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**NSW Government Commissioning and
Contestability Policy**

Policy & Guidelines Paper

Preface

Commissioning and contestability are key tools available to government to optimise service delivery outcomes. They embody a customer centric approach to service delivery that positively challenges current ways of working by seeking innovative ways to improve quality, productivity and access to services.

Many agencies have already adopted commissioning and contestability approaches, but realising the benefits and providing customer centred outcomes requires a whole-of-government effort.

The purpose of the *NSW Government Commissioning and Contestability Policy* is to establish a whole-of-government approach to delivering improved service outcomes for NSW citizens. It creates a clear and consistent policy direction, definition and set of principles to guide NSW Government agencies in commissioning and contesting services.

The *NSW Government Commissioning and Contestability Policy* is supported by the *NSW Government Commissioning and Contestability Practice Guide*, which has been developed to assist practitioners in applying commissioning and contestability.

The *NSW Government Commissioning and Contestability Policy* and *NSW Government Commissioning and Contestability Practice Guide* will support the sector's capacity and capability to deliver service commissioning, and strengthen confidence in the quality of government spend on the right services.



Rob Whitfield

Secretary

NSW Treasury

November 2016



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November 2016

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Note

General inquiries concerning this document should be initially directed to: Director, Commissioning and Contestability Unit, NSW Treasury (Tel: 9228 4567)

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1. Executive summary

The NSW Government is committed to enabling better services for the citizens of NSW. With the challenge of growing demand for services, an ageing population and continued budget constraints, there is a need for Government to focus on delivering better outcomes and value for money. Fundamental to this is improving services to be more outcome driven and customer centric using an integrated service response. This direction is supported by the Competition Policy Review (2015) (“the Harper Review”) and the Productivity Commission Inquiry into Human Services (2016). The NSW Government will use a whole-of-government commissioning and contestability approach to service reform.

The NSW Government Commissioning and Contestability Policy (Policy) creates a platform for NSW Government agencies to explore ways to create better service outcomes. It sets out the requirements for commissioning and contestability with a view to applying more rigour to the design and funding of services that enhance people’s lives. A commissioning approach does not have a predetermined outcome, but rather focuses on achieving better results for individuals and the community. This may mean shifting responsibilities between agencies, from government to third parties like NGOs, or from third parties back into government. This reason alone is not the driver for Government pursuing a whole-of-government approach to commissioning and contestability. Commissioning and contestability are about making informed decisions based on good evidence and the right processes. They embody a customer centric approach that positively challenges current ways of working and seeks to introduce competition as a lever for improving quality, productivity and access.

The Policy provides a clear set of governing principles that will shape service delivery reform across NSW Government. These principles are outlined as follows:

- commissioning of services should focus on improving outcomes and delivering quality services, regardless of organisational boundaries and constraints
- Government must act in the interest of customers and the community by putting them at the centre, with greater attention to the integration of services and an improved end-user experience
- productivity, quality and efficiency benefits should be shared with the customer through service improvements as well as being reinvested in Government priorities
- effective commissioning will clearly define and prudently manage delivery and financial risk
- commissioning will encourage innovation and an openness to more diverse service delivery models in the public, private and not-for-profit sectors. These models should be flexible, reflect the needs of the customer and recognise the limitations of certain markets
- contestability allows Government to challenge existing providers to deliver service outcomes within agreed resources
- agencies should consider their role as policy-maker, commissioner, regulator and provider and whether a separation of roles would be of benefit within the service design.

The Policy is supported by a NSW Government Commissioning and Contestability Practice Guide (the Practice Guide) that has been developed in consultation with Government agencies and advisors, as a body of knowledge to support practitioners. It is an evolving document that will be updated to reflect current need and practice.

The Commissioning and Contestability Policy (and Practice Guide) applies to all NSW Government agencies, and is to be used in the following situations:

- in developing new service delivery policies and proposals, or when service delivery policies undergo significant review
- when undertaking portfolio or service delivery reviews
- where commissioning and contesting services impact annual and mid-year budget submissions
- when undertaking strategic planning and whole-of-agency and/or cross-agency organisational redesign
- prior to executing major contracts that bind Government for long contract periods, to ensure they are as contestable as possible
- in determining service continuity arrangements prior to the end of major contracts, particularly when the contract and industry is affected by innovation e.g. technology.

It is recognised that there may be situations in which departure from the Policy is necessary with appropriate Treasury, Treasurer, and/or Cabinet approval.

The Commissioning and Contestability Unit (CCU) owns the Policy and Practice Guide, with delivery agencies remaining accountable for service delivery outcomes resulting from commissioning and/or contestability processes.

The CCU has been established in NSW Treasury to implement the whole-of-government approach to commissioning and contestability. It has joint policy responsibility and program accountability to the Treasurer and Minister for Finance, Services and Property.

2. Purpose of the policy

The purpose of the NSW Government Commissioning and Contestability Policy is to establish a whole-of-government approach to delivering improved service outcomes for NSW citizens. It creates a clear and consistent policy direction, definition and set of principles to guide NSW Government agencies in commissioning and contesting services that are customer centric.

3. Commissioning and Contestability Policy

Citizens of NSW reasonably expect continuous improvement in the goods and services they receive. The contribution of competition and contestability to increasing the quality of public service provision and national productivity has been the focus of a number of recent reviews, including the Competition Policy Review (2015) (“the Harper Review”) and the Productivity Commission Inquiry into Human Services (2016). It is within this context that commissioning and contestability will be used to improve outcomes for NSW citizens.

The NSW Government has a commitment to deliver better services to customers and the community and to put them, and not service providers, at the centre of service delivery. The NSW Government must respond to the challenge of delivering better outcomes and more services in the face of growing demand, an ageing population and budget constraints. This requires a shift in how services are organised, funded and delivered.

Commissioning is an approach to considering the outcomes that need to be achieved, and designing, implementing and managing a system to deliver these outcomes in the most effective way. It leverages the strengths of the public sector and where appropriate, involves working with the customer, and private and non-government organisations to achieve better outcomes.

Commissioning is concerned with creating a closer link between policy and delivery, performance regimes and resourcing (time, funding and people) to deliver outcomes. It provides the opportunity to unlock value in service delivery systems beyond traditional models and government contributions.

Contestability is the process of evaluating and benchmarking services against credible alternatives and/or market testing in order to drive productivity, learning and improvement. It is just one tool that is available to commissioners and does not have a predetermined outcome.

The NSW Government Commissioning and Contestability Policy establishes the Government’s commitment to:

- achieving the best outcomes for all stakeholders from commissioning and contestability initiatives
- greater application of commissioning and contestability to services
- adopting commissioning and contestability and the principles outlined within this Policy at a whole-of-government level.

Vision for services

The NSW Government's vision for commissioning and contestability is to provide:

A whole-of-government strategic approach to the delivery of quality services to sustainably provide improved outcomes for NSW citizens.

The NSW Government has adopted the following principles to guide commissioning of services:

- commissioning of services should focus on improving outcomes and delivering quality services, regardless of organisational boundaries and constraints
- Government must act in the interest of customers and the community by putting them at the centre, with greater attention to the integration of services and an improved end-user experience
- productivity, quality and efficiency benefits should be shared with the customer through service improvements as well as being reinvested in Government priorities
- effective commissioning will clearly define and prudently manage delivery and financial risk
- commissioning will encourage innovation and an openness to more diverse service delivery models in the public, private and not-for-profit sectors. These models should be flexible, reflect the needs of the customer and recognise the limitations of certain markets
- contestability allows Government to challenge existing providers to deliver service outcomes within agreed resources
- agencies should consider their role as policy-maker, commissioner, regulator and provider and whether a separation of roles would be of benefit within the service design.

Application of the Policy

The Commissioning and Contestability Policy (and Practice Guide) applies to all NSW Government agencies, and is to be used in the following situations:

- in developing new service delivery policies and proposals, or when service delivery policies undergo significant review
- when undertaking portfolio or service delivery reviews
- where commissioning and contesting services impact annual and mid-year budget submissions
- when undertaking strategic planning and whole-of-agency and/or cross-agency organisational redesign
- prior to executing major contracts that bind Government for long contract periods, to ensure they are as contestable as possible
- in determining service continuity arrangements prior to the end of major contracts, particularly when the contract and industry is affected by innovation e.g. technology.

Government agencies are expected to consider commissioning and/or contestability in the context of service delivery improvement, and provide Cabinet and the Expenditure Review Committee (ERC) with confidence that all service delivery policy and funding proposals have been developed in line with the NSW Government Commissioning and Contestability Policy.

The Policy is designed to be applied to commissioning and contesting services that fall within the remit of all NSW Government agencies. It is therefore to be applied to a wide range of Government services, recognising that there may be situations in which departure from the Policy is necessary with appropriate Treasurer, Treasury and/or Cabinet approval. This will be determined on a case-by-case basis in consultation with the CCU.

Other related policies and guidelines are contained at *Appendix 1* of this Policy.

Promoting consistency and best practice

Role of the Commissioning and Contestability Unit (CCU)

The CCU has been established in NSW Treasury as a centre of excellence, to implement a whole-of-government approach to commissioning. The CCU reports to the Treasurer and Minister for Finance, Services and Property.

The Treasurer and Minister for Finance, Services and Property have joint policy responsibility and program accountability for commissioning issues that arise in operation of the CCU. The Treasurer will maintain full accountability with the Treasury.

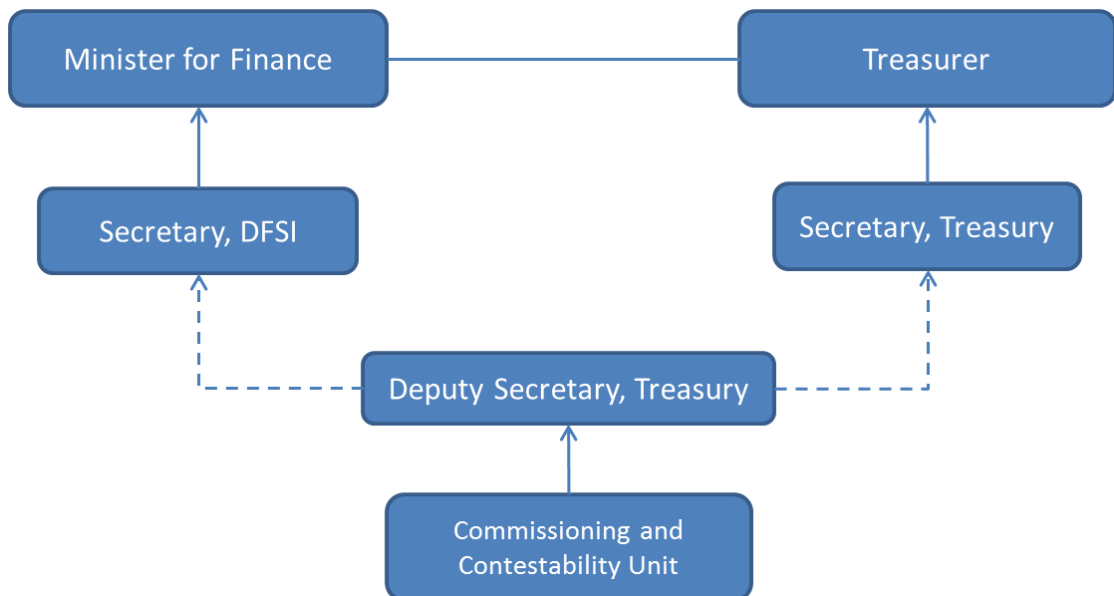


Figure 1 - CCU governance and reporting model

The CCU is responsible for:

- the whole-of-government NSW Government Commissioning and Contestability Policy and Practice Guide. These will be augmented by existing fiscal and commercial Treasury services and relevant agency approaches
- ensuring that agencies adhere to the requirements set out in this policy
- embedding commissioning as a new way of doing business across Government, and building on the significant reforms already underway
- building and maintaining expert capability in commissioning, for agencies to draw on to provide specialist support and advice for the commissioning of services. The level of assistance provided by the CCU will vary according to agencies levels of relevant experience
- partnering with agencies to deliver, co-lead or lead commissioning and contestability projects with accountabilities to be established on a case-by-case basis
- working with agencies to identify services that would benefit from a commissioning approach
- supporting the development of commissioning capability (including capturing lessons learnt) across the sector alongside the Public Service Commission (PSC)
- representing Treasury on governance committees for commissioning and/or contestability initiatives
- reporting to Government on the state of commissioning and contestability activity across the sector.

The CCU recognises that a one-size-fits-all approach to commissioning cannot be applied across the sector, due to varying degrees of commissioning expertise and diversity of services. The role of the CCU will be dynamic and evolve over time as commissioning capability develops across the sector and markets change, requiring a shift in response.

Role of agencies

Agencies remain accountable for customer and service delivery outcomes resulting from commissioning and contestability and are required to consult with the CCU:

- in respect to the application of the NSW Government Commissioning and Contestability Policy and Practice Guide
- when preparing Cabinet and ERC submissions for service delivery policy and program funding proposals
- in determining if other similar government services are being reviewed or contested in the market, to ensure a cohesive and consistent whole-of-government market approach
- where new service delivery and/or funding models are being considered.

The Commissioning and Contestability Practice Guide

The NSW Government Commissioning and Contestability Policy is supported by the NSW Government Commissioning and Contestability Practice Guide (the Practice Guide). The Practice Guide has been developed to help practitioners apply commissioning and contestability under the Policy framework. The Practice Guide reflects contemporary practice and is updated on an as-needs basis.

4. What is commissioning and contestability?

Commissioning and contestability are concerned with identifying best practice in service delivery and disseminating learning across the delivery system allowing for adjustments to changing needs and adoption of innovation.

They encourage greater innovation in service delivery, and pay greater regard to the identification of new services and solutions, and the challenges of scaling them up and rolling them out across the system overall.

The process pays much greater attention to customers, and seeks to design and manage delivery systems so that services are better integrated and meet the needs of customers and the community as a whole.

Commissioning and contestability do not have a predetermined outcome. They are unbiased in determining whether public, private or non-government service provision provides the best pathways and solutions to achieving customer outcomes. They seek to introduce innovation and competitive forces into services where they may not have previously existed.

Commissioning

Under the NSW Government Commissioning and Contestability Policy, commissioning is defined as:

Commissioning is an approach to considering the outcomes that need to be achieved, and designing, implementing and managing a system to deliver these outcomes in the most effective way. It leverages the strengths of the public sector and where appropriate, involves private and non-government organisations and individuals to transform outcomes for customers.

The NSW Government will use commissioning to understand customer needs, determine its role in meeting customer needs, and decide how to create, fund, manage, regulate and evaluate ongoing service delivery systems.

When commissioning services, agencies are expected to:

- review, design and plan for customer and community outcomes, leveraging contestability and user choice where they add value
- take a broader service design and delivery perspective and consider how a service system is enabled, funded and implemented to deliver policy objectives
- reconsider traditional service delivery models
- ensure that frontline service providers, markets, funders and customers are fully engaged in the development of performance regimes and that adequate resources (time, funding and people) are allocated to deliver the outcomes.

Contestability

Under the NSW Government Commissioning and Contestability Policy, contestability is defined as:

Contestability is the process of evaluating and benchmarking services against credible alternatives and/or market testing in order to drive productivity, learning and improvement.

Contestability is concerned with overcoming complacency of monopolistic services, whether provided by the public, private or NGO sector. It is just one tool that is available to commissioners and does not have a predetermined outcome. Contestability does not necessarily involve shifting delivery to the private or not-for-profit sectors.

When contesting services, agencies are expected to:

- identify ways of using contestability to raise service standards
- provide assurance that service quality and cost represent value for money
- increase transparency and accountability
- look for ways to introduce service innovation.

Commissioning and contestability hierarchy

Commissioning and contestability require government to reconsider its role in service delivery. This can be done at the highest level, where government looks at its overall service responsibility, or for individual service lines. Agencies need to consider the context of their commissioning and contestability initiatives applying the following hierarchy:

1. **(a) Strategic commissioning** – involves understanding outcomes and pathways, the services the community needs, and whether there is a role for government in providing these services within a service delivery system. It usually requires careful reconsideration of agency funding arrangements to deliver an integrated whole-of-government response.

(b) Service commissioning - involves applying the design and governance principles of commissioning to a service, group of services or activities to create better service integration and community outcomes.
2. **Contestability** – used as part of commissioning when required, or standalone. Contestability can be applied in a number of situations, for example:
 - during the commissioning process where opportunities for improved outcomes through user choice and contestability have been identified
 - where deep markets that are proven to deliver more effective and efficient results already exist for services
 - when renewing a contract with a service provider.

5. Benefits of commissioning

The context in which public services are delivered is becoming ever more complex as populations become more diverse, needs change and customers demand more user choice and control.

A rigorous commissioning approach has the capacity to deliver a number of benefits. It allows government to:

- assess whether services are meeting customer outcomes and the expectations of the community
- design systems of service that leverage innovation and value from inside and outside government
- enable macro-level oversight that is critical for managing whole systems of delivery
- ensure services are run well, monitored, avoid duplication, and are safe, timely and efficient.

Customer and outcomes-focused

Under a commissioning approach, agencies are required to put the needs of customers at the centre of service design, and allow for the development of a range of service responses to achieve desired outcomes within defined resources.

Commissioning requires government to shift from managing inputs and outputs to managing for outcomes. It requires more sophisticated service design, government to market interactions and management agreements.

Agencies are expected to consider customer benefits and outcomes at the following levels:

- individual – where one person directly benefits from receiving improved services e.g. faster and simpler housing approvals
- population/community – where communities or target cohorts benefit overall e.g. campaigns to tackle childhood obesity
- overall system – where overall system benefits are realised with multiple flow-on effects across populations, that may also deliver broader economic outcomes e.g. integrated public transport timetabling.

Better public services

Commissioning and contestability enables government to adopt new models and approaches that result in more efficient and effective public services. Commissioning and contestability initiatives are expected to be able to demonstrate contributions to better public services in any or all of the following areas:

- value for money
- quality and access
- safety
- performance and responsiveness.

Recognising innovation and diversity

A rigorous commissioning approach promotes innovation and encourages the emergence of new models and approaches. It does so by challenging whether current service outcomes are still valid, and if so, tests existing services against alternatives, to identify those that better respond to changing and diverse customer needs.

When commissioning services, agencies will be expected to consider the impact of innovation and diversity in the design, implementation and management of service delivery systems. Agencies must take the following into account:

- how delivery models within the service design reflect demographic difference
- how geographic differences influences need, access and markets
- the impact of differences in government agency culture when proposing more integrated 'end to end' services
- how to create diversity and capability in the supply of goods and services
- how innovation (e.g. technology) influences efficiency, customer use and access
- the value of conducting tests and trials to validate service delivery models and approaches
- that innovation can come from anywhere within and outside the system, including front-line providers.

Contestability is also a driver of innovation, productivity and economic growth and has the potential to unlock opportunity and value beyond what is available in some existing service delivery systems.

Partnerships in commissioning

Partnerships are critical to the delivery of quality and sustainable services, whether they are public, private or NGO provided. This means agencies must embrace a partnering approach throughout the different stages in the commissioning and contestability process. This will enhance co-design, community engagement, contract and performance management. Partnership considerations include:

- relationships with the customer and community, cross- agencies, and with other government jurisdictions
- managing contract relationships better, or any combination of relationships along this spectrum
- market creation by stimulating creative, outcome-focused delivery partnerships e.g. joint ventures between private sector organisations and NGOs who self-organise and bring together their relative strengths
- allowing for flexibility for outcomes to be defined across traditional agency boundaries e.g. health and community services, for the benefit of customers.
- consideration for how to treat existing government infrastructure and assets as an integrated part of a service, and the opportunities that this may create to attract innovation and investment
- strengthening the relationship between service commissioning and infrastructure programs to identify opportunities that avoid large up-front capital investments.

6. How will this be achieved?

NSW Government Commissioning and Contestability Practice Guide

To support agencies in applying the Policy, the NSW Government has developed the NSW Government Commissioning and Contestability Practice Guide.

The Practice Guide outlines the six primary steps in the commissioning process: defining outcomes, designing, testing, implementing, managing and evaluating a commissioning system.

It sets out the objectives and considerations for each step in the life cycle.

Although the process is sequential in nature, practitioners must always reflect back to previous steps and make adjustments when new information changes the outcomes, benefit and/or design of the commissioning system. This is indicative of the iterative nature of commissioning, where more certainty is gained as the process progresses towards implementation, and a process of continuous improvement is applied to service delivery systems.

The Practice Guide:

- outlines the process, steps and key decision points to support commissioning and contestability of programs and services
- has contestability embedded within the commissioning steps
- is an evolving document based on best industry practice and knowledge to support practitioners.

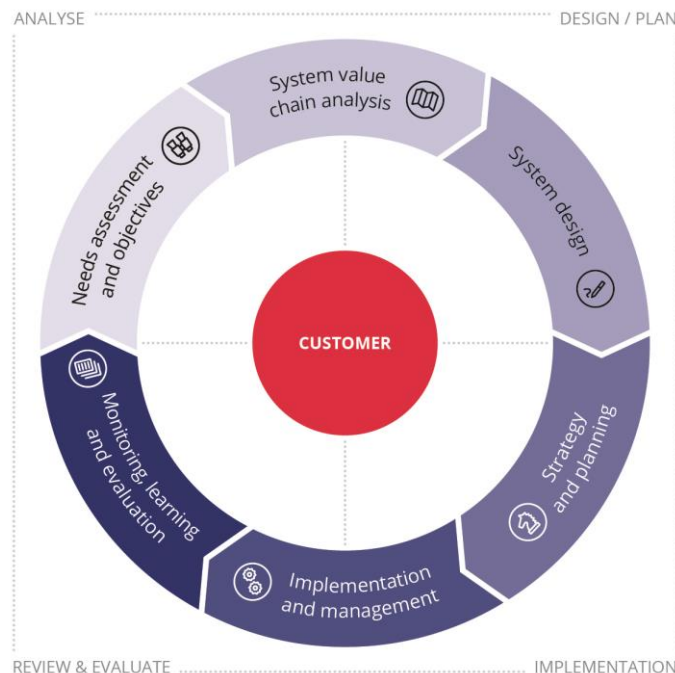








Figure 2 - The Commissioning Process

Table 1 - Commissioning stage and purpose

Stage	Purpose
 <p>Needs assessment and objectives</p>	<p>To understand and define the problem you are trying to solve, the outcomes you want to achieve and who will be involved in solving it in order to establish a case for change and obtain a mandate to proceed.</p>
 <p>System value chain analysis</p>	<p>To understand the component services within the value chain, performance characteristics and influencing factors to help build a "straw-man" commissioning design.</p> <p>This is an opportunity to rethink the model of delivery by assessing "what is possible" unconstrained by historical practice, funding and policy.</p>
 <p>System design</p>	<p>Finalisation and validation of the commissioning design and its components. At the end of this step, an agreed design that has been tested and validated is ready for broader consultation and approval.</p> <p>Assessment should include financial, operationalisation, customer preferences, risk and timing within an overarching value for money assessment. Impacts of market failure, non-compliance and regulation should be known to validate that the implementation is feasible.</p> <p>Contestability opportunities are identified and understood within the value chain to inform the market strategy to be implemented.</p>
 <p>Strategy and planning</p>	<p>An implementation strategy is developed articulating the services required, how the commissioner will shape supply, the timing of implementation, governance and overarching approach to commission and performance management with a clear articulation of outcomes and measures.</p>
 <p>Implementation and management</p>	<p>Implementation covers the establishment of the commissioning system, management of its operation and adjustments to ensure that it operates and performs as intended.</p> <p>For contestability components of the system, this may simply be to retain and improve the business, all the way through to market engagement, co-design, and market creation, contracting and establishing an operating model.</p> <p>It includes monitoring and reporting against KPIs defined for agreed outcomes, providers/suppliers issue resolution and improving system capability. Information collated will contribute to the evaluation process.</p>
 <p>Monitoring, learning and evaluation</p>	<p>Continuous management of the service model including performance, regulation and realisation of benefits and outcomes. Make adjustment to performance agreements and services according to changes in service need.</p> <p>At expiry of term, consider if service requirements, market opportunity and customer needs have changed to decide on whether to renew, stop, recontest or recommission.</p>

7. Enabling commissioning

Adopting a commissioning approach will require agencies to consider how current institutional elements need to change. These include:

- viewing service delivery as a system rather than a corporation that is simply managed through command and control mechanisms
- structures and capability improvement to be accountable for service outcomes
- devolution of responsibilities for service delivery to front-line managers
- where delivery is by an external provider, understanding of markets and how to manage these through contracts
- availability of the right information within the service system to allow customers to exercise choice and make informed decisions
- supporting the flow of information from the front-line providers to decision makers, ensuring that service delivery policy is balanced with practical experience
- recognising diversity and how this impacts service systems.

Organisational structure, capability and culture

To enable commissioning within agencies, supporting structures need to be established to reflect the size and complexity of the change required. Commissioning requires a new way of redefining business models, sometimes across multiple agencies. Agencies need to consider the impact of change in the following areas:

- capability – the skill, knowledge and experience required to commission and contest services
- capacity – the right number of people in the right places, with the appropriate processes and tools to support commissioning and contesting services
- retention – ensuring that government retains the skills and capabilities it builds in its people
- organisation – the need for government to structure and organise itself to be a commissioner and manager of systems of supply, with a stronger emphasis on performance and governance
- transparency and accountability – ensuring government establishes a greater understanding of the cost and performance of delivering services.

Agencies must recognise that commissioning and contestability initiatives can have impacts on the public sector workforce, and that working with staff to manage these impacts is vital.

Funding considerations for commissioning

Commissioning challenges how services are provided and outcomes are achieved. Government must reconsider how it funds and structures financing to align with new service delivery models, and to leverage value from its investments.

Looking at alternative funding and payment models under a commissioning approach is fundamental because traditional bulk-funded services, in some cases, are not tailored to the specific service complexities and interdependencies. This can affect or limit outcomes that can be achieved.

When developing funding solutions for a commissioning initiative, agencies are expected to consider:

- who in the commissioning system is best placed to hold and control funding, with the ability to make the most informed choice to generate the best outcome e.g. government (commissioner), provider, customer advocate or end user
- how funding is structured to encourage cross-agency collaboration e.g. through pooling of funds from multiple agencies
- how funding should be released to get the best performance and ensure desired outcomes are achieved e.g. performance bonus payments, payments by outcomes, bulk payments, pre-payments, milestone payments or abatements
- whether there are alternative funding models available including private, federal, user-pays and inter-jurisdictional contributions, e.g. social benefit bonds, Public Private Partnerships.

Understanding markets

When commissioning, agencies must consider the existence of, or ability to create, open and contestable markets. This is key to creating the best possible service outcomes and preventing the emergence of monopolistic behaviour.

Agencies need to understand the following key market elements in determining market maturity and whether further market development and design is needed or possible:

- market drivers – these are the forces that drive demand and trends that cause markets to develop and grow. Common examples include consumer demand, government policy and changes in technology
- future demand – demand forecasts would typically consider the historical growth in demand, a projection of growth under the existing delivery model, any changes in the delivery and the external market environment
- market capacity and capability – the ability of potential providers to meet the demand for different services in different locations
- barriers to entry – obstacles that prevent new competitors from easily entering a market e.g. asymmetric information, economies of scale, cost of entry, vertical integration, government regulation, uncertainty of demand
- market appetite – market capacity and capability are necessary but without sufficient incentives (financial, reputational, mission-driven) the market will not participate or will only do so at a high price
- barriers to exit – commissioners/customers need to be able to choose alternative providers and this means ensuring a way for existing providers to exit the market in an orderly way. Barriers to exit can include cost, large/non-transferable asset portfolios, disrupting long-standing provider/customer relationships
- effective regulation – there are two forms of regulation in any given market:
 - I. regulation of providers to ensure compliance with standards
 - II. regulation of the market itself to ensure a level playing field, adherence to competition policy and law, and reduction in the risk of monopolistic behaviours.

Further to this, markets also need to be sustainable. Sustainability implies that the market displays certain attributes including:

- the existence of competition allowing the user or purchaser to have choice of provider
- limitations for monopolies to form
- existence of sufficient demand and ways for its management
- availability of funding supporting efficient cash-flow
- availability of information to support choice
- ability to protect the customer from service failure
- ability to make market adjustments.

Information and data

Agencies will need to provide a strong evidence base, that is support by information and data when:

- evaluating service delivery models and making proposals for change
- establishing and managing performance management regimes with service providers
- evaluating service outcomes and making adjustments to service delivery models within commissioning systems.

The commissioning and contestability process will use information and data to:

- research options, new models and technology to determine opportunities for change
- benchmark services to understand if the services are performing compared to others
- model the behaviour of the commissioning system design and its sensitivity to change
- forecast demand, supply and use, based on historical information and experience
- measure performance when looking at the value chain and hand-over points in supply
- measure and manage outcomes for evaluation purposes
- evaluate markets and the capacity and capability to supply
- measure and manage performance within the commissioning system
- enable consumer choice and competition by making information available within the service delivery system
- support understanding customer segmentation, preferences and behaviours.

Financial Management Transformation

The Financial Management Transformation (FMT) program has been established within NSW Treasury to develop revised financial governance arrangements for the NSW Government.

Financial Management governance reforms will play a significant role in creating financial and service delivery accountability across services that are commissioned and contested. This includes:

- clarity and accountability for government spend and how service agreements support and validate performance
- transparency that Government is achieving value for money through its commissioning and contestability initiatives
- providing detailed input as a financial source for benchmarking and value for money assessments within commissioning and contestability
- showing alignment between Government priorities and resources
- safeguarding services and infrastructure plans by providing more reliable forward estimates.

8. How will the role of government change under a commissioning approach?

As NSW Government embeds a whole-of-government commissioning approach for services, the following aspects of the government's role will need to be considered:

- government should define its role in service delivery as it takes a customer centric view
- customer outcomes are clearly articulated when developing policy
- governance structures and the separation of government's roles as policy-maker, regulator and service provider
- organisational structures and capability aligned to new service delivery models
- how to implement different funding structures and financing arrangements that enable new and innovative payment and purchasing models
- creating flexibility and agility to better respond to diversity in markets and customers' needs, taking into account demographic, economic, geographic and social differences.

The Practice Guide provides more detail in how agencies can plan for these considerations.

Roles within a commissioning system

Within a commissioning environment there is the potential to create competition and conflicts of interest between, and within government and non-government participants.

There must be clear delineation and understanding of responsibilities between the entity responsible for paying for the service outcome, the provider and the entity responsible for consumer protection.

Agencies are required to assess their responsibilities according to the following roles and relationships within a commissioning system. This will assist in determining if separation of duties is required.

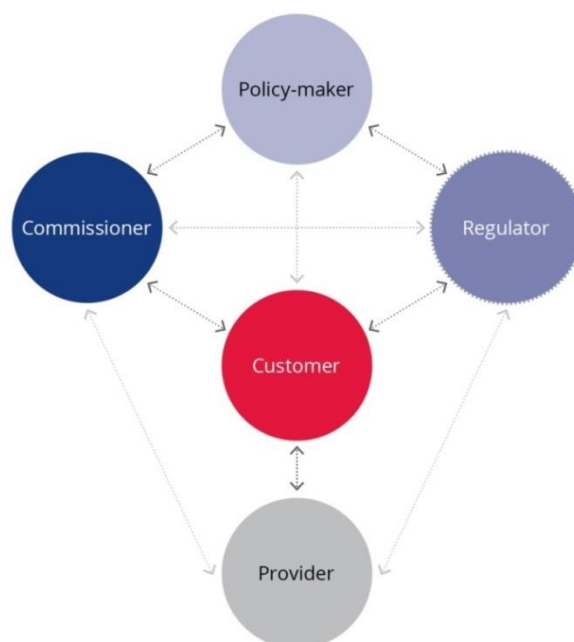


Figure 3 - Roles in a service delivery system

- **Customer** – the service recipient and the ultimate beneficiary of the commissioning system. This may be an individual or group.
- **Policy-maker** – determines the legislative and policy framework and responses required to achieve the outcomes in the commissioning system. Policy-makers also determine the level of funding that the commissioner has to purchase services or subsidise customers with, and sets the standards to be enforced by the regulator to protect the customer. Policy-makers need to engage with service commissioners to bridge the gap between policy and service design to ensure that the intent of the policy is achievable and service commissioners understand what is necessary to achieve the outcome.
- **Commissioner** – provides the system governance and stewardship for overall service delivery. The commissioner is responsible for maintaining the integrity and performance of the system and its integration always linking back to the policy-maker when evaluating outcomes and making adjustments to the commissioning systems to achieve the intent of the policy. As a market steward, the commissioner determines in the first instance what the structure of supply will be, the funding rules, and controls within the system.

The commissioner will modify those rules and controls over time to protect the integrity of the service delivery system in achieving the desired outcomes. In cases where parts of the system fail, the commissioner plays a role in risk mitigation and business continuity. The commissioner may purchase services from providers on behalf of the service recipient, or the service recipient may receive subsidies from the commissioner and purchases services themselves. The commissioner may also have responsibility for defining eligibility for subsidies or for access to services by controlling cost and targeting specific customers.

- **Regulator** – enforces the rules within the commissioning system or market and could include provision of accreditation services. It provides an independent control mechanism and an avenue for dispute resolution. The regulator is focused on the relationship between the customer and provider. Careful consideration should be given to the involvement of the regulator in policy and purchasing decisions. The need for a regulator and the scope of responsibilities should be determined on a case-by-case basis.
- **Providers** – are responsible for delivering a specified service, product or outcome to the customer against quality, timeliness and cost requirements. The provider can be from the government, private or non-government sectors.

Although the roles in a commissioning system may not always be clearly delineated, it is important for commissioners to understand the different perspectives in making decisions around service design.

Role of government in market stewardship

Commissioned systems often:

- empower customers through choice or well-designed outcome based contracts that allow for better innovation and deliver better outcomes, and
- have funding and regulatory arrangements that support equity, transparency and accountability.

Because well-functioning markets are essential for effective commissioning, government must take a strong role in market stewardship as an enabler. This includes establishing processes for adapting to change such as market innovation, technology advances and customer needs.

Government needs to create service systems that are resilient and do not put customers at risk. This may require government to:

- provide support for emerging markets through market design and development
- ensure funding is targeted at desired outcomes
- undertake careful and consultative contract design
- have robust evaluation processes
- establish appropriate regulatory arrangements
- monitor performance and look for early signs of potential failure
- establish inherent step-in arrangements that are not dependent on government
- ensure accountability of parties involved in service provision
- support providers in building their capabilities
- prudently manage risk by not transitioning service in or out of government without due consideration for market depth, user maturity, and market or service failure.

Appendix 1 - Associated instruments

Please note that the following list outlines the primary instruments for consideration. It is not intended to be exhaustive.

NSW Government Policy Papers and Guidelines

- NSW Government Program Evaluation Guidelines January 2016
- NSW Government Benefits Realisation Management Framework October 2015
- NSW Procurement Policy Framework for NSW Government Agencies July 2015
- NSW Government Market Approaches Guide April 2015
- NSW Procurement Board Industry Engagement Guide March 2015
- NSW Government Social Impact Investment Policy February 2015
- NSW Government Consultative Arrangements: Policy and Guidelines 2012
- NSW Government Guidelines for Engagement with NSW Human Services Non-Government Organisations July 2016

NSW Treasury Policy Papers

- TPP15-03 Internal Audit and Risk Management Policy for the NSW Public Sector
- TPP13-3 Total Asset Management (TAM) Submission Requirements
- TPP12-3 Risk Management Toolkit for the NSW Public Sector
- TPP08-5 Guidelines for Capital Business Cases
- TPP07-7 Commercial Policy Framework: Treasury Management Policy
- TPP07-6 Economic Appraisal Principles and Procedures Simplified
- TPP07-5 NSW Government Guidelines for Economic Appraisal
- TPP07-4 Commercial Policy Framework: Guidelines for Financial Appraisal
- TPP07-3 Service Costing in General Government Sector Agencies
- TPP05-4 Distinguishing For-Profit from Not-For-Profit Entities
- TPP02-1 Policy Statement on the Application of Competitive Neutrality Policy and Guidelines Paper
- TPP01-3 Guide to Economic Performance Measurement for General Government Sector Agencies
- TPP 01-2 Guidelines for Pricing of User Charges

Appendix 2 – Tables of terms and acronyms

Table 2 - Table of terms

Term	Description
Agency	NSW Government Departments, including the Executive Agencies, Services, Separate Agencies, Statutory Bodies and Entities within each Cluster.
Cohort	A group of people with shared characteristics.
Commissioning	An approach to considering the outcomes that need to be achieved, and designing, implementing and managing a system to deliver these outcomes in the most effective way. It leverages the strengths of the public sector and where appropriate, involves private and non-government organisations and individuals to transform outcomes for customers.
Commissioner	Provides the system governance and stewardship for the commissioning system. The Commissioner is responsible for maintaining the integrity and performance of the system and its integration.
Contestability	The process of evaluating and benchmarking services against credible alternatives and/or market testing in order to drive productivity, learning and improvement.
Customer	The beneficiary or recipient of a service.
Customer centric	A specific approach to doing business and delivering services that focuses on the customer. This ensures that customers are at the centre of service design and operation.
Outcome	The higher order goal that is sought to be achieved for customers or NSW citizens. Sometimes described as a result, an outcome must have a measurable impact.
Program management	Involves managing groups of projects to achieve a desired outcome or benefit for an organisation. It is about the structuring and control of those projects so they deliver effectively as a group.
Service	The provision of activity to a customer or customers.
Service design	The process of designing services that provide the desired outcomes and address the service needs of the target population.

Term	Description
Service model	The assumptions, systems and structures on which the delivery and design of a service are based. This can involve services being delivered by government agencies, not-for-profit organisations, private businesses or a combination of these providers.
Service provider	Any person, group of people or organisations supplying a service (whether public, private or NGO sector). Also referred to as a Provider.
System design	The activity of planning and organising people, infrastructure, communication and components of a system, in order to improve quality, the interaction between the service provider and customers, and the customer's experience.
System value chain	The component parts and their relationship within a service delivery system. Each part creates and builds value contributing to the overall outcome and value of the system.
Whole-of-Government	Refers to public service agencies working across portfolio to achieve a shared goal and an integrated government response to particular issues. A whole-of-government approach can focus on policy development, program management and service delivery.

Table 3 - Acronyms

Acronym	Description
CCU	Commissioning and Contestability Unit
KPI	Key Performance Indicator
NGO	Non-Government Organisation
NSW	New South Wales
PSC	Public Service Commission
TC	Treasury Circular
TPP	Treasury Policy Paper

Appendix 3 – Acknowledgements

The following NSW Government agencies, practitioners and advisors were consulted and provided significant input in the development of the NSW Government Commissioning and Contestability Policy and Practice Guide:

- Department of Education
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- Department of Finance, Services & Innovation
- Department of Justice
- Department of Premier and Cabinet
- Transport for NSW
- Department of Industry
- Department of Planning and Environment
- NSW Health
- NSW Treasury
- Dr Doug McTaggart
- Professor Gary Sturgess
- Associate Professor Helen Dickinson
- Deloitte
- EY
- KPMG
- PwC
- McKinsey & Company