



Legislative Assembly of the Northern Territory

Public Accounts Committee

Inquiry into the Indigenous Employment Provisional Sum

October 2025



Inquiry into the Indigenous Employment Provisional Sum



Legislative Assembly of the Northern Territory

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Chair's Preface

This report details the Committee's findings and recommendations regarding its inquiry into the Indigenous Employment Provisional Sum (IEPS), referred to the Committee by the Assembly on 22 May 2025.

The IEPS was created in 2014 to increase employment and business opportunities for Aboriginal Territorians through public construction projects. In 2017, the scheme was suspended following concerns raised about potential widespread misuse.

Contrary to some public discussion, the Committee found no evidence of large-scale or systemic fraud. Of the \$60.8 million paid through the IEPS, a total of \$1.6 million (approximately 2.6 per cent) was later identified as overpayments. Only \$0.3 million of that amount was proven to involve fraudulent conduct, resulting in three criminal convictions. The overwhelming majority of irregular payments stemmed from unclear policy design and inconsistent administrative processes, rather than deliberate wrongdoing by industry.

The Committee also examined the costs associated with responding to these overpayments. More than \$1.8 million in taxpayer funds was spent on investigation and recovery efforts to recoup \$0.9 million. While it was appropriate to pursue recovery action where possible, this outcome demonstrates an inefficient use of public money, driven by process failures rather than misconduct. It is clear that the administrative burden created fell disproportionately on Government and did not deliver value for the Territory.

The inquiry highlighted that private construction contractors acted within the policy and contract settings provided by Government, and in many cases worked cooperatively to resolve discrepancies. It is essential that lessons learned focus on improving Government's own verification and oversight systems, not imposing new regulatory or administrative burden on the private sector.

Aboriginal employment obligations continue to play an important role within the Value for Territory framework and support real opportunities for Aboriginal Territorians. However, the Committee notes that the verification of participation remains challenging for agencies. Any improvements made going forward must be designed with industry, and implemented in a way that is streamlined, practical and not detrimental to business operations.

Above all, this inquiry reinforces that major policy initiatives must be supported by adequate planning, documented business cases, clear guidance, and appropriate systems before implementation. These safeguards protect the public purse and ensure that policy objectives deliver genuine economic benefit.

On behalf of the Committee, I thank departmental officials, industry representatives, and others who contributed to this inquiry. I also acknowledge my fellow Committee Members for their constructive and diligent approach to this important work.

A handwritten signature in blue ink, appearing to read "Clinton Howe". The signature is fluid and cursive, with a large initial "C" and "H".

Mr Clinton Howe MLA
Chair

Committee Members

Chair:	Mr Clinton Howe, MLA Member for Drysdale
Deputy Chair:	Mrs Laurie Zio, MLA Member for Fannie Bay
Members:	Mr Manuel Brown, MLA Member for Arafura Justine Davis, MLA Member for Johnston Mr Brian O’Gallagher, MLA Member for Karama

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Acronyms and Abbreviations

ASNEX	Asset Systems Nexus
CCU	Contractor Compliance Unit
CPR	Contractor Performance Report
CPS	Contractor Performance Scorecard
DCIS	Department of Corporate and Information Systems
DCDD	Department of Corporate and Digital Development
DLI	Department of Logistics and Infrastructure
DIPL	Department of Infrastructure, Planning and Logistics
EDRM	Electronic Document Records Management
IAIU	IEPS Audit and Investigation Unit
IAT	Inter-Agency Taskforce
IEPS	Indigenous Employment Provisional Sum
HPRM	HP Record Manager
TRAX	Contrax System

Terms of Reference

On 22 May 2025, the Assembly resolved that:

The Public Accounts Committee inquire into and report on the Auditor-General's November 2018 Report to the Legislative Assembly at pages 31 to 66 in respect of the Department of Infrastructure, Planning and Logistics, including but not limited to consideration of:

- a) the full extent of overpayments to all IEPS contractors;
- b) options for repayment by contractors of all unrecovered overpayments; and
- c) implementation of the Auditor-General's recommendations by the former Department of Infrastructure, Planning and Logistics and outcomes to date.

and that the Committee present its final report to the Assembly on or before 31 October 2025.

Recommendations

Recommendation 1

The Committee recommends that Agencies be required to develop policy implementation plans, to be approved by the Chief Executive Officer, detailing the performance management system, processes, procedures, controls, risk mitigation, guidance documentation, communication strategy and staff training required prior to the implementation of all major policy initiatives.

Recommendation 2

The Committee recommends that the Government, specifically the Contractor Compliance Unit, strengthen its internal systems to support Aboriginal Territorians to have greater participation in the Northern Territory's workforce and procurement outcomes.

1 Introduction

Inquiry Referral

- 1.1 Based on a motion moved by the Independent Member for Johnston, Justine Davis MLA, and pursuant to clause 1(d)(i) of its Terms of Reference¹, on 14 May 2025 the Assembly resolved that:

The Public Accounts Committee inquire into and report on the Auditor-General's November 2018 Report to the Legislative Assembly at pages 31 to 66 in respect of the Department of Infrastructure, Planning and Logistics, including but not limited to consideration of:

- (a) the full extent of overpayments to all IEPS [Indigenous Employment Provisional Sum] contractors
- (b) options for repayment by contractors of all unrecovered overpayments
- (c) in cases of prima facie evidence of fraud, the merits of legal proceedings based on advice from relevant government agencies

and that the committee present its final report to the Assembly on or before 31 October 2025.²

- 1.2 Following consideration of the Terms of Reference, at its meeting of 21 May 2025 the Committee resolved to write to the Leader of Government Business to request that the inquiry terms of reference be amended as the Committee did not consider it was best placed to respond to clause (c).

- 1.3 Noting that the such matters lie within the purview of the NT Police, Director of Public Prosecutions and the Department of Logistics and Infrastructure Investigation Unit, the Committee proposed replacing clause (c) with a new clause (c): implementation of the Auditor-General's recommendations by the former Department of Infrastructure, Planning and Logistics and outcomes to date (see Appendix 1).

- 1.4 On 22 May 2025, the Leader of Government Business subsequently moved that:

the motion on the committee referral regarding the Indigenous Employment Provisional Sum, as agreed to by the Assembly on 14 May 2025, be amended by omitting clause (c) and inserting new clause (c):

'implementation of the Auditor-General's recommendations by the former Department of Infrastructure, Planning and Logistics and the outcomes delivered to date.'

I move that the motion be accepted.

Motion agreed to.³

Conduct of the Inquiry

- 1.5 On 30 May 2025 the Committee called for submissions by 30 June 2025. The call for submissions was advertised via the Legislative Assembly website, Facebook, and

¹ Legislative Assembly of the Northern Territory, *Standing Orders (4th Edition)*, <https://parliament.nt.gov.au/business/standing-and-session-orders>, Standing Order 177 – Public Accounts Committee, p. 52

² Parliamentary Record, *Draft Daily Hansard – Day 2 – 14 May 2025*, <https://hdl.handle.net/10070/997743>, pp. 59-66

³ Parliamentary Record, *Draft Daily Hansard – Day 6 – 22 May 2025*, <https://hdl.handle.net/10070/997747>, p.3

email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.

- 1.6 The Committee received one submission to its inquiry from the Department of Logistics and Infrastructure (the Department). Following consideration of the Department's submission, the Committee identified several matters relating to the Auditor-General's 2018 report it required further information on. As such, on 23 July 2025 the Committee requested that the Department provide a written response to its queries by 15 August 2025. By way of follow up, on 25 September 2025 the Committee held a public hearing with departmental representatives (see Appendix 1).

Report Structure

- 1.7 Chapter 2 provides background information on the Indigenous Employment Provisional Sum initiative.
- 1.8 Chapter 3 considers the IEPS Audit and Investigation following suspension of the scheme as it relates to clauses 1 and 2 of the inquiry Terms of Reference.
- 1.9 Chapter 4 considers departmental responses to the recommendations contained in the Auditor-General's *November 2018 Report to the Legislative Assembly*.
- 1.10 Chapter 5 presents the Committee's findings and recommendations.

2 Background

Indigenous Employment Provisional Sum Initiative

2.1 The Indigenous Employment Provisional Sum (IEPS) initiative was implemented in October 2014 as a mechanism to support the Department of Infrastructure, Planning and Logistics' (DIPL) *Indigenous Participation on Construction Projects Policy*.⁴ The IEPS sought to provide “employment and training opportunities to Aboriginal people and build the capacity of Aboriginal businesses through the delivery of construction projects.”⁵ Employment was to be supported by DIPL nominating a ‘Provisional Sum’ item in construction contracts for Indigenous employment and training where project values exceeded \$500,000 (Tier 4 and 5 projects).⁶

2.2 As the Department of Logistics and Infrastructure (DLI) explained to the Committee:

A provisional sum is a contractual term that is used to nominate a potential item that can be claimed against the contract. The value payable against the contract can be from nil to the full value allocated in the contract. The application of the IEPS policy was to include a provisional sum worth up to 10% of the contract value. This contractual mechanism was used to allow tenderers flexibility in how they could achieve better Aboriginal employment and Aboriginal business outcomes in their offering. It was also designed to encourage the construction sector to find ways of increasing Aboriginal employment, acknowledging there may be a cost in implementing better outcomes.⁷

2.3 While the IEPS initially allowed for a provisional sum item relating to the employment and training of indigenous people, in February 2015 the *Guidelines for the Implementation of the Indigenous Employment Provisional Sum* were amended to exclude the training of indigenous people from the scheme.⁸ As noted in DLI’s submission

The IEPS could be claimed by the contractor through submitting their progress claims throughout the contract period. Some contractors elected not to claim against the IEPS, some only claimed a portion of the allocated amount while other contractors claimed the full allocation.⁹

2.4 In November 2016 DIPL identified “anomalies associated with claims against the IEPS by one contractor”.¹⁰ An internal investigation into this issue and the wider scheme was subsequently undertaken by the Contractor Compliance Unit (CCU) with a number of underpayments and overpayments to contractors identified.¹¹ On 4 August 2017, the then Minister for Infrastructure, Planning and Logistics announced that:

⁴ Auditor-General, *November 2017 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2017_November.pdf, p. 39

⁵ Department of Logistics and Infrastructure, Submission No. 1, p. 1

⁶ Auditor-General, *November 2017 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2017_November.pdf, p. 40

⁷ Department of Logistics and Infrastructure, Submission No. 1, p. 1

⁸ Auditor-General, *November 2017 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2017_November.pdf, p. 47

⁹ Department of Logistics and Infrastructure, Submission No. 1, p. 1

¹⁰ Auditor-General, *November 2017 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2017_November.pdf, p. 51

¹¹ Auditor-General, *November 2017 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2017_November.pdf, p. 64

Following advice received from the Department of Infrastructure, Planning and Logistics relating to potential widespread fraud of the IEPS, the Government has suspended the scheme, effective immediately.¹²

While no new contracts with the IEPS were issued from 4 August 2017, contracts with provisional sums agreed to prior to this date were honoured. As such, businesses were able to complete their current projects without changes to their contract conditions.¹³

Audits of the IEPS Initiative

2.5 The Auditor-General audited the IEPS initiative twice, reporting in November 2017 and November 2018. The 2017 audit examined the initiative from its inception in October 2014 through to 31 May 2017, with the objective of providing the Legislative Assembly with:

- an overview of the performance management system in place at the Department of Infrastructure, Planning and Logistics to manage the IEPS initiative;
- assurance that the controls and processes leading to payments to contractors in accordance with the IEPS initiative are appropriately designed and implemented; and
- assurance that payments to contractors in accordance with the IEPS initiative have been made in accordance with the criteria applicable to the initiative.¹⁴

2.6 The Auditor-General's report highlighted a range of issues surrounding the scheme, including poor planning, governance, and cost controls, frequently erroneous or incomplete record-keeping, difficulty validating claims, and inconsistent treatment of contract variations.¹⁵ As the Auditor-General pointed out:

- The performance management system in place to manage IEPS is ineffective and does not enable the Agency to assess whether the objectives of the IEPS initiative are being achieved efficiently, effectively and with economy;
- I am unable to provide assurance that the controls and processes enabling payments to contractors in accordance with the IEPS initiative were appropriately designed and implemented as there were no formal controls and processes in place and I was provided no evidence that there was consistent interpretation or application of the IEPS initiative; and
- I am unable to provide assurance that payments to contractors were paid in accordance with the criteria applicable to IEPS as criteria were inconsistently interpreted and applied across different projects/contracts.¹⁶

2.7 Noting that a significant number of IEPS claim anomalies, procedural weaknesses, and system inadequacies were brought to the attention of the DIPL executive from the inception of the scheme, the Auditor-General pointed out that:

The absence of effective preventative controls from the implementation of the IEPS initiative exposed the Agency to significant financial risk and there is

¹² Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 35

¹³ Auditor-General, *November 2017 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2017_November.pdf, p. 75

¹⁴ Auditor-General, *November 2017 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2017_November.pdf, p. 38

¹⁵ Auditor-General, *November 2017 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2017_November.pdf, pp. 38-74

¹⁶ Auditor-General, *November 2017 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2017_November.pdf, p. 41

evidence to suggest that some contractors have deliberately claimed payments under the IEPS to which they were not entitled.¹⁷

2.8 In response to the Auditor-General's findings, the Chief Executive Officer of DIPL at the time advised that:

- strict procedural controls and requirements for the independent verification and approval of IEPS payments had now been implemented
- the IEPS framework had been strengthened and improved governance arrangements had been implemented to ensure a high level of oversight, control and direction in the management and close out of the IEPS initiative
- for existing contracts that contain the IEPS, contractors had been advised that claims in-line with the Conditions of Contract and revised Eligibility Criteria and the Indigenous Employment Report would continue to be accepted and processed
- the revised Eligibility Criteria now clearly identified the activities and costs permitted to be claimed and contractors had been advised that non-conforming claims for IEPS payments would not be approved.¹⁸

2.9 The Chief Executive Officer further acknowledged that:

the IEPS initiative was developed and implemented without adequate planning, procedural controls or guidance, which has exposed the Department to risk. On this basis an Inter-Agency Taskforce (Taskforce) chaired by myself and comprising of senior representatives for the Solicitor for the Northern Territory, Department of Treasury and Finance, and the Northern Territory Police, Fire and Emergency Services, has been established to oversee the analysis of contracts that included an IEPS and address any potential misuse of the initiative.¹⁹

2.10 Covering the period from 1 June 2017 to 31 July 2018, and including information dating back to the commencement of the initiative where required, the 2018 audit of the IEPS considered the performance management systems DIPL had in place to manage the IEPS after the scheme was suspended. As such, this second audit sought to provide the Legislative Assembly with:

- an overview of the actions taken by the Department of Infrastructure, Planning and Logistics (DIPL) to address the recommendations arising from the prior audit of the Indigenous Employment Provisional sum (IEPS) initiative ...; and
- assess the controls and processes DIPL has in place to manage the investigation, final payments and closure of the IEPS policy.²⁰

2.11 While acknowledging that DIPL had enhanced controls relating to the verification of claims against the IEPS within contracts, the Auditor-General noted that:

the audit identified a number of processes where controls could be further improved.

When considering the current progress of the IEPS investigation, there is significant risk that the resources allocated to the verification of past claims

¹⁷ Auditor-General, *November 2017 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2017_November.pdf, p. 41

¹⁸ Auditor-General, *November 2017 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2017_November.pdf, pp. 75-6

¹⁹ Auditor-General, *November 2017 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2017_November.pdf, p. 76

²⁰ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 31

against the IEPS are not sufficient and the opportunity for DIPL to recover overpayments in a timely manner will be negatively impacted.

Responses to breakdowns and weaknesses in controls have been limited to investigating past and current claims against the IEPS with the prioritisation of current claims for payment. The extent to which identified shortcomings in controls related to verification of payments, contract management and document management and associated risks may impact other processes not specific to IEPS have not been assessed at an Agency level. Controls at the wider project management level remain unchanged. As a result, the Agency may continue to be exposed to financial risk.

The audit identified that the Agency could implement improvements in order to demonstrate the Agency objectives are being achieved economically, efficiently and effectively.²¹

- 2.12 The Auditor-General subsequently made 10 recommendations to 'enhance the effectiveness of management and monitoring of payments of claims against the IEPS policy and contract management more broadly ...'²² Pursuant to clause 3 of the inquiry Terms of Reference, these recommendations, DIPL's responses, and outcomes to date are considered in detail in chapter 4.

²¹ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 37

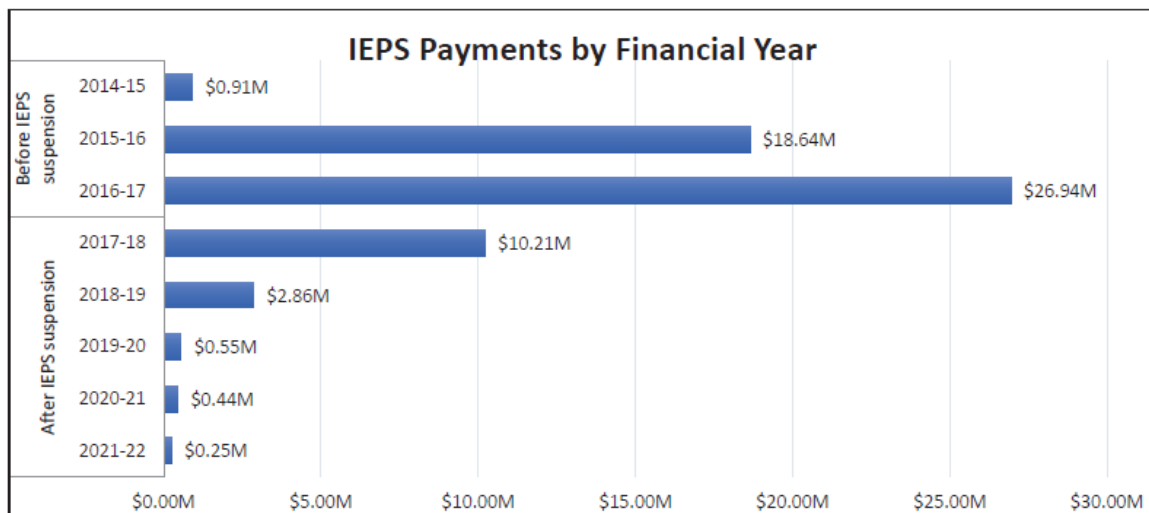
²² Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 37.
Note: the 10 recommendations are set out on pp. 38-41; see also pp. 64-6 for DIPL's response to the Auditor-General's recommendations.

3 IEPS Audit and Investigation

Introduction

3.1 Implemented in October 2014, DLI advised that the IEPS was 'included in 529 contracts with a total of \$122 million eligible to be claimed by contractors.'²³ However, not all contractors elected to claim against the IEPS. As set out in Figure 1 below, a total of \$60.8 million was claimed and paid out against the scheme to 146 contractors against 453 contracts.

Figure 1: IEPS Payments by Financial Year²⁴



3.2 To clarify, DLI advised that:

Of the \$60.8 million paid, \$48.8 million was paid prior to the suspension of the scheme. Once the scheme was suspended, the claims made and paid against the IEPS were re-audited and verified against the Conditions of Contract by the IEPS Audit and Investigation Unit.

While the scheme was suspended, active contracts that included the IEPS still had to be honoured. The remaining \$12 million of the \$60.8 million was paid after the suspension of the scheme for contracts that were still current. These claims were verified against the Conditions of Contract by the IEPS Audit and Investigation Unit prior to payment being made.²⁵

DLI also advised that the last payment against the IEPS was made on the 13 October 2021 and all contracts with the IEPS available were completed by June 2022.²⁶

3.3 As mentioned previously, following the identification of anomalies in claims against the IEPS and potential misuse of the scheme, the IEPS was suspended in August 2017. DIPL subsequently established the IEPS Audit and Investigation Unit (IAIU) to review and verify all unpaid IEPS claims for payment for current contracts, and audit claims paid prior to the suspension of the scheme. Audit outcomes highlighting both

²³ Department of Logistics and Infrastructure, Submission No. 1, p. 2

²⁴ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 2

²⁵ Department of Logistics and Infrastructure, Submission No. 1, p. 2

²⁶ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 2

non-deceptive actions and suspected deceptive actions were then reported to the Inter-Agency Taskforce which was responsible for referring all suspected fraudulent activities to the NT Police for further investigation.²⁷

3.4 In relation to verifying unpaid claims, the Committee was advised that DIPL also implemented additional mechanisms to ensure the veracity of contractor claims including:

- enhancing the IEPS eligibility criteria to clearly articulate definitions and interpretations, documentation requirements and eligible and ineligible claims
- requiring contractors provide a statutory declaration attesting Aboriginal heritage from claimed individuals
- liaising with contractors to address unverified claims.²⁸

3.5 The Committee notes that the introduction and application of the enhanced IEPS eligibility criteria to unpaid claims on active contracts following the suspension of the IEPS, resulted in \$1.9 million of the \$13.9 million claimed being declined by DIPL for not meeting the Conditions of Contract.²⁹

Extent of Overpayments to IEPS Contractors

3.6 Determining the full extent of overpayments to IEPS contractors proved to be challenging for a number of reasons. As noted by DLI:

The IEPS was a complex scheme, subject to misinterpretation and difficulties in administering. The majority of non-compliances related to differing interpretation of the application of the scheme, resulting in unintentional non-compliances by contractors.³⁰

3.7 Moreover, as highlighted in the Auditor-General's *November 2017 Report to the Legislative Assembly*, the difficulties in administering the IEPS were compounded by the deficiencies in the performance management system, procedures and processes DIPL had in place to manage the IEPS.³¹ In the absence of any guidance on how to interpret and apply the IEPS, the Auditor-General noted that:

there was no consistent application of the policy across contractors, contracts or contract variations and interpretation of the policy differed between employees, divisions and regions within the Agency [DIPL].³²

3.8 The Auditor-General also pointed out that:

The communication between contractors and the Agency [DIPL] emphasise that the lack of clarity in relation to implementation of the initiative have resulted in the Agency being financially disadvantaged by paying claims for items not envisaged by the Agency as being eligible for claiming.³³

3.9 The Committee understands that misinterpretation of the application of the IEPS on the part of DIPL and contractors necessarily impacted on what could subsequently

²⁷ Department of Logistics and Infrastructure, Submission No. 1, p. 1

²⁸ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 1

²⁹ Department of Logistics and Infrastructure, Submission No. 1, p. 2

³⁰ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 18

³¹ Auditor-General, *November 2017 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2017_November.pdf, pp. 38-76

³² Auditor-General, *November 2017 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2017_November.pdf, p. 68

³³ Auditor-General, *November 2017 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2017_November.pdf, p. 66

be legally identified as an overpayment. DLI further advised that 'DIPL also experienced difficulties in determining whether an overpayment existed and recovery of potential overpayments due to the expiry of contracts and retention of records being over seven years.'³⁴

- 3.10 Of the \$60.8 million paid against the IEP, a total of \$1.6 million was identified as overpayments. DLI noted that of this, \$1.4 million was not able to be substantiated and warranted further investigation³⁵ The remaining \$0.2 million was written off by the Treasurer 'due to no dividends payable to creditors following the liquidation of the contractor.'³⁶ Ultimately, 35 of the 146 contractors that made IEPs claims were subject to recovery of overpayments across 55 different contracts.³⁷ The Committee heard that, 'of the \$1.4 million unsubstantiated claims, \$1.3 million was paid prior to the suspension of the scheme and \$0.1 million was paid after the suspension of the scheme.'³⁸
- 3.11 A total of 21 contractors were referred to NT Police for further investigation of suspected fraudulent activities. Four individuals were charged and three were convicted.³⁹ DLI further advised that:

Of the \$1.4 million warranting further investigation, \$0.3 million was proven to have been fraudulently claimed and categorised as deliberate misrepresentation. The remaining balance of the \$1.4 million (\$1.1 million) was not a result of deliberate misrepresentation, and can be broadly categorised as a combination of unintentional misinterpretation or administrative error.⁴⁰

Options for Repayment of Unrecovered Overpayments

- 3.12 As indicated previously, of the \$60.8 million paid out against the scheme, the IAIU identified \$1.6 million in overpayments relating to 55 contracts awarded to 35 of the 146 contractors. During the IEPs audit and investigation process, DIPL obtained legal advice regarding overpayment recovery options and the development of 'processes relating to obtaining documentation from contractors and seeking recovery of identified overpayments'.⁴¹
- 3.13 Based on the legal advice received, DLI advised that the recovery of identified overpayments were subject to different processes depending on whether the contract was current or finalised. For current contracts, the Conditions of Contract enabled DIPL to liaise with contractors to obtain the necessary substantiating documentation or seek recovery of any overpayment.⁴² The Committee heard that recovery of overpayments on current contracts 'occurred either by reimbursement from the contractor or by reducing the contractor's next progress claim.'⁴³

³⁴ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 16

³⁵ Department of Logistics and Infrastructure, Submission No. 1, p. 2

³⁶ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 13

³⁷ Department of Logistics and Infrastructure, *Responses to Written Questions*, pp. 13

³⁸ Department of Logistics and Infrastructure, *Responses to Written Questions*, pp. 14

³⁹ Department of Logistics and Infrastructure, Submission No. 1, p. 2

⁴⁰ Department of Logistics and Infrastructure, *Responses to Written Questions*, pp. 13

⁴¹ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 16

⁴² Department of Logistics and Infrastructure, Submission No. 1, p. 2

⁴³ Department of Logistics and Infrastructure, Submission No. 1, p. 3

3.14 However, DIPL’s ability to obtain further documentation or seek recovery of any overpayments on finalised contracts was limited:

Once a Final Certificate has been issued, there is no contractual right to:

- require a contractor to produce further documentation; or
- seek reimbursement where an overpayment has been identified. However, if the overpayment is the result of a false claim (deceptive practices) or mistaken claim (claims without the required supporting documentation of as a breach of contract), DIPL could seek reimbursement by commencing legal proceeding within the Statute of Limitations’ timeframe.

The Statute of Limitations’ period is 3 years from the date of the Final Certificate with an ability to apply for a 12-month extension through the courts.

Therefore, for finalised contracts, obtaining documentation or seeking recovery of overpayments resulting from non-deceptive action was reliant upon the contractor’s cooperation and willingness.

The NT Police advised that in order to recover funds resulting from suspected deceptive actions, a criminal investigation would need to be pursued and it would need to be proven through court proceedings that the contractor deceived DIPL in obtaining payment. Determining whether a contractor had received benefit by deception is based on the claim made at the time that payment was released.⁴⁴

3.15 Despite the challenges relating to the recovery of overpayments on finalised contracts, the Committee heard that ‘DIPL pursued recovery of all confirmed overpayments.’⁴⁵ Where an overpayment on a finalised contract was identified, a letter was issued to the contractor detailing the nature of the overpayment and providing the contractor with an opportunity to provide the necessary documentation to substantiate the claim to enable verification. Where the contractor was unable to substantiate the claim, or where a response was not provided by the contractor, an invoice was raised for recovery of the overpayment.⁴⁶

3.16 As set out in Table 1 below, reimbursements were sought or received by issuing an invoice, reducing subsequent progress claims, or bank transfer reimbursement. The Committee was further advised that while the majority of disputes relating to overpayments were resolved between DIPL and the contractor, in one instance both parties engaged with an Expert Determiner to resolve the dispute.⁴⁷

Table 1: Overpayment Reimbursement Method⁴⁸

Reimbursement method	Number of contractors	Reimbursement sought
Invoice issued by DIPL	21	\$1.3 million ¹
Reduction in subsequent contract progress claim	9	\$0.1 million
Bank transfer reimbursement (no invoice issued)	12 ²	\$0.2 million

¹ Includes \$0.2 million that was written off by the Treasurer due to no dividends payable to creditors following the conclusion of the contractor’s liquidation.

² Includes four contractors that were also issued an invoice for recovery of a different overpayment and one contractor that reimbursed an overpayment by reducing a subsequent contract progress claim.

⁴⁴ Department of Logistics and Infrastructure, Submission No. 1, pp. 2-3

⁴⁵ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 15

⁴⁶ Department of Logistics and Infrastructure, Submission No. 1, p. 3

⁴⁷ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 15

⁴⁸ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 15

3.17 To date, of the \$1.6 million of claims identified as overpayments, \$0.9 million has been recovered from contractors through the aforementioned reimbursement methods. DLI advised that the outstanding \$0.7 million relates to contractors that have been liquidated. Noting that the Northern Territory Government is a registered creditor with the liquidators for these amounts, DLI further advised that:

Of the \$0.7 million, \$0.2 million relates to a liquidation that has concluded with no dividends payable to creditors and as this amount could not be recovered, it was subsequently written off by the Treasurer.

With regards to the \$0.5 million that is currently outstanding, it was noted that:

It is now a matter for the liquidators to determine if dividends will be payable to creditors. If the liquidation is finalised in the absence of full recovery of the debt, the portion unrecoverable will need to be written off by the Treasurer.

3.18 Given the above, DLI advised the Committee that it had 'exhausted all options for recovery of identified overpayments.'⁴⁹

⁴⁹ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 3

4 Implementation of Auditor-General's Recommendations

4.1 As indicated previously, the Auditor-General made a total of 18 recommendations regarding the IEPS, including eight from the initial audit in 2017 and a further ten from the subsequent 2018 audit. The Committee was advised that DIPL accepted all of the recommendations and had fully implemented them by February 2020.⁵⁰ In accordance with clause 3 of the inquiry Terms of Reference, the following discussion considers the issues raised by the Auditor-General in their 2018 report to the Legislative Assembly that gave rise to recommendations, implementation of the recommendations by DIPL, and outcomes to date.

Independence of IEPS Investigation Team

4.2 Following suspension of the IEPS, the Committee heard that DIPL established two new teams to support the audit and investigation functions associated with the identification of suspected fraudulent claims against the IEPS, namely the:

- **IEPS Verification Team:** responsible for reviewing and validating all IEPS claims submitted from August 2017.
- **IEPS Audit and Investigation Team:** responsible for reviewing all claims submitted prior to August 2017.⁵¹

As mentioned previously, an Inter-Agency Taskforce (IAT) was also established to 'oversee the analysis of contracts that included the IEPS and seek resolution of any discrepancies by either civil or criminal avenues, or both.'⁵²

4.3 The IEPS Verification Team and the Audit and Investigation team were located within the operational unit that was responsible for the day to day management of the IEPS including policy development, provision of guidance to operational staff and contractors, authorisation of payments, and the conduct of quality assurance reviews.⁵³ However, as the Auditor-General pointed out:

While the investigation activities are allocated to a separate team within the unit, the independence of the Investigation Team may be, or be seen to be, impaired as the Investigation Team is structurally located within the unit which has operational responsibility for interpretation and application of the IEPS. For an investigation team to be, and be seen to be objective, established practice is to implement structural separation from business operations.⁵⁴

When conducting an investigation within an organisation, operational and reporting structures must in place to facilitate confidentiality and to allow the investigators to operate independently of the day to day business operations.⁵⁵

4.4 As such, the Auditor-General recommended that:

⁵⁰ Department of Logistics and Infrastructure, Submission No. 1, p. 3

⁵¹ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 42

⁵² Department of Logistics and Infrastructure, Submission No. 1, p. 1

⁵³ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 44

⁵⁴ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 42

⁵⁵ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 43

management consider the structural positioning and reporting lines of the IEPS Investigation Team to ensure the IEPS Investigation Team is, and is seen to be, independent of the processes being investigated and from those processes considered business as usual. Structural separation and clear reporting lines support the independence and objectivity of those involved in an audit or investigative role.⁵⁶

- 4.5 The Committee was advised that in July 2018 the IEPS Verification Team and the IEPS Audit and Investigation Team were merged to form the IEPS Audit and Investigation Unit (IAIU).⁵⁷ Acknowledging the importance of avoiding any perceptions of a potential conflict of interest, DIPL agreed that the IAIU should not report to a division that was responsible for managing the contracts under investigation and advised the Auditor-General that:

Effective as of 1 November 2018, DIPL has implemented a change in reporting lines with the IEPS Investigation Team now forming part of the Corporate Services Division and being referred to as the IEPS Audit and Investigation Unit.⁵⁸

- 4.6 The Committee was further advised that, effective as of 3 June 2019, the IAIU was transferred to the Executive Services Division reporting directly to the Director Executive Services who in turn reported directly to the Chief Executive Officer.⁵⁹ In accordance with the Auditor-General's recommendation, DLI pointed out that:

Independence of the IEPS Audit and Investigation Unit was maintained from 1 November 2018 to the cessation of the investigation in May 2022. This structural separation and implementation of clear reporting lines supported the independence and objectivity of those involved in the audit.⁶⁰

- 4.7 By way of clarification, DLI advised the Committee that following the amalgamation of the IEPS Verification Team and the IEPS Audit and Investigation Team, the internal IAIU within DIPL was responsible for:

1. Reviewing and verifying all unpaid IEPS claims for payment in current contracts.

The IEPS Audit and Investigation Unit verified if the claim complied with the Conditions of Contract. If the claim did not conform with the Conditions of Contract, DIPL liaised with the contractor explaining reasons why the claim was declined. Contractors were provided with an opportunity to revise claims, produce documentation to substantiate claims or withdraw the claim.

2. Auditing claims paid prior to the suspension of the scheme in August 2017.

The IEPS Audit and Investigation Unit assessed the claim's compliance with the Conditions of Contract. DIPL liaised with contractors where claims did not meet the Conditions of Contract and sought to obtain additional documentation to substantiate claims.⁶¹

- 4.8 In addition to the reconciliation of IEPS payments made against contracts, the Committee heard that the IAIU also conducted regular reviews of the IEPS data and provided reports to the IAT on:

⁵⁶ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 38

⁵⁷ Department of Logistics and Infrastructure, Submission No. 1, p. 4

⁵⁸ Department of Logistics and Infrastructure, Submission No. 1, p. 11

⁵⁹ Department of Logistics and Infrastructure, Submission No. 1, p. 11

⁶⁰ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 3

⁶¹ Department of Logistics and Infrastructure, Submission No. 1, p. 1

- the value of IEPS claimed
- the value if IEPS paid
- the status of claims being audited
- the status of verification for unpaid claims
- identified overpayments and the status of recovery of these overpayments
- audit reports for each contractor reviewed that included specific details on the contractor's claims against the IEPS and an assessment of the claims against the Conditions of Contract.⁶²

4.9 DLI further advised that audit outcomes highlighted any discrepancies that may have arisen from non-deceptive actions such as administrative errors or unintentional misinterpretations, and suspected deceptive actions such as deliberate misrepresentations. The IAT then referred all suspected fraudulent activities to the NT Police for further investigation.⁶³

Contractor Performance Review Process

4.10 Given that Contractor Performance Reviews are taken into account when considering future procurement decisions, the Auditor-General raised concerns that during the 2018 audit 'several instances were identified where the Contractor Performance Review had not been performed on completed projects.'⁶⁴

4.11 At the time of the audit, DIPL advised that they were:

aware of the issues and limitations in the Contract Performance Review process and identified that the process is not always completed in a timely manner thus it is difficult to take into consideration when assessing responses to subsequent tenders. DIPL are working with DCIS [Department of Corporate and Information Services] to develop a new Contractor Performance Review process.⁶⁵

4.12 While acknowledging the work underway to develop and implement a new process designed to facilitate the timely and accurate assessment and reporting of contractor performance, the Auditor-General recommended that:

DIPL ensure the design and implementation of the new process supports efficient completion and reporting of performance assessments and enables meaningful reports to be extracted that effectively contribute to future tender assessments.

I further recommend that the new and changed processes together with training on how to use the system, be effectively communicated to all personnel involved in the contract management.⁶⁶

4.13 DLI noted that while it continues to work with Department of Corporate and Digital Development (DCDD previously DCIS) to improve the assessment and reporting of contractor performance, a number of initiatives had been put in place to support timely, efficient and consistent performance assessments. For example, contractor performance reports for DLI infrastructure and project contracts are now stored in ASNEX, which also serves as the central repository for project and asset

⁶² Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 4

⁶³ Department of Logistics and Infrastructure, Submission No. 1, pp. 1-2

⁶⁴ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 43

⁶⁵ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 43

⁶⁶ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 38

management data across the Northern Territory Government, with signed copies of CPS forms retained in the NTG Central Records Management System.⁶⁷

4.14 DLI further advised that it had:

developed internal IT dashboards and reporting tools to monitor the completion of ASNEX contractor performance reports across the agency. These dashboards are updated monthly and shared via email at the executive, business unit and individual staff level to support visibility and accountability. Quarterly compliance reports for contracts managed in ASNEX are presented to the DLI Executive Leadership Team, providing a consolidated overview of contractor performance reporting across the agency.⁶⁸

4.15 To support future procurement decisions, the Committee heard that:

a restricted access dashboard is available to procurement staff which provides summarised company performance data. This enables assessment staff to review completed CPS reports and identify relevant contractor performance information for consideration in new tender evaluations.⁶⁹

4.16 Staff were initially advised of the new process via the Chief Executive newsletter in January 2020. A communications plan regarding the updated processes was subsequently approved by the General Manager Infrastructure, Investment and Contracts in February 2020, with information on the new process provided via the intranet and email circulation.

4.17 DLI also advised that all contract management staff had been trained in using the new system, with training incorporating 'scheduled internal training sessions, regular updates published on the DLI intranet, as well as one-on-one support services to ensure staff are confident in using the CPS forms and workflows.'⁷⁰ It was further noted that 'contract management staff work in partnership with other internal teams, including but not limited to the Procurement Capability Team, the Contractor Compliance Unit, and the Contracts Unit to ensure consistent messaging and up-to-date training materials.'⁷¹

4.18 Noting that the core systems supporting the new contract performance review process are fully operational across the Department, DLI advised that:

these contractor performance systems are now embedded into business operations. As with most digital systems, they are subject to continuous improvement and ongoing refinement. DLI has a strategic program of work in place to regularly review and improve our processes and will continue working closely with DCDD to ensure the systems remain effective, user-friendly, and aligned with whole-of-government procurement and reporting requirements.⁷²

the core systems supporting the contract performance review process are fully operational across DLI and are now

4.19 The Committee understands that DLI's *Contractor Performance Scorecard Reporting Policy* was also updated in June 2024 to ensure that the contractor performance

⁶⁷ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 5

⁶⁸ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 5

⁶⁹ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 5

⁷⁰ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 6

⁷¹ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 6

⁷² Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 9

reporting process was aligned with 'the *Procurement Act 1995* directions with respect to the Procurement Principles and rules for evidence-based reporting ...'⁷³

Prioritisation of Workload and Resourcing of IEPS Investigation Team

4.20 During the initial stage of the internal IEPS Audit and Investigation a selected number of claims were required to be reviewed in relation to each contractor. The minimum number of claims to be reviewed was determined on the basis of the assessed risk of fraud:

The higher the number of contracts awarded to a contractor, the higher the risk of fraud resulting in the requirement to review a greater number of claims. Similarly, the higher the value of IEPS paid to a contractor, the higher the risk of fraud resulting in the requirement to review a greater number of claims.⁷⁴

4.21 While this prioritisation resulted in enhanced verification of current claims and a structured process for investigating past claims, due to the possibility that anomalies in the selected claims might not be detected, all claims were ultimately subject to review.⁷⁵ However, as at 31 July 2018, the Auditor-General noted that 93 percent of claims submitted after August 2017 had been reviewed compared to only 10 percent of contracts submitted before August 2017.⁷⁶

4.22 Given that section 12 of the *Limitation Act 1981* imposes a three year time limit for bringing an action for breach of contract to court, the Auditor-General expressed concern that the focus on claims submitted after 4 August 2017 over claims made prior to the suspension of the scheme risked DIPL's capacity to pursue recovery of overpayments of claims made under older contracts.⁷⁷

4.23 In relation to resourcing, the Auditor-General also noted that one of the three positions in the IEPS Audit and Investigation was not filled and of the two remaining staff, 'only one appears to hold appropriate investigative qualifications.'⁷⁸ Consequently, the Auditor-General recommended that:

management review the prioritisation of workload and the current resourcing of the IEPS Investigation Team and take necessary steps to mitigate the risk that overpayments of claims against the IEPS will not be recovered in a timely manner.⁷⁹

4.24 In response DIPL pointed out that the prioritisation of IEPS claims meant that 'the majority of high risk contracts have been reviewed.'⁸⁰ However, following receipt of legal advice noting that the Final Certificate Date is the date from which the statutory limitations period commences, DIPL noted that 'IEPS claims will now be reviewed against this date noting the three year statutory limitations period.'⁸¹ DIPL further

⁷³ Department of Logistics and Infrastructure, *Answers to Questions Taken on Notice*, p.6

⁷⁴ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 10

⁷⁵ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 10

⁷⁶ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p.38

⁷⁷ Department of Logistics and Infrastructure, Submission No. 1, p. 12

⁷⁸ Department of Logistics and Infrastructure, Submission No. 1, p. 12

⁷⁹ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p.38

⁸⁰ Department of Logistics and Infrastructure, Submission No. 1, p. 12

⁸¹ Department of Logistics and Infrastructure, Submission No. 1, p. 12

noted that the IAIU would have three full time staff members by the end of November 2018 with a fourth to be recruited in early 2019, with the unit consisting of one member of staff at the SA01 level and three at the AO7 level.⁸² As the Committee heard, all claims were reviewed by the IAIU by May 2022.⁸³

Identification of Costs Associated with IEPS Investigation

4.25 The Auditor-General noted that it had not been possible to identify the costs associated with the investigation and verification of the IEPS as they were not captured separately from costs associated with the day-to-day business of the IEPS team.⁸⁴ As such, the Auditor-General recommended that:

costs associated with conducting the IEPS Investigation be captured separately from other costs and monitored, noting that specific funding was appropriated to DIPL to “ensure a greater level of scrutiny in construction contract procurement across the Agency”.⁸⁵

4.26 In response to the Auditor-General’s recommendation, in 2018 DIPL advised that a new cost centre had been created to capture all personnel and operational costs associated with the IEPS investigation, and noted that ‘for 2017-18 over \$500,000 was spent on personnel and on costs for this activity.’⁸⁶ As set out in Table 1 below, DLI also provided costings for 2018 through to May 2022 when the internal investigation into the IEPS concluded.⁸⁷

Table 2: IEPS Investigation Costs⁸⁸

Financial year	Expenditure		
	Employee	Operational	Total
2018-19	\$430,654.67	\$34,968.01	\$465,622.68
2019-20	\$500,947.96	\$36,537.07	\$537,485.03
2020-21	\$362,933.20	\$19,582.22	\$382,515.42
2021-22 ¹	\$412,640.94	\$15,450.77	\$428,091.71

¹The internal investigation into the IEPS ceased in May 2022

4.27 However, the Committee was concerned to hear that:

IEPS staff were at times carrying out other duties (e.g. internal audit activities) at appropriate downtimes of work and therefore the expenditure includes staff undertaking duties unrelated to the IEPS investigation.⁸⁹

4.28 Given that the aforementioned costs include expenditure on duties unrelated to the IEPS investigation, it is evident that DIPL did not fully comply with the Auditor-General’s recommendation. Assuming the majority of the \$2.3m expended between 2017 and 2022 related to the IEPS investigation, it is also concerning to note that as

⁸² Department of Logistics and Infrastructure, Submission No. 1, p. 12

⁸³ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 4

⁸⁴ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 44

⁸⁵ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p.38

⁸⁶ Department of Logistics and Infrastructure, Submission No. 1, p. 13

⁸⁷ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 4

⁸⁸ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 4

⁸⁹ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 4

much, if not considerably more, was expended on investigating potential overpayments than was subsequently identified as such.

IEPS Review Procedure

4.29 The IEPS investigation process was documented in the IEPS Review Procedure. This document outlined 'the review process to be undertaken and roles and responsibilities pertaining to the IEPS investigation process.'⁹⁰ The IEPS Review Procedure was created on 2 February 2018 and amended on 20 February 2018. However, as the Auditor-General pointed out, at the time of their audit some six months later, the document remained in draft.⁹¹ It was therefore recommended that:

the IEPS Review Procedure be reviewed and formally approved by the Inter-Agency Taskforce (IAT).⁹²

4.30 In response, the Committee was advised that while the IAT was responsible for reviewing the outcomes of IEPS audits, it was not responsible for setting or approving the review process. Nevertheless, it is evident that the IAT did have a role in reviewing and suggesting amendments to the IEPS Review Procedure:

DIPL held responsibility for developing and implementing the IEPS review process. DIPL informed the Inter-Agency Taskforce of the review process in the following meetings:

- October 2017 – summary of the process was discussed during the Inter-Agency Taskforce meeting.
- March 2018 – the documented process was provided and reviewed by the Inter-Agency Taskforce.
- August 2018 – the Inter-Agency Taskforce discussed the impact of the statute of limitations on pursuing debts.
- November 2018 – the process was updated to reflect legal advice on recovering funds. the reporting structure for the investigation team was amended to ensure independence and renamed to the IEPS Audit and Investigation Unit. This restructure was reflected in the processes. The Taskforce also limited their scope to reviewing suspected deceptive practices, thereby removing responsibilities relating to overpayments that have arisen from non-deceptive practices.⁹³

Similarly, while DIPL was responsible for establishing the IAT's Terms of Reference, the IAT had a role in reviewing them.⁹⁴

Governance Structure of the Inter-Agency Taskforce

4.31 The Auditor-General identified several weaknesses in the governance structure of the IAT.⁹⁵ In particular, the Auditor-General noted that:

- Prior to the commencement of my 2018 audit, the IAT had not met for five months despite the terms of reference requiring the IAT to meet fortnightly...;

⁹⁰ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 45

⁹¹ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 45

⁹² Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 39

⁹³ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 6

⁹⁴ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 7

⁹⁵ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, pp. 45-46

- No written conflict of interest declarations were submitted by IAT members;
- The IAT had not approved the draft IEPS Review Procedure;
- The IAT includes personnel with operational responsibilities pertaining to the IEPS thus creating a perception that the objectivity and independence may be impaired.⁹⁶

4.32 To improve the governance structure and provide for more effective oversight, the Auditor-General subsequently recommended that:

the governance structure and the effectiveness of the IAT be considered and strengthened. Actions suggested to address this recommendation could include:

- Holding regular scheduled meetings as required by the terms of reference applicable to the IAT or updating the terms of reference to reflect the changed requirements.
- Obtaining and retaining written conflict of interest declarations from each IAT member and requiring a verbal conflict of interest declaration to be a standard agenda item at the commencement of each meeting.
- Taking into consideration conflicts of interest (including conflicting duties and responsibilities), assessing and confirming, as appropriate, the membership of the IAT.
- Approving the IEPS Review Procedure.
- Determining what progress reporting is required to adequately inform the IAT and considering what action may be required to address delays in progress.⁹⁷

4.33 The Committee was advised that several changes were made to address the Auditor-General's concerns regarding the IAT's governance. In relation to meeting frequency, it was noted that this was verbally revised by the IAT to be 'as required' given that, as a Governance Group, the IAT was not required to meet until matters were put before it for its consideration and decision. It was further noted that the IAT's Terms of Reference were amended and approved on 27 November 2018 thereby aligning them with IAT practice.⁹⁸

4.34 With regards to conflict of interest requirements, in 2018 DIPL advised the Auditor-General that:

IAT members were asked at the first meeting in August 2017 to declare any Conflicts of Interest and submit a conflict of interest declaration or make a verbal declaration to the Chair if required. In all subsequent meetings, the agenda includes a standing item for declarations of conflicts of interest. These responses will be noted in future Minutes and a request for written Conflict of Interest Declarations has been sought from members.⁹⁹

4.35 In response to concerns regarding the objectivity and independence of the IAT, the Committee was advised that the General Manager Infrastructure, Investment and Contracts ceased holding membership on the IAT.¹⁰⁰ As discussed previously, while the IAT reviewed and had input into the IEPS Review Procedure it was not responsible for approving it.

⁹⁶ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 39

⁹⁷ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 39

⁹⁸ Department of Logistics and Infrastructure, Submission No. 1, pp. 13-14

⁹⁹ Department of Logistics and Infrastructure, Submission No. 1, p. 14

¹⁰⁰ Department of Logistics and Infrastructure, Submission No. 1, p. 14

4.36 The Committee heard that DIPL also strengthened the reporting requirements of the IAIU, with monthly reports summarising the activities of the unit to be ‘submitted to Executive Management, the Inter-Agency Taskforce, and to the Minister.’¹⁰¹

Monitoring and Reporting on Strategic Outcomes

4.37 As indicated previously, the level of IEPS available under each contract was determined based on the value of the contract, as opposed to being directly related to a required output such as the level of Indigenous employment. However, as the Auditor-General pointed out, there was an:

unrelated requirement for contractors to produce and adhere to an Indigenous Development Plan which documents the action that will be taken by the contractor during project delivery to increase employment and sub-contracting opportunities for Indigenous people and Indigenous-owned entities.¹⁰²

4.38 While the IEPS was removed from contracts in August 2017, Indigenous employment obligations were retained and still form part of the *Value for Territory Assessment* within the standard tender evaluation process.¹⁰³ Indeed, following suspension of the IEPS, in 2018 DIPL ‘announced a strategic aim of “*Maximising Aboriginal employment and business involvement in the design and delivery of Government’s infrastructure program.*”¹⁰⁴

4.39 Given that the 2018 audit of the IEPS found that there was ‘evidence that the intended employment actions are not always delivered by the contractor, or, for circumstances outside the control of the contractor, are unable to be delivered.’¹⁰⁵, the Auditor-General recommended that:

management consider how the contractors and the Agency will measure achievement of the desired strategic outcome and what evidence will be required to demonstrate progress against the desired strategic outcome.¹⁰⁶

4.40 The Committee heard that the *Aboriginal Procurement Policy and Guidelines* sets a ‘mandatory whole of government target, aiming for 5% of all contracts (by quantity and value) to be awarded to Aboriginal Business Enterprises.’¹⁰⁷ DLI advised that not only was it a major contributor to government’s performance against these targets, as set out in Table 2 below, it had exceeded the target every year since the policy was introduced.

Table 3: Portion of contract awards to Aboriginal Business Enterprises against total DLI procurement activity¹⁰⁸

Financial Year	Number of Contracts	Total Value	Portion of awarded contracts	Portion of awarded contract value
2017-18	76	\$54.5 million	5.9%	6.5%
2018-19	50	\$46.0 million	5.0%	8.0%

¹⁰¹ Department of Logistics and Infrastructure, Submission No. 1, p. 16

¹⁰² Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 40

¹⁰³ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 9

¹⁰⁴ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 40

¹⁰⁵ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 40

¹⁰⁶ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 40

¹⁰⁷ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 9

¹⁰⁸ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 9

Financial Year	Number of Contracts	Total Value	Portion of awarded contracts	Portion of awarded contract value
2019-20	42	\$37.0 million	4.6%	6.8%
2020-21	54	\$65.4 million	8.2%	10.1%
2021-22	73	\$133.3 million	8.6%	11.1%
2022-23	54	\$71.5 million	7.9%	8.5%
2023-24	39	\$86.3 million	6.2%	6.6%
2024-25	38	\$86.1 million	8.9%	13.3%

4.41 The Committee heard that performance against *Aboriginal Procurement Policy* targets is:

reported internally to government through the 'Agency Procurement Management Plan and externally through the agency's Annual Report, government's annual reporting obligations under the Everyone Together Aboriginal Affairs Strategy, the Aboriginal Economic Development and Jobs Framework, and the COAG Reporting Framework for Aboriginal and Torres Strait Islander Procurement Policies and Outcomes.¹⁰⁹

4.42 As indicated previously, the Conditions of Contract incorporate obligations regarding Aboriginal employment as a requirement of DLI's *Aboriginal Participation on Construction Projects Policy*, which 'mandates the inclusion of Indigenous Development Plans in all works contracts with an estimated value greater than \$500,000.'¹¹⁰ The Committee heard that:

DLI's Contractor Compliance Unit review and assess contractor's Indigenous Development Plans to ensure that these plans align with the commitments made in the awarded tenderer's documentation. Throughout the contract, the Contractor Compliance Unit conduct audits on these plans to determine contractor compliance and achievement of commitments. These audits consider the current stage of the works and the contractor's efforts to engage Aboriginal workers in alignment with tender commitments. The audit enables proactive monitoring by DLI and allows any instance of non-compliance to be reflected in contractor performance reporting. The contractor is required to address any non-conformances identified during the audit.

During the contract, the contractor is required to submit monthly reports to the Superintendent detailing Aboriginal engagement activities. At the conclusion of the contract, the contractor is required to submit a final report to the Superintendent Representative detailing the outcomes of Aboriginal engagement activities and performance against the original commitments outlined in the tender.¹¹¹

4.43 However, despite the implementation of an enhanced system of contractor performance reporting, the Committee was particularly concerned to hear that:

Verifying the portion of Aboriginal engagement on a project remains challenging due to a range of factors including but not limited to:

- Quality of documentation supplied by contractors to the department to verify claims and participation
- Contractor identification of all employees that worked on the project, for how long, and identification of Aboriginal employees
- Record completeness

¹⁰⁹ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 9

¹¹⁰ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 8

¹¹¹ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 10

- Audit timings impacting participation figures at a given moment in time.¹¹²

4.44 With regards to Aboriginal employment obligations, the Committee queried the extent to which employees have to be local Indigenous people. Noting that the *Aboriginal Procurement Policy*, the *Procurement Framework* and the *Value for Territory Assessment* all refer to employment for Aboriginal Territorians, DLI advised that FIFO employees do not meet this requirement.¹¹³ For example, the *Value for Territory Assessment* notes that in relation to Aboriginal participation in employment and business:

Aboriginal Territorians includes both Aboriginal and Torres Strait Islander people who reside in the Northern Territory on an ongoing permanent basis.¹¹⁴

Processes and Controls to Verify Claims for Payment

4.45 While the Auditor-General acknowledged that DIPL had enhanced controls relating to the verification of claims against the IEPS within contracts since the 2017 audit, concern was raised that control weaknesses may also exist in relation to other contract management and payment processes within the Agency. It was therefore recommended that:

management conduct a risk assessment of the likelihood and consequence that similar control breakdowns and weaknesses may exist and impact the Agency more broadly and, from this assessment, develop and implement a plan for corrective action.¹¹⁵

4.46 In response to the Auditor-General's recommendation, in 2018 DIPL advised that it had implemented a *Fraud and Corruption Control Policy* and delivered whole of agency information sessions, risk management workshops and fraud awareness training. DIPL further advised that an online risk register was also being developed to 'provide greater efficiency in recording risks, conducting assessments, identifying treatments and ongoing monitoring and reporting of risks.'¹¹⁶

4.47 Following finalisation of DIPL's *Enterprise Risk Management Framework* to align it with ISO Guidelines, the Committee understands that a desktop risk assessment was completed in 2019 of internal controls relating to DIPL's invoice processing in the Government Accounting System and the Asset Information System.¹¹⁷

4.48 DLI advised the Committee that significant internal controls now exist over contract payments across the Agency including, but not limited to:

- financial and contract delegations to ensure payments are authorised at an appropriate level
- segregation of duties from staff authorising payment, staff confirming goods/services received, and staff processing payments

¹¹² Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 17

¹¹³ Department of Logistics and Infrastructure, *Answers to Questions Taken on Notice*, p.1

¹¹⁴ Northern Territory Government, *Value for Territory Assessment – A guide for tendering with the Northern Territory Government*, Northern Territory Government, Darwin, 31 January 2025, <https://nt.gov.au/media/docs/business-and-industry/doing-business-with-government/supply-goods-and-services-to-government/ntg-value-for-territory-assessment-guide.pdf>

¹¹⁵ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 40

¹¹⁶ Department of Logistics and Infrastructure, Submission No. 1, p. 18

¹¹⁷ Department of Logistics and Infrastructure, Submission No. 1, p. 17

- system controls (e.g. user access restrictions, contract information including schedule of rates, prevention of duplicate invoice entry, prevention of payment it here is insufficient budget etc.).

4.49 With regards to continuous improvement, it was further noted that:

DLI's internal audit program includes audits that examine contract management and contract payments to identify opportunities to enhance internal operations. DLI is currently implementing a Contract and Project Management Framework to enhance contract management practices.¹¹⁸

Document Management

4.50 In auditing the IEPS, the Auditor-General identified widespread document management issues. For example, It was found that key documentation for contracts was recorded inconsistently and in a number of instances DIPL was unable to provide procurement and contractual documentation upon request or in a timely manner.¹¹⁹ Noting that data pertaining to IEPS was maintained in an excel spreadsheet created by the IEPS Investigation Team, the Auditor-General pointed out that 'the management of large amounts of data manually in excel is subject to human error, difficult to scrutinise and report upon and is exposed to increased security risk.'¹²⁰

4.51 The Auditor-General subsequently recommended that when relying upon manual processes to capture and report data, the following controls be implemented:

- development of process documentation and instructions around the collection and storage of data;
- implementing quality assurance reviews of the data;
- limiting access to source data maintained in excel; and
- introducing processes to regularly back-up the data files.¹²¹

4.52 DLI advised that given all information relating to the IEPS could not be captured within the Asset Information System, it had been necessary to develop manual systems to capture and report on the IEPS. The Committee heard that all of the controls proposed by the Auditor-General had been implemented and specifically:

- processes were developed in relation to the collection and storage of data
- information was regularly reviewed and reconciled, cross referencing against the Conditions of Contract
- access to the IEPS internal investigation was limited and password protected
- information is contained in the HP Record Manager (HPRM) in accordance with the Electronic Document Records Management (EDRM) to ensure information is held confidentially and is available to be searched electronically as required.¹²²

4.53 In relation to the latter point, the Committee was further advised that DIPL also implemented a:

¹¹⁸ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 11

¹¹⁹ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 41

¹²⁰ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 41

¹²¹ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 41

¹²² Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 11

uniform work instruction 'Naming Convention for Project files'. This work instruction includes the structure of project files within HPRM and standardised document naming conventions to ensure ease of access to contract information. Project file guides have been developed and published for each structure of project files to assist staff filing documents.¹²³

Risk Management Processes

4.54 The Auditor-General also raised concerns that the audit had:

identified instances of resistance from employees and contractors when requested by management to implement improved processes and controls designed to improve the management of IEPS claims and payments.¹²⁴

4.55 It was therefore recommended that:

management take action to clearly communicate employee responsibilities to ensure all personnel are acting in a manner that supports continuous improvement and effective risk management. This may require additional effort by the Agency to clearly document and communicate the approved processes for negotiating disputes or requests to vary special or uncommon conditions within contracts.¹²⁵

4.56 DLI advised the Committee that a number of initiatives were implemented to improve staff perceptions and priorities related to risk management. In addition to the introduction of the *Enterprise Risk Management Framework* and delivery of risk management and fraud awareness training mentioned previously, the Committee heard that in June 2019 the CCU delivered 'Unpacking Management Plan Requirements' training. In October 2019, DIPL also delivered 'Resolving Construction Disputes in the NT – Adjudications Under the Construction Contracts (Security of Payments) Legislation' training and developed a suite of work instructions regarding dispute resolution and variation processes that are available to all staff on the intranet.¹²⁶

4.57 With regards to ensuring current and future staff understand their responsibilities and obligations in relation to risk management, the Committee heard that DLI has developed an online induction program that includes information on risk management and fraud awareness that must be completed by all departmental staff.¹²⁷

4.58 DLI further advised that it is investing \$100,000 per annum on targeted training for contract managers and project staff, and has developed a number of agency specific procurement training courses which focus on 'educating department staff on risk mitigation, scope development, construction contract management, conflicts of interest and evidence-based decision making.'¹²⁸ DLI also noted that the CCU continues to deliver training relating to contract management plans and audits to departmental staff across the Territory several times a year with six training sessions delivered so far this year.¹²⁹

¹²³ Department of Logistics and Infrastructure, Submission No. 1, p. 16

¹²⁴ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 41

¹²⁵ Auditor-General, *November 2018 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2018_November.pdf, p. 41

¹²⁶ Department of Logistics and Infrastructure, Submission No. 1, pp. 18-19.

¹²⁷ Department of Logistics and Infrastructure, *Answers to Questions Taken on Notice*, p. 2

¹²⁸ Department of Logistics and Infrastructure, *Answers to Questions Taken on Notice*, p. 2

¹²⁹ Department of Logistics and Infrastructure, *Answers to Questions Taken on Notice*, p. 3

Outcomes

- 4.59 As indicated in the previous sections, in responding to the Auditor-General's recommendations, DIPL implemented a number of systems and updated processes that have informed departmental procedures post the IEPS. As such, the Committee queried whether DLI had undertaken any follow-up audits internally or externally to verify the effectiveness of implemented changes as a consequence of the 2017 and 2018 audits by the Auditor-General.
- 4.60 Given that the majority of recommendations arising from the audits specifically related to the IEPS and were no longer applicable, DLI advised that it had not conducted any audits on the effectiveness of the recommendations relating to the IEPS per se. However, it was noted that:
- as the Inter-Agency Taskforce was responsible for overseeing the analysis of contracts, [it] was able to assess the effectiveness of implemented changes as they related to DIPL's internal investigation into the IEPS. This provided sufficient assurances on the effectiveness of the internal investigation and actions undertaken to address the recommendations raised by the Northern Territory Auditor-General.¹³⁰
- 4.61 It was further noted that internal audits had been conducted to assess the effectiveness of some of the implemented changes. For example, the Committee heard that in December 2021 DIPL audited the *Contractor Performance Scorecards* to assess the effectiveness of contractor performance reporting. As a result, further recommendations were made and implemented in relation to enhancing contractor performance reporting. It was also noted that other internal audits have assessed the effectiveness of documentation retention which was also an issue raised by the Auditor-General.¹³¹

¹³⁰ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 17

¹³¹ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 17

5 Key Findings and Recommendations

Policy Implementation

5.1 Above all else, the Committee's inquiry into the IEPS serves to highlight the significant issues that can arise when major policy initiatives are implemented without adequate planning, and in the absence of the necessary systems, procedures and controls. As the Auditor-General pointed out in their *November 2017 Report to the Legislative Assembly*:

- there was limited planning prior to the introduction of the IEPS initiative;
- no risk assessment was performed in relation to the implementation and operation of the IEPS initiative;
- no framework was developed identifying roles, responsibilities, processes and systems that would be required to support the IEPS initiative;
- the requirements, procedures and processes required to support the IEPS initiative were not determined, defined, documented or communicated;
- desired outcomes of the policy were not articulated in measurable terms and no key performance indicators were developed to support the measurement and reporting of performance;
- no consultation occurred with legal experts; advisors or other agencies in relation to implementation of the policy; and
- no plan was developed to coordinate communication with stakeholders within industry, Indigenous organisations; or Agency personnel.¹³²

5.2 The Committee finds it extraordinary that the IEPS initiative responsible for allocating up to \$122 million in claims was implemented without the necessary systems, processes and controls in place. Indeed, the Committee notes that the *Guidelines for the Implementation of the Indigenous Employment Provisional Sum* were not released until four months after the IEPS was introduced and followed the first claim and related payment.¹³³

5.3 The Committee found that the deficiencies in the performance management system, procedures and processes that DIPL had in place to manage the IEPS inevitably exposed the Government to the risk of material fraud being perpetrated upon the Territory, and material financial loss arising from the misinterpretation of policy requirements. The Committee found that the aforementioned deficiencies necessarily impacted on DIPL's capacity to subsequently identify and recover overpayments. As detailed in this report, considerable costs were also incurred in the auditing and investigation of claims following suspension of the IEPS.

5.4 To ensure that the implementation of major policy initiatives are informed by an appropriate level of planning and supported by the necessary systems, processes and procedural controls, as set out below, the Committee has recommended that

¹³² Auditor-General, *November 2017 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2017_November.pdf, p. 55

¹³³ Auditor-General, *November 2017 Report to the Legislative Assembly*, https://ago.nt.gov.au/reports/2017_November.pdf, p. 47

Agencies be required to develop detailed implementation plans to be approved by the Chief Executive Officer prior to the implementation of all major policy initiatives.

Recommendation 1

The Committee recommends that Agencies be required to develop policy implementation plans, to be approved by the Chief Executive Officer, detailing the performance management system, processes, procedures, controls, risk mitigation, guidance documentation, communication strategy and staff training required prior to the implementation of all major policy initiatives.

Aboriginal Employment Obligations

5.5 Although the IEPS was removed from contracts in August 2017, Indigenous employment obligations were retained and still form part of the *Value for Territory Assessment* within the standard tender evaluation process. As DLI noted:

During contract delivery and at cessation of a contract, the department completes contractor performance reporting to evaluate a contractor's performance in the delivery of a government contract. The contractor performance report of a previous contract can be used in tender assessments for future contracts when assessing the contractor's past performance.¹³⁴

5.6 While acknowledging the significant amount of work undertaken to date in relation to the *Contractor Performance System*, the Committee was particularly concerned to learn that eight years on from the suspension of the IEPS, DLI still finds verifying the portion of Aboriginal engagement on construction projects challenging.

5.7 Accurate verification of Aboriginal participation is important, in relation to both DLI's assessment of a contractor's compliance with the Conditions of Contract and consideration of the contractor's performance in future tender evaluations. As noted in the *Value for Territory Assessment*:

Contractors with a good history of delivering on contract commitments, particularly in projects that are of a similar scope, scale and delivered in the region, are considered to be more likely to deliver on commitments made in the tender.¹³⁵

5.8 Given the above, the Committee is of the view that the Contractor Compliance Unit should work with key stakeholders to address this issue as a matter of priority. The Committee is also of the view that opportunities regarding Aboriginal participation on construction projects should preference Territory Aboriginals only.

Recommendation 2

The Committee recommends that the Government, specifically the Contractor Compliance Unit, strengthen its internal systems to support Aboriginal

¹³⁴ Department of Logistics and Infrastructure, *Responses to Written Questions*, p. 18

¹³⁵ Northern Territory Government, *Value for Territory Assessment – A guide for tendering with the Northern Territory Government*, Northern Territory Government, Darwin, 31 January 2025, <https://nt.gov.au/media/docs/business-and-industry/doing-business-with-government/supply-goods-and-services-to-government/ntg-value-for-territory-assessment-guide.pdf>, p. 5

Territorians to have greater participation in the Northern Territory's workforce and procurement outcomes.

Appendix 1: Request for Amendment to Terms of Reference



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

15th Assembly

Public Accounts Committee

REF: COMM00027-0005.2

Hon Steve Edgington MLA
Leader of Government Business
Legislative Assembly of the Northern Territory
GPO Box 3146
Darwin NT 0800

Dear Leader of Government Business

Re: Indigenous Employment Provisional Sum Inquiry Referral

The Committee welcomes the Terms of Reference for the Indigenous Employment Provisional Sum inquiry. At its meeting today the Committee discussed the Terms of Reference.

It does not consider that it is best placed to respond to clause (c), noting that such matters lie within the purview of the NT Police, Director of Public Prosecutions and the Department of Logistics and Infrastructure Investigation Unit.

Accordingly, the Committee respectfully requests that clause (c) be deleted and replaced by new clause (c) implementation of the Auditor-General's recommendations by the former Department of Infrastructure, Planning and Logistics and outcomes to date. The Committee is of the view that the proposed amendment would add value to the inquiry outcome.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Clinton Howe', written over a light blue circular scribble.

Mr Clinton Howe MLA
Chair

21 May 2025

Appendix 2: Submissions Received and Public Hearing

Submissions

1. Department of Logistics and Infrastructure

Public Hearing

Darwin – 25 September 2025

Department of Logistics and Infrastructure

- Adam Walding: Deputy Chief Executive Officer
- Fotis Papadakis: Acting Chief Operating Officer

Note: Copy of submission, public hearing transcript and answers to questions taken on notice are available [here](#).

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