

Provision of court recording and transcription services

Report 9: 2015–16



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December 2015

The Honourable P Wellington MP
Speaker of the Legislative Assembly
Parliament House
BRISBANE QLD 4000

Dear Mr Speaker

Report to Parliament

This report is prepared under Part 3 Division 3 of the *Auditor-General Act 2009*, and is titled Provision of court recording and transcription services.

In accordance with s.67 of the Act, would you please arrange for the report to be tabled in the Legislative Assembly.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Greaves', is written over a faint, light-colored signature line.

Andrew Greaves
Auditor-General

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Summary

Court recording and transcription services are an important element of administering and accessing the justice system. Audio recordings are the official record of what occurs in courts, including details of evidence, decisions and judgements. Recordings are documented as a written transcript when requested by the court, by parties to proceedings or by other court users. The courts and their users rely on these recordings and transcripts in the day-to-day operations of the court for preparing cases, examining and cross-examining witnesses and lodging appeals.

The Department of Justice and Attorney-General (DJAG) is responsible for providing recording and transcription services to Queensland's courts. Since March 2013 it has outsourced the provision of these services. Before then, the in-house State Reporting Bureau (SRB) provided the full service, with the support of the Court Technology Group (CTG).

In February 2013, DJAG contracted with Auscript Australasia Pty Ltd (Auscript) to provide recording and transcription services across the state. In 2014–15, 93 362 hours of court proceedings were recorded and 1 773 077 folios (around 591 026 pages) were transcribed. From the start of the contract to 30 June 2015, DJAG has paid \$17.9 million for the provision of court recording and transcription services.

DJAG's outsourcing of these services was part of its response to the then government's focus, which was implementing its election commitments on fiscal repair. The government required all agencies to find urgent cost savings. The change to outsourcing also followed several years of complaints by the courts about the quality and timeliness of the services provided by the department and the need to replace its aging Dalet recording system. DJAG's intent in outsourcing was to reduce the state's costs of providing these services while also addressing quality, timeliness and legacy system issues. DJAG estimated that outsourcing would save it up to \$6 million per year.

On 22 April 2015, the Attorney-General, the Honourable Yvette D'Ath MP, wrote to the Auditor-General requesting the Queensland Audit Office (QAO) consider concerns about quality, timeliness and cost of transcripts under the outsourced service. The Auditor-General decided to undertake a performance audit on court recording and transcription services.

The objective of the audit was to determine whether the expected benefits from outsourcing court recording and transcription services are being realised and whether DJAG is managing the contract effectively.

Conclusions

The outsourced service delivery model is meeting the needs of courts in most cases. Auscript reports that it has recorded 99.9 per cent of court proceedings since the contract commenced, but DJAG does not independently verify this.

The model is delivering lower annual net operating costs to the state, but these fall well short of the up to \$6 million in savings originally estimated. The savings realised by the state have also come at a cost to court users in terms of the prices they pay for their transcripts and the levels of service they receive. Costs, inaccuracies and delays can have a profound impact on people's ability to prepare their case and access justice. In its endeavour to save money DJAG failed to adequately consider and assess the likely impact of its decisions on the courts and court users.

Two and a half years on, the state has now moved beyond break-even point with the outsourcing model—that is, the cumulative savings now exceed the costs incurred by the state to transition to the new model, including staff redundancy and infrastructure set up costs.

However, lower than estimated annual savings, combined with concerns about quality, timeliness and user cost, bring into question the overall value proposition of the selected model. From this perspective, DJAG cannot reliably demonstrate whether its present outsourcing model for court recording and transcription services represents the best overall value for money that it could have obtained, in terms of either cost or quality and timeliness.

This is largely because DJAG significantly limited its own ability to create sufficient competitive tension in its tender process by bypassing important procurement steps. These important steps relate to gaining a detailed understanding of user needs and service requirements, and adequately understanding and informing the supply market.

Transitioning in such a short time period from a fully-departmental provided service to a single external provider model was high risk, particularly in the absence of this crucial supporting analysis. Because DJAG bypassed key procurement processes to meet tight timeframes, it did not know at the time of going to market, and still does not know, what service delivery mix is most likely to provide the best value for money outcomes for Queensland courts.

The rushed process continues to hinder DJAG and Auscript—being the root cause of user concerns and their on-going contract management problems.

It is critical for government to take the lessons learned from this outsourcing experience as it considers alternative service delivery models in the future. There is an opportunity to achieve savings and benefit from innovation in service delivery, but only if agencies diligently plan and manage the process well.

Outsourcing outcomes

DJAG's average annual direct cost savings under outsourcing to date are approximately \$3.4 million per year in operating costs. This is just over half of the up to \$6 million in annual savings that DJAG advised the Cabinet Budget Review Committee an outsourced arrangement could achieve.

The cumulative savings over the term of the contract will fall well short of DJAG's original savings estimates. Nevertheless, assuming the current level of savings continue, the state now stands to realise around \$12.8 million in direct cost savings over the life of the contract—2019, or up to \$19.6 million if both of the contract's two-year extension options are exercised. These savings estimates are susceptible to unplanned cost increases and do not include own source revenue forgone and CPI adjustments.

DJAG estimated \$400 thousand per annum would be required to cover the cost of the internal team managing the outsourced arrangements. That is now up to \$700 thousand per annum and DJAG expect it to rise to \$850 – \$900 thousand by the end of 2015–16 financial year, further eroding direct cost savings.

DJAG also did not consider the loss of its own-sourced revenue in its annual \$6 million savings estimate. When this lost revenue is taken into account, the net savings under the outsourced arrangement drop from \$3.4 million to \$2.9 million per year.

Some users still raise concerns about services not meeting their needs, but this is not simply a service delivery issue. It results from a combination of factors that make it more difficult to be clear about where and if there has been service delivery failure. The major factors being:

- unresolved pre-existing service delivery issues
- DJAG not establishing user needs and expectations from the outset of the contract
- Auscript not meeting in some instances some contracted service accuracy and time delivery standards.

DJAG and Auscript disagree on how to assess transcript errors. DJAG's sample testing of transcripts between April 2014 and August 2015 found that more transcripts failed to meet the contract's minimum standard for accuracy than met it. December 2014 was the only exception. But the contract measure used by DJAG for transcript accuracy is simplistic and also not comparable to how DJAG measured the SRBs transcript accuracy. Therefore, DJAG are unable to reliably determine if they are receiving an equivalent quality of service in terms of accuracy, than they did under the in-house model.

The outsourced model DJAG implemented has shifted some of the costs associated with producing recording and transcription services to end users. We estimate this has resulted in a 119 per cent cost increase, at a minimum, for users in the civil court jurisdiction and some Magistrates Court matters with the removal of subsidies and the cost structure of the outsourced model.

Users of Queensland Courts civil jurisdictions are paying more for comparable transcripts than users of the Federal Court of Australia pay with the same service provider, Auscript. They also pay more while waiting longer for their transcripts. For example, users of Queensland's civil courts ordering a transcript with a 10-day delivery period pay 13 cents more per folio (100 words) than a Federal Court transcript delivered in five days. Auscript advised us that a number of differences between the two jurisdictions make up the rates, including the rates negotiated, structure of the two models and volumes of orders from users.

Cost increases for users are common when transitioning from a subsidised model to user pays. However, they heighten the need for proper assessment of the impacts on users when considering outsourcing, and for effective consultation with and education of users, before and after the decision.

Auscript report 99.99 per cent of required proceedings were recorded. DJAG does not verify this. It relies on the data, which Auscript provides, without direct checks.

Outsourcing public services

Over the last decade, the global trend towards outsourcing public services has increased in the search for innovation and cost efficiency in service delivery. So too have the warnings about the benefits only being realisable if the outsourcing process is undertaken thoroughly based on proper planning, analysis and management.

The former attorney-general made the decision to outsource to a single provider and set the timeframes for this to occur. The procurement timeframes were clearly driven by the need to achieve budget savings through staff redundancies by 30 June 2013.

We saw no documented analysis supporting the rationale for a single provider model. While the in-house service was effectively a sole source supply contract, the requirement to outsource afforded an ideal opportunity at that time to test whether a mix of providers offered net benefits compared to a sole source provider.

Given these policy settings, DJAG did not:

- do a detailed analysis of its existing costs, of alternative service delivery options or of user requirements to inform this decision, before or after the event.
- perform a detailed cost benefit analysis to inform its estimate of annual savings of up to \$6 million.
- comply with the Queensland Procurement Policy. It lacked adequate consideration of key principles—whole-of-life costs; identification of user needs; adequate market engagement; and probity.
- provide sufficient information to the market about the services they required and the outsourced operating model. This resulted in limited interest from the market with only two tenders being received— and only one of which met all tender requirements. But because of the tight timeframe DJAG did not consider extending the procurement process to achieve greater market participation.
- document advice to the former attorney-general about the procurement risks associated with the short timeframes imposed.

Managing outsourced service delivery contracts

DJAG negotiated the contract poorly. As a result, the contract:

- lacks appropriate incentives and penalties to drive performance
- is not clear on responsibilities, services, and definition of service quality
- is not outcomes based, reflecting quality and performance
- does not adequately reflect user needs.

The contract does not reflect current operating arrangements. Consequently, the parties are working outside the contract.

The working relationship in an outsourced environment is critical. DJAG and Auscript are not working together effectively to resolve contract and service delivery issues. More than two and a half years into the contract, they still do not agree on fundamental operating principles, responsibilities and quality measures.

We identified a number of other major issues in relation to contract management:

- DJAG unintentionally retained responsibility for services it intended to outsource, adding unintended costs. For example, it retains responsibility for distributing free transcripts, the majority of these relating to criminal matters.
- There is no mechanism built into the pricing structure to remove the recovery component of Auscript's capital investment once Auscript has fully recovered its investment. This means that there is a lack of transparency associated with the recovery of up front transition costs compared to on-going operating expenses, and a risk of users continuing to pay a higher price than necessary. If volumes are lower than anticipated, Auscript bears the risk of not recovering its capital investment.
- DJAG has no reliable way of assessing how the outsourced court recording and transcription services compare with those provided previously by the State Reporting Bureau (SRB).
- DJAG and Auscript are not fulfilling their formal reporting requirements under the contract. DJAG has only conducted one bi-annual performance review with Auscript—two and a half years after the contract started. Auscript has met target and minimum standards for monthly reporting on seven occasions. It has submitted only one quarterly report on time and has never submitted an annual report.
- DJAG has not independently verified Auscript's performance, despite having the ability to audit under the contract. This makes it impossible for DJAG to make an informed assessment over the accuracy of this information.

Recommendations

We recommend that the Department of Justice and Attorney-General:

1. resolves known contract issues with Auscript as a matter of priority, and vary the contract as needed
2. ensures all contractual rights are appropriately exercised and obligations met, including as a priority:
 - approval of a suitable transition-out plan as required under the contract
 - independently verifying Auscript's performance and billing information, as provided for under the contract
3. assesses the effectiveness of existing contract performance measures and change as needed, including introducing incentives and penalties that will better drive performance and high quality service delivery
4. conducts a cost benefit analysis, while considering full lifecycle costs, to determine if current services are cost effective and providing value for money, with a view to revisiting costs and how services are delivered where they are not
5. immediately conducts a detailed assessment of service delivery requirements, user needs and market capability to identify future service delivery options
6. evaluates feasible alternative service delivery options to determine the best value for money option in terms of cost, timeliness and quality
7. develops a strategy and plan to progress to the best value for money option at the end of the current contract.

Reference to comments

In accordance with s.64 of the *Auditor-General Act 2009*, a copy of this report was provided to the Attorney-General and to the Director-General of the Department of Justice and Attorney-General and the CEO and Managing Director of Auscript Australasia Pty Ltd with a request for comments. A copy was also provided to the former attorney-general (now the Shadow Minister for Police, Fire, Emergency Services and Corrective Services), as a person with a special interest in the report, in accordance with s.64(3).

Where they have made submissions to us, their views were considered in reaching our audit conclusions and are represented to the extent relevant and warranted in preparing this report.

The comments received are included in Appendices A and E of this report.

1. Context

In Queensland, court and tribunal proceedings are recorded electronically in courthouse locations across the state. Courts record all legal proceedings, but only transcribe the audio when a person or court requests it.

Judges, judicial officers, juries, legal practitioners and individuals involved in court proceedings rely on audio and transcripts as an official record of proceedings. Both form the basis of decisions and judgements made by the judiciary.

In 2014–15, 93 362 hours were recorded and 1 773 077 folios (around 591 026 pages) of transcript produced. Folios consist of 100 words and are a metric to measure transcript volumes. There are around three folios (300 words) to a page of transcript.

Queensland courts

Court jurisdictions

Queensland's court jurisdictions consist of eight courts, one tribunal and a commission. The Queensland Court Services (QCS) is a business unit in the Department of Justice and Attorney-General (DJAG), and manages the following courts:

- Supreme Court
- District Court
- Magistrates Court
- Children's Court
- Industrial Court
- Land Court
- Land Appeal Court.

QCS also manages the Queensland Industrial Relations Commission (QIRC) and the Industrial Court, which structurally sit under the Office of Industrial Relations—as part of Queensland Treasury's portfolio. QCS does not manage the Mental Health Court or the Queensland Civil and Administrative Tribunal (QCAT). The Mental Health Court is part of the Queensland Department of Health and QCAT is a separate business unit under DJAG. QCAT is different to other courts. It is an independent tribunal, established to be accessible, quick and inexpensive in resolving disputes.

Magistrates, District and Supreme courts hear civil and criminal matters with other courts and tribunals presiding over specific matters. Civil cases normally involve a party (a person, company, or the government) who is in dispute with another party and seeks compensation or some other remedy by way of a claim or application. Criminal cases relate to acts or behaviours prohibited by law.

Court locations

In Queensland, there are 81 courthouse locations for holding courts, from Thursday Island in the north, Goondiwindi in the south, Mount Isa in the west, and Coolangatta in the east.

Figure 1A
Court locations in Queensland



Source: Department of Justice and Attorney-General Annual Report

A court user can be a judicial officer, lawyer, prosecutor, Legal Aid, Crown Law, the Queensland Police Service, units of the courts, parties to proceedings or the public.

State Reporting Bureau

From 1926 until 2013, the State Reporting Bureau (SRB) recorded, transcribed, administered and distributed transcripts to Queensland's courts, tribunals, commissions, and inquiries. DJAG disbanded SRB when it outsourced Queensland's court recording and transcription services to Auscript Australasia Pty Ltd (Auscript).

SRB's workforce of 161 full time equivalent employees was located across nine service centres and 22 circuit courts. Staff travelled from Brisbane to regional areas as required.

SRB faced resourcing and on-time delivery challenges due to difficulty in meeting peaks and troughs in demand. It largely attributed these difficulties to an inflexible workforce and employment conditions. On heavy court load days, SRB often needed to divert staff from transcribing duties to ensure that courts were recorded. This had an impact on transcript delivery.

In June 2000, the Court of Appeal was fitted with audio and video link equipment to hear appeals and applications in criminal and civil matters.

In 2004, DJAG introduced digital technology for the SRB to improve the timeliness of transcripts and quality of audio. The department began a three-year rollout of digital technology (called Dalet) to record audio of proceedings across all Supreme, District and Magistrates courts in Queensland. In May 2006, the Dalet system rollout was completed and its cost was recorded as an asset on the department's balance sheet, with a useful life for accounting purposes of six years. At the time of outsourcing the system was nearing the end of its useful life.

From 2006–07 the Supreme Court of Queensland annual report detailed technical issues with both video and audio links. This resulted in lost court time and sometimes adjourned hearings. They also regularly noted inconsistent quality and delays in SRB's delivery of transcripts. These issues aligned with the rollout of the digital technology. Although subsequent annual reports refer to improvements in the quality of SRB services, some court jurisdictions continued to raise concerns about technical issues and delays in transcripts.

DJAG's Court Technology Group (CTG) provided technological support to SRB. This team is now the Information & Court Technology Branch. Among other functions it is responsible to ensure that DJAG's court technology, including the four channel audio feed is functional.

Recording and monitoring of proceedings

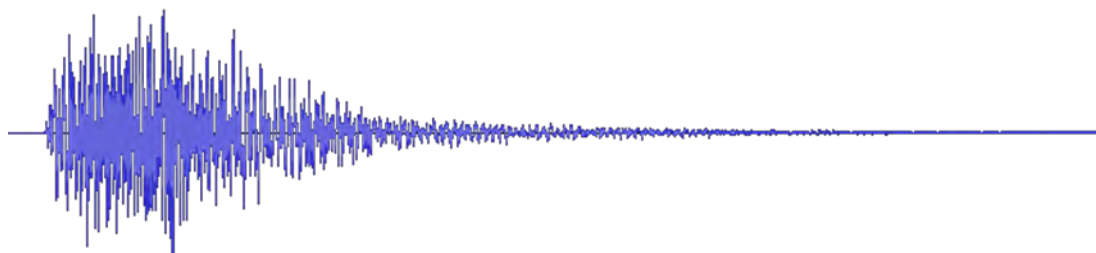
SRB used CAT (computer-aided transcription) reporters or stenographers until DJAG fully outsourced recording and transcription services in 2013. The reporters sat in courts to make a record of what happened and what was said. These recordings were used to produce official transcripts when needed.

In lower courts, deposition clerks provided in-court recording and monitoring of proceedings using a dedicated personal computer (PC) to start, stop, or pause the recording. They also made annotations indicating commencement times and other relevant details of the proceedings. In higher courts, SRB staff provided remote recording and monitoring, with the capacity to monitor up to four proceedings at a time, using live video and audio streaming. This allowed SRB staff to listen to each courtroom at least once every minute. Staff used a dedicated computer to record proceedings and make annotations of relevant information.

Both in-court and remote staff were responsible for completing morning tests of equipment and reporting any technical issues before commencement, and during proceedings to the Court Service Centre for resolution.

The service provided under the outsourced arrangement differs from what SRB provided most noticeably by the removal of officers sitting in courts and the removal of access to a live video stream for remote monitoring of proceedings. Instead, Auscript staff monitor almost all courts remotely, relying on visual audio waveforms (see Figure 1B) to indicate sound. Its staff can monitor multiple proceedings at any one time. In exceptional circumstances for specific cases, staff may be present in courts for proceedings.

Figure 1B
Audio waveform



Source: https://commons.wikimedia.org/wiki/File%3AOrchestra_hit.png Transcript quality

Transition to an outsourced service delivery model

Before the 2012 state election, DJAG was already considering its options for replacing Dalet. In addition to issues of timeliness and quality, Dalet was reaching the end of its useful life. Its software had become incompatible with the department's upgrade of its underlying operating system.

The new government actively encouraged departments to open up their non-core government services to market competition with a view to improving productivity. Their vision was for government to become 'the enabler, rather than the doer' to achieve value for money through outsourcing where appropriate. The government at that time also required agencies to find budget savings as part of its fiscal repair agenda.

DJAG recommended the outsourcing of its court recording and transcription services, as one means to achieve savings. On 11 September 2012, the former attorney-general announced the decision to outsource these services. He reported that it would save Queensland up to \$6 million annually.

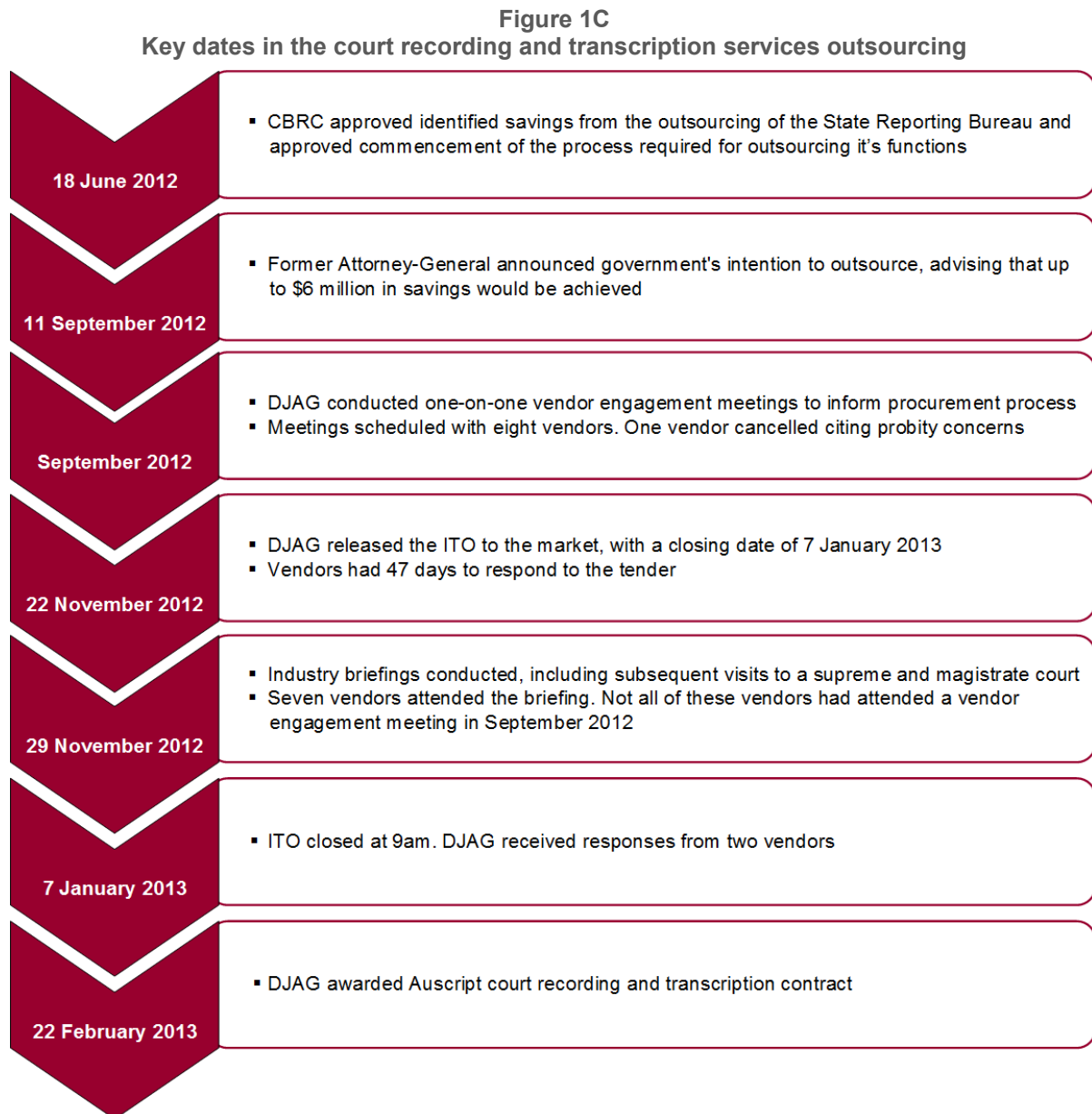
A single provider model (sole contractor) to deliver the end-to-end recording and transcription services was chosen over a panel arrangement (multiple contractors). This model was consistent with the existing SRB model, which was essentially a single provider (internal to DJAG) end-to-end model.

The former attorney-general set February 2013 as the implementation date for the new model to align with the government's target to finalise all staff redundancies by 30 June 2013.

In August 2012, DJAG extended the target date for implementation to March 2013 in its significant procurement plan. In this plan, DJAG again identified cost savings and identified potential secondary benefits of improving the reliability of service delivery performance. On 22 November 2012, DJAG released an invitation to offer (ITO) to the market with a closing date of 7 January 2013. DJAG awarded the contract to Auscript Australasia Pty Ltd (Auscript) on 22 February 2013.

Timeline of key events

Figure 1C shows the key dates and events in the decision and process for outsourcing the delivery of court recording and transcription services.



Source: Queensland Audit Office

Roles and responsibilities

The minister

As the state's law officer, the Attorney-General is the guardian of the public interest, and is responsible for administering justice in Queensland, while ensuring fair and equitable access to justice for everyone.

The former attorney-general announced the decision to outsource court recording and transcription services.

Department of Justice and Attorney-General

The Department of Justice and Attorney-General (DJAG) is a government department that is responsible for administering justice in Queensland.

Additionally, DJAG's role is to uphold a justice system that is equitable, just, and accessible to all. DJAG is accountable for the fairness, safety, and well-being of Queensland businesses and consumers alike. Under the *Financial Accountability Act 2009*, the Director-General, as the accountable officer, must ensure that operations are carried out efficiently, effectively and economically to achieve reasonable value for money. This includes ensuring court services are timely, cost effective, and high quality.

DJAG was responsible for:

- advising the minister on decisions about outsourcing
- procuring a service provider for court recording and transcription services
- developing and managing the service delivery contract.

Auscript Australasia Pty Ltd

Auscript is an Australian company, owned 100 per cent by Record Holdings Pty Ltd. It provides recording and transcription services to courts in a number of jurisdictions, as well as to other government agencies and state law enforcement bodies.

In the late 1990s, the Australian government privatised the Commonwealth Reporting Service (CRS), which became Auscript Pty Ltd. In 2004, the current owners purchased the company and began trading as Auscript Australasia Pty Ltd.

In 2012, when DJAG commenced its procurement process, Auscript provided court recording and transcription services in the following Australian jurisdictions:

- Federal Court of Australia
- Family Court of Australia and Federal Circuit Court of Australia
- Victoria Civil Administrative Tribunal
- Victorian state courts, through the Victorian Government Reporting Services.

In 2013, at around the same time that DJAG awarded Auscript the contract for Queensland's courts, Auscript was also awarded a contract to provide recording and transcription services in Western Australian courts. Figure 1D shows the types of matters heard for the court jurisdictions where Auscript has a contract.

Figure 1D
Types of matters heard by jurisdiction

Service	Federal Court of Australia	Family Court of Australia	Victorian courts	WA courts	Queensland courts
Civil	✓	✓	✓	✓	✓
Criminal	✗	✗	✓	✓	✓
Appeals	✓	✓	✓	✓	✓

Source: Queensland Audit Office based on information provided by Auscript Australasia Pty Ltd.

Relevant legislation and policy

Procurement policies

The government released the state procurement policy in 2010, which at the time was its overarching policy to guide the procurement of goods and services. The policy's objective was to deliver benefits for the Queensland Government, suppliers and the community by advancing government priorities, achieving value for money and ensuring probity and accountability for procurement outcomes.

Achieving value for money requires public sector entities obtain the best return and performance for the money spent. This means price is not the sole determinant of value, but one of three factors:

- overall objective and outcome being sought by the procurement
- costs, including upfront price, whole-of-life costs and transaction costs associated with the acquisition, use, holding, maintenance and disposal
- non-cost factors such as fitness for purpose, quality, delivery, service, support, and sustainability.

On 1 July 2013, the Queensland procurement policy replaced the state procurement policy. Both the Queensland procurement policy and the state procurement policy promote the selection of options that best provide value for money outcomes.

Project assurance framework

In 2012, the project assurance framework (PAF) was in place to assist departments to effectively manage and monitor projects to maximise benefits and achieve value for money. While designed for major infrastructure projects, key principles such as identifying the service requirement, conducting an options analysis and developing a business case are equally important when managing other types of projects.

From July 2015, the project assessment framework replaced the PAF and value for money frameworks. It continues to promote the use of stage gates in regularly assessing if a project is meeting strategic objectives and delivering value for money. It explicitly states that its use is not limited to infrastructure projects, or public private partnerships (PPP). A PPP is a risk-sharing relationship between the public and private sectors to deliver public infrastructure and related non-core services.

Financial Accountability Act 2009 / Financial Accountability Handbook

The Director-General is required to achieve value for money for the department's activities and operations, under the *Financial Accountability Act 2009* and related handbook. The handbook defines value for money as maximising available benefits from inputs, and considers cost and non-cost factors. To achieve value for money the handbook requires that agencies:

- identify and prioritise objectives by conducting a cost-benefit analysis
- evaluate if government or other providers are best placed to provide the service
- monitor the budget
- assess if benefits are realised by continuously evaluating services, activities and programs against pre-determined needs and objectives.

Recording of Evidence Act 1962

Part 8 of the *Classification or Computer Games and images and Other Legislation Amendment Bill 2012*, amended the *Recording of Evidence Act 1962* to enable the outsourcing of the recording and transcribing of legal proceedings in Queensland. Previously, only SRB could record and transcribe legal proceedings in Queensland courts.

The Legal Affairs and Community Safety Committee recommended the Parliament pass the Bill on the basis that the decision to outsource would:

- improve the recording and transcribing services
- make financial savings.

Passing of the Bill allowed recording and transcription of legal proceedings by:

- an outsourced arrangement between DJAG's director-general and an external party
- an employee of the department
- a member or adjudicator of QCAT (for QCAT purposes only).

The committee, however, raised concerns that there would be no control over the price, and that this could price individuals out of the justice system.

Court recording and transcription services

Audio recordings are the official record of what was said in court. Transcripts are meant to provide an accurate representation of that recording. Both can include details of presented evidence, decisions made and judgements passed.

Most court proceedings are recorded, but few are transposed into a written transcript. A high proportion of Supreme and District court matters are transcribed, but few Magistrates Court matters. Recordings, or parts of recordings, are transcribed when requested by courts, parties to proceedings or court users. The main Magistrates Court matters which are transcribed are hearings and decisions.

Courts order transcriptions for appeal matters once the appeal is lodged and the matter is listed for hearing. This avoids the cost of transcribing matters that do not proceed to an actual appeal hearing.

Figure 1E shows the key phases in the service delivery chain for court recording and transcription services. While these phases are consistent across court jurisdictions, they can differ in complexity and execution. For example, business rules such as restrictions around who can receive a transcript differ for criminal and civil transcript distribution.

Figure 1E
Court services delivery chain



Source: Queensland Audit Office

Judges, judicial officers, legal practitioners, the general public, and other parties involved in court proceedings rely on recordings and the content of transcripts to form the basis for their decisions. Appeal courts rely on them as an accurate record of what occurred in lower courts. They require accurate, complete and timely transcripts. Missed recordings and inaccurate or late transcripts could not only cause delays, but in some circumstances affect decisions or result in mistrials. Delays in proceedings have flow-on effects to other cases and can result in people staying in custody longer than necessary.

Judges may order certain sensitive evidence or information be suppressed or restricted, limiting who can access recordings or transcripts. For example, in criminal cases this may include suppressing the identity of a police informant to ensure the person's safety. Whereas in civil cases it may be to protect commercially sensitive information. Transcribing and distributing transcripts of these proceedings correctly is crucial to maintaining public confidence in the justice system.

Transcript categories

The contract requires Auscript to provide two broad categories of transcript—same day and deferred.

Same day transcripts require delivery by:

- 6:00 pm on the same day for all spoken word before 4:30 pm
- 9:30 am the next business day for all spoken word after 4:30 pm.

Deferred transcripts have five categories, with the delivery time determining the unit price charged per folio (100 words). Figure 1F shows the five deferred transcript categories and corresponding delivery times.

Figure 1F
Deferred transcript categories and delivery times

Transcript category	Prescribed delivery time
One day deferred	Within one business day
Two day deferred	Within two business days before 5:00 pm
Three day deferred	Within three business days before 5:00 pm
Five day deferred	Within five business days before 5:00 pm
Ten day deferred	Within ten business days before 5:00 pm

Source: Queensland Audit Office based on contract.

Court service delivery models

Each Australian state and territory has slightly different delivery models for court recording and transcription services. Some undertake the services in-house (public service delivery) and others outsource some, or all, phases of the service delivery chain to private providers.

Appendix B compares the service delivery models for court recording and transcription across Australia and New Zealand.

There are private providers who offer one or more court services and others are capable of providing the full service delivery chain. Where private providers are used, the federal courts and the two territories have opted for a sole provider model (single supplier). WA has outsourced all of its recording and transcription services to one supplier, Auscript, and has one court building that operates under a PPP with a sole supplier. It has not outsourced distribution services. The other states that have outsourced services use a panel of suppliers.

Auscript is the contracted single supplier of court recording and transcription services for the federal courts. They have two contracts with the Commonwealth government to provide these services: one contract for the Federal Court of Australia (FCA) and a second contract combining the Federal Circuit Court of Australia and the Family Court of Australia. These courts do not hear criminal matters.

The Australian Capital Territory and the Northern Territory are the only other Australian jurisdictions to fully outsource their court recording and transcriptions services but, on a much smaller scale than Queensland. The Australian Capital Territory has three court facilities and the Northern Territory has eight, both within a smaller geographical area than Queensland.

Court transcript pricing and charging models

Under the SRB model, transcript prices charged to parties to court proceedings covered around 50 per cent of SRB's costs for producing those transcripts—DJAG subsidised the other 50 per cent.

The main reason for the government's decision to outsource the service was to achieve net budget savings, primarily through the reduction of SRB staff and recovering the cost of transcripts. This introduced a greater level of user pays, meaning users pay more of the cost of providing recording and transcription services.

The fee structure under the outsourced model is complex. Factors such as the jurisdiction, the type of matter and the requesting party can all influence who pays for a transcript.

DJAG pays for the production of some transcripts in the first instance. However, if other parties order the transcript, DJAG is not charged. DJAG receives a rebate for transcripts it has paid for if another party subsequently orders the same transcript.

DJAG can approve a fee waiver to clients who demonstrate financial hardship. In these cases, DJAG pays for the transcript on behalf of the party. DJAG's process for evaluating fee waivers can result in delays to the party accessing the transcript. This process continues under the outsourced arrangement.

SRB prohibited the copying of transcripts, unless SRB's director approved the request. The Director only granted approval in rare circumstances, for example if the copy was required to support a body of research or a case study. In spite of these restrictions, some stakeholders advised us that copying of transcripts was common. The outsourced arrangement continues to prohibit the copying of transcripts.

Rationale for the audit

Two businesses that did not submit offers wrote to DJAG expressing their concerns about the procurement process, and a third expressed concerns about the probity of the process. Their concerns included:

- limited information provided by DJAG
- short procurement timeframe for the scale of outsourcing
- cost structure and its potential to significantly increase user costs
- high level of risk for both DJAG and the selected provider.

The Premier, the Honourable Anastasia Palaszczuk MP, raised some of these concerns in the Parliament, as Leader of the Opposition.

On 22 April 2015, the Attorney-General, the Honourable Yvette D'Ath MP, wrote to the Auditor-General with concerns about the level of service provided under the outsourced service delivery model. These concerns related to transcript accuracy, timeliness and cost.

The Attorney-General requested the Queensland Audit Office (QAO) consider the issues raised. In response, the Auditor-General agreed to undertake a performance audit on court recording and transcription services.

Audit objective, method and cost

The objective of the audit was to determine whether the expected benefits from outsourcing court recording and transcription services are being realised and whether DJAG is managing the contract effectively.

The audit addressed the objective through the following sub-objectives:

- establish whether the procurement process achieved economy in purchasing
- establish whether the contract was developed and managed effectively
- determine whether services delivered represent value for money.

Entities subject to this audit

- Department of Justice and Attorney-General (referred to as DJAG)
- Auscript Australasia Pty Ltd (referred to as Auscript).

The audit cost \$300 000.

Report structure

The structure for the remainder of this report is:

Chapter	
Chapter 2	Assesses the process to outsource
Chapter 3	Explores the development and management of the outsourcing contract
Chapter 4	Evaluates the outcomes of outsourcing court recording and transcription services
Appendix A	Contains responses received on this report
Appendix B	Compares service delivery models
Appendix C	Lists key outsourcing service delivery issues
Appendix D	Describes the audit methodology we used
Appendix E	Contains correspondence with the former attorney-general

2. Outsourcing process

In brief

Departments need to establish service requirements, consider alternative service delivery options and develop a robust business case before embarking on outsourcing. Maximising procurement outcomes requires a value for money approach, systematic planning, market understanding and transparency, and accountability.

Conclusions

The former attorney-general's announcement of the decision to outsource court recording and transcription services drove the process and timeframe. This had a significant effect on the robustness of the Department of Justice and Attorney-General's (DJAG) procurement and contract development. Poor processes have had a lasting detrimental impact on DJAG's ability to demonstrate the outsourced service delivery model it procured is the best value for money outcome for the state.

Findings

- There is no evidence available that documents the rationale for the decision to outsource to a single provider.
- DJAG did not do a detailed analysis of existing costs, service delivery options or user requirements to determine if outsourcing would deliver the best service and value for money.
- Pressure to achieve budget savings through the reduction of staff by 30 June 2013 drove the procurement timeframe. As such, DJAG did not consider extending the procurement timeframe to achieve greater market participation.
- The estimated annual savings of up to \$6 million was not based on a detailed cost benefit analysis.
- DJAG's court recording and transcription procurement process did not comply with the Queensland procurement policy. It lacked adequate consideration of key principles—whole-of-life costs; identification of user needs; adequate market engagement.
- DJAG provided insufficient information to the market about the services it required and the outsourced operating model. This resulted in limited interest from the market with only two tenders received—only one of which met all tender requirements.

Introduction

Queensland's full outsourcing of court recording and transcription service was unprecedented in its scale and nature for DJAG, placing a premium on the rigour and thoroughness of planning and executing the procurement process.

The Financial Accountability Handbook and state procurement policies provide public sector entities with clear guidance when considering and undertaking the outsourcing of services. They set out that before embarking on outsourcing arrangements, departments need to establish that an appropriate service requirement exists, consider available options and develop a robust business case.

Once a business case has been established, maximising procurement outcomes requires a value for money approach involving, systematically planning, market understanding and transparency and accountability. This involves more than an assessment of price, which is not the sole determinant of value. Achieving value for money requires public sector entities to obtain the best return and performance for the money spent—cost, quality, timeliness. We expected to find a robust, transparent and accountable decision-making process focused on value for money.

This chapter assesses whether DJAG executed the procurement process in accordance with the state procurement guidelines, applying a value for money approach.

Conclusions

The Department of Justice and Attorney-General's (DJAG) procurement of outsourced court recording and transcription services was rushed and poorly executed in order to meet imposed timeframes.

DJAG did not establish a compelling case for the decision to pursue a 'single provider' service delivery model. DJAG's bypassing of detailed service requirements, user needs and market analyses significantly limited its ability to produce an environment that was conducive to competitive bidding for the contract. Bypassing these processes also meant that DJAG was not clear about what specific services it was contracting and the manner in which they were to be provided.

Limited interest from market participants due to a lack of information and perceived high-risk contract means DJAG does not know whether it got the best price. Consequently, DJAG did not know at the time of going to market, and still does not know, what service delivery model is most likely to provide the best value for money outcomes for Queensland courts.

Decision to outsource

The primary objective in outsourcing court recording and transcription services was to deliver cost savings. DJAG estimated there would be up to \$6 million annually in cost savings. DJAG did not do a detailed cost analysis to support this estimate.

The government's state procurement policy at the time required agencies to:

- apply a value for money approach
- systematically plan the procurement
- understand the nature of the procurement and the market from which they were purchasing
- be accountable for the outcomes of the procurement and maintain transparent decision making processes.

Realising cost savings should not be at the expense of achieving value for money—that means obtaining the best return and performance for the money spent. At a minimum, this should involve establishing a service requirement, conducting a preliminary evaluation and developing a business case.

The timing of the decision significantly limited DJAG's ability to conduct these important processes. This led to DJAG largely bypassing them and meant the decision to outsource court recording and transcription services was made without the benefit of these important processes. As a result, it was not a fully informed decision and factors other than the achievement of the best value for money outcome determined the procurement process and timeline. Instead, the process was driven by the priority of realising cost savings within a short timeframe.

Consequently, DJAG did not establish a compelling service delivery requirement to justify the decision to outsource court recording and transcription services to a single provider.

DJAG did not clearly define court recording and transcription service requirements before going to market and outsourcing. It did not:

- adequately identify user needs or expectations
- undertake a detailed analysis of existing court recording and transcription services
- scope the outcomes it sought to achieve.

DJAG is still clarifying service requirements two and a half years into the contract with Auscript.

Understanding existing services

The timing of the decision and the need to exit State Reporting Bureau (SRB) staff before 30 June 2013 meant that DJAG's ability to do a detailed assessment of service requirements was limited.

DJAG did not analyse its existing court recording and transcription services, and has still not catalogued or documented all of the services required. While DJAG consulted SRB's documented processes, and its high-level process maps, they did not have detailed catalogues and maps of services before commencing the contract. DJAG has since documented procedures to reflect the new arrangements, but continues to work on those that are still pending.

Understanding user needs

DJAG established a user reference group, however the users viewed the decision to outsource as a 'fait accompli' (done deal) and did not consider DJAG's efforts to consult with them genuine.

As a result, before outsourcing, DJAG did not fully understand user needs and expectations, or the range and complexity of the existing systems and processes in place. It was therefore ill-prepared to inform the former attorney-general of the risks and benefits associated with outsourcing the services.

Preliminary evaluation and business case

DJAG did not do an adequate preliminary evaluation and did not develop a business case to inform decisions about the provision of court recording and transcription services. It did:

- compile a list of potential service providers
- visit the Auscript office in Brisbane around April 2012
- meet the registrar of the Federal Court of Australia and also speak with representatives of other court jurisdictions in Australia and New Zealand
- estimate the annual savings of outsourcing to be \$6 million
- make a recommendation to the former attorney-general.

DJAG did not present its estimated cost savings for the outsourced arrangement in a business case, but reported its savings target in its submission to the CBRC sub-committee.

DJAG identified it would still require an internal support team under outsourcing, known as the Transcription Coordination Team (TCT). The team's role was to facilitate the new model after 1 March 2013, and to respond to transcript requests for court proceedings that pre-dated the new contractual arrangement. It factored these staff costs into the final costings when determining the estimated annual cost savings.

DJAG's cost savings estimate was a rough calculation that recognised average annual employee costs for State Recording Bureau (SRB) staff as a saving, or cost no longer incurred under outsourcing. DJAG reduced these savings by the estimated annual costs for TCT and contractor payments to provide court recording and transcription services. Figure 2A details DJAG's estimate of cost savings under an outsourced arrangement.

Figure 2A
DJAG's estimated cost savings to outsource reported to CBRC

	2012–13 \$ mil.	2013–14 \$ mil.	2014–15 \$ mil.	2015–16 \$ mil.
SRB Employee expenses	12.0	12.0	12.0	12.0
Reduced by:				
Supplies and services (contract payments)	5.6	5.6	5.6	5.6
Transcript Coordination Team	0.4	0.4	0.4	0.4
Estimated savings	6.0	6.0	6.0	6.0

Source: DJAG

DJAG represented that outsourcing would deliver the same savings in 2012–13 as the following years, despite knowing that the services would continue to be provided under the SRB model for the majority of that year—implementation of outsourcing was planned to begin in February or March 2013.

DJAG based its savings estimate of up to \$6 million on the recording and transcription services provided by SRB and paid out of SRB's budget allocation. These estimates did not include the portion of recording services carried out by staff within the Magistrates Courts and QCAT as these costs are still incurred under the outsourced arrangement. They also did not factor into the contract payment the transcript costs for QCAT, which DJAG now incurs. These costs are included in the \$8 to \$9 million per year paid by DJAG to Auscript.

DJAG also reported in its cabinet submission that outsourcing would avoid the need to replace the aging Dalet digital recording system. DJAG estimated it would cost around \$3 million to replace Dalet.

DJAG's preliminary evaluation and business case development was inadequate because it did not do:

- a detailed cost analysis
- an analysis of the market and its ability to meet service requirements in Queensland
- a detailed assessment of service delivery models operating in other jurisdictions to identify the differing operating models and their strengths, weaknesses and costs
- an options analysis to compare options, benchmark them against the existing service delivery provided by SRB and assess value for money
- a risk analysis or risk management strategy.

This meant that DJAG did not fully understand the size, nature and capabilities of the market or the strength, weaknesses and risks of options available to it before the decision to outsource these services.

Options analysis

DJAG did not undertake a robust options analysis. A robust options analysis should include a comparison of the strengths and weaknesses of a range of alternative service delivery models. For example, for the delivery of court recording and transcription services the options DJAG could have included are:

- retaining the current SRB service delivery model (status quo)
- retaining the current SRB service delivery model, but removing the 50 per cent transcription cost subsidy
- retaining some elements of service delivery in-house and outsourcing others—e.g. retaining recording and distribution services in-house and outsourcing transcription services
- outsourcing all elements of recording, transcriptions and distribution.

The options for outsourcing should also include an assessment of the strengths and weaknesses of contracting a single provider compared with engaging a panel (multiple) of providers.

The only option DJAG provided to the former attorney-general was a recommendation to:

- establish an interim panel of service providers from 1 January 2013
- fully transition to a single external provider by 1 July 2013.

DJAG did not provide the former attorney-general with detailed information to support these recommendations. For example, it provided no comparison of this option with alternatives, and no risk assessment or detailed costings.

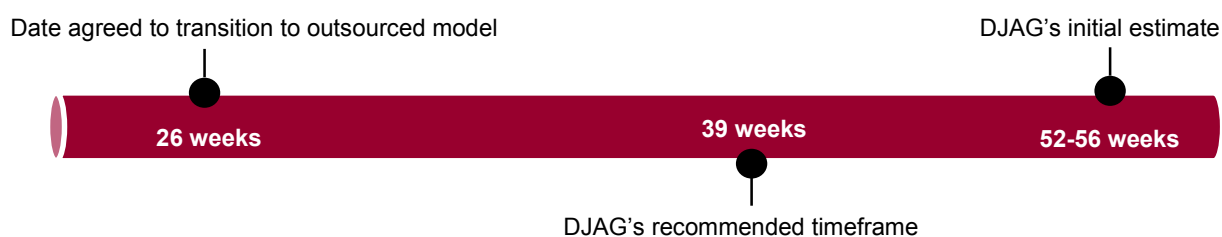
Estimated timeframe required to outsource

DJAG initially estimated that it would require 52 to 56 weeks to conduct a rigorous and successful procurement process. This was based on the high risk and scale of the outsourcing and was a worst-case estimate. Despite this, DJAG recommended a 39-week procurement process to the former attorney-general.

The former attorney-general decided to transition directly to a single external service provider by the end of February 2013—approximately 26 weeks.

Despite the shorter timeframe presenting challenges, DJAG did not document concerns with being able to meet this timeframe. It was not listed as a risk in its significant procurement plan. DJAG did not express to the former attorney-general any concerns about either the decision to seek a sole provider model or the timeframes chosen for the procurement.

Figure 2B
Comparison between estimated and approved timeframe to outsource



Source: Queensland Audit Office

Procurement process

The procurement process commenced in August 2012. The process lasted until 22 February 2013 when DJAG awarded the contract to Auscript Australasia Pty Ltd (Auscript). Figure 2C shows a timeline of the procurement process.

Figure 2C
DJAG procurement process for court recording and transcription services



Source: Queensland Audit Office

The state procurement policy required agencies to prepare significant procurement plans for projects that were high expenditure and/or presented a high degree of business risk.

DJAG established a panel to conduct the procurement and engaged a probity advisor. The panel provided progress updates to key stakeholders throughout the process, including the Queensland Courts Service Board. The Board's minutes show that it discussed the updates but it did not provide governance oversight to the procurement process.

Procurement planning

The procurement process undertaken by DJAG did not comply fully with the government's state procurement policy. It was not well planned or executed by DJAG, meaning the department cannot reliably demonstrate the best value for money outcome was achieved.

DJAG developed significant procurement and evaluation plans as required under the state procurement policy. The plans established the target date of March 2013 to implement outsourced court recording and transcription services. The significant procurement plan contained the minimum elements.

Key components of the plan lacked important detail such as:

- procurement objectives—No objectives were identified, only the services to be outsourced
- evaluation of potential supply strategies—Alternative supply strategies were not evaluated before selecting the preferred strategy
- market and risk analyses—The risk assessment did not identify risks such as failure to gain suitable market interest, transition risk, or risks to probity.

Understanding service needs

DJAG failed to understand user needs and expectations before the decision to outsource. It did not remedy this situation during the procurement planning process and so failed to sufficiently understand its own service needs and the impact of proposed changes on users of the services being outsourced.

The significant procurement plan identified at a high level the services sought from the procurement. It specified that:

The services provided by the contractor must be consistent regardless of location, including all courtrooms, hearing rooms and circuit locations (depending on solution provided).

Transitioning to an outsourced model represented a significant shift from the court operating model that was in place under the SRB. While SRB aimed to provide a consistent service, in reality it provided services that differed across court jurisdictions. DJAG underestimated the significance of this change and failed to:

- adequately engage the users of these services to understand their needs and expectations
- catalogue and map the varied services that were being provided and were expected by the judiciary
- identify and map which services would continue, change or cease under an outsourced service delivery model
- manage expectations and communicate the proposed changes.

Market soundings

Understanding and engaging effectively with the market creates the pre-conditions for fully informed competitive bidding, which in turn drives value for money.

During September 2012, DJAG scheduled individual 'market sounding' meetings with eight businesses from around the country interested in providing court recording and transcription services. Vendors responded to a set of questions DJAG had pre-determined. Anomalies and inconsistencies characterised these meetings:

- One business withdrew at short notice from attending its scheduled session citing that it was concerned about the probity of the process.
- DJAG staff made notes and recordings of the meetings but, due to a technical fault, the recording of the meeting with Auscript failed.
- DJAG allowed only limited opportunity for company representatives to ask questions about the procurement process and delivery of court recording and transcription services in Queensland, to avoid one vendor having an unfair advantage over another. Feedback from vendors instead indicates that this limitation resulted in a lack of clarity and understanding of what DJAG wanted. It also meant that DJAG did not get sufficient information about market capabilities.
- The parties advised, and recordings of the meetings indicate, that no opportunity was provided to companies to give an open presentation on their business and its capabilities.

Significant procurement plan

While the primary consideration in the outsourcing was to deliver costs savings, it also provided the opportunity to achieve secondary benefits. DJAG stated in its significant procurement plan that the procurement:

..will achieve savings and improve the reliability of service delivery performance through predetermined standards that will be identified in the agreement.

This conclusion was not supported by a cost-benefit assessment.

The significant procurement plan identified an anticipated contract term of six years with two extension options of two years each. The procurement plan contains an estimated contract cost of approximately \$8 million per year.

DJAG could not demonstrate how this estimate was determined. No detailed cost analysis was undertaken and the figure is inconsistent with the calculation of \$6 million annual savings, which assumes \$5.6 million in annual contract payments.

Going to market

The invitation to offer (ITO) documentation issued by DJAG on 22 November 2012 was followed by an industry briefing on 29 November 2012.

DJAG provided the estimated audio hours and transcript volumes for 2010 and 2011 across jurisdictions in the ITO which was issued to the market to assist participants with pricing. DJAG sourced tender documents from Western Australia and the federal courts to guide the development of the ITO. However, the level of detail in the ITO was insufficient. Interested businesses reported that they did not adequately understand the service delivery requirements and risks to provide a competitive bid. For example, market participants were concerned that the ITO failed to include extensive details on infrastructure requirements and site configuration, limiting the ability to submit an informed bid.

Other common complaints raised in the market, included:

- insufficient time to respond to the ITO
- short and non-negotiable timeframe to commence services
- significant upfront capital investment
- limited information on individual courts and geographic location.

DJAG advised it acted on procurement advice only to tell the market what product it wanted, rather than how it wanted the product delivered in a move to encourage innovation.

This procurement approach can be effective if executed appropriately. An approach like this usually involves further stages of co-design where the department and the vendor get together to design the potential operating model and contracting arrangements. This exercise would normally be undertaken with a shortlist of suitable candidates to keep competitive tension alive and drive towards an optimal service delivery model at a competitive contract price.

The shortened procurement process along with the limited information provided to the market resulted in little interest from market participants. DJAG received two offers—only one of which met all tender requirements.

The apparent market depth compared to the one compliant response to the ITO should have been a clear signal to DJAG that there was a problem with the procurement process. DJAG was aware at this stage of market participants' concerns about the lack of detail provided on which they could submit a fully informed competitive bid. However, it did not consider extending the procurement timeframe to overcome these concerns and achieve greater market participation. This is because the broader imperative to realise budget savings by reducing DJAG staff and making redundancy payments by 30 June 2013 drove the procurement timeframe.

The time constraint and confirmation of staff redundancies meant DJAG did not investigate market concerns or preferred service delivery models. DJAG did not approach the former attorney-general to request more time to revisit the ITO and attempt to increase the market response.

3. Developing and managing the contract

In brief

Contracts lay the foundations for managing outsourced services. It is critical that agencies entering into outsourced arrangements consider what they need in the contract to help them effectively manage the risks and performance of the outsourced arrangements.

Conclusions

Department of Justice and Attorney-General (DJAG) developed a poor contract, which it is now struggling to manage. The contract lacks clarity, does not adequately reflect service requirements and user needs. As a result parties are working outside the contract. Deficiencies in the contract expose both parties to additional costs and risks. DJAG is incurring unforeseen costs for services it intended to outsource and Auscript is reliant on volume-based pricing to recover its significant upfront capital investment.

The contract does not facilitate effective performance management of the outsourced arrangements through mutually agreed key performance indicators, penalties and incentives. This has put a strain on the effectiveness of the relationship between DJAG and Auscript and led to a failure to resolve ongoing issues.

Findings

- DJAG negotiated the contract poorly. As a result, the contract:
 - lacks incentives and penalties to drive performance
 - is not clear on responsibilities, services, and definition of service quality
 - is not outcomes-based, reflecting quality and performance
 - does not adequately reflect user needs
- The contract does not reflect current operating arrangements. Consequently, the parties are working outside the contract
- DJAG has unintentionally retained responsibility for services it intended to outsource, adding unintended costs. For example, it has retained responsibility for distributing free transcripts
- DJAG has no reasonable way of assessing how the outsourced court recording and transcription services compare with those provided by SRB
- DJAG and Auscript are not meeting formal reporting requirements under the contract
- DJAG unsuccessfully exercised its contractual right to audit Auscript's performance, despite having the ability to do so under the contract. It relies on data provided by Auscript without verifying it. This makes it impossible to make an informed assessment of the accuracy of this information
- DJAG and Auscript are not working together effectively to resolve contract and service delivery issues. More than two and a half years into the contract, they still do not agree on fundamental operating principles, responsibilities and quality measures
- The pricing structure in the contract includes a component for Auscript to recover its upfront costs. The pricing structure has no in-built mechanism to remove this pricing component once fully recovered. If volumes are lower than anticipated, Auscript bears the risk of not recovering its capital investment.

Introduction

The underlying contract forms the basis of any outsourced arrangement. Framing a contract with clear objectives that align with the agency's intended outcomes can effectively drive the performance of the contractor and reduce the level of risk.

DJAG manages Auscript Australasia Pty Ltd's (Auscript's) performance in providing court recording and transcription services according to the contract established between the state and Auscript on 22 February 2013 (the contract).

We expected this contract to:

- articulate desired outputs
- clearly outline roles and responsibilities
- specify when outputs are to be delivered
- specify contract performance expectations
- establish dispute resolution processes.

According to the contract, DJAG measures Auscript's performance against three key performance indicators (KPIs)—recording, transcriptions and reporting. DJAG assesses transcriptions against accuracy and timeliness. The KPIs for recording and transcriptions have a target and a minimum standard to measure service performance under the contract. The target represents the preferred level of performance, whereas the minimum standard represents the lowest level of performance DJAG is willing to accept. The purpose of having two measures is to encourage the continuous improvement of services.

Figure 3A shows the KPIs in the contract and the targets.

Figure 3A
KPIs used to measure service delivery

KPI	Target	Minimum standard
Recordings	100 per cent	Record 99.5 per cent of all Proceeding time ordered
Transcriptions		
▪ Accuracy	One error in every single spaced page of transcript	The Contractor shall not produce transcript that has, on average, more than one error in every single spaced page of transcript.
▪ Delivery	98 per cent or transcripts delivered in accordance with requirements	Delivery of transcripts must not fall below 95 per cent as per identified delivery requirements in Section 3.9 of the contract.
Reporting		
▪ Monthly	100 per cent of monthly reports submitted within two business days of month end	100 per cent of monthly reports submitted within five business days of month end
▪ Quarterly	100 per cent of quarterly reports submitted within two business days of end of quarter	100 per cent of quarterly reports submitted within five business days of end of quarter
▪ Annual	100 per cent of annual reports submitted in March within two business days of the first of March	100 per cent of annual reports submitted in March within five business days of the first of March

Source: Queensland Audit Office

This chapter explores the development of the contract to determine whether DJAG adequately designed it to support governance of the outsourced arrangements including managing risks and driving performance.

We examine the outcomes of outsourcing and performance against the contract KPIs in Chapter 4.

Conclusions

DJAG poorly developed and negotiated the outsourced contract that is now not 'fit for purpose.' They are failing to manage it effectively. Deficiencies in DJAG's procurement process and contract development phase continue to have ongoing effects for contract management.

Poor processes led to the contract being developed without adequate consideration or understanding of service requirements and user needs. As a result, the contract lacks clarity, exposes the department to unnecessary risk, does not adequately reflect service requirements and user needs. It is a source of contention between DJAG and the contractor.

This has had a lasting detrimental impact on service delivery. It has also impacted DJAG's ability to effectively manage the contract and its working relationship with Auscript.

These impacts are evident by the user concerns and the number and type of unresolved contract and operating issues that remain more than two and a half years into the contract.

Developing the contract

The contract between DJAG and Auscript incorporates the ITO, addendums to the ITO, and extensive correspondence between DJAG and Auscript that includes Auscript's tender response. The contract and related attachments have not been consolidated into one document.

The contract includes a scope, key performance indicators (KPIs) and contractual obligations but these lack detail, unnecessarily leaving key elements of the contract open to interpretation.

DJAG's contract to outsource court services was poorly developed due to its:

- failure to incorporate incentives and penalties to drive performance
- lack of clarity for service deliverables, expected quality and role responsibilities
- failure to include objectives and service deliverables that reflect user needs and expectations
- limited focus on quality and performance.

DJAG failed to establish clear terms and conditions by not incorporating these key elements. The parties' interpretations differ on the contract's key clauses and requirements. This has led to the parties working outside of the contract.

Issues arising from a lack of contract clarity

Incentives, penalties and termination

The ITO previously proposed a performance measurement regime that awarded and deducted performance points, depending on the contractor's performance against the KPIs. For example, DJAG would deduct two points for every page of transcript where the contractor exceeded the KPI of one error per page. If the contractor achieved the KPI, DJAG proposed to award 10 points. This was removed during contract negotiations. Under the original ITO, performance points were intended to determine if the contract would be extended. Without these, there is no incentive for continuous improvement or penalty for poor performance.

Auscript asserted to us that they are 'penalised' for performance when they deliver late transcripts as they receive a lower fee (e.g. the 10-day turnaround price, which is less than a five-day turnaround price). However, it is questionable whether receiving a fee commensurate with the services delivered is the same as being penalised in the true contract performance management sense.

The contract contains termination clauses. Should the need ever arise, DJAG's ability to use the termination provisions is limited as it would need to find an alternative provider for 81 courthouse locations across the state or perform the service in-house.

Business rules for delivering services

The lack of clarity regarding service deliverables, roles and responsibilities has resulted in continuous changes to the business rules for service delivery.

Under the ITO Auscript is required to provide monitoring and recording services in all Queensland courts and tribunals, unless DJAG instructs otherwise. This forms part of the contract. Using standing orders in the ITO, DJAG specifies how Auscript should prepare and deliver transcripts, and which party should pay in each circumstance. Determining factors include the party requesting the transcript, and in which jurisdiction the case was heard.

DJAG developed a document separate to the ITO with more detail to assist with determining who pays. This document has undergone many changes to provide greater clarity and reflect changes in business processes. This has resulted in DJAG issuing multiple versions since the commencement of the contract.

DJAG provided version one of this document to Auscript on 25 March 2013. Version three was presented on 22 April 2013, the same day that Auscript commenced provision of services. In total, DJAG has issued 13 versions of the document. Some of DJAG's changes to the rules have resulted in changes to how Auscript provides its services, and its internal business process.

Scope of court recording requirements

The recording of out-of-court sessions is another example of DJAG not clearly specifying its service requirements in the contract.

There are two audio feeds, a backup and a primary feed. DJAG did not specify in the contract for Auscript to exclude recording out-of-court sessions via the primary feed. However, DJAG advised that its understanding was that the primary audio feed would start and stop when court proceedings had commenced and finished, as was done under SRB.

Instead, Auscript keeps the primary audio feed running, recording periods outside of court proceedings. This means that conversations held between proceedings are recorded. This is allowable under the contract, but demonstrates an example of DJAG not clearly specifying in the contract its desired service requirement.

Auscript only invoices DJAG for the time that courts are in session and removes out-of-court session segments from audio recordings requested by DJAG and other parties.

This practice exposes DJAG to the risk that out-of-court session recordings could be made public. There may also be an increase in future costs to store additional data or strip portions from requested recordings when audio files are returned at the end of the contract.

Scope of transcript distribution services

DJAG has taken back services that it had intended to outsource, exposing it to more risk and cost than it anticipated.

While DJAG intended delivery of all types of transcripts to be outsourced, it failed to specify this in the ITO. It used a Western Australian ITO document for outsourcing court recording and transcription services as a basis for preparing its own ITO, but failed to remove all unwanted clauses. For example, DJAG meant to outsource the distribution of free transcripts, the majority of these relating to criminal matters. Instead, clause 3.9.4.4 of the ITO outlined that the customer (DJAG) was responsible for free transcript distribution. Despite this, Auscript delivered free transcripts outside the requirement of the contract for around 12 months, before DJAG re-established in-house services to deliver free transcripts. This increased DJAG's costs and resources beyond what it had anticipated.

DJAG took back distribution of free transcripts because:

- it was required to under the contract
- Auscript was not prepared to continue exposing itself to risk by acting outside the requirements of the contract—particularly for such a high-risk service.

Capital and transition costs

Both parties incurred capital and transition costs at the commencement of the contract. Auscript covered the cost of installing its system and related infrastructure in court locations across the state. It also incurred transition costs as it undertook extensive consultation across the state about the changes. DJAG spent \$0.8 million to upgrade infrastructure to be compatible with Auscript's systems. The government also spent over \$6.8 million on staff redundancies, excluding accrued long service and recreational leave entitlements.

The contract price negotiated between DJAG and Auscript includes Auscript's recovery of its upfront capital investment and transition costs. These costs are recovered through recording and transcript charges to DJAG and users. There is no mechanism built into the contract's pricing structure to remove the recovery component of Auscript's capital investment once fully recouped. This means that DJAG and court users will continue to pay the recovery component after these costs have been fully recovered.

Auscript bears a risk of not recovering its upfront capital expenditure and ongoing operational costs over the life of the contract if it receives insufficient orders for transcripts and audio recordings. Under the contract, DJAG will not be able to recover the upfront \$0.8 million infrastructure costs it incurred.

A more transparent pricing structure would have been to unbundle the various components of the fee. This would include an upfront payment upon the contractor successfully transitioning-in, followed by a variable pricing structure aligned with volumes and the cost of providing services. Such a model could better incorporate incentives, penalties and aid in managing DJAG and contractor risks.

Managing the contract

DJAG developed a contract management plan that identified risks, roles and responsibilities, deliverables and key objectives. However, the document focused more on the management of the contract after its inception, than on the lead-up to its development. DJAG completed the first draft of the plan on 9 May 2014, more than 12 months after signing the contract.

Weaknesses in the contract and its execution have contributed to poor contract management. The main contributing factors are:

- KPIs are generic, failing to drive performance or measure stakeholder satisfaction. DJAG did not establish a benchmark by assessing SRB performance before outsourcing.
- DJAG has attempted but failed to action its right to access and check Auscript's performance and billing information under the contract.
- DJAG and Auscript do not agree on issues such as distribution rules and quality measures, and there is no joint commitment to resolve disagreements. 13 issues requiring a contract variation remain unresolved (see Appendix C).
- DJAG has not finalised and agreed to the transition-out plan with Auscript, due to being dissatisfied with the level of detail and clarity regarding transition-out timeframes.

Establishing key performance indicators (KPI)

While KPIs align with contract objectives, they are simplistic, because they do not:

- reflect the complexity of the services to be delivered
- measure stakeholder satisfaction.

KPIs relating to reporting are procedural and not indicative of contract risk or achievement of objectives. DJAG and Auscript do not agree on fundamental aspects of the contract including how the KPIs are to be measured, monitored and reported.

DJAG failed to establish performance benchmarks, even by way of market comparison. Despite it reporting on the timeliness and quality of SRB in the past, performance measures are not comparable to activities provided under the outsourced arrangement. This prevents DJAG from definitively comparing the costs, timeliness and quality of Auscript and SRB services. As a result, DJAG has no reasonable way of assessing how the outsourced court recording and transcription services compare with those provided by SRB. They cannot assess whether outsourcing is providing improved, comparable or inferior service.

Existing KPIs do not account for the nuances of the suite of services provided, or for the external factors that can affect the timeliness and accuracy of transcript delivery. The recording KPI does not explicitly specify DJAG's expectation of how Auscript should monitor and report on audio quality. DJAG has not undertaken any audio checks for quality, and this limits DJAG's visibility and level of assurance it can gain that the quality of recordings is adequate.

In the ITO, DJAG specified an objective to implement technology that focuses on stakeholder satisfaction with recording and transcription services. Without KPIs to measure stakeholder satisfaction, DJAG cannot effectively assess the success of the outsourced arrangement.

The simplistic KPIs, lack of incentives and penalties, and disagreement in how to measure performance limits DJAG's ability to adequately manage the outsourced relationship.

Verifying performance and billing data

DJAG has sought clarity around Auscript's billing processes. It conducts a manual internal review over Auscript's fortnightly invoices as it identified instances of incorrect billing and duplicate invoices. This led to DJAG receiving refunds and credits. The number of duplicate invoices has decreased, however DJAG still report duplicate charges. These charges especially relate to 'extracts' where a portion of an existing transcript that Auscript has already invoiced is produced and invoiced again.

DJAG has not exercised its ability to audit Auscript's performance, provided to it under the contract. This has meant DJAG has not independently verified Auscript's performance in the time the contract has been in existence. This makes it impossible to make an informed assessment over the accuracy of this information.

Over 12 months ago, DJAG undertook to engage an independent auditor to provide third party compliance audit services. Instead, DJAG and Auscript agreed to postpone the audit until issues with distribution were resolved. Since reaching a solution to the problem, DJAG has not engaged a third party auditor.

Auscript has previously engaged an external auditor to audit its billing processes. It has not shared the full report with DJAG.

Resolving contract and performance issues

DJAG has not managed the contractual relationship well. Although DJAG and Auscript meet regularly, they are not working together effectively to identify, address and resolve key issues, which affect service delivery.

There is still substantial disagreement between both parties on operating principles. As a result, DJAG is committing substantially more resources and costs to managing the contract and delivering distribution services than it had anticipated. These unforeseen costs by the department have eroded the benefits of the outsourced arrangement.

Since the commencement of the contract, DJAG and Auscript have discussed the need for a number of variations to the contract. These contract variations remain outstanding action items.

Until 28 October 2015, DJAG and Auscript had been meeting monthly to resolve issues. Auscript will withdraw from meeting with DJAG monthly. In 2016, it intends to revert to quarterly meetings as required under the contract, citing the amount of time and lack of progress on resolving issues. There is a listing of key unresolved issues in Appendix C.

Transition-out plan

An example of a critical unresolved contract requirement is the development and agreement of the transition-out plan.

Auscript is responsible under the contract to prepare a transition-out plan for DJAG's approval by 28 February 2014. The purpose of the transition-out plan is to ensure a seamless transition at the end of the contract. This is particularly important because Auscript owns the technology and some of the equipment used in Queensland courts.

Auscript did present DJAG with a transition-out plan, almost a year late on 13 February 2015. However, DJAG was not satisfied with its level of detail—stating it had substantially less detail than the transition-in plan. It again requested further clarity, particularly about indicative transition-out timeframes.

Auscript provided DJAG with an updated transition-out plan on 14 October 2015. DJAG is currently assessing the plan.

Reporting performance

Auscript provides monthly statistical data to DJAG.

DJAG and Auscript have performed poorly in meeting their formal reporting requirements under the contract. This is because:

- While Auscript has submitted all monthly reports to DJAG since January 2014, it has only met the target or minimum standard for monthly reporting on seven occasions
- Auscript has only supplied three quarterly reports since the contract took effect for the quarters ending March 2015, June 2015 and September 2015. Only September met the minimum reporting requirements under the contract. The contract requires Auscript to provide a quarterly report at review meetings with DJAG's project manager. DJAG has not scheduled any quarterly review meetings with Auscript
- DJAG has only conducted one bi-annual performance review with Auscript—two and a half years after the contract started
- Auscript has not delivered an annual report.

Reporting user satisfaction

In addition, reporting of user satisfaction was not a requirement of the contract, restricting DJAG's ability to gain an understanding for users' experiences under the outsourced model.

Auscript collects and records the details of client complaints in its Corrective and Preventative Action (CAPA) system. This system tracks and reports all complaints. As at 31 May 2015, Auscript reported 2 545 complaints since April 2013, relating to a total population of 51 894 transcripts. This represents five per cent of total delivered transcripts, but the system is reliant on users raising their complaints with Auscript. Some users have previously expressed that workload and time pressures may restrict them from reporting issues.

Auscript also collects feedback from end users through its client feedback process. Client satisfaction surveys have five questions covering three areas:

- the quality and timeliness of transcripts
- on-line ordering process
- overall satisfaction level.

Auscript sends surveys to its clients in each of the jurisdictions in which it operates. It sends the survey to parties to proceedings such as lawyers but does not include DJAG, the judiciary or court staff. The survey report summarises the aggregated feedback from all respondents and does not distinguish between the different jurisdictions. This makes it impossible to determine feedback for its performance in Queensland.

4. Outsourcing outcomes

In brief

The outsourcing of court recording and transcription services was intended primarily to deliver the Department of Justice and Attorney-General (DJAG) cost savings. A secondary benefit was to address quality and timeliness issues raised by the courts. DJAG and Auscript Australasia Pty Ltd (Auscript) agreed to performance measures and targets in the contract aimed at ensuring achievement of intended benefits.

Conclusions

DJAG's outsourcing of court recording and transcription services has delivered savings to DJAG, but not necessarily the intended quality and timeliness benefits. Although outsourcing has reportedly improved the recording of court proceedings, DJAG does not verify the recording results. DJAG's direct cost savings are just over half of what it estimated they would be. Timeliness and quality of transcripts continues to be a concern—often not meeting contracted targets.

Court users are feeling the effect of these issues. These issues are a direct consequence of DJAG's focus on achieving cost savings for the state without genuine consideration of the cost to users and impact on the accessibility of justice.

Findings

- DJAG's average annual savings under outsourcing are approximately \$3.4 million. This represents more than half of the up to \$6 million in annual savings that DJAG advised the Cabinet Budget Review Committee could be achieved by moving to an outsourced arrangement.
- The state has now moved beyond break-even point with the outsourcing model — that is, the cumulative savings now exceed the costs incurred by the state to transition to the new model, including staff redundancy and infrastructure set up costs.
- Auscript report 99.99 per cent of required court proceedings have been recorded over the term of the contract so far. DJAG do not verify this.
- Some users still raise concerns about services not meeting their needs. This is the result of unresolved pre-existing issues; DJAG not establishing user needs and expectations from the outset; and partly because Auscript is not meeting some contract service targets in accuracy, time delivery and reporting.
- DJAG and Auscript disagree on how to assess transcript errors. DJAG's sample testing of transcripts between April 2014 and August 2015 found that more transcripts failed to meet the contract's minimum standard for accuracy than met it. December 2014 was the only exception.
- The outsourced model has shifted some of the costs associated with producing recording and transcription services to users. Combined with removal of subsidies under the SRB model this has contributed to a 119 per cent increase in user costs for civil and Magistrates Court transcripts.
- Users of Queensland Courts pay more and wait longer for comparable transcripts than users of the Federal Court of Australia.

Introduction

The government outsourced court recording and transcription services mainly to deliver cost savings to the state. It also hoped it would help address ageing technology and, to a lesser extent, quality and timeliness issues raised by the courts over a number of years. The ultimate measure of success of the Department of Justice and Attorney-General's (DJAG) outsourcing of these services is the realisation of cost savings while maintaining at least a comparable level of service in terms of timeliness and quality.

This chapter examines whether the outcomes of the outsourced arrangements are consistent with DJAG's stated objectives. Specifically, it addresses the questions about whether the outsourced arrangements are:

- more cost effective—Have the costs to deliver recording and transcription services reduced?
- being delivered effectively—Are court proceedings being recorded and are transcripts delivered on time to an acceptable quality standard?
- accessible to users of the court system.

Conclusions

To date, DJAG's outsourcing of court recording and transcription services has provided required services to the courts and delivered some cost savings but not to the full estimated potential. This combined with the effects to users brings into question the overall value for money of the single provider outsourced model DJAG has implemented.

To this end, outsourcing has been a success, as cost savings have been achieved—albeit not to the extent estimated. Whether the procurement represents overall value for money in terms of cost, quality and timeliness is however questionable.

DJAG's \$3.4 million average annual direct cost savings under the outsourced service delivery is more than half of the initial estimate—of up to \$6 million. However, the cost savings are expected to decrease by a further \$200 thousand with the increase in DJAG staff to manage the contract.

DJAG's savings have come at a cost to some users. Timeliness and quality of transcripts is a concern with the outsourced model regularly failing to provide transcripts that meet contracted accuracy and delivery targets. In addition, users in the civil court jurisdiction pay a higher cost for slower service than users in the Federal Court of Australia. For example, Queensland court users ordering a transcript with a 10-day delivery period pay eleven cents more per folio (100 words) than a federal court transcript delivered in five days.

Court users feel the effect of these issues and continue to express dissatisfaction with quality and timeliness two and a half years into the contract. These issues are a direct consequence of DJAG's focus on achieving cost savings for the state without genuine consideration of the cost to users and impact on the accessibility of justice.

Cost effective

DJAG estimated outsourcing would equate to savings of up to \$6 million per year. It based this estimate on avoided operating costs but failed to consider the negative impact on the department's own source revenue and capital expenditure.

Summary of cost savings

The average operational expenses under SRB compared to the average under outsourcing, indicate an approximate saving of \$3.4 million annually. This represents just over half of the up to \$6 million in annual operational savings that DJAG advised the Cabinet Budget Review Committee it could achieve by moving to an outsourced arrangement.

Auscript's ITO response reported that it could achieve direct savings for DJAG of \$7-\$9 million in year one, dependent on the volume of recording and transcript requests. Actual annual savings has also fallen short of this estimate.

Figure 4A shows a comparison between the average expenses incurred under SRB, and the outsourced arrangement with Auscript. The average expenses under SRB include SRB and relevant Court Technology Group labour costs, court recording and transcription technology costs, including maintenance, depreciation and amortisation.

The average \$9.7 million per annum cost to deliver court recording and transcription services under Auscript compared to SRB's annual average costs of \$13.1 million, results in an annual operating direct cost saving of \$3.4 million per annum.

Figure 4A
Comparison of expenses incurred under SRB and Auscript

	Annual expenses under outsourcing (\$)					Avg annual operational savings under outsourcing \$ mil.
	Avg under SRB (\$) 2006-07 to 2011-12 \$ mil.	2012-13* \$ mil.	2013-14 \$ mil.	2014-15 \$ mil.	Avg since outsourcing 2013-14 to 2014-15 \$ mil.	
Total expenses	13.1	12.2	10.1	9.3	9.7	3.4

Note: SRB delivered services for the majority of 2012-13, with Auscript commencing delivery of the outsourced services from March 2013. For this reason, we excluded 2012-13 expenditure from our calculation of the average annual cost under both SRB and outsourcing.

Source: Queensland Audit Office from DJAG financial information

Expenses reported since outsourcing include more than just payments made to Auscript. DJAG's costs include the creation of a dedicated Transcript Coordination Team (TCT) of 9.6 Full Time Employment (FTE) staff to manage the contract and conduct manual, time consuming reviews over billing and KPIs.

Auscript contract payments

The amount DJAG pays Auscript under the contract depends on the number of proceedings recorded and transcripts ordered. Auscript is paid per 15 minutes of recording and on a per folio (100 words) basis for transcripts, not on a fixed annual fee. Generally, one page of transcript is equivalent to three folios (300 words). The rates per folio that Auscript charges DJAG are lower than its rates for parties to proceedings who are not entitled to DJAG funded transcripts—such as lawyers and the public. The rates charged to DJAG are subject to an annual CPI review.

Figure 4B shows the payments made by DJAG to Auscript since the commencement of the contract. In 2013-14 the payment exceeded the annual estimate that Auscript included in its response to the ITO—\$7.5 million to \$8.5 million. This is to be expected as payments depend on the number of recordings, transcript and CD volumes ordered. Auscript charged DJAG less in 2014-15 due to a decrease in transcript volumes and recording hours ordered in that year. This was somewhat offset by a significant increase in CDs ordered.

Figure 4B
Auscript charges to DJAG

	2012-13* \$ mil.	2013-14 \$ mil.	2014-15 \$ mil.	Total \$ mil.
Auscript charges	1.0	8.9	8.0	17.9

Notes: *Payment in 2012-13 was not for a full financial year as the contract was awarded to Auscript in February 2013.

Source: Queensland Audit Office from DJAG data

The above payments only reflect payments from DJAG to Auscript for recordings and transcripts ordered through the courts, and paid on behalf of parties entitled to a free transcript. They do not include payments by other users, lawyers and the public for transcripts and CDs.

Cumulative savings

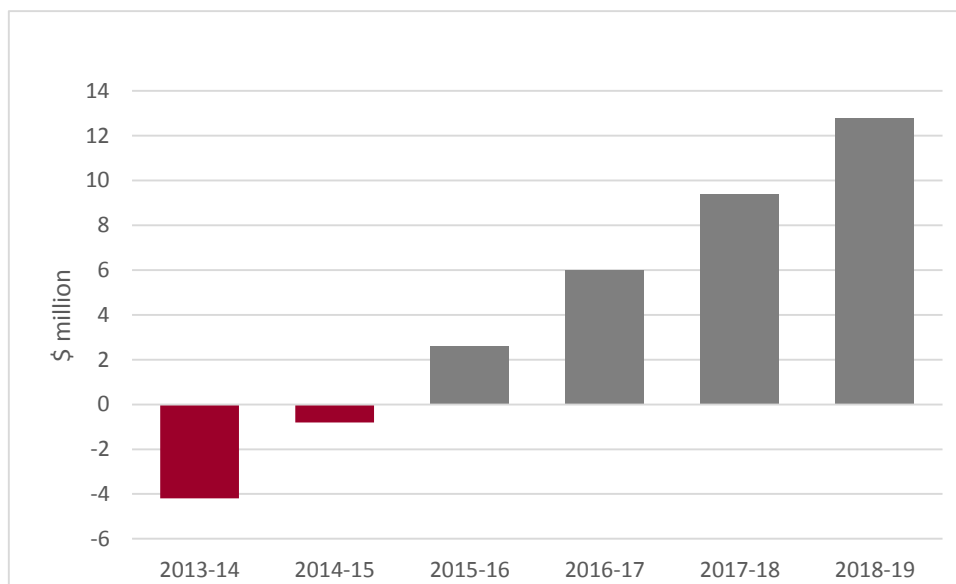
DJAG estimated a flat \$6 million annual savings each year between 2013–2014 and 2015–16—totalling \$18 million. It did not calculate estimated savings for the life of the contract and did not consider transition costs, including staff redundancy and infrastructure set up costs.

In its response to the ITO, Auscript estimated:

...direct savings to the customer of between \$7-\$9 million in Year 1 and \$9-\$10 million by Year 10, bringing a total of over \$90 million of savings to the Customer.

After considering the transition costs, including staff redundancy and infrastructure set up costs with the \$3.4 million annual savings, we estimate the state reached the break-even point about two years and three months into the contract. The cumulative savings over the term of the contract will fall well short of DJAG's and Auscript's savings estimates. Figure 4C shows the estimated cumulative direct cost savings over the life of the contract based on the current average annual savings of \$3.4 million per year.

Figure 4C
Estimated cumulative savings



Source: Queensland Audit Office from DJAG data

Nevertheless, the state is now in a position where it should start to realise savings from outsourcing. Assuming the current level of savings continue, it could stand to reap around \$12.8 million in direct cost savings over the life of the contract—2019, or up to \$19.6 million if both the contract's two-year extension options are exercised.

By outsourcing, DJAG has avoided the capital costs of replacing its aging Dalet recording system. While the upfront payment of this cost was avoided, the contract price paid by DJAG includes a component to cover the cost of Auscript's capital investment.

Savings estimated from outsourcing are susceptible to unplanned cost increases and do not include revenue forgone and CPI adjustments.

Transcript Coordination Team costs

DJAG expected TCT costs to be \$400 000 per annum under the outsourced arrangements. Instead, staff numbers increased beyond six full-time employees. Costs for DJAG's TCT over the last two years exceeded this estimate, increasing to around \$700 000 in 2014-15. Figure 4D shows the estimated and actual DJAG costs.

Figure 4D
DJAG's Transcript Coordination Team costs (TCT)

	2013-14 \$ mil.	2014-15 \$ mil.
TCT (DJAG's estimate)	0.4	0.4
TCT (Actual)	0.5	0.7
Variance (\$)	0.1	0.3
Variance (%)	25%	75%

Source: Queensland Audit Office from DJAG data

DJAG expects that the 2015-16 figure will increase further by around \$150 – \$200 thousand, with five more administration officers to commence in the short term to oversee the transcription ordering process.

Impact on individual business units

While the overall cost of delivering recording and transcription services is less, the costs to some courts have increased considerably under the outsourced model. The Queensland Civil and Administrative Tribunal (QCAT), which is a separate business unit within DJAG, did not directly pay for its recordings before the outsourcing arrangement. Now that it does, annual costs have increased significantly from \$53 515 in 2011-12 to \$498 206 in 2014-15.

These costs are included in the overall contract payments noted above paid by DJAG to Auscript. Therefore these individual business unit increases do not change the fact that savings to the department overall have been realised.

Revenue foregone

DJAG did not factor in the loss of own-source revenue in its calculation of estimated annual savings of \$6 million. DJAG continues to derive some revenue from transcripts produced before 1 April 2013, but this decreased substantially since outsourcing and will decline further.

Figure 4E reports the average own-source revenue that DJAG has earned under the in-house and outsourced models. Own-source revenue represents income derived by DJAG for providing transcription support on a user pays basis to external agencies. The effects of outsourcing on own-source revenue were not evident until 2013-14, as court recording did not fully transition to Auscript until 23 April 2013.

Figure 4E
Own-source revenue earned under SRB and Auscript

	Avg under SRB (\$)	Annual revenue and expenses under outsourcing (\$)			
	2006–07 to 2011–12 \$ mil.	2012–13* \$ mil.	2013–14 \$ mil.	2014–15 \$ mil.	Avg since outsourcing 2013–14 to 2014–15 \$ mil.
Own-source revenue	0.6	1.3	0.9	0.3	0.5

Note: *SRB delivered services for the majority of 2012–13 with Auscript commencing delivering the outsourced services from March 2013. For this reason, we excluded 2012–13 expenditure from our calculation of the average annual cost under both SRB and outsourcing

Source: Queensland Audit Office from DJAG financial information

When the loss of the average annual own-sourced revenue is included, the average annual net cost savings to DJAG reduces by \$528 870 per year, from \$3.4 million to \$2.9 million.

Timeliness

When a party requests a transcript, it is mandatory that Auscript deliver the transcript within agreed timeframes (ranging from same day to 10 days) and in accordance with contract distribution rules. This is important because parties to the proceeding, such as judges and legal practitioners, rely on its timely delivery to assist in preparing for an upcoming court case, for example a hearing, or an appeal.

Courts were reporting issues with SRB's timeliness in delivering transcripts from 2006–07. While DJAG's focus was on cost savings, another stated benefit of outsourcing was improvements in timeliness.

Over two and half years into the contract there are still concerns being expressed about the timely distribution of transcription services. The cause of these concerns is a combination of:

- unresolved pre-existing issues
- DJAG not establishing user needs and expectations from the outset
- Auscript not meeting some contract service delivery targets.

Where a transcript is delivered later than required, the courts and users do necessarily know, or care, why the delay has occurred—just that the transcript has been delivered late and it has reduced their ability to prepare their cases.

Unresolved pre-existing issues

DJAG has failed to resolve some of the issues, which hampered SRB in providing timely transcription services. These issues continue to affect the timeliness of the outsourced model. For example, some transcripts require judges' revisions before being completed. In the District Court, communication issues and delays in receiving revisions from some judges in some cases inhibits the timely release of transcripts to parties. While DJAG cannot control how long revisions take, DJAG's attempts to bring this issue to the attention of the judiciary has been ineffective in addressing delays. Case study 1 provides an example of the effect on users of such delays.

Case study 1

Review delay

A prisoner received positive comments supporting their release on parole from a judge. The lawyer representing the prisoner requested a copy of the transcript to support the prisoner's parole application.

Auscript initially advised the lawyer that the transcript would be available within three days, but this estimate extended to 10 days to allow time for the judge to review the transcript. The lawyer contacted Auscript a further two–three weeks later, who advised that the transcript was not available due to the judge being on circuit. The lawyer wrote to the judge's associate who advised that the judge was unaware they needed to approve the transcript. The lawyer received the transcript within 48 hours of contacting the associate.

The untimely delivery of the transcript delayed the prisoner for over a month in submitting his application for parole.

Meeting user needs

DJAG is responsible under the contract for the delivery of free transcripts, most of which are in the criminal jurisdiction. The contract requires delivery of all same day transcripts of words spoken to 4:30pm by 6.00 pm on the day of the proceedings. The Transcript Coordination Team (TCT) within DJAG performs this function. In these cases, Auscript prepares the transcript and provides it to TCT to distribute to users. This creates double handling of the transcript and can result in delays.

The court and parties to proceedings require these transcripts shortly after the end of the day's proceedings, by 6.00 pm. This is to allow them to read the transcript to prepare their case for the next day of the proceedings.

TCT staff finish work at 6.00 pm. Any delay due to courts sitting late or in Auscript producing the transcript means the court and relevant parties do not receive the transcript until the next day. There is no data available to determine how frequently delays occur due to staff finishing at 6.00 pm, and being unavailable to deliver transcripts. It is also not possible to determine exactly how often TCT receives transcripts after the 6.00 pm cut-off.

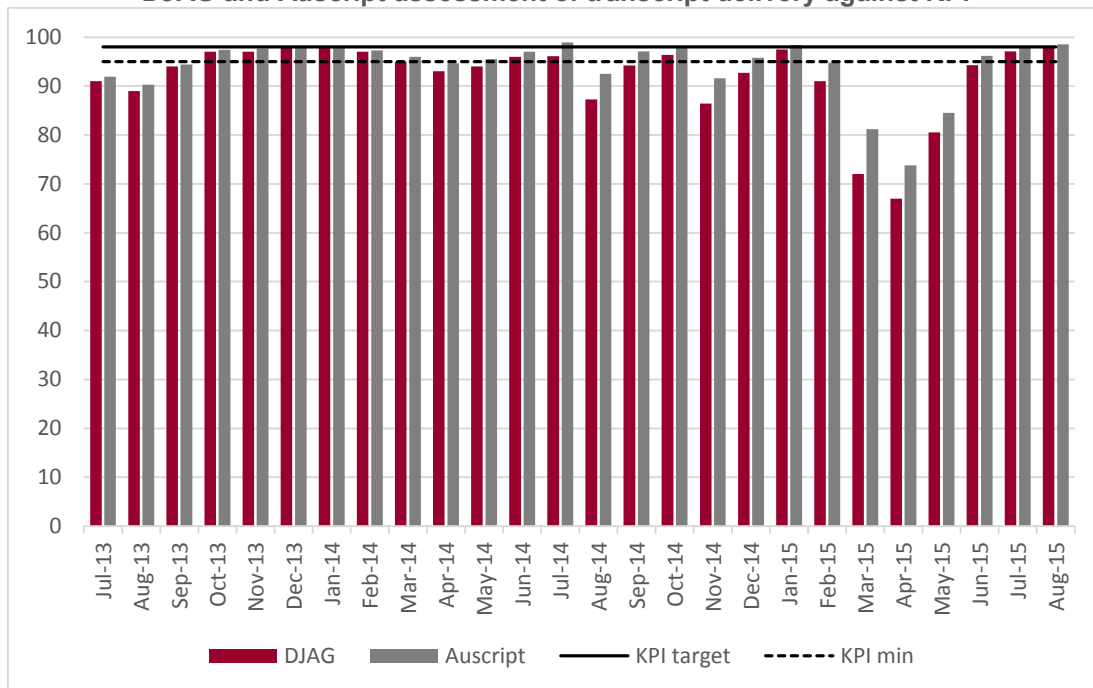
Judges we interviewed detailed occasions where, due to late transcript delivery they had delayed the start of a day's proceedings to allow the parties to read the transcript and prepare their case.

Under the contract, DJAG is required to use reasonable endeavours to notify Auscript of transcript requirements for proceedings by 5:00pm. DJAG and Auscript agreed to extend this so parties did not need to place an order for same day transcripts until 9:00 am. The 9.00 am cut-off is still too early and does not meet user needs. These restrictions limit accessibility to transcripts, and can result in delays.

Meeting contract KPIs

DJAG assesses Auscript's performance in meeting the contract's transcript delivery KPI. DJAG exclude late transcripts where they assess that the delay was outside of Auscript's control, such as a delay in TCT providing a transcript. Auscript does not accept DJAG's assessment of its timeliness and makes its own assessments. Auscript also excludes from its analysis transcripts where it assesses the delay to be outside its control. Figure 4F shows both DJAG's and Auscript's assessment of transcript timeliness for the period from July 2013 to August 2015.

Figure 4F
DJAG and Auscript assessment of transcript delivery against KPI



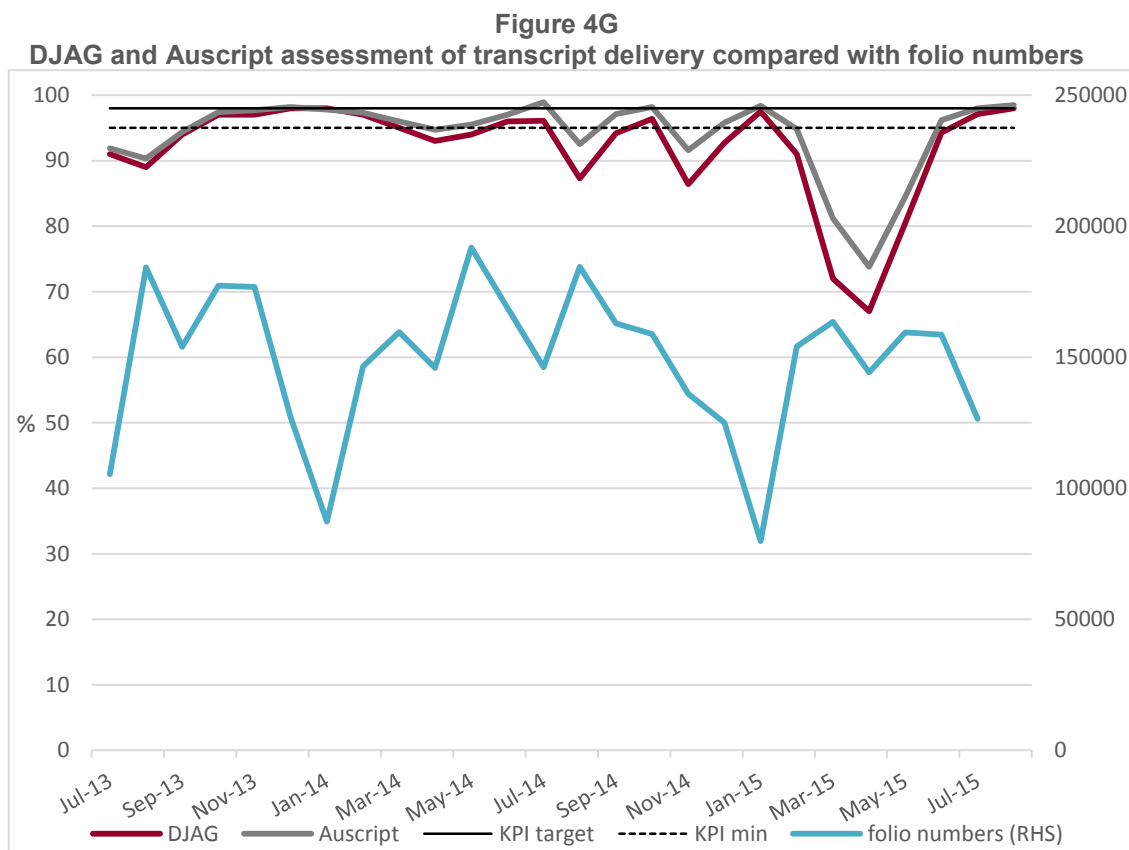
Source: Queensland Audit Office based on DJAG and Auscript assessments of data provided by Auscript.

Auscript report that its performance for September and October met the transcript delivery KPI target — 98.05 per cent and 98.62 per cent respectively. DJAG has not finalised its assessments for these months.

Although DJAG and Auscript make their own assessments, both show a high level of performance fluctuations. Both sets of data show that over time Auscript has not consistently met the timeliness KPI.

Auscript's biggest drop in timeliness is from March to May 2015. Auscript reported to us that the reason for this dip was due to an increase in demand for transcripts and staff issues during this time. Our analysis of the folio numbers data does not support that increased demand was a significant factor.

Figure 4G shows folio numbers returning to normal levels after the post seasonal lull in December and January. The data suggests that folio numbers are not the main contributor to the decline in timeliness during this period.



Source: Queensland Audit Office based on DJAG and Auscript assessments of data provided by Auscript.

Quality

As the official record of court proceedings, recordings are a fundamental tool in the administration of justice. The courts and parties to proceedings rely on transcripts as an accurate representation of the recording. They rely on transcripts, and to lesser extent recordings, to prepare cases and make decisions.

Recording

Under the contract, Auscript is required to capture 99.5 per cent of proceeding time ordered. Auscript report that it has recorded 99.99 per cent of required proceedings over the term of the contract.

Recording of court proceedings can fail because of technical issues with either DJAG's equipment or the recording equipment installed by Auscript, which plugs into DJAG's. Determining where a fault lies can be a source of dispute.

DJAG does not verify the quality of recordings captured, or the recording of all required proceedings. DJAG instead relies on Auscript or users to report any missed recordings or recording quality issues. DJAG assumes no reported issues means all required proceedings were recorded, and at a quality that allows for accurate and reliable transcription. The vast majority of recorded proceedings are Magistrates Court matters and may not be listened to or transcribed until a later time—possibly even years later.

Monitoring of recordings

One source of contention between DJAG and Auscript is the monitoring of recordings. While there is a mandatory requirement under the contract that Auscript ensures the quality of its audio recordings, the contract does not specify the manner in which, or how often, monitoring should be undertaken.

Under SRB, deposition clerks listened to recordings in real time and could rectify issues in a timely manner. For example, they could request a witness to speak more clearly, or check whether a microphone was on mute. SRB staff could also monitor proceedings remotely, using a video stream and live audio. SRB staff could monitor up to four courtrooms at a time, listening to each proceeding at least once every minute. The staff member contacted either the judge's associate in the courtroom where an issue was identified, or the in-house CTG support team for performance or technical issues they experienced while monitoring a court.

Auscript monitors proceedings remotely from a centralised location. Its staff do not use a video stream and do not always listen to the audio. Instead, they rely on four visual audio waveforms, representing the volume for each of the four channels in a courtroom. One Auscript staff member has visibility of multiple proceedings at any one time. This significantly reduces the amount of time an officer can listen to a proceeding and consider the quality of the recording. However, for all trial matters requiring a same day transcript, Auscript's Annotation team listen to the audio in near real time.

While sound checks are performed in the morning, when a tone is played through a single speaker in each courtroom, Auscript and DJAG have differing views on who is responsible for sound quality, how sound quality should be monitored, and if the current sound check processes are sufficient to measure sound quality.

Transcript accuracy

Accuracy is the primary measure of transcript quality under the contract. It states that Auscript:

...shall not produce Transcript that has, on average, more than one (1) error in every single spaced page of Transcript.

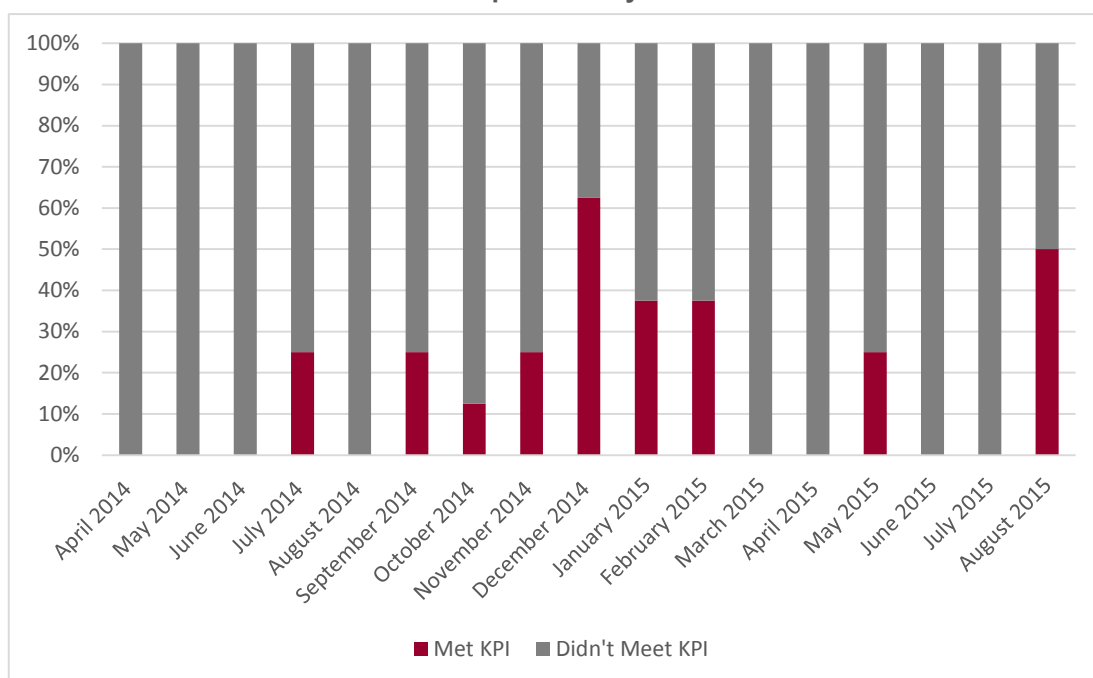
DJAG chose this measure because of its ease of measurement and clarity, but instead it has been a source of disagreement with Auscript. This is a simplistic way of measuring accuracy.

Previously, DJAG applied a weighting system for identifying errors when auditing SRB transcripts for accuracy. The weighting system consisted of formulas that rated the significance of errors depending on their nature. The ratings were a tally of the number of errors against five categories: punctuation, mishearings/omissions, format and style, incorrect speakers, spelling. For example, an error related to identifying a speaker incorrectly would attract a higher error rate than an error that relates to a misspelt word. DJAG used the aggregate of the errors tallied for each category to determine the overall rating.

Under the current contract with Auscript no weighting of errors is applied and therefore accuracy results for SRB and Auscript are not comparable, making it impossible to determine whether the outsourced model has delivered equivalent or greater accuracy.

The contract provides for DJAG to undertake performance checks of the contractor's transcript accuracy. DJAG conducts monthly audits to ensure Auscript delivers transcripts that comply with the DJAG style guide. DJAG established an audit methodology to guide how it conducts monthly audits of Auscript transcripts. Although DJAG and Auscript have discussed details of the audit process, there has been no formal agreement on the approach undertaken. In spite of it being a KPI in the contract and the original ITO, Auscript still does not agree with DJAG's assessments being based on an average of one error per page. DJAG performs quality checks by reviewing eight transcripts per month. It assesses six pages of each transcript for errors and determines an error-per-page rate. It then reports the number of reviewed transcripts that meet the KPI. Figure 4H shows the results of DJAG's monthly assessments for transcript accuracy.

Figure 4H
DJAG transcript accuracy assessment



Note: DJAG reviews a sample of eight transcripts per month for accuracy based on the contract KPI of one error per page. Auscript calculate accuracy using its own internal weighted criteria. DJAG did not perform these accuracy reviews prior to April 2014. DJAG's accuracy assessments for July and August 2015 are interim results.

Source: Queensland Audit Office from Department of Justice and Attorney-General data.

Auscript undertakes its own quality checks. It reports a consistently high level of quality based on its own quality reviews. Its assessments are directed at staff performance and involve random selection of transcripts. Auscript weights the significance of each error to determine an overall score for the accuracy of staff members and aggregates the scores to achieve an overall accuracy rate for the month.

DJAG's assessment of quality does not correlate well with Auscript's assessment. Figure 4I shows Auscript's assessment from January 2015 to September 2015.

Figure 4I
Auscript assessment of staff accuracy

Jan 2015	Feb 2015	Mar 2015	Apr 2015	May 2015	Jun 2015	Jul 2015	Aug 2015	Sep 2015
98.88%	99.06%	98.97%	98.79%	98.88%	99.11%	98.97%	99.02%	99.09%

Source: Auscript Australasia Pty Ltd

Accessible

In 2009, Robert McClelland, the Attorney-General of Australia wrote:

An effective justice system must be accessible in all its parts. Without this, the system risks losing its relevance to, and the respect of, the community it serves. Accessibility is about more than ease of access to sandstone buildings or getting legal advice. It involves an appreciation and understanding of the needs of those who require the assistance of the legal system.

Because of the reliance placed on them by users of the justice system (such as lawyers and the public), court recordings and transcripts play a role in ensuring the justice system is effective and accessible. For this reason, it is equally important that reliable transcripts of court proceedings are themselves readily accessible to users of the court system. Cost and timeliness of delivering court reporting and transcription services can affect accessibility and equity of the justice system. This is particularly so under a user pays model, which shifts these costs to users of the courts.

In assessing the potential cost savings for the state of outsourcing, DJAG did not fully consider the effects of shifting these costs to court users. From the users perspective this includes:

- paying higher prices for transcripts, which had previously been subsidised
- paying for hearings and decisions separately
- changes in practices around copying transcripts.

Cost of accessing justice

The savings to DJAG from outsourcing court recording and transcription services have come at a cost to users.

Users of the court system, such as the public who order transcripts for civil and Magistrates Court matters, pay Auscript directly. The cost of individual transcripts varies depending on the number of folios (length of the transcript), delivery time required for the transcript and number of people requesting transcripts.

After the contract was awarded, DJAG and Auscript hosted a number of workshops and consultative sessions with registries, the judiciary and support staff to communicate the changes with outsourcing. These sessions did not include lawyers and other representatives of parties to court proceedings. These are the parties most affected by the transition to a user pays service delivery model. The consultation therefore has not been fully effective in preparing these users well for the change. They are still raising concerns about the costs of accessing transcripts.

In line with principles of user pays, Auscript charges DJAG at a lower rate for transcripts per folio (100 words) than it charges court users. Its rate for users is higher than what DJAG pays, depending on considerations such as delivery timeframe.

DJAG did not consider the cost impact on users prior to or during outsourcing. Under the outsourced model the price of transcripts for civil and Magistrates court matters have increased, primarily through the removal of government subsidies. For example, we estimate a 100 page transcript produced by SRB to be \$516, with the 50 per cent subsidy that applied, or \$1 031 without the subsidy. Under the outsourced model we estimate the cost to users to be \$1 131, based on an average of three folios per page and using the lowest price (10 day delivery) of \$3.77 per folio. From a user perspective, this is a \$615 (119 per cent) increase per 100 pages of transcript. This is a conservative estimate based on the lowest rate charged. The increase will be greater for users requiring shorter delivery times, which attract a higher rate.

Such an increase may not necessarily be unexpected or unusual in transitioning from a subsidised model to user pays. But it does necessitate robust consideration of impact on users and heightens the need for effective consultation and education of users. Under the new model, users must separately request a transcript of 'hearings' and 'decisions,' incurring individual charges.

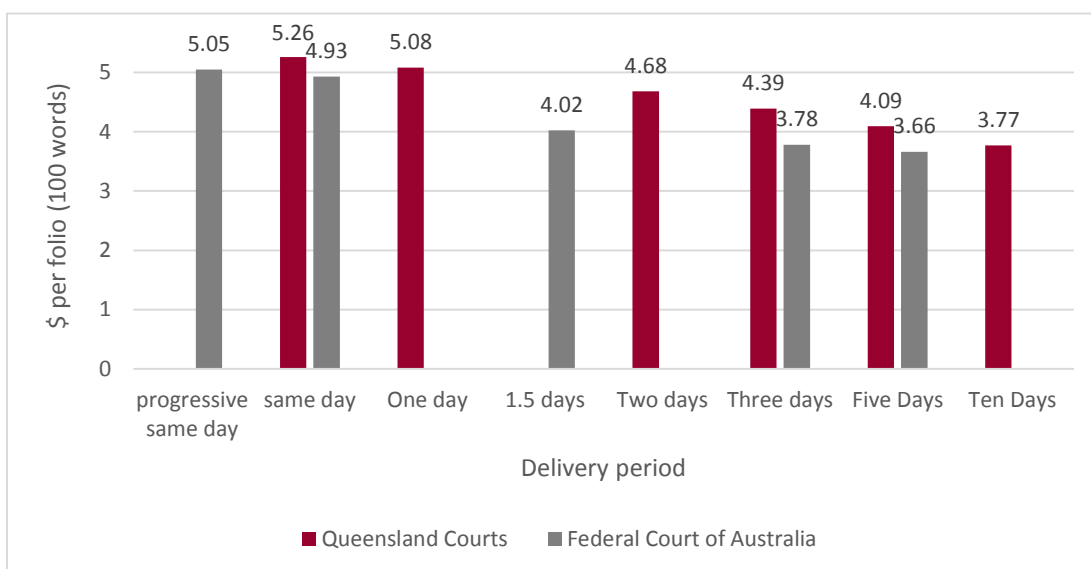
Court users in Queensland pay higher rates compared with users of the Federal Court of Australia, whose services are also outsourced to Auscript.

Auscript advised us that a number of differences between the two jurisdictions make up the rates, including the:

- original contractual rates negotiated
- structure of the two models
- upfront costs incurred by Auscript
- volumes of orders from users.

Since outsourcing the only increase in Auscript's folio rate for users of Queensland courts has been due to CPI. Figure 4J compares the Auscript charges (excl GST) for transcripts per folio (100 words) for parties to proceedings of Queensland Courts with its charges to parties of proceedings in the Federal Court of Australia.

Figure 4J
Comparison of Auscript transcript folio pricing for Queensland courts and the Federal Court of Australia



Note: Days are business days. Prices per folio shown are for a single party order, lower rates apply when two parties or three or more parties place an order. In both cases the rates applied for users of Queensland courts are lower than for users of the Federal Court of Australia. For Queensland Courts, Auscript charges lower rates for non-parties to proceedings.

Source: Queensland Audit Office from information accessed from Auscript website on 27/10/2015

Auscript does not offer progressive same day and 1.5-day orders for Queensland Court transcripts. It does not offer one-day (24 hour) orders for Federal Court transcripts, however its same day charges for Federal Court transcripts are lower than both same day and one-day charges for Queensland court transcripts.

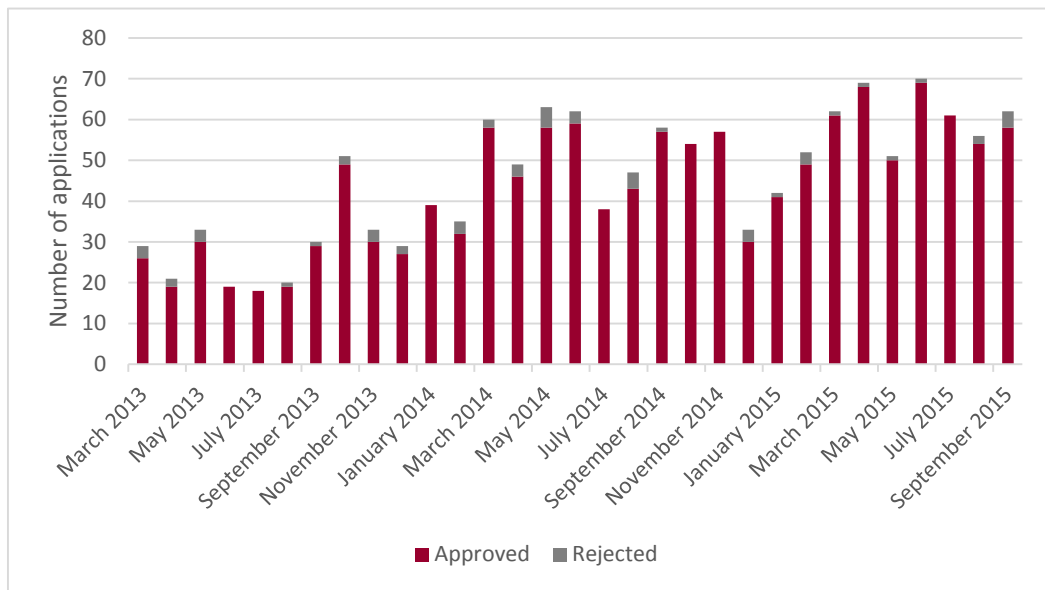
The different rates mean a lawyer operating in both the Queensland and Federal Court jurisdictions will pay a higher fee for a transcript of a Queensland court proceeding than a transcript of the same size in a Federal Court proceeding. These costs are ultimately passed on to clients. It also means that Queensland Court users pay more and wait longer to access transcripts. For example, Users of Queensland's civil courts ordering a transcript with a 10-day delivery period pay 13 cents more per folio (100 words) than a Federal Court transcript delivered in five days.

Fee waivers

DJAG did not routinely capture or report fee waiver data under SRB.

Since outsourcing in March 2013, there have been 1 412 fee waiver requests, of which DJAG approved 1 348 (95 per cent). DJAG takes 2.5 to three days on average to determine applications for fee waivers. Figure 4K shows that over this period requests for fee waivers have increased significantly. The reason for this increase in fee waiver requests is unclear and DJAG has not investigated the reason.

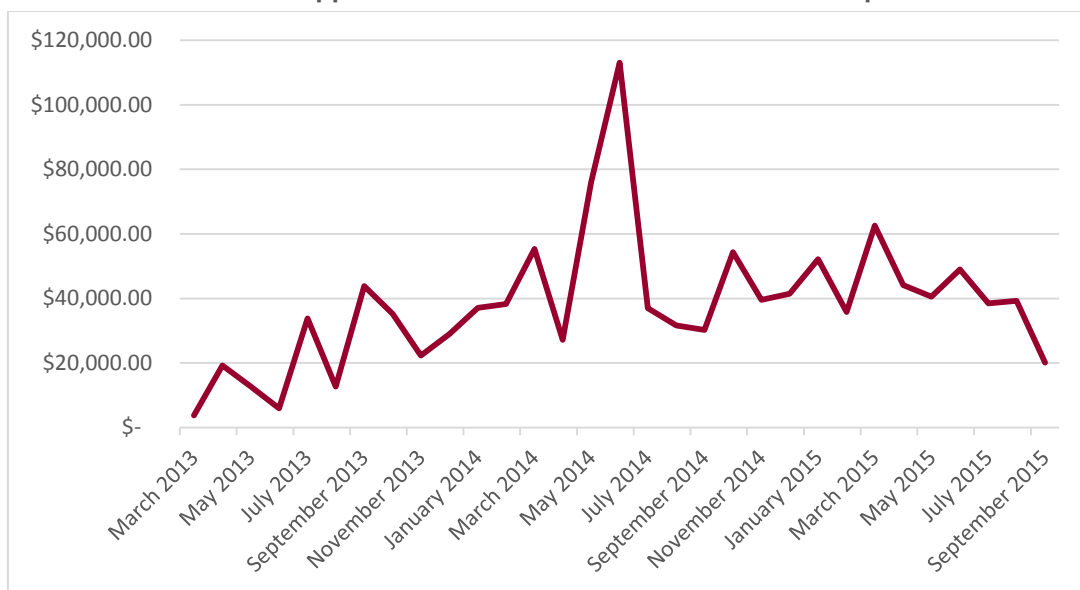
Figure 4K
Requests for fee waivers from March 2013 to September 2015



Source: QAO from data supplied by DJAG.

Increased fee waiver requests and approvals adds cost to DJAG. Figure 4L shows DJAGs costs of the approved fee waivers between March 2013 and September 2015. The costs can vary considerably depending on the number of folios in individual transcripts.

Figure 4L
DJAG costs from approved fee waivers from March 2013 to September 2015



Source: QAO from data supplied by DJAG.

From the commencement of outsourcing in March 2013 to September 2015, 1 348 approved fee waivers cost DJAG approximately \$1.2 million and it rejected around \$36 000 worth of fee waiver requests. DJAG never set a budget for fee waivers and therefore did not account for this cost in the cost benefit analysis. The \$1.2 million is included in the total contract payments from DJAG to Auscript so it does not change the fact that the department achieved an overall saving through outsourcing.

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Appendix A—Comments

In accordance with s.64 of the *Auditor-General Act 2009*, a copy of this report was provided to the Attorney-General; the Director-General of the Department of Justice and Attorney-General and; the CEO and Managing Director of Auscript Australasia Pty Ltd with a request for comments.

A copy was also provided to the former attorney-general (now the Shadow Minister for Police, Fire, Emergency Services and Corrective Services), as a person with a special interest in the report, in accordance with s.64(3). All correspondence with the former attorney-general is included in Appendix E.

Responsibility for the accuracy, fairness and balance of the comments rests with these people.

Comments received from Director-General, Department of Justice and Attorney-General



Department of Justice and Attorney-General
Office of the Director-General

In reply please quote: 521301/2 3071935

3 DEC 2015

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Auditor-General
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ABN 13 846 673 994

Dear Mr Greaves

Thank you for your letter dated 27 November 2015 enclosing your proposed report of the performance audit on the provision of court recording and transcription services.

As you have indicated in your report, the decision to outsource recording and transcription services was made in the context of the previous government's focus, as part of implementing its election commitments, on 'fiscal repair'. As part of 'fiscal repair', the Government had an urgent requirement for all agencies to make significant savings that could be included in the 2012-13 budget. Outsourcing recording and transcription services was one of the options identified by the Department of Justice and Attorney-General to give effect to the former Government's commitment to 'repair and restore' the State's fiscal position.

I note, again as you have identified in your report, that while the estimated savings to accrue through outsourcing were not realised, significant savings have been achieved.

An omission from the report, which I consider worth noting, is that in February 2013, the Independent Probity Advisor noted no concerns with the procurement and planning process.

As requested, I enclose a table of recommendations with the department's associated response. The department accepts all seven recommendations in the report. It is important to note that the department has started work on some of the areas highlighted by the audit report.

We are continuing to engage with Auscript about the contract management issues with a view to identifying and resolving those issues, to the extent possible and appropriate, by way of a variation to the contract terms. In addition, we have developed a roadmap of activities we need to undertake to ensure we are managing the contract effectively and that we can make informed decisions about the contract into the future.

You will of course appreciate, that the delivery of a number of the recommendations is not within the department's sole control. As such, the timeframes identified are target

Comments received from Director-General, Department of Justice and Attorney-General

(2)

timeframes. The department will of course, prioritise, to the extent possible within its control, the implementation of the recommendations.

In addition, implementing the report's recommendations will require additional resourcing and expertise that is not currently available within the department. The department's ability to implement the recommendations is subject to that resourcing and expertise being available.

The department recognises the importance of recording and transcription services to the community and judiciary and will be working to implement the recommendations in your report.

Thank you for the opportunity to review the draft report. I would appreciate it if you would publish this response with the report when it is tabled in Parliament.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Mackie', with a long horizontal flourish extending to the right.

David Mackie
Director-General

Enc

Response to recommendations



Department of Justice and Attorney-General, Provision of court recording and transcription services (Report No. 9: 2015–16)

Response to recommendations provided to the Director-General, Department of Justice and Attorney-General on 27 November 2015.

Recommendation	Agree / Disagree	Timeframe for Implementation (Quarter and Year)	Additional Comments
1. resolves known contract management issues with Auscript as a matter of priority, and vary the contract as needed	Agree	June 2016	Commenced. The Department wrote to Auscript on 26 October 2015 asking it to provide its issues to inform contract variation discussions.
2. ensures all contractual rights are appropriately exercised and obligations met, including as a priority: <ul style="list-style-type: none"> ▪ approval of a suitable transition out plan as required under the contract ▪ independently verifying Auscript's performance and billing information, as provided for under the contract 	Agree	December 2016 December 2016	The Department will develop an appropriate transition out plan and provide it to Auscript for comment with a view to finalising this as soon as possible. The Department will discuss with Auscript an appropriate time for an independent auditor to review Auscript's performance and billing information.
3. assess the effectiveness of existing contract performance measures and change as needed, including introducing incentives and penalties that will better drive performance and high quality service delivery	Agree	December 2016	The Department will assess the effectiveness of current contract performance measures and discuss this with Auscript.
4. conducts a cost benefit analysis, while considering full lifecycle costs, to determine if current services are cost effective and providing value-for-money, with a view to revisiting costs and how services are delivered where they are not	Agree	March 2017	The Department will conduct a cost benefit analysis to determine the cost effectiveness and value for money consideration. This will inform future service delivery options.
5. immediately conducts a detailed assessment of service delivery requirements, user needs and market capability to identify future service delivery options	Agree	June 2017	The Department will document and map all aspects of recording and transcription service delivery requirements. This will involve a number of stages.

Response to recommendations



Recommendation	Agree / Disagree	Timeframe for Implementation (Quarter and Year)	Additional Comments
		June 2016	The Department will undertake a survey of stakeholders who have interacted with recording and transcription services to better understand user's current recording and transcription needs. The results will be used to highlight both immediate opportunities for service delivery improvement as well inform future service delivery requirements.
		December 2016	In addition, the Department will undertake more in-depth user needs analysis across a broad section of stakeholders (including the judiciary, legal practitioners, Office of Director of Public Prosecutions and Legal Aid Queensland).
		March 2017	The Department will undertake a high-level market scan to identify market capability and establish if the market meets the needs of users identified in the surveys.
6. evaluates feasible alternative service delivery options to determine the best value for money option in terms of cost, timeliness and quality	Agree	November 2017	The Department will identify and evaluate feasible alternative recording and transcription service delivery options.
7. Develops a strategy and plan to progress to the best value for money option at the end of the current contract.	Agree	December 2017	The Department has commenced work on this. It has developed a roadmap of activities to ensure the Department is in the best position to make informed and deliberate sourcing decisions for the provision of recording and transcription services prior to the conclusion of the current Auscript contract term.

Comments received from Joint Founder, Chief Executive Officer and Managing Director, Auscript Australasia Pty Ltd



Auscript Australasia Pty Limited
Level 22, 179 Turbot Street
Brisbane QLD 4000

3 December 2015

Mr Andrew Greaves
Auditor-General
Queensland Audit Office
Level 14
53 Albert Street
Brisbane QLD 4000

Dear Mr Greaves

Performance Audit on the provision of court recording and transcription services

Thank you for the opportunity to respond to the Queensland Audit Office (QAO) Audit Report (the **Report** or **Audit**) as you outlined in your letter of 8 September 2015.

I state at the outset that Auscript unconditionally accepts and endorses each of your recommendations, and we stand ready to work with the Department of Justice and Attorney-General (the **Department**) to implement the recommendations. I take this opportunity to add further background, and observations on the Audit and its findings.

Auscript is a substantial employer in Queensland and Australia, with over 400 staff and technology exports globally. Since moving our head office to Queensland 11 years ago we have contributed over \$100 million to the Queensland economy.

Because we are a global organisation taking Queensland exports to the world, our reputation extends far outside the State of Queensland. It is important in this formal response that the flavour of the local Queensland environment is explained to the wider audience in some detail.

It is entirely appropriate, in fact, essential, that I firstly revisit the facts as to why this eight-month, time-consuming and expensive taxpayer-funded Audit has occurred.

The Report states that three rival companies – two of which did not submit a bid for the Queensland Courts contract – were the source of complaints about the procurement process. These complaints were subsequently raised in Parliament by the then Opposition Leader. Since those initial complaints, my name or that of my company has been raised in Parliament on at least 13 occasions.

This environment – flowing from the complaints of commercial rivals unable to match the service Auscript provides – subsequently generated a series of negative media stories

COMMERCIAL IN CONFIDENCE

Comments received from Joint Founder, Chief Executive Officer and Managing Director, Auscript Australasia Pty Ltd



about Auscript and the awarding of the contract. On each occasion, false claims made by nameless critics were reported as fact in the media.

On 22 April 2015, the Brisbane Times published a story with the headline "Baden-Clay jury pool was 'recorded' by Auscript". This article became the catalyst for the Government's referral of this matter to the QAO.

In this article, the new Labor Attorney-General said "she intended to write to the Auditor-General outlining the issues and concerns that have been raised by the material revealed by Fairfax Media". In Auscript's official response, we welcomed the referral, and expressed our hope that a thorough investigation would put an end to the unfounded claims about our company.

The headline used by the Brisbane Times was misleading. Firstly, Auscript is required to record all proceedings across the Courts, and was acting in accordance with both its contractual and legal obligations. Secondly, the article intimated that the recordings of the jury pool were made during the deliberations on the trial. This was never the case. It is pleasing to note that the incident that sparked the referral to your office has been considered so immaterial that it is not even mentioned in your Report.

I now turn to the substantial matters considered by the Audit. I note that the eight-month Audit has been exhaustive in pursuing these issues, and has involved a number of Auscript staff, including the Executive team and CEO, investing thousands of hours.

Auscript was appointed after a very thorough and detailed tender process by the former LNP Government. The Audit references this process. It is recorded in the Queensland Parliamentary records that the now Premier and Government were opposed to the outsourcing of the technology and transcription services by the LNP Government of the day. Among the criticisms was an inference that some preferential treatment had been granted to Peter Wyatt and/or Auscript during the tender process because over the years I had attended some LNP functions. What neither the now Premier, nor the now Attorney-General knew at the time was that over the years I have also attended paid Labor party functions. I have written to the Premier advising her of this fact. Like many professionals in business, I see myself as apolitical in business and recognise the importance of working constructively with Government, regardless of their political views.

It is important to note that the Attorney-General in her media comments of 22 April 2015 raised no concerns with the QAO in relation to Auscript's technology or its recording capability. This is very reassuring as in Queensland the audio recording is the formal record of evidence and it is absolutely fundamental that recordings of all matters are captured and stored. The Audit has found no evidence to dispute our assertion that 99.9 per cent of court proceedings across the State have been successfully recorded since the contract commenced.

Comments received from Joint Founder, Chief Executive Officer and Managing Director, Auscript Australasia Pty Ltd



Timeliness

The first issue raised by the Attorney-General on 22 April was in relation to “delays in transcripts” or what we term “timeliness”.

The fact is that Auscript has delivered in excess of 65,000 transcripts and has achieved 97 per cent on time delivery for Same Day transcript, and 94.56 per cent for all transcripts, for the period 1 July 2013 to 30 November 2015.

The Audit identified that the State Recording Bureau (**SRB**) (SRB was the previous insourced provider) only had statistics for Same Day, evidence only transcripts, and ontime delivery ranged from 80.2 per cent to 95 per cent.

Given that time is so critical in the effectiveness of natural justice, Auscript’s improvements are significant. Further, under the insourced model non-Same Day transcripts were delivered on average within 13.6 days; Auscript achieves 3.5 days through the outsourced model. Auscript provides the Department with detailed monthly performance reports. All details regarding timeliness are reported transparently to the Department to ensure proactive communication to the end users.

No evidence supports the claim that Auscript is responsible for delays in transcript delivery. However, the Audit has shown that any delays are generally caused by problems that existed well before outsourcing, known as “pre-existing issues”. Many of these issues have been identified by Auscript working with the Department and must be subject to urgent contract variations. We are pleased to note that the QAO largely agrees with our observations around timeliness.

Value for Money

The second issue raised by the Attorney-General on 22 April was in relation to “increased costs” which I have summarised under the broader heading of “Value for Money” as costs need to be considered in their entirety.

The Report acknowledges that under the SRB, insourced model costs to the taxpayer and State of Queensland were significantly higher than under the outsourced model.

Auscript will achieve, for the State of Queensland, up to \$19.8 million in savings, during the complete contract term, plus an additional \$3 million that has already been realised as the Department has not had to replace ageing technology and infrastructure.

Auscript’s commitment to achieving savings for Courts and parties is evident through the multi-million dollar savings that have been achieved in the Federal Court of Australia, which have been reported on in this Report by the QAO. In that jurisdiction Auscript has achieved both savings to the parties and the Government, through close collaboration, innovation and a two-way partnership.

Auscript remains committed to working with the Queensland Government to implement similar proven innovations and efficiencies, which will ultimately benefit the Courts, parties and the Government.

Comments received from Joint Founder, Chief Executive Officer and Managing Director, Auscript Australasia Pty Ltd



Costs to the Court User

As the Report highlights, in conjunction with many other Courts across Australia, the Queensland Government of the day decided to remove the taxpayer funded subsidies for transcripts in civil proceedings. Transcripts are only paid for by the parties in civil proceedings and in a small number of Magistrate Court criminal proceedings, representing less than 5 per cent of transcripts in criminal proceedings.

Auscript acknowledges that it was the Department's decision to remove the 50 per cent subsidy on civil transcripts.

Passing these costs to the end users, is a significant saving to the Queensland taxpayer, and the Government, and is consistent with other best practices in Courts across Australia and around the world.

Quality and Accuracy

The third issue raised by the Attorney-General on 22 April was in relation to "error rates". Auscript has an internationally recognised and certified quality methodology, and actively surveys Court users for feedback regarding service delivery.

Based on the same criteria that was applied in the past to the SRB and is used in other jurisdictions, Auscript's quality is above expectations and surpasses the results that were being achieved by the SRB.

Auscript's high quality services are further illustrated by the fact that from over 65,000 transcripts produced by Auscript under the contract, the QAO identified 16 issues, only two of which were directly attributable to Auscript.

The current quality audits being undertaken by the Department do not address the agreed contracted position to measure quality and accuracy. Therefore, any assertion that Auscript is not performing to the contract is factually incorrect. In fact, for all of Auscript's other Court clients, with the same contract terms, Auscript is exceeding KPIs, at less than one error per page.

Any criticisms in the QAO Report regarding Auscript's quality results are based on the same assessment methodology that the QAO identifies as being 'simplistic and incomparable' to past assessment measures. Any regime that gives a style error (such as the non-capitalisation of a word) the same weight as the omission of a key word is inherently simplistic and unfair, considering that transcripts are handmade products. Therefore, any assessment completed within these guidelines would, in accordance with the QAO's Report, be considered irrelevant.

Auscript is achieving superior quality outcomes, for all other clients, with the same people, processes and technology.

Auscript remains committed to working with the Department on an appropriate and consistent quality measurement to provide confidence and transparency in our service delivery.

Comments received from Joint Founder, Chief Executive Officer and Managing Director, Auscript Australasia Pty Ltd



Tender Process

The tender evaluation report referenced in the Report found that Auscript was easily the strongest and most experienced bidder. The fact that Auscript is a Queensland-based company was a bonus for jobs, prosperity and tax revenue in this State. Queensland is not the only area where Auscript has been shown to be the best all-round provider of these services.

The Department engaged with the industry, world-wide, on 14 September 2012, when a Call of Offer was made as per the Forward Procurement Schedule to alert the global recording technology and court reporting community of the Department's intention to go to tender. Therefore, the market was aware of the Department's intentions.

Following the release of the ITO to the market, the Department's tender response allowed for 29 business days (excluding public holidays and weekends), which is a six and a half week period for tenderers to respond. Auscript, and our competitors, frequently bid on similar tenders and are subject to varying periods of time to complete a bid. Consider the Federal Court of Australia – 4 weeks; the Administrative Appeals Tribunal (AAT) – 4 weeks; and the WA Courts and Tribunals – 6 weeks.

Technology

The Report acknowledges that under the SRB insourced model there were issues with the digital technology implemented by the Department and ongoing concerns firstly regarding technical issues, leading to adjournment of hearings, and secondly, with delays in producing the transcripts. These are no longer an issue for the State of Queensland.

Auscript's technology and the successful implementation of the contract has seen 99.9 per cent of all proceedings faultlessly and successfully remotely recorded, monitored and stored. This is a testament to the successful implementation of the contract, which is fundamentally a complex, mission-critical digital technology recording and transcript solution.

As we are witnessing in business models around the world, digital technology and innovation can be hugely price disruptive, whilst at the same time providing a level of service and quality that has not been possible in the analogue world.

Auscript has provided a unique digital business model to the Queensland Government, which is unable to be matched by any competitor. That is evidenced by the fact that two competitors could not respond with a digital solution and the one that did respond did so with an analogue solution and a price differential of over \$11 million per annum, as publicly disclosed.

Court Users

Auscript has engaged extensively with the users of the recording and transcription services to understand areas for improvement and any concerns. The engagement has been successful and whilst there are minimal issues, it is evident that a majority of the issues experienced by the end users are pre-existing Departmental procedural issues.

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Comments received from Joint Founder, Chief Executive Officer and Managing Director, Auscript Australasia Pty Ltd



Auscript had already identified these issues as areas for improvement with the Department in 2013 and is, and remains, committed to working with the Department to resolve them.

The Report affirms these areas for improvement. Some examples of these issues include:

- **Criminal Transcript Delivery**

The Department has the responsibility to distribute approximately 95 per cent of criminal matters. This delays the time in which a transcript is received by the end user. Auscript provided a proposal in June 2014 to the Department that would reduce the delays and increase the speed in which a transcript is delivered to the end user.

- **Revisions**

There are complexities surrounding the distribution of revisable transcripts (judgments, sentencing remarks, orders, rulings) which impact the timeliness of the delivery of these transcripts to the end users. The delays are unrelated to the production of transcript and are the result of processes that have existed within the Queensland Courts for many years. Auscript remains willing to implement improvements to reduce delays to the end users.

Conclusion

As I have outlined, the basis of this Audit by the QAO was predicated on misleading information provided by commercial rivals to the then Opposition and, ultimately, the media. This mischievous criticism has then led to an expensive and time-consuming Audit that has proven that Auscript is delivering significant savings to the State of Queensland, whilst achieving high quality outcomes. The Report confirms that:

- the outsourcing arrangements will save Queensland taxpayers \$19.6 million over the life of the Auscript contract, should the options be exercised;
- a further \$3 million saving has been achieved for Queensland, as there is no longer the need to upgrade and support ageing recording infrastructure;
- 99.9 per cent of court proceedings across the State have been successfully recorded since the contract commenced;
- the outsourced delivery model is meeting the needs of court users in most cases; and
- based on the same criteria that was applied under the insourced model, and is used in other jurisdictions, Auscript's quality is above expectations and this is illustrated by the fact that from over 65,000 transcripts produced by Auscript under the contract, the QAO identified 16 issues, only 2 of which were attributable to Auscript.

Auscript responded to a Government tender, and was awarded the contract on its capability, capacity and extensive experience in performing the required services and delivering a high quality service whilst remaining cost competitive in the market. The Report recognises that outsourcing was a significant transformation for the Department

Comments received from Joint Founder, Chief Executive Officer and Managing Director, Auscript Australasia Pty Ltd



and the Courts. Through this transformation, Auscript has worked diligently to identify and resolve issues as they arise. Auscript is committed to continual engagement with the Department, Courts and end users to identify user needs and implement improvements.

The contract is fundamentally sound, and services are being delivered to the court users, with no systemic issues and minimal complaints. During contract implementation, Auscript identified a number of opportunities for improvements to ensure court users were being adequately serviced. It is reassuring that a majority of these areas for improvement identified by Auscript are supported by the QAO through this Report.

As I mentioned at the beginning of this letter, Auscript supports all of the recommendations in the Report and believes it provides a sound basis for achieving an even greater value and level of service delivery for the Department, the Courts and the people of Queensland.

In closing, I recognise the professional and courteous conduct of your staff allocated to this assignment.

Yours sincerely

Peter Wyatt FCA
Joint Founder, CEO and Managing Director
Auscript Australasia Pty Ltd

Auditor-General response



Your ref: Mr P Wyatt
Our ref: 2015-9140P & 2015-9132P
Contact: Mr D Brown – 3149 6080

7 December 2015

Mr P Wyatt
CEO and Managing Director
Auscript Australasia Pty Ltd
Level 22
179 Turbot Street
BRISBANE QLD 4000

Dear Mr Wyatt

QAO report to Parliament for 2015-16: Provision of court recording and transcription services

Thank you for your response to the report on my performance audit *Provision of court recording and transcription services*, which my office received on 3 December 2015.

I propose to table the report in Parliament on Thursday, 10 December 2015.

I have considered your views and I have represented them to the extent relevant and warranted in preparing my final report.

There are a number of comments in your letter, which misrepresent the findings and conclusions of the report and require clarification. I have detailed the main issues below.

Baden-Clay matter

You state in your letter that the reports about the Baden-Clay matter, which you assert were the cause of the Attorney-General's referral to my office, '*...has been considered so immaterial that it is not even mentioned.*' in my report.

As you are aware, while my report does not specifically name the Baden-Clay matter it does specifically detail issues pertinent to that matter, specifically the recording of out-of-court sessions (page 33). I identify that recording conversations held between proceedings is allowable under the contract, but is also an example of the Department of Justice and Attorney-General (DJAG) not clearly specifying in the contract its desired service requirement. My finding about this is:

This practice exposes DJAG to the risk that out-of-court session recordings could be made public. There may also be an increase in future costs to store additional data or strip portions from requested recordings when audio files are returned at the end of the contract.

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Auditor-General response

It is therefore not correct to claim I considered this matter immaterial.

Procurement process

You state in your letter that:

Auscript was appointed after a very thorough and detailed tender process by the former LNP Government. The Audit references this process.

I did not conclude that the procurement process was thorough or detailed. To the contrary my conclusion of this process, detailed on page 20 of my report, was:

The Department of Justice and Attorney-General's (DJAG) procurement of outsourced court recording and transcription services was rushed and poorly executed in order to meet imposed timeframes.

I found that DJAG bypassed key processes, which meant it was not clear about what specific services it was contracting and the manner in which they were to be provided. This resulted in limited interest from market participants due to a lack of information and associated risks.

Recording of proceedings

You state in your letter that:

The Audit has found no evidence to dispute our assertion that 99.9 per cent of court proceedings across the State have been successfully recorded since the contract commenced.

While your statement is literally accurate, the audit also did not find evidence to support your assertion. My report details, on page 45, that:

DJAG does not verify the quality of recordings captured, or the recording of all required proceedings. DJAG instead relies on Auscript or users to report any missed recordings or recording quality issues. DJAG assumes no reported issues means all required proceedings were recorded, and at a quality that allows for accurate and reliable transcription.

This means that DJAG relies on, and is making payments based on, Auscript's 'assertions' that it is meeting this contractual performance indicator.

More concerning to me is your statement in the conclusion of your letter that my report 'confirms that: 99.9 per cent of court proceedings across the State have been successfully recorded since the contract commenced.'

I want to be clear that I have made no such finding. The audit findings in respect of the recording of proceedings are that Auscript's claims are unverified by DJAG and DJAG cannot provide any reliable assurance about the recording of proceedings.

Reporting and timeliness

You also state that:

Auscript provides the Department with detailed monthly performance reports. All details regarding timeliness are reported transparently to the Department to ensure proactive communication to the end users.

I report on page 36 that:

Auditor-General response

While Auscript has submitted all monthly reports to DJAG since January 2014, it has only met the target or minimum standard for monthly reporting on seven occasions.

More significantly, you state that:

...the Audit has shown that any delays are generally caused by problems that existed well before outsourcing, known as 'pre-existing issues'.

You go on to claim that, '*...the QAO largely agrees with our observations around timeliness.*' These statements misrepresent the findings of the audit, particularly those detailed on page 42:

Over two and half years into the contract there are still concerns being expressed about the timely distribution of transcription services. The cause of these concerns is a combination of:

- *unresolved pre-existing issues*
- *DJAG not establishing user needs and expectations from the outset*
- *Auscript not meeting some contract service delivery targets.*

I conclude on page 2 that the combination of these factors '*...make it more difficult to be clear about where and if there has been service delivery failure.*'

Cost savings

You also quote cumulative savings figures from my report without providing the context. You said:

Auscript will achieve, for the State of Queensland, up to \$19.8 million in savings during the complete contract term, plus an additional \$3 million that has already been realised as the Department has not had to replace ageing technology and infrastructure.

Again, these statements clearly misrepresent the findings of my report, and with respect to the \$3 million contradicts my finding. On page 40, I said:

Assuming the current level of savings continue, it could stand to reap around \$12.8 million in direct cost savings over the life of the contract—2019, or up to \$19.6 million if both the contract's two-year extension options are exercised.

By outsourcing, DJAG has avoided the capital costs of replacing its aging Dalet recording system. While the upfront payment of this cost was avoided, the contract price paid by DJAG includes a component to cover the cost of Auscript's capital investment.

Savings estimated from outsourcing are susceptible to unplanned cost increases and do not include revenue forgone and CPI adjustments.

When lost revenue is included these savings are reduced. The \$12.8 million and \$19.6 million figures assume current levels of savings continue and DJAG's costs associated with managing the contract do not continue to increase, as they have since contract commencement.

Auditor-General response

The estimated \$3 million to replace DJAG's Dalet system was avoided as an upfront cost, but does not represent a saving. This is because DJAG is paying for Auscript to recover its capital costs as a component of the pricing structure. Depending on the volumes of recording and transcription services required over the term of the contract, DJAG could possibly continue to pay the pricing component for Auscript's capital investment after these costs have been fully recovered. This is detailed on page 34 of my report.

Quality and accuracy

You note that my report acknowledges that there were reported concerns about technical issues and timeliness and quality of the service provided by the State Reporting Bureau prior to outsourcing. You go on to say that:

These are no longer an issue for the State of Queensland. Auscript's technology and the successful implementation of the contract has seen 99.9 per cent of all proceedings faultlessly and successfully remotely recorded, monitored and stored.

It is important to be clear these are your claims and not findings of my report. I found that:

- concerns have been expressed about the cost, timeliness and quality of service since outsourcing
- DJAG do not verify your assertion that 99.9 per cent of proceedings are recorded (as discussed above)
- The monitoring of recordings is a source of contention between DJAG and Auscript (refer to page 46).

More concerning to me is your statement in the conclusion of your letter that my report 'confirms that: Auscript's quality is above expectations..'

I want to be clear that I have made no such finding or conclusion. To the contrary, I conclude that:

...lower than estimated annual savings, combined with concerns about quality, timeliness and user cost, bring into question the overall value proposition of the selected model. From this perspective, DJAG cannot reliably demonstrate whether its present outsourcing model for court recording and transcription services represents the best overall value for money that it could have obtained, in terms of either cost or quality and timeliness.

As previously advised the 16 issues were examples of matters raised by stakeholders during the audit. They were not meant to represent an exhaustive list of all issues encountered across all court jurisdictions. Therefore, I am not in a position to conclude on the extent of issues raised as a percentage of the total transcript volumes. Finally, I want to make clear that it is your assessment that only two of the 16 issues were attributable to Auscript and not a finding of the audit.

A copy of the full comments you provided has been included in the final report. For clarity, accuracy and transparency I have also included a copy of this letter.

Please accept my thanks to you and your staff for the assistance you provided during this audit.

Auditor-General response

Should you have any questions regarding this report, please contact me or have one of your officers contact the audit Director, Darren Brown on telephone 07 3149 6080.

Yours sincerely



Andrew Greaves
Auditor-General

Appendix B—Comparison of service delivery models

Figure B1—Comparison of state service models as at August 2015

	QLD	NSW	VIC	SA	WA	ACT	NT	Tas	NZ
Recording	Outsourced*	Partially outsourced**	Partially outsourced**	In-house	Outsourced*	Outsourced	Outsourced	In-house	In-house
Transcription	Outsourced*	Partially outsourced**	Partially outsourced**	In-house	Outsourced*	Outsourced	Outsourced	In-house	In-house
Distribution	In-house/ Outsourced ***	In-house	In-house	In-house	In-house	Outsourced	Outsourced	In-house	In-house
Billing	Outsourced*	In-house	In-house	In-house	Outsourced*	Outsourced	Outsourced	In-house	In-house
Data storage	Outsourced*	In-house	In-house	In-house	In-house	Outsourced	Outsourced	In-house	In-house
Infra/ Equipment	Outsourced*	In-house	In-house	In-house	In-house	Outsourced	Outsourced	In-house	In-house
Maintenance	Outsourced*	In-house	In-house	In-house	In-house	Outsourced	Outsourced	In-house	In-house
# Suppliers engaged	1	3	4	N/A	2	1	1	N/A	N/A

* Fully or partially outsourced to Auscript

**While civil matters are outsourced, all criminal matters are recorded and transcribed in-house. However for New South Wales one day or less civil matters in the Supreme Court and List Courts are provided in-house by Court Reporters together with all Supreme Court criminal matters. For Vic criminal cases are only outsourced to their panel of four, where there is no capacity to service in-house.

***DJAG distributes all transcripts that it pays for. Auscript distributes all other transcripts

Source: Queensland Audit Office

Appendix C—Key outsourcing service delivery issues

Figure C1—Status of key contract issues

Issue	Description	Status
Transcription/audio ordering process is not clear	Auscript report that instructions and court list details provided by DJAG are often incorrect and unclear. This can result in late delivery of transcript, and possibly delayed proceedings.	Unresolved Reliant on contract variation
Transcript turnaround times requested outside contracted times	End users are ordering turnarounds not offered under the contract. Auscript has been working outside of the contractual obligations to meet user requests.	Unresolved Reliant on contract variation
Unclear roles and responsibilities associated with the distribution of free transcripts	Auscript delivered free transcripts, working outside of contractual requirements for around 12 months. From August 2014, DJAG took back the distribution of free transcripts. Auscript claims it still incurs increased administration costs due to capturing, following up and reporting on the approval and distribution of free transcripts	Unresolved
Transcript types are not clear to the end user	Descriptions of transcript types do not aid users in ordering correctly. The number of types have varied since the contract has commenced.	Unresolved Reliant on contract variation
Delay in Court of Appeal (COA) transcript requests	Auscript report that DJAG did not make it aware of COA's requirements	Unresolved Reliant on contract variation
Revisions process	Auscript report that the revision process can result in the late delivery of transcript. Waiting for judges to make revisions, or advise that the transcript can be released contributes to delays in distribution	Unresolved Reliant on contract variation

Figure C1—Status of key contract issues cont'd...

Issue	Description	Status
Style guide and business rules	Multiple changes and complex requirements. Users unaware of requirements of style guide and business rules, including distribution	Unresolved Reliant on contract variation
Services covered by the contract	DJAG has made progress in documenting services however there are still areas of uncertainty such as the criminal transcripts	Unresolved Reliant on contract variation
Clarity of roles and responsibilities	DJAG and Auscript are still debating key areas of responsibility such as: transcript distribution (issue with Transcript Coordination Team)	Unresolved Reliant on contract variation
Billing processes	Complex billing arrangements. Up to version 13 of Free Transcript Provision document. DJAG have a lack of visibility over what is ordered, delivered and billed	Unresolved Reliant on contract variation
Agreed quality measures	DJAG and Auscript do not agree on the definition of errors in transcripts and measure quality differently. Auscript report it is operating outside of contract requirements, and impacting its ability to meet KPI targets.	Unresolved Reliant on contract variation
Escalation processes for issues	No centralised contact point for users to report issues. Some users report issues to DJAG and some direct to Auscript	Unresolved
Independent review of performance and billing processes	DJAG has not actioned its right under the contract to undertake a review of Auscript's billing process	Unresolved

Source: Queensland Audit Office

Appendix D—Audit methodology

Audit objective

The objective of the audit was to determine whether the expected benefits from outsourcing court recording and transcription services are being realised and whether the Department of Justice and Attorney-General (DJAG) is managing the contract effectively.

The audit addressed the objective through the lines of inquiry set out in Figure D1. The audit criteria is based on the legal and administrative requirements governing procurement.

Figure D1—Audit scope

Lines of inquiry		Audit criteria	
The procurement process achieved economy in purchasing			
1.1	Service requirement	1.1.1	The service requirement was clearly defined and understood, and aligned with state government priorities
		1.1.2	The decision to outsource was supported by sound information and assessments
1.2	Procurement process	1.2.1	Detailed market sounding and options analysis was undertaken
		1.2.2	Procurement and tender evaluation strategy was effectively developed
		1.2.3	Tender evaluation was completed, using appropriate criteria, and supported the final decision
The contract was developed and managed effectively			
2.1	Contract development	2.1.1	Contract criteria aligns with service needs and state government objectives.
		2.1.2	Contract terms and conditions clearly outline roles and responsibilities of all parties
		2.1.3	Key performance indicators are specific, measureable, achievable and relevant
		2.1.4	Incentive/penalty clauses are built into the contract to drive performance/service delivery
2.2	Contract management	2.2.1	Service delivery and performance related issues are regularly monitored, reported and addressed
		2.2.2	Issues with the contract, and user complaints are monitored, reported and addressed
Services being delivered represent value for money			
3.1	Services	3.1.1	All required services are being delivered

Lines of inquiry		Audit criteria	
		3.1.2	There is capacity to expand services to meet the state's requirements
3.2	Costs	3.2.1	Whole-of-life costs are monitored and reported on a regular basis
		3.2.2	Services are cost effective and delivering the savings identified in the tender process
3.3	Quality	3.3.1	High quality court recording and transcription services are being delivered through outsourcing

Source: Queensland Audit Office

Reason for the audit

On 22 February 2013, the former attorney-general announced the appointment of Auscript Australasia Pty Ltd (Auscript) as the sole provider of recording and transcription services to Queensland's courts, the Queensland Civil and Administrative Tribunal, and the Queensland Industrial Relations Commission. DJAG estimated at the time the transition to outsourced services would save the state up to \$6 million per year, and address timeliness and quality issues that existed.

After Auscript was appointed, concerns continued to be raised about the quality and timeliness of the service and about the cost to users of purchasing transcripts. On 22 April 2015, the Attorney-General wrote to the Auditor-General requesting the Queensland Audit Office consider the issues raised.

After conducting some initial inquiries, on 18 May 2015, the Auditor-General notified the Director-General, DJAG and the CEO and Managing Director of Auscript Australasia Pty Ltd that he would conduct a performance audit.

Performance audit approach

The audit was conducted in accordance with the *Auditor-General of Queensland Auditing Standards—September 2012*, which incorporate the requirements of standards issued by the Australian Auditing and Assurance Standards Board.

The audit was conducted between May 2015 and October 2015. The Department of Justice and Attorney-General (referred to as DJAG) and Auscript Australasia Pty Ltd (referred to as Auscript) were subject to this audit.

Auscript is a non-public sector entity and was included in this audit under the provisions of Section 36A of the *Auditor-General Act 2009* (the Act).

Section 36A of the Act allows the Auditor-General to conduct an audit of a matter in which a public sector entity (in this case DJAG) is giving or has given property, including money to a non-public sector entity (in this case Auscript). The object under the Act includes to determine whether the money has been applied economically, efficiently and effectively for the purposes for which it was given to the non-public sector entity.

The audit included:

- interviews with DJAG and Auscript staff
- interviews with judges, magistrates, staff and representatives across the court jurisdictions
- analysis of DJAG and Auscript data
- review of DJAG and Auscript documents.

Appendix E—Correspondence with former attorney-general



Your ref: The Hon. J Bleijie MP
Our ref: 2015-9140P
Ms D Bird 3149 6023

IN-CONFIDENCE

21 August 2015

The Honourable J Bleijie MP
Member for Kawana
Shadow Minister for Police, Fire, Emergency Services
and Corrective Services
PO Box 1200
BUDDINA QLD 4575

Dear Mr Bleijie

Performance audit on the provision of court recording and transcription services

In accordance with Section 37A of the *Auditor-General Act 2009*, I have commenced a performance audit on the provision of court recording and transcription services.

The objective of this audit is to determine whether the expected benefits from outsourcing court recording and transcription services are being realised and the contract effectively managed.

The audit will address the objective through the following sub-objectives:

- The procurement process achieved economy in purchasing
- The effectiveness of contract development and management
- Services being delivered represent value for money

As you were the Attorney-General at the time of the decision to outsource court recording and transcription services, I am seeking your input to the audit.

In particular, I am trying to understand the rationale for your direction to seek a single provider model, and would appreciate any documentation you are able to provide that supports this decision.

I am also interested in the rationale for the timeframes imposed on the department to conduct and conclude the tender process.

I would appreciate receiving your response on these, and any other salient matters, by 31 August 2015.

If you would like to discuss this audit further, please contact me or have one of your officers contact Ms Daniele Bird, Assistant Auditor-General on 3149 6023.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Greaves', is written over a horizontal line. Below the signature, the name 'Andrew Greaves' and the title 'Auditor-General' are printed in a small, sans-serif font.

Andrew Greaves
Auditor-General

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Correspondence with former Attorney-General



Jarrod BLEIJIE MP
Member for Kawana
Shadow Minister for Police, Fire, Emergency Services and Corrective Services



31 August 2015

Queensland Audit Office
PO Box 15396
City East QLD 4002

Dear Mr Greaves 

RE: PERFORMANCE AUDIT ON THE PROVISION OF COURT RECORDING AND TRANSCRIPTION SERVICES

I refer to your letter dated 21 August 2015, but only received in mail by this office on 27 August 2015.

I note that you are conducting a performance audit on the provision of court recording and transcription services.

I am not sure how long you have been conducting this performance audit, but I am lead to believe for many weeks now. For such an important matter, I am surprised to receive your letter on 27 August with which you request my response by 31 August 2015, leaving me approximately one clear business day to respond.

The outsourcing of court reporting transcription was not a decision that I made on my own. The Government, at the time, had a policy to outsource some services to the private sector, to ensure both quality of service and value for money for the Queensland tax payer. With that policy background, the decision to outsource court recording and transcription services was made to reduce the operating costs of this service and to address longer term issues associated with ageing technologies and workforce skill sets.

The transition to Auscript saw the replacement of ageing technology in 236 court rooms across 65 sites with state-of-the-art digital recording technology.

Soon after I became Attorney-General, I recall I had a meeting with Mr Kevin Meiklejohn, State Manager of the former State Reporting Bureau (SRB). I was asked about that meeting at my Estimates in 2012, where I advised that:

***Mr BLEIJIE:** That is my diary. I suspect my diary will say that I am in attendance. The manager of the State Reporting Bureau, Kevin Meiklejohn, was at that meeting. It was a boardroom table. He was sitting there, Peter from Auscript was sitting here, I was sitting here and I suspect my chief of staff David was there too. There were four people in the room. Incidentally, following on from that, the manager of the State Reporting Bureau actually said that the State Reporting Bureau has had difficulties and has had issues. You only have to look at the annual reports of the Supreme Court over the last five years to see that not everyone is entirely happy with it. He offered that information up. I put to him directly why it has not been fixed and he said that it has never worked properly from the start. I point out that it was the former Labor government that introduced that now system in the State Reporting Bureau.*

I was concerned when I received this feedback from the State Manager.

However, I also draw your attention to the following comments:

Supreme Court of Queensland Annual Report 2009-2010

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Correspondence with former Attorney-General

Letter to Auditor-General

31 August 2015

1. *The performance of the State Reporting Bureau (SRB) has again provided difficulties for the registry staff, the court, the profession and litigants during this reporting year.*
2. *The quality of SRB transcripts remains inconsistent and problematic. In one case crucial portions of transcripts were missing, including the judge's directions to the jury.*
3. *Errors continued beyond this reporting year.*
4. *Occasional delays in commencing Court of Appeal hearings because of faulty SRB recording equipment have continued to occur.*
5. *These difficulties in SRB's performance present a concerning and ongoing challenge to the reliable administration of justice in Queensland and must be urgently addressed.*

Supreme Court of Queensland Annual Report 2010-2011

1. *But from January to April inclusive, the delays returned.*
2. *There has been some delay in obtaining transcript of appeal hearings and considerable delay in obtaining, after the appeal hearing, transcript from the original hearing not included in the appeal book.*
3. *The quality of SRB transcripts have improved this year although some problems have continued.*
4. *Occasional delays in commencing Court of Appeal hearings because of faulty SRB recording equipment continued to occur.*

District Court of Queensland Annual Report 2010-2011

1. *Unfortunately the amount of service available from the SRB hampered, in some respects, the operation of the court. The provisions of transcripts has been delayed, causing unnecessary problems for the litigants, lawyers and judges.*

However, in stark contrast to those earlier reports and after the commencement of Auscript delivering the services, former Chief Justice de Jersey commented in the Supreme Court Annual Report 2012-2013, 'While the new system was not problem free, I was then confident that Auscript was gearing towards the delivery of a first class product, and as at the delivery of this report, I remain so confident.'

I **enclose** a copy of those relevant court annual reports for your information.

By all accounts, Auscript have been providing very professional services not only in Queensland but around Australia and internationally.

Having had the benefit to read the Supreme and District Court Annual Reports, as well as understanding the fact that other jurisdictions including the Commonwealth had outsourced their reporting, and the additional evidence provided by the State Manager of the State Reporting Bureau advising me that Queensland had end of life technologies that had never really worked effectively, the decision of the Government to call for a public tender to outsource the reporting and transcription services was an obvious decision to make.

I request that my letter be published in your draft and final report.

Yours sincerely,



Jarrod Bleijie MP
Member for Kawana
Shadow Minister for Police, Fire and Emergency Services
Shadow Minister for Corrective Services

Correspondence with former Attorney-General



Your ref:
Our ref: 2015-9140P
Ms D Bird 3149 6023

IN-CONFIDENCE

8 September 2015

The Honourable J Bleijie MP
Member for Kawana
Shadow Minister for Police, Fire, Emergency Services
and Corrective Services
PO Box 1200
BUDDINA QLD 4575

Dear Mr Bleijie

Performance audit on the provision of court recording and transcription services

Thank you for your letter dated 31 August 2015 about your decision to outsource court recording and transcription services.

The information provides useful context, but I note it did not answer the two matters I sought specific input on, viz. the rationale for:

1. seeking a single provider model for recording and transcription services
2. the timeframes imposed on the department to conduct and conclude the tender process.

I would appreciate any information and documentation you have that supports these decisions by 18 September 2015.

I note your request to include your letter in my report. It is not my usual practice to include correspondence in a report, apart from the final submissions received in the proposed report. I have considered your comments and will include them in the body of the report to the extent necessary. You will be provided with the proposed report and will get the opportunity to make a submission to it.

If you would like to discuss this audit further, please contact me or have one of your officers contact Ms Daniele Bird, Assistant Auditor-General on 3149 6023.

Yours sincerely



Andrew Greaves
Auditor-General

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Correspondence with former Attorney-General



Jarrod BLEIJIE MP

Member for Kawana

Shadow Minister for Police, Fire, Emergency Services and Corrective Services



RECEIVED
11 SEP 2015
QUEENSLAND
AUDIT
OFFICE

8 September 2015

Mr Andrew Greaves
Auditor-General
Queensland Audit Office
PO Box 15396
CITY EAST QLD 4002

Dear Auditor-General, 

RE: PERFORMANCE AUDIT ON THE PROVISION OF COURT RECORDING AND TRANSCRIPTION SERVICES

I refer to my letter dated 31 August 2015 and your response dated 8 September 2015.

I note that you didn't address the issue of me being given one business day to respond to your enquiry.

My letter of 31 August 2015 clearly set out the reason why the government chose to outsource transcription services.

In terms of documentation and more detailed reasons, I suggest you contact the Department of Justice and Attorney-General for that information.

Yours sincerely,



Jarrod Bleijie MP
Member for Kawana
Shadow Minister for Police, Fire and Emergency Services
Shadow Minister for Corrective Services

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Correspondence with former Attorney-General



Your ref:
Our ref: 2015-9140P
Ms D Bird 3149 6023

IN-CONFIDENCE

16 September 2015

The Honourable J Bleijie MP
Member for Kawana
Shadow Minister for Police, Fire, Emergency Services
and Corrective Services
PO Box 1200
BUDDINA QLD 4575

Dear Mr Bleijie

Performance audit on the provision of court recording and transcription services

Thank you for your prompt response to my follow up letter of 8 September, which my office received on 11 September.

I agree that your letter of 31 August set out the reason why the government chose to outsource transcription services. My audit is examining the success of this initiative in terms of the expected savings in cost and improvement in quality.

I have already approached the department and obtained its documentation and its detailed reasons for the outsourcing decisions. The evidence I have obtained to date is that the option to pursue a 'single provider' arrangement, and the timeframes imposed within which to select a provider were your decisions. The department has indicated they were directed by you with respect to both of these.

You should be aware I may attribute some adverse findings in my proposed report to these two matters if they are the root cause of subsequent issues encountered with contract management and administration.

The reason I wrote to you initially was to understand your rationale for these two aspects of the outsourcing process. As I was only seeking your rationale I felt that sufficient time was allowed for your response. As you are aware from your past dealings with my office, you had the option to request an extension to my information request.

If you would like to discuss this audit further, please contact me or have one of your officers contact Ms Daniele Bird, Assistant Auditor-General on 3149 6023.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Greaves', is written over a horizontal line. Below the signature, the name 'Andrew Greaves' and the title 'Auditor General' are printed in a small, sans-serif font.

Andrew Greaves
Auditor General

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Correspondence with former Attorney-General





Jarrod BLEIJIE MP

Member for Kawana

Shadow Minister for Police, Fire, Emergency Services and Corrective Services

18 September 2015

Mr Andrew Greaves
Auditor-General
Queensland Audit Office
PO Box 15396
CITY EAST QLD 4002
Sent via email to: Andrew.Greaves@gao.qld.gov.au

Dear Mr Greaves,

I refer to your further letter dated 16 September 2015.

I note my request for you to explain why I was only given one business day to respond to your initial letter which arrived at my office by mail on 21 August 2015. Your office regularly conducts performance audits and rightly questions processes and outcomes by Queensland Departments. I respectfully suggest that your answer *'that I could have requested an extension of time'* is both unsatisfactory and fails the high standard that you require from so many.

Further your letter indicates that you have received information from the Department of Justice and Attorney General. I have not seen these documents nor have I seen a draft report despite the fact that you seem to have prejudiced the matter by claiming in your letter that you may attribute some adverse findings in your proposed report to two matters if they are the root cause of subsequent issues encountered with contract management and administration.

This is the second time your office has been embroiled in a matter that I believe has denied me natural justice. In responding to your requests I have not been afforded with all the relevant information, yet you require detailed information.

Due to your apparent prejudice I have today written to the Attorney General requesting legal assistance pursuant to the Guidelines for the Grant of Indemnities and Legal Assistance to Ministers and Assistant Ministers.

As I intend to respond to your latest letter, and considering my request for legal assistance, I request an extension of time to respond to your requests, for information to the 31 October 2015.

I await your reply.

Yours sincerely,



Jarrod Bleijie MP
Member for Kawana
Shadow Minister for Police, Fire and Emergency Services
Shadow Minister for Corrective Services

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Correspondence with former Attorney-General



Your ref:
Our ref: 2015-9140P
Ms D Bird 3149 6023

IN-CONFIDENCE

24 September 2015

The Honourable J Bleijie MP
Member for Kawana
Shadow Minister for Police, Fire, Emergency Services
and Corrective Services
PO Box 1200
BUDDINA QLD 4575

Dear Mr Bleijie

Performance audit on the provision of court recording and transcription services

Thank you for your prompt response to my follow up letter of 16 September.

I note your comments that you have not seen documents obtained from the Department of Justice and Attorney-General nor a draft of my report. I am unable to provide you with the documentation my staff has gathered from the department as it is protected information under s.53 of the *Auditor-General Act 2009* (the Act). You have not seen the draft report to parliament as I have not finalised it or issued it to anyone yet.

I have however enclosed details of the facts as I presently understand them, to aid you in responding to my inquiry and providing any other information you consider relevant to the audit. I have not yet formed my conclusions.

My staff are in the final stage of collecting, collating and validating evidence for this audit for inclusion in my draft report. My previous letters to you were a part of that process and intended to provide you an opportunity to contribute any information you consider relevant. More specifically, I initially wrote to you to understand your rationale for two aspects of the outsourcing process— the decision to pursue a 'single provider' arrangement, and the timeframes imposed within which to select a provider. These two matters remain a relevant focus of the audit.

When my draft proposed report is finalised, I will give you a copy and 21 days to comment prior to it being tabled in the Parliament.

My audit commitments limit me in granting your request for an extension to 31 October 2015. However, in recognising your needs for additional time I can grant you an extension to 15 October 2015. Please provide me with your response to the two matters I have raised and any other information you consider relevant by this date.

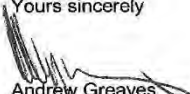
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Web www.qao.qld.gov.au

Correspondence with former Attorney-General

The information you provide, to the extent it is relevant, will be used to inform my draft report.
If you would like to discuss this audit further, please contact me or have one of your officers
contact Ms Daniele Bird, Assistant Auditor-General on 3149 6023.

Yours sincerely



Andrew Greaves
Auditor-General

Enc.

Correspondence with former Attorney-General



Jarrod BLEIJIE MP
Member for Kawana
Shadow Minister for Police, Fire, Emergency Services and Corrective Services



8 October 2015

Mr Andrew Greaves
Queensland Audit Office
PO Box 15396
CITY EAST QLD 4002

Dear Mr Greaves, *Andrew*

PERFORMANCE AUDIT ON THE PROVISION OF COURT RECORDING AND TRANSCRIPTION SERVICES

I refer to your letter dated 24 September 2015.

As I indicated to you in my earlier letter of 18 September 2015, in order to fully respond to your requests I had sought legal assistance from the Attorney-General pursuant to the Ministerial and Former Ministerial Guidelines.

I am advised that this application is currently with the Attorney-General for her consideration but has not yet been decided upon.

You have advised that you are willing to grant an extension of time for my reply until 15 October 2015, despite my request for an extension of time until the 31 October 2015. This extension of time was requested in order for the Attorney-General to consider my request for legal assistance.

I respectfully submit to you that providing natural justice and fairness to me, in order for a properly considered response, would outweigh your convenience to complete and table the audit at a time dictated by you.

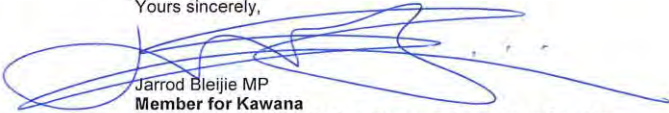
As I have previously submitted to you, I was advised that you have been undertaking this performance audit for some time and at a very late stage - what appears to be towards the end of the audit - you wrote to me requesting my response to certain matters, noting that I had one business day to respond by the time I received your written letter in the post. You also did not provide any information with respect to potential adverse findings and have not provided a copy of your draft report to me. It appears as though you are continually drip feeding information at your convenience and not being completely transparent in this process.

Considering that I have not as yet heard back from the Attorney-General with respect to my legal assistance application, I again ask that you reconsider my request for an extension of time until the 31 October 2015.

It is a matter for you whether you agree to this extension of time or not. However, as I have concerns over the process of this performance audit by your office, I am currently seeking advice from The Clerk of the Parliament as to whether I should make a full statement to Parliament and table copies of all correspondence between you and I on this matter.

I await your reply.

Yours sincerely,



Jarrod Bleijie MP
Member for Kawana
Shadow Minister for Police, Fire and Emergency Services
Shadow Minister for Corrective Services

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Correspondence with former Attorney-General

Your ref:
Our ref: 2015-9140P
Ms D Bird 3149 6023



IN-CONFIDENCE

09 October 2015

The Honourable J Bleijie MP
Member for Kawana
Shadow Minister for Police, Fire, Emergency Services
and Corrective Services
PO Box 1200
BUDDINA QLD 4575

Dear Mr Bleijie

Performance audit on the provision of court recording and transcription services

Thank you for your response to my letter of 24 September 2015.

Considering you are still awaiting a response to your application for legal assistance, I will grant you an extension to 31 October 2015.

As previously advised, you have not seen the draft report to the Parliament as I have not finalised it or issued it to anyone yet.

We will provide you with a draft report as soon as it is finalised. If this is without the benefit of your responses to our questions, we will amend the report as needed based on your responses when we receive them. In accordance with the Auditor-General Act 2009, I will provide you with 21 days to comment on the proposed report prior to me tabling it in the Parliament.

I note your comment that you had one day to respond upon receipt of my initial letter about this matter. My staff sent the letter to you on 21 August 2015, which requested you provide information about certain matters relevant to the audit by 31 August 2015. My staff followed up by emailing a copy of the letter to your office on 26 August 2015 and received email confirmation from your office on the same day.

If you would like to discuss this audit further, please contact me or have one of your officers contact Ms Daniele Bird, Assistant Auditor-General on 3149 6023.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Greaves', is written over a printed name and title.

Andrew Greaves
Auditor-General

Correspondence with former Attorney-General



Your reference: 2015-914OP
Ms D Bird 3149 6023

30 October 2015

Mr Andrew Greaves
Queensland Audit Office
PO Box 15396
CITY EAST QLD 4002
Sent via email to: Andrew.greaves@qao.qld.gov.au

Dear Mr Greaves ,

PERFORMANCE AUDIT ON THE PROVISION OF COURT RECORDING AND TRANSCRIPTION SERVICES

I refer to your most recent correspondence of 9 October 2015 and to our previous correspondence in respect of the performance audit on the provision of court recording and transcription services (**Performance Audit**) being conducted under s.37A of the Auditor-General Act 2009 (Qld) (**AG Act**).

Firstly, based on the nature of the information that you have requested that I provide, I am concerned about the risk that the Performance Audit may consider matters which are expressly outside the scope of your performance audit jurisdiction. The input that you seek from me appears to be irrelevant to the objective of the audit, which you record in your letter to me as being *"to determine whether the expected benefits from outsourcing court recording and transcription services are being realised and the contract effectively managed"* (bold added). Your questioning of the rationale for a single provider or the timeframe for the conduct and conclusion of the tender process seem to have little direct bearing upon achieving the stated objective.

In particular, I draw your attention to the express prohibitions prescribed under s.37A(5) of the AG Act, which prohibits, inter alia, questioning the merits of policy objectives of the State government, including:

- (a) a decision of Cabinet; and
- (b) a direction of a Minister.

More broadly, this concern also raises questions as to whether the information you have requested I provide could be considered to be "reasonably necessary" for the purposes of the Performance Audit within the meaning of s.47(1) of the AG Act.

I have provided the requested information in good faith (notwithstanding that I have not yet been afforded the opportunity to provide a proper response to the matters you have identified) and request that you provide confirmation of the above matters. My response is necessarily based upon my recollection of matters that occurred some 3 years ago, in circumstances where I do not have copies of and have not had the benefit of being provided access to file notes, briefing notes and Departmental records (including those leading up to and including the tender Invitation Document, Conditions of Offer or Conditions of General Contract etc. for the Transcription and Recording Services tender) that are relevant to the events leading up to the tender. My ability to provide a better recollection is therefore prejudiced by this and I provide my responses subject to these matters.

Secondly, (and related to the comment above) I believe that the conduct of this Performance Audit to date has triggered several natural justice issues that require your attention and confirmation.

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Correspondence with former Attorney-General

Letter to Mr Andrew Greaves

30 October 2015

These natural justice issues are as follows:

- (a) My capacity to be provided with the opportunity to provide a proper response to the matters you have identified. Without access to the relevant Departmental documents, I believe that I have not been afforded with the opportunity to provide a proper response to the matters you have identified.

While I acknowledge and accept the application of s.53 of the AG Act to the documents already provided to you under this Performance Audit, I do not accept that this means that other relevant documents cannot be provided to me to enable me to provide a detailed and proper response to these matters.

Given that this Performance Audit deals with an important public interest issue (that is the provision of an essential and important service to the Queensland Court system) and may make findings about these matters, it is appropriate that I be afforded such an opportunity to properly respond to the matters you have identified as relevant to these matters. I believe this is particularly so in circumstances where you say that "*evidence I have obtained to date is that the option to pursue a 'single provider' arrangement, and the timeframes imposed within which to select a provider were your decisions. The department has indicated they were directed by you with respect to both of these*", yet I am not provided with the Department records, in order to address these propositions and provide comment as part of my response.

I maintain my request for access to the file notes, briefing notes and Departmental records relevant to the events leading up to and including the tender for the provision of court recording and transcription services.

- (b) The impartiality of this Performance Audit process and any findings made under this Performance Audit process. As detailed above, this Performance Audit raises important public interest issues. It is therefore appropriate that the process for the conduct of this Performance Audit be fair and transparent so as to not in any way diminish the value of any findings, learnings or insights that can be obtained from this Performance Audit. With these matters in mind, I request that you test the process that has been conducted to date and consider these matters in finalising this Performance Audit including making any findings or recommendations.

As detailed above, I would appreciate your confirmation of these matters as soon as possible.

Having regard to the above issues, I have below set out my responses to the matters you have identified. Having regard to the matters identified in paragraph (a) above, I reserve my rights to provide further information on these matters.

The rationale for seeking a single provider model of recording and transcription services (including any supporting documentation)

Almost every jurisdiction in Australia has outsourced their transcription services, including the previous Labor Commonwealth government. The Newman government did nothing new when it sought to do what other states and territories had done by seeking offers from the open market by way of competitive tender.

The Queensland Courts Service Board provided governance to this project and to my recollection an independent panel was created to evaluate all tender bids.

Prior to the commencement of the procurement process in relation to court reporting services, the State Reporting Bureau exclusively recorded and produced written records of proceedings for

Correspondence with former Attorney-General

Letter to Mr Andrew Greaves

30 October 2015

Queensland's Supreme, District and Magistrates courts in accordance with the *Recording of Evidence Act 1962*. The model that was already in existence was therefore a single provider model.

I do not presently recall any particular discussion at the time of the proposal for a tender as to whether or not the existing single provider model should be altered to seek multiple providers. So far as I recall, the potential for the engagement of a single provider was not changed by the tender.

I am aware, however, that to facilitate the outsourcing of the court recording and transcription services, consequential amendments were made to the *Recording of Evidence Act 1962*, and those amendments enable the chief executive to enter into an arrangements with a person to provide recording and transcription services. I do not believe that those amendments prevent the chief executive from entering into arrangements with more than one person.

The rationale for the timeframes imposed on the Department to conduct and conclude the tender process (including any supporting documentation)

It is my recollection that in setting timeframes for the conduct of the tender:

- (a) the Department consulted with various stakeholders as part of the budgetary process to determine their business needs;
- (b) the Department thereafter prepared a proposed timeline which I reviewed and discussed with them;
- (c) the timetable that I indicated to the Department as my preference was to have the outsource provider commence in March 2013. To the best of my present recollection, my rationale was that any improvement in delivery of transcription services to the courts and the benefit of any associated budgetary savings to the public purse ought occur as soon as practicable;
- (d) I was informed by the Department that the timeframe I discussed with them could be achieved. High level timeframes were then developed.

As you have indicated in your previous correspondence, I will receive a copy of the draft report prepared for this Performance Audit and will be provided with the opportunity to respond by way of making a submission in reply to the draft report.

I request that a copy of this letter and my submission in reply be published in the copy of the final report for this Performance Audit.

I await your reply in relation to the matters detailed above.

Yours sincerely,



Jarrod Bleijie MP
Member for Kawana
Shadow Minister for Police, Fire and Emergency Services
Shadow Minister for Corrective Services

Correspondence with former Attorney-General



Your ref: Mr J Bleijie MP
Our ref: 2015-9140P
Mr D Brown 3149 6080

IN-CONFIDENCE

5 November 2015

Mr J Bleijie MP
Member for Kawana
Shadow Minister for Police, Fire, Emergency Services
and Corrective Services
PO Box 1200
BUDDINA QLD 4575

Dear Mr Bleijie

Performance audit on Provision of court recording and transcription services

Thank you for your letter responding to matters relevant to the outsourcing of court recording and transcription services, which I received on 30 October 2015. You raise a number of concerns, which I have addressed below.

Relevance

You question whether the matters relating to the selection of a single supplier and the timeframes for the conduct and conclusion of the tender process are relevant to the audit objective.

A number of factors, including but not limited to the process by which the tender was undertaken, can affect benefits realisation and contract management. This is recognised in the procurement guidelines that establish a due process for public servants to follow when undertaking major procurements. Therefore, these matters bear directly on my assessment against the audit objectives.

The Auditor-General Act 2009

I note that you also draw attention to section 37A(5) of my Act which prohibits me from questioning the merits of policy objectives. As this is a matter of some confusion and debate, it is worth considering in some depth the operation of this section, which has been in operation only since 2011. To this end, I have published a fact sheet, available for download on my website, which canvasses the key issues, at

https://www.qao.qld.gov.au/files/file/June2015_Auditor-GeneralandPolicy_FactSheet_0.pdf

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Correspondence with former Attorney-General

In short, the prohibition in my Act applies to questioning the merits of policy objectives, and points to the sources where these policy objectives may be evidenced, including a decision of cabinet or a direction of a Minister. It is important to ascertain what the policy objectives are. In this regard, I understand the predominant public policy objective was fiscal repair. I make no comment on this objective and I have not sought to evaluate its merits.

Whether an administrative decision by a minister about a procurement process is captured by the operation of this section is less clear. The intent of the legislature, based on the experience of other jurisdictions where similar provisions operate, has been to focus on matters of public policy, not administrative policy. It may be that the legislation would benefit from clarification in this regard.

Having said that, I acknowledge and do not question your right to take such administrative decisions. The focus of the audit is not on your decisions per se, but on the positive or adverse consequences, if any, that flow from those decisions. In this respect, your decisions are context only for the audit findings and conclusions, which properly focus on the department's implementation thereof.

Natural Justice

You further raise two issues regarding natural justice—access to departmental records and the impartiality of the audit.

In relation to the first matter, the absence of departmental records supporting or documenting your decision prompted me to write to you in the first instance. I was seeking to explore whether you or your staff had retained any documentation that could shed light on this matter.

As it goes to your second point, I am concerned that you raise this matter in this way without supporting such a serious inference with any evidence.

The independence of my position is enshrined in legislation. The auditing standards under which my staff operate demand their objectivity, and the evidence-based methods and processes they utilise give effect to this outcome. This is reinforced by strong executive oversight and effective quality control mechanisms that govern the audit process.

Based on my observations and inquires with key staff I am satisfied there has been no departure from the auditing standards in this audit. My staff as always have maintained their professionalism and integrity.

In relation to your substantive responses, which I acknowledge and accept are based on your recollections, the information you have provided is consistent with our understanding.

Proposed report to the Parliament

Please find enclosed the proposed report to the Parliament for your information and comment. The information you have provided is represented in the proposed report where relevant.

A copy of the proposed report to Parliament has also been provided to:

- Mr D Mackie, Director-General, Department of Justice and Attorney-General
- CEO and Managing Director, Auscript Australasia Pty Ltd
- the Honourable A Palaszczuk MP, the Premier of Queensland and Minister for the Arts
- the Honourable Y D'Ath MP, Attorney-General, Minister for Justice and Minister for Training and Skills
- Mr D Stewart, Director-General, Department of the Premier and Cabinet.

IN-CONFIDENCE

2

Correspondence with former Attorney-General

Section 64 of the *Auditor-General Act 2009* (the Act), provides for any comments on the proposed report to be given to the Auditor-General in writing within 21 days after the advice is received. Therefore, any comments you may have in relation to the proposed report are required no later than Thursday, 26 November 2015. Comments received within 21 days will form part of my report to Parliament, which is scheduled to be tabled in December 2015.

I note also your requests that I include all your correspondence in my report to the Parliament. In the interests of transparency, an appendix will be added to the report with copies of:

- all your correspondence
- correspondence to you, including this letter.

I draw your attention to the provisions of section 65 of the Act, which impose a confidentiality requirement on the recipient of a proposed report until the finalised report is tabled in the Parliament.

If you would like to discuss this audit further, please contact me or have one of your officers contact Mr Darren Brown, Director of audit, on 3149 6080.

Yours sincerely



Andrew Greaves
Auditor-General

Enc.

IN-CONFIDENCE

3

Correspondence with former Attorney-General



Your reference: 2015-9140P

25 November 2015

Mr Andrew Greaves
Queensland Audit Office
PO Box 15396
CITY EAST QLD 4002
Sent via email to: andrew.greaves@qao.qld.gov.au

Dear Mr Greaves

PERFORMANCE AUDIT ON THE PROVISION OF COURT RECORDING AND TRANSCRIPTION SERVICES

I refer to your letter dated 5 November 2015 and to the draft proposed report to Parliament regarding the performance audit on the provision of court recording and transcription services (**Performance Audit**) conducted under s.37A of the Auditor-General Act 2009 (Qld) (**AG Act**).

I note that you acknowledge my concern about the risk that given the particular questions put to me, the Performance Audit may consider matters which are expressly outside the scope of your performance audit jurisdiction. I do not consider that concern is best addressed by referring to the QAO's own publication as some form of authority, (which on the one hand confirms that the merits of government policy are not to be commented on yet suggests that the merits of the policy can be) as it is the legislation and not your Office's own interpretation that matters.

The matters that you put to me do not appear to be 'administrative policy', as opposed to matters more relevant to government or cabinet policy.

Natural Justice

I note that:

- Despite requests by me, (and after having spent some 6 months conducting the audit) I have not had the benefit of being provided access to file notes, briefing notes and Departmental records (including those leading up to and including the tender Invitation Document, Conditions of Offer or Conditions of General Contract etc. for the Transcription and Recording Services tender) that are relevant to the events leading up to the tender;
- You are aware that I do not have copies of such materials;
- You are also aware that without access to the relevant Departmental documents, I believe that I have been hampered in my ability to provide a proper response to the matters you have identified. This is particularly evident in circumstances where you alleged in your letter to me that the department indicated that it was *directed* by me to pursue a 'single provider' arrangement, and that I imposed the timeframes upon it. These are assertions I would expect to see recorded in department materials, and which would be very relevant to any response on my part; and
- You have consciously proceeded to complete your draft report without providing me with the benefit of the requested access even though you were informed by me that my ability to provide a better recollection on events that happened some 3 years ago was being prejudiced by not having the benefit of access to the files and materials that were relevant to the events leading up to and including the tender for the provision of court recording and transcription services

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Correspondence with former Attorney-General

Letter to Mr Andrew Greaves

25 November 2015

The content and the matters dealt with in your draft report relate to and reflect upon my reputation and are serious matters. In the current circumstances and considering the issues raised above, I do not believe that I have been afforded with an opportunity to properly respond to this audit and the matters raised in your draft report.

In seeking to deflect my criticism of the inadequate manner in which I believe I have been afforded the opportunity to respond, you note that the independence of your position is enshrined in legislation. That may be the case, but reference to the statutory construct of your office misses the point entirely. Self-serving rhetoric about executive oversight and quality control mechanisms etc., do not adequately address the fact that:

- you have sought and expected me to be able to provide fulsome answers to your enquiries but have disadvantaged me by not providing access to relevant records that are no longer in my control;
- you left your request to me until late in the progress of your report and initially provided me with only an unreasonably short time for reply;
- when I obtained a short extension of time and was able to consider the requests in further detail I identified my need to be able to obtain access to relevant materials in order to better assess the facts;
- while your office may seek to employ "evidence based methods and processes" such processes do not appear to be strongly adhered to when as a former Minister I am deprived of access to the very files and records that I have identified as relevant to my ability to adequately respond to (and if necessary correct) some of the statements that are proposed to be made with respect to my dealings with the Department. It makes it appear to be more of a 'selective' process.

It is of real concern to me that notwithstanding these important issues and the fact that I have still not been provided with the natural justice that I strongly believe I am entitled to receive, you nevertheless appear intent upon proceeding to publish a report without providing me with the documents that are available (including documents that you refer to and rely upon in making reference to my dealings with the Department). I regard it as inappropriate that you seek to do so.

I believe the shortcomings identified above represent a flawed process and taint the draft report.

Response to draft report

The draft report also contains several factual inaccuracies. To correct these inaccuracies and as far as possible to prevent these inaccuracies flowing through into the final report, I have set out below the following comments and responses to the draft report to Parliament:

1. The report concludes that:
 - a. the outsourced service delivery model is meeting the needs of courts in most cases;
 - b. the outsourced services result in millions of dollars of savings to the State of Queensland;
 - c. transcript costs have increased (although the report fails to adequately assess and acknowledge that the removal of the 50% State subsidy on transcript costs which was identified at page 17, would also cause increases to occur);
2. Outsourcing has yielded real and significant costs savings for the State budget.
3. The report acknowledges that the SRB recording and transcription service was a single source model and that the outsourcing was no different in that regard.

Correspondence with former Attorney-General

Letter to Mr Andrew Greaves

25 November 2015

4. The report notes that:
 - a. the Department recommended the outsourcing of the court reporting and transcription services (p.12).
 - b. I accepted the recommendation and announced the decision to outsource, on 11 September 2012;
 - c. Vendors were given 47 days to respond to the tender. In assessing the adequacy of the 47 day period regard should also be had to the fact that the market was publicly informed of the proposed outsourcing process on 11 September 2012, that one on one vendor engagement meetings were then held in September 2012 with eight vendors and that the ITO was formally released several weeks later on 22 November 2012. Clearly, as from the making of the public announcement on 11 September 2012 relevant market participants and potential bidders would have commenced preparation of their bids - well before the formal release of the ITO on 22 November 2012.

I also note that in the 2015 Queensland Treasury publication titled "*International trade obligations and government procurement: A guide for Queensland Government procurement practitioners*" that it is stated that a minimum time of 25 days is to be allowed for suppliers to submit a response to a tender. Measured against that globally recognised tender timeframe the 47 day period discussed above was not unreasonable.
5. The report creates a misleading impression (through lack of context and the omission of material facts) when it then says that I made the decision "to outsource to a single provider" and "set the timeframes" for this to occur (p 3):
 - a. the draft report incorrectly says that a single provider model was "chosen over" a panel arrangement. (page 12). However, to the best of my recollection, I was not provided with a selection of models to choose from when the decision to outsource was made. This is supported by the statement at page 25 of the report that DJAG's recommendation was to transition to a single service provider. The proposition or inference that there was a deliberate choice made by me *between* alternate model types is incorrect. (I again record that I have asked for the department records including the recommendations to be provided to me to assist my review and recollection but I have not been provided with them);
 - b. the draft report says that I "set February 2013" as the implementation date to align with the government's target to finalise all staff redundancies by 30 June 2013. (page 12) The proposition creates a false impression by failing to record at page 12 that:
 - i. the commencement date arose through discussion with the Department;
 - ii. the timetable that I said (to the best of my recollection) that I had indicated to the Department as my preference was to have the outsource provider commence in March 2013 (not February 2013 as stated at pages 12 and 25);
 - iii. the Department informed me that the timeframe I discussed with them could be achieved and the timeframes that arose were made after receiving that advice. (This is consistent with the report noting at pages 25 and 29 that DJAG did not express concerns to me about the timeframe for the procurement);
 - iv. had the Department informed me that the timetable was not realistically achievable for the process, I would have considered that advice - but that did not occur.
 - c. the failure to qualify the broad statement by reference to these matters creates a misleading impression of the making of the decision to outsource.

3

Correspondence with former Attorney-General

Letter to Mr Andrew Greaves

25 November 2015

- d. similarly, the statement on page 13 that "The former Attorney-General made the decision to outsource court recording and transcription services" is made in a vacuum. It does not add that it arose following a recommendation from the department and their advice that millions of dollars of costs savings could be found in doing so;
6. Although the report refers to the current Attorney General's letter dated 22 April 2015, the source of alleged 'concerns about quality, timeliness and user costs' in aid of an assertion that such 'brings into question the overall value proposition of the selected model' are otherwise largely unidentified and not assessable in the report. The reasoning of the report is not transparent. It is difficult to understand whether or not the assertions are represented by a large number of specific identifiable instances or merely represent isolated comments. This is in contrast to the report confirming regular reports of inconsistent quality and delays in SRB's delivery of transcripts.
7. The report comments upon 'direct costs savings' but it is not evident from the body of the report and summary paragraphs that those calculations include the additional savings to government associated with not having to replace the aging Dalet system that was nearing the end of its useful life and the software that was incompatible with the underlying operating system. The savings made by not having to replace Dalet do not appear to be brought to account by the QAO in its figures. By not addressing those costs directly, the report appears to be ignoring those savings and skewering the cost/benefit analysis. If those costs have, however, been incorporated, they ought to be made evident.
8. Similarly, the reference to Budget savings (at page 18, paragraph 1) is limited in scope as it likewise fails to mention the IT costs savings that would occur by not having to replace Dalet as would otherwise have been scheduled.
9. The proposition at page 21 that the decision to outsource court recording and transcription services "had a significant effect" on the robustness of the Department's procurement and contract development is a sweeping overstatement that casts a misrepresentative shadow. The correct picture is that:
 - a. the department informed me that it had sufficient time to do so. I relied upon that;
 - b. there was sufficient time provided for the department to engage in sufficient consultation, to provide clear and sufficient to the market about the particular services it required and to undertake the necessary steps during the procurement phases in a reasonable manner; and,
 - c. the decision to outsource was and still remains a separate issue to:
 - i. the department's capacity to develop the necessary contract terms (there is no doubt it had the resources and time to draft adequate contract terms);
 - ii. the quality of the department's execution (e.g., whether or not the department engaged in appropriate consultation, provided clear and sufficient to the market about the particular services it required or undertook enough steps during the procurement phases).
10. The report repeatedly makes the sweepingly broad and at times bald assertion that DJAG failed to adequately consider and assess the likely impact of its decisions on the courts and court users or understand user needs or adequately engage, yet this is not strongly supported by the body of the report. Instead, the report indicates that the lack of user engagement did not arise as a result of any lack of engagement by the department (which had set up user groups and had sought feedback from stakeholders) but rather third party perceptions, namely the apparent view of users that the outsourcing was a 'fait accompli' (page 23).

Correspondence with former Attorney-General


Letter to Mr Andrew Greaves

25 November 2015

Please ensure that the draft report is revised to correct the misleading references and more accurately state the facts and context in which they arose. Please also address my natural justice concerns.

I also ask that a copy of this letter be published in the copy of the final report for this Performance Audit.

Yours sincerely



Jarrod Bleijie MP
Member for Kawana
Shadow Minister for Police, Fire and Emergency Services
Shadow Minister for Corrective Services

Correspondence with former Attorney-General



Your ref: Mr J Bleijie MP
Our ref: 2015-0140P
Mr D Brown 3149 6080

IN-CONFIDENCE

8 December 2015

Mr J Bleijie MP
Member for Kawana
Shadow Minister for Police, Fire, Emergency Services
and Corrective Services
PO Box 1200
BUDDINA QLD 4575

Dear Mr Bleijie

Performance audit on Provision of court recording and transcription services

Thank you for your response to the report on my performance audit *Provision of court recording and transcription services*, which my office received on 25 November 2015.

I propose to table the report in Parliament on Thursday, 10 December 2015.

Natural Justice

As per your previous correspondence on this matter, you assert that you have been denied natural justice because I have not provided you access to departmental records.

As previously advised, I am prohibited from providing you with documentation my staff has gathered from the department as it is protected information under s.53 of the *Auditor-General Act 2009*.

Furthermore, it was an absence of departmental records supporting or documenting your decision which prompted me to write to you in the first instance. I was seeking to explore whether you or your staff had retained any documentation that could shed light on this matter.

Response to my proposed report

I acknowledge and accept your substantive responses to my report are based on your recollections and that these matters occurred about three years ago.

I have considered your views and those of the department and Auscript Australasia Pty Ltd (Auscript) in preparing my final report. I have made some amendments to the extent relevant and warranted.

I note that Auscript raised a number of matters you raise about the report. I have addressed these in a letter to the CEO of Auscript, which I will include in my report.

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Correspondence with former Attorney-General

I note also your requests that I include all your correspondence in my report to the Parliament. In the interests of transparency, I have included an appendix to the report with copies of:

- your correspondence
- correspondence to you, including this letter.

If you would like to discuss this audit further, please contact me or have one of your officers contact Mr Darren Brown, Director of audit, on 3149 6080.

Yours sincerely



Andrew Greaves
Auditor-General

IN-CONFIDENCE

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Auditor-General Reports to Parliament

Reports tabled in 2015–16

Number	Title	Date tabled in Legislative Assembly
1.	Results of audit: Internal control systems 2014-15	July 2015
2.	Road safety – traffic cameras	October 2015
3.	Agricultural research, development and extension programs and projects	November 2015
4.	Royalties for the regions	December 2015
5.	Hospital and Health Services: 2014-15 financial statements	December 2015
6.	State public sector entities: 2014-15 financial statements	December 2015
7.	Public non-financial corporations: 2014-15 financial statements	December 2015
8.	Transport infrastructure projects	December 2015
9.	Provision of court recording and transcription services	December 2015

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