Report of the Auditor-General

Auditor-General's Department

Report 11 of 2018

New Royal Adelaide Hospital
operating term arrangements

Government of South Australia

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3 December 2018

The Hon A L McLachlan CSC MLC
President
Legislative Council
Parliament House
ADELAIDE SA 5000

The Hon V A Tarzia MP
Speaker
House of Assembly
Parliament House
ADELAIDE SA 5000

Dear President and Speaker

Report of the Auditor-General: Report 11 of 2018 'New Royal Adelaide Hospital operating term arrangements'

As required by the *Public Finance and Audit Act 1987*, I present to each of you Report 11 of 2018 titled 'New Royal Adelaide Hospital operating term arrangements'.

Content of the Report

Our review of the new Royal Adelaide Hospital project has been undertaken in phases reflecting project delays and the extended time it has taken to deliver the project, key events impacting the project and project lifecycle stages and milestones.

In November 2015, I reported to the Parliament on a number of areas relating to project governance, assurance, management and reporting systems, and processes that required improvement. In March 2018, I provided the Parliament with an update on the status of the project and outlined significant developments leading to the completion of works and the hand-over of the hospital to the State.

This Report focusses on assessing the arrangements and controls implemented by SA Health to manage the Project Agreement during the operating term.

Acknowledgements

The audit team for this Report was Salv Bianco, Philip Rossi and Stephen Gladigau.

We also appreciate the cooperation and assistance given by staff of the Department for Health and Wellbeing and Central Adelaide Local Health Network Incorporated during the review.

Yours sincerely

Andrew Richardson
Auditor-General

Contents

1 Executive summary

1.1 Introduction

The new Royal Adelaide Hospital (the new RAH or the facility) is the State's flagship hospital, providing a comprehensive range of the most complex clinical care to an estimated 85 000 inpatients and 400 000 outpatients each year.[1]

Under a public private partnership (PPP) arrangement, SA Health Partnerships Pty Ltd (Celsus)[2] financed most of the facility from design to construction and is to provide a range of facility management and ICT support services during the operating term of the PPP. The State was responsible for State funded works (including clinical equipment) and provides clinical services during the operating term of the PPP.

The PPP operates under a Project Agreement between the State and Celsus over 35 years ending in June 2046, including design and construction and operating term phases. Delays in the design and construction phase have shortened the operating term by one year to 29 years.

On 13 June 2017 the new RAH was handed over to the State signifying the start of the operating term of the project.

Our review of the new RAH project has been undertaken in phases, reflecting project delays and the extended time it has taken to deliver the project, key events impacting the project and project lifecycle stages and milestones.

In November 2015, I reported to the Parliament on a number of areas relating to project governance, assurance, management and reporting systems, and processes that required improvement.[3] In March 2018, I provided the Parliament with an update on the status of the project and outlined significant developments leading to the completion of works and the hand-over of the facility to the State.[4]

This Report focuses on assessing the arrangements and controls implemented by SA Health to manage the Project Agreement during the operating term.

There were a number of outstanding issues with the delivery of the facility. In addition, there are a number of unresolved disputes between the State and Celsus, including the application of the abatement regime (ie the reduction of services payments)[5] in the Project Agreement.

This Report also details the events leading to the State and Celsus entering into two process suspension deeds, and the impact and status of these deeds.

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1 Royal Adelaide Hospital website, viewed 20 September 2018, <www.rah.sa.gov.au/about>.

2 Formally known as Project Co.

3 Auditor-General's Report for the year ended 30 June 2015 'New Royal Adelaide Hospital report: November 2015'.

4 Auditor-General's Report for the year ended 30 June 2017 'New Royal Adelaide Hospital: March 2018'.

5 The Project Agreement provides for a reduction in Celsus's services payments where it fails to deliver the services in line with the requirements and minimum standards in the Project Agreement.

1.2 Conclusion

The controls exercised by SA Health to date over the operating term phase of the Project Agreement were not sufficient to provide reasonable assurance that the Project Agreement, and therefore the financial transactions, were being managed properly.

This was because we identified areas where the Department for Health and Wellbeing (as the Contract Administrator) and the Central Adelaide Local Health Network Incorporated (CALHN) (as Facility Operator) needed to improve their procedures, practices and internal controls. We found gaps in the governance and contract management controls established by the State for the operating term of the Project Agreement. They included a lack of:

- detailed reporting for key committees and activities
- monitoring of contractual obligations
- risk management documentation and reporting
- reliable performance reporting
- audit and quality assurance monitoring processes
- resolution of abatement issues.

We acknowledge that, since the new RAH opened, SA Health has been focused on resolving outstanding issues with the delivery of the facility and various disputes with Celsus. As a result, it was still transitioning to business as usual operations pending resolution of these matters. We consider the control issues we identified as fundamental to good governance, monitoring and oversight of the Project Agreement over the 29-year operating term.

The State has calculated significant abatements and Celsus has disputed the abatements applied and reserved.

We note that, while some progress has been made to address the matters affecting the operations of the new RAH, the abatement disputes and other matters remain unresolved. Fundamental matters, such as agreeing what constitutes a failure event and the reliability of performance data, need to be resolved to provide a sound basis for monitoring the provision of services.

Another key matter to be resolved is responding to a proposal presented to the State and Celsus by the facility management subcontractor (Spotless) to revise the existing commercial arrangements, including an increase to its monthly service fee.

1.3 What we found

Process suspension deeds (section 4)

The State, in assessing Celsus's performance, has identified numerous service failures and therefore calculated significant abatements ($471 million).[6] Celsus disputes the abatements

[6] The abatements calculated by the State represent the gross abatements before applying the abatement limit. The Project Agreement limits the abatements that can be applied each month to the monthly service amount and the monthly State loan payment.

calculated by the State. These disputes have been unresolved for a considerable period of time.

The State and Celsus entered into two process suspension deeds (November 2017 and June 2018) to attempt to resolve these abatement disputes and other matters including:

- outstanding issues affecting the operation of the new RAH
- consideration of a proposal from Celsus's facility management subcontractor for revised commercial arrangements including an increase in its monthly service fee.

We also noted the State has not established a contingency plan or contingency management framework to address continuity of services risks.

Contract management governance (section 5)

The PPP Management Committee was not provided with written reports on the delivery of the services to enable it to monitor and ensure Celsus is providing the services in line with contractual requirements (ie the Services Specification).

Contract management plan and procedures (section 6)

While a register outlining contract obligations has been developed, it is not used to actively monitor and action the State and Celsus's obligations under the Project Agreement.

We also found the Contract Management Manual needs updating as it does not reflect all contract management arrangements implemented by the State. Further, some supporting procedures, process flows and a workbook referred to in the Contract Management Manual were yet to be developed.

Risk management for the operating term (section 7)

There were delays in finalising the contract risk register and there was no formal reporting to the PPP Management Committee on contract risks and shared risks.

We also noted:

- there were delays in finalising reporting on shared risks to the Facility Management Committee, the joint consultative and advisory committee established to consider issues with the maintenance of the facility and delivery of services
- the reporting of risk treatments to the Facility Management Committee could be improved.

Performance reporting (section 8)

We found the State did not always document its assessment of whether Celsus's performance reports satisfied the minimum information requirements of the Project Agreement. A service failure arises where the State assesses that these requirements are not met.

While the State has identified the risk of Celsus providing inaccurate and unreliable performance data, this risk has yet to be assessed to determine treatments required to mitigate it.

State service monitoring (section 9)

The Services Monitoring Plan, which details the Facility Operator's (CALHN's) approach to monitoring that Celsus has delivered a satisfactory level of service, was not implemented as provided for in the plan as:

- there was no effective control to ensure planned service audits were completed and no reporting to management on the status of the service audit program
- not all service audits in the service audit program were undertaken
- there was no service inspection program and the inspection records indicate, for most service streams, that limited or no inspections were done
- improvement/corrective action plans were not documented for a number of service audits where Celsus did not satisfactorily meet the audit criteria
- quality failures were not raised in response to some failed service audits, and the reasons for not raising them were not documented in the audit record.

Celsus performance monitoring (section 10)

We found the State had not:

- confirmed that Celsus's quality assurance plan was certified by a third party certification body as complying with the Australian Standard on quality management systems
- established a control/process to ensure Celsus effectively implemented all quality assurance activities in its quality assurance plan.

We also found:

- due to a number of defects with the Celsus ICT systems used in delivering services, the independent audit to confirm that applications, systems and components of Celsus ICT used in delivering services are fit for purpose was deferred
- Celsus's Logistics and Technology Delivery Plan did not include procedures for auditing the accuracy of data recorded on Celsus ICT systems, and the State had no process to ensure Celsus performed these audits
- Celsus's Catering Soft Services Manual did not include processes to regularly audit the meal ordering system, and the State did not have documentation to evidence that Celsus undertook audits of the meal ordering system.

Quarterly service payment (section 11)

The State established controls and processes to verify the Celsus quarterly service payment (QSP) invoice. However, the:

- Facility Operator's authorisation (verification) of pass through costs claimed by Celsus was not always documented

- State was yet to recover from Celsus the costs of utilities for the designated commercial areas.

Application of the abatement regime (section 12)

The State and Celsus have a different interpretation of what constitutes a failure event. This is fundamental to the operation of the abatement regime in the Project Agreement.

Celsus has indicated that:

- the Quantitative Facilities Management (QFM) system is not configured to accurately capture the performance of orderly services
- the orderly performance data in QFM cannot be relied on to assess performance or calculate abatements.

The State relies on data from the QFM system to assess the performance of orderly services and calculate abatements.

As noted above, the State has calculated significant abatements, and applied abatements of $1.4 million for the June 2017 quarter and $96.8 million for the March 2018 quarter to Celsus's QSP and State loan payment. The State has also reserved its rights to apply certain abatements to subsequent QSPs ($126.4 million).

Celsus has disputed the abatements applied and reserved by the State.

Under a process suspension deed, the State paid Celsus $89 million representing the abatement applied for March 2018 less an amount of $7.8 million. In addition, the abatement regime was temporarily suspended until after the payment of the September 2018 QSP to enable the State and Celsus to work together to resolve abatement disputes. While the abatement regime was suspended, abatements continue to accrue and the State retains the right to apply the abatements accrued after the process suspension deed expires.

Operating term disputes (section 13)

In addition to the abatement disputes, Celsus has issued notices disputing the State's view that patient minding services and Mental Health Unit security services provided by Celsus do not constitute an operating term modification.

Under a process suspension deed, dispute resolution processes in the Project Agreement have been temporarily suspended for these disputes.

The State and Celsus also disagree on the margins and other indirect costs that can be applied for minor works. At the time of our review, formal dispute processes under the Project Agreement had not commenced.

1.4 What we recommended

We made a number of recommendations to SA Health to address issues raised, and these are summarised below.

Process suspension deeds (section 4)

Implement a robust contingency management framework to address the risk to continuity of services.

Contract management governance (section 5)

Review current reporting provided to the PPP Management Committee to help monitor services delivered by Celsus.

Contract management plan and procedures (section 6)

Develop and implement a contract management plan to action and monitor the State's and Celsus's obligations under the Project Agreement.

Finalise the review of the contract management manual as soon as practicable.

Risk management for the operating term (section 7)

Implement the following improvements to risk management arrangements:

- finalise the contract risk register
- report regularly to the PPP Management Committee on contract risks and shared risks
- report details of shared risks to the Facility Management Committee, including treatments to mitigate significant risks timely and regularly
- review and implement enhancements to reporting provided to the Facility Management Committee on significant shared risks.

Performance reporting (section 8)

Assess all Celsus performance reports for compliance with the minimum reporting requirements of the Project Agreement.

Develop the Performance Report Compliance Workbook to help assess compliance with the minimum reporting requirements of the Project Agreement.

Finalise the risk assessment on the accuracy and reliability of performance data provided by Celsus, and implement treatments to mitigate this risk.

State service monitoring (section 9)

Undertake service audits as required by the service audit program and implement processes to monitor that service audits are performed.

Ensure the results of all service inspections are recorded on the inspection record.

Develop and implement a program of service inspection activity including monitoring that inspections are performed.

Document the reasons for not raising quality failures identified by service audits. A senior officer should review and approve the reasons.

Ensure Celsus develops and implements an improvement/corrective action plan where it does not satisfactorily meet the criteria of a service audit.

Celsus performance monitoring (section 10)

Confirm that Celsus's quality assurance plan has been certified by a third party certification body as complying with the Australian Standard on quality management systems.

Ensure appropriate processes are in place to monitor Celsus's implementation of its quality assurance plan.

Ensure Celsus implements independent audits of applications, systems and components of Celsus ICT used in delivering the services as soon as practical.

Work with Celsus to ensure regular audits of the meal ordering system are performed and the processes are documented in Celsus's Catering Soft Services Manual.

Ensure Celsus audits the accuracy of data recorded on its ICT systems and include procedures for the audit in its Logistics and Technology Delivery Plan.

Quarterly service payment (section 11)

Determine the cost of utilities for the designated commercial areas and recover these costs from Celsus timely.

Document the Facility Operator's sign-off confirming the validity of pass through costs.

Application of the abatement regime (section 12)

Work with Celsus to:

- clarify and reach a consensus on what constitutes a failure event
- ensure the QFM system is accurately configured to capture the performance of orderly services as intended by the Services Specification.

Obtain a complete understanding of Celsus's processes for identifying, recording and reporting quality failures and if required, implement processes to provide assurance that all quality failures are identified and reported.

Operating term disputes (section 13)

Work with Celsus to reach a consensus on the margins and other indirect costs for minor works that Celsus can charge the State. Where agreement cannot be reached, start the dispute resolution procedures in line with the Project Agreement.

1.5 Response to our recommendations

The Chief Executive, SA Health responded to our findings and recommendations. His responses to the specific findings are included in sections 4 to 13.

The Chief Executive, SA Health also provided the following clarification:

- While it would be accurate to say there was not always documentation that confirmed whether the status of the service audit program was reported, discussion did occur and the Director Operational Services was aware of the status of the activities of the Facility Operator Team. The status of the audit program was reported to CALHN management at weekly contract management meetings. Each Contract Manager provided an update to the Facility Services Manager on the status of audits and issues regarding audits, and time commitments attending to other operational matters.
- The Services Monitoring Plan was developed as a base guide for Contract Managers prior to commercial acceptance. The plan was to review the schedule once the facility was in business as usual mode, and modify audit activity. Since the facility opened, urgent issues have commonly arisen, interrupting business as usual.
- Inspections are conducted on an ad hoc basis and findings are recorded on the inspection record template. Audits are the mandatory tool used for identifying service delivery failures. Inspections are optional.

2 Background

2.1 Project background

The new RAH is the largest social infrastructure project ever undertaken by the State with a nominal budget of approximately $2.4 billion.[7] This comprises a nominal estimated cost of $1.85 billion for design and construction costs by Celsus and State funded works of $582 million (at 31 October 2018).[8]

The new RAH has replaced the old RAH and provides an extensive range of complex medical, surgical, diagnostic, support services and a number of state-wide services.

Further background information on the project objectives and strategic drivers for the project was provided in my Supplementary Report for the year ended 30 June 2015 'New Royal Adelaide Hospital report: November 2015'.

2.2 Project delivery arrangements

2.2.1 Overview of project delivery

The new RAH project is being delivered primarily through a serviced infrastructure model. A Project Agreement between the State and Celsus, executed in May 2011, provides rights and obligations for Celsus, to finance most of the facility from design to construction, and provide a range of facility management and ICT support services during the State's use of the facility for a defined period.

The State is responsible for completing State funded works, and providing clinical services and certain equipment for the new RAH.

The term of the Project Agreement is 35 years, ending on 6 June 2046, when Celsus must return the hospital and site back to the State in line with the Project Agreement.

Construction of the new RAH started in late 2011 and commercial acceptance was achieved on 13 June 2017.

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[7] This excludes $35.2 million paid to Celsus for the State's share of delay costs paid under a Deed of Settlement and Release entered into in September 2015. For further details on this payment refer to my Supplementary Report for the year ended 30 June 2017 'New Royal Adelaide Hospital: March 2018', section 6.2.1.

[8] Financial data obtained from SA Health management reports 'Financial Summary as at 31 October 2018', to be presented to the PPP Management Committee.

The operating term phase of the project began on 14 June 2017. Clinical services progressively started at the new RAH from 14 August 2017 and patients were moved from the old RAH to the new RAH between 4 September 2017 and 6 September 2017. The Emergency Department opened on 5 September 2017.

During the operating term the Project Agreement is administered on behalf of the State by the Contract Administrator (Deputy Chief Executive, SA Health). A Contract Administration Team was established in the Department for Health and Wellbeing to support the role of the Contract Administrator.

CALHN was nominated as the Facility Operator. It is responsible for delivering the hospital services and functions. This includes providing clinical and clinical support services.

The Facility Operator, through the Facility Operator Team established in CALHN, monitors that Celsus and its subcontractors meet the requirements of the Services Specification during the operating term.[9]

The Contract Administration and Facility Operator Teams are required to work together during the operating term to ensure effective outcomes for the State.

2.2.2 Key parties for the operating term and their interrelationships

The key parties for the operating term include:

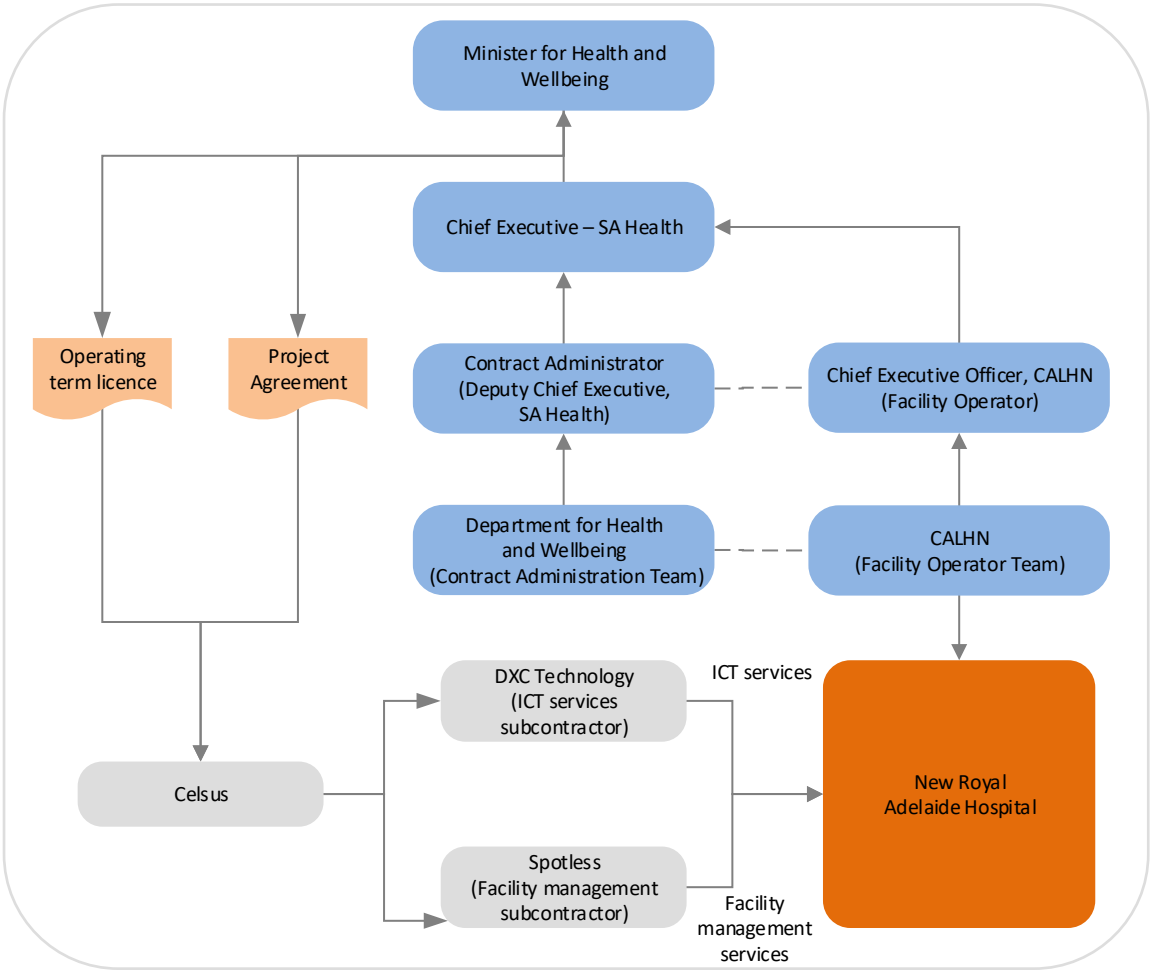
- the Minister for Health and Wellbeing representing a body corporate acting for and on behalf of the State as the relevant contracting party under the Project Agreement
- the Contract Administrator who is responsible for administering the Project Agreement as the State's delegate from commercial acceptance onwards
- CALHN, established under the *Health Care Act 2008* and nominated as the Facility Operator[10]
- Celsus representing the main entity contracted with the State to deliver the project including facilities management and ICT support services during the operating term
- subcontractors engaged by Celsus, including the facility management subcontractor (Spotless) and the ICT services subcontractor (DXC Technology).

The interrelationships of the parties for the operating term are summarised in figure 2.1.

[9] The Services Specification is the schedule to the Project Agreement that outlines the services Celsus is to provide during the operating term and performance standards.

[10] The Facility Operator is not a party to the Project Agreement but is a State Associate.

Figure 2.1: New RAH PPP interrelationships for the operating term



2.2.3 Responsibilities and services provided by Celsus during the operating term

During the operating term Celsus must provide a range of non-clinical services including facility management and ICT support services. Facility management services include building and ground maintenance, security, cleaning, catering and orderly services. Appendix 1 provides an overview of the services provided by Celsus.

The Services Specification, which is a schedule to the Project Agreement, sets out the scope of these services, including the required performance standards.

Failure to achieve the required performance standards in the Services Specification can result in an abatement (ie reduction) being applied to Celsus's service payment.

2.2.4 Responsibilities and services provided by the State during the operating term

In return for receiving services from Celsus, the State must pay Celsus service payments during the operating term. Paid quarterly, the service payments include:

- finance charges (comprising principal repayments, interest payments and equity distributions)
- Celsus's fees for providing non-clinical services.

The estimated annual service payment and State loan payment that the State is required to pay Celsus (as provided for in the Financial Model), inclusive of indexation, ranges between $365 million p.a. and $472 million p.a. in the final year of the agreement (ie 2045-46).

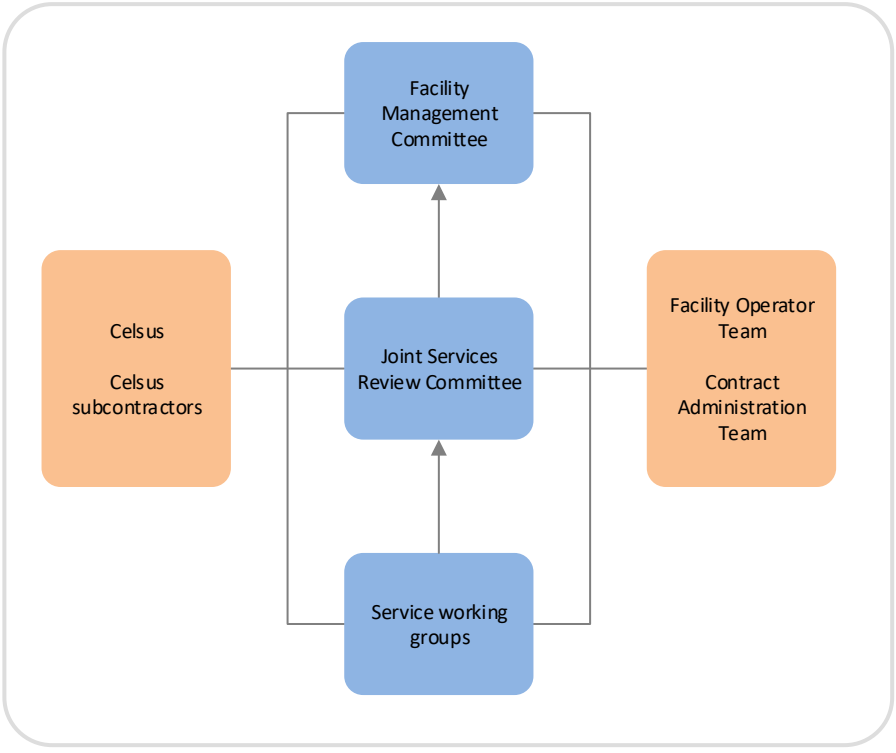
The value of service payments will vary over the operating term as it is adjusted for changes in service delivery, energy costs, and asset maintenance and replacement works.

The State is responsible for providing clinical services and some equipment.

2.2.5 Joint committee structure for the operating term

The State and Celsus established a joint committee structure that supports communication and interface between them to address operational issues with the delivery of the services. The committee structure is shown in figure 2.2.

Figure 2.2: Joint committee structure for the operating term



Service working groups

To provide a forum to deal with facility operational issues and initiatives and the delivery of the services, the State and Celsus established non-contractual working groups for the various services.

Operational issues and initiatives that cannot be resolved by the service working groups are escalated to the Joint Services Review Committee.

Joint Services Review Committee

The Joint Services Review Committee is also a non-contractual forum, established to deal with day-to-day operational issues and initiatives escalated from the services working groups.

Operational issues that cannot be resolved by the Joint Services Review Committee are escalated to the Facility Management Committee.

Facility Management Committee

The Project Agreement requires the State and Celsus to establish a Facility Management Committee for the operating term which must meet regularly (at least monthly).

The Facility Management Committee provides a forum for discussing and considering issues about the facility and the provision of the services. It is consultative and advisory only.

2.3 Performance monitoring and reporting during the operating term

The Project Agreement includes a performance monitoring and reporting regime for the operating term.

Celsus must develop a performance monitoring program to self-monitor and assess its performance in delivering the services. It must also provide comprehensive reporting to the State on the delivery of the services. This reporting includes daily, monthly, quarterly and annual performance reports.

The monthly performance reports must contain sufficient information for the Contract Administrator to determine the quality of services provided and calculate any abatements to Celsus's service payment.

The Project Agreement allows the State to monitor, review or conduct audits of Celsus's performance including its performance monitoring system and program. CALHN, as Facility Operator, has developed a Services Monitoring Plan which details its approach to verifying that Celsus has delivered a satisfactory level of service.

3 Audit mandate, objective and scope

3.1 Our mandate

The Auditor-General has authority to conduct this review under section 36(1)(a)(iii) of the *Public Finance and Audit Act 1987*.

3.2 Our objective

We assessed whether the controls exercised by SA Health[11] over the operating term phase of the new RAH Project Agreement were sufficient to provide reasonable assurance that the financial transactions were conducted properly.

We focused on the arrangements established by the State to ensure Celsus delivers the contracted level of service.

3.3 What we reviewed and how

We assessed whether SA Health has established:

- sound governance arrangements, including policies and procedures and risk management, to adequately manage the Project Agreement during the operating term to ensure contracted services and outcomes are delivered
- processes/controls to ensure Celsus provides the State with performance reports that meet the requirements of the Project Agreement, and that they are reviewed and issues identified are addressed
- processes/controls to ensure Celsus and the State are meeting their obligations under the Project Agreement, and Celsus is delivering the contracted level of service
- processes/controls to ensure QSPs are calculated and paid in line with the Project Agreement
- processes/controls to ensure service failures are completely and accurately identified and recorded, and the QSP is abated for service failures
- processes/controls to ensure disputes between the parties are managed in line with the Project Agreement.

[11] SA Health is the brand name for the health portfolio of services and agencies responsible to the Minister for Health and Wellbeing. SA Health consists of the Department for Health and Wellbeing, the local health networks and the SA Ambulance Service Inc.

In assessing these elements, we considered the requirements of the Project Agreement and procedures and guidelines documented by SA Health to manage the Project Agreement for the operating term.

Our review involved relating with SA Health representatives from the Contract Administration and Facility Operator Teams, and officers from the Crown Solicitor's Office.

3.4 What we did not review

Our review was limited to the areas outlined in section 3.3. We did not review:

- the resolution of the outstanding matters identified in my Supplementary Report for the year ended 30 June 2017 'New Royal Adelaide Hospital: March 2018'
- the management of minor works and modifications implemented after commercial acceptance
- the refinancing of Celsus's senior debt, which occurred in early 2018
- the extent to which the facility was delivered in line with the design specifications and the impact from any loss of amenity due to outstanding works/items at commercial acceptance
- the operational effectiveness of the hospital.

4 Process suspension deeds

What we found

The State has calculated significant abatements ($471 million)[12] for Celsus's failure to deliver the contracted level of services. Celsus has disputed how the abatement regime should be applied.

The State and Celsus entered into two separate agreements (suspension deeds) in November 2017 and June 2018 with the aim of resolving the abatement disputes and other matters. The suspension deeds temporarily suspended dispute resolution processes and the State's right to apply abatements.

The State and Celsus did not resolve the disputes before the November 2017 Suspension Deed expired.

Spotless's parent company advised the market in February 2018 that its Facilities Management Subcontract with Celsus is cash negative and underperforming.

Following the issue of a payment statement in May 2018 for the March 2018 quarter that included abatements of $96.8 million, the State and Celsus entered a second process suspension deed in June 2018. In addition to dealing with abatement disputes this deed committed to:

- reviewing a 'reset proposal' submitted by Spotless
- a process to resolve other disputes and specific operational issues affecting the new RAH.

The 'reset proposal' outlined the issues Spotless claims it has faced in delivering the services and proposed revised commercial arrangements including an increase to its monthly service fee.

SA Health advised that the State and Celsus:

- have made progress in resolving the operational issues identified in the June 2018 Suspension Deed but some matters remain unresolved
- are still working through Spotless's 'reset proposal' and reviewing the abatement regime.

Key matters unresolved include:

- the extent of patient minding services Celsus must provide contractually
- whether additional contingency Mental Health Unit security services provided by Celsus due to the non-functioning duress alarm system are a modification
- the abatements applied/to be applied by the State.

[12] The abatements calculated by the State represent the gross abatements before applying the abatement limit. The Project Agreement limits the abatements that can be applied each month to the monthly service amount and the monthly State loan payment.

We also noted the State had not established a contingency plan or contingency management framework to address the risk to continuity of services. The State, in entering into the process suspension deeds, identified that there is a risk to service continuity.

What we recommended

SA Health should implement a robust contingency management framework to address the risk to continuity of services.

4.1 Introduction

The State and Celsus entered into two process suspension deeds in November 2017 and June 2018. The aim of the deeds was to work cooperatively to resolve disputes and operational issues affecting the new RAH.

4.2 November 2017 Suspension Deed

4.2.1 Background

Celsus disputed the abatements applied by the State to the June 2017 QSP

In August 2017 the State applied abatements of $1.4 million to the first QSP. In response Celsus issued the State a dispute notice that:

- disputed the application of the abatement regime to the first QSP
- requested relief from the abatements applied.

The State refused to provide relief from the abatements applied.

On 31 October 2017 Celsus issued a further dispute notice notifying the State that it would refer the dispute for resolution by an independent expert in line with the accelerated dispute resolution process in the Project Agreement.

Celsus foreshadowed an intention to dispute the abatements applied by the State to the September 2017 QSP

In November 2017 the State issued Celsus a payment statement for the September 2017 quarter. It included an abatement amount of $31.1 million.[13] In turn, Celsus issued its own abatements to its facility management subcontractor (Spotless).

[13] The actual abatements calculated by the State for September 2017 totalled $59.2 million. The Project Agreement limits the abatements that can be applied to an amount equal to the monthly service amount and the monthly State loan payment. The abatement limit calculated by the State for September 2017 was $31.1 million.

The November 2017 Suspension Deed indicated that Spotless foreshadowed an intention to dispute the September 2017 payment statement under the Facilities Management Subcontract. Under the arrangements, where Spotless commences a dispute process against Celsus, Celsus is entitled to commence a corresponding dispute process against the State.

The State and Celsus entered into a process suspension deed

Celsus raised with the State concerns about the QFM system reporting and performance data and requested discussions with the State to address these concerns. To facilitate these discussions Celsus proposed to suspend, temporarily, contractual dispute processes for abatements and the application of the abatement regime.

On 17 November 2017 the State and Celsus entered into the November 2017 Suspension Deed.

The State undertook an internal review and approval process to decide whether to enter into the November 2017 Suspension Deed. This identified a number of risk factors, including risks to continuity of services at the new RAH due to the financial risks to Celsus from the application of significant abatements to its service payments.

We note the risk assessment performed to support the State's decision to enter into the November 2017 Suspension Deed was not documented in line with the Australian Standard on risk management.

4.2.2 Aim of the November 2017 Suspension Deed

The aim of the November 2017 Suspension Deed was to work cooperatively to resolve disputes relating to:

- the June 2017 and September 2017 payment statements issued by the State to Celsus, before starting any dispute resolution process under the Project Agreement
- any current, pending or future dispute arising from the application of the abatement regime to the December 2017 QSP.

4.2.3 Impact of the November 2017 Suspension Deed

Suspension of dispute resolution processes

The November 2017 Suspension Deed temporarily suspended, until 9 February 2018, the dispute resolution processes for any current, pending or future abatement dispute. It also preserved the State's and Celsus's rights to continue and/or commence dispute resolution processes after 9 February 2018.

Suspension of abatement regime

The November 2017 Suspension Deed temporarily suspended, until 9 February 2018, the State's right to apply abatements for the September 2017 and December 2017 quarters.

It also preserved:

- the State's right to apply abatements for the September 2017 and December 2017 quarters and apply this to any subsequent QSP
- Celsus's right to dispute any abatements for the September 2017 and December 2017 quarters subsequently applied by the State.

4.2.4 Outcome of the November 2017 Suspension Deed

The November 2017 Suspension Deed expired on 9 February 2018.

The State and Celsus failed to resolve the disputes relating to the June 2017 and September 2017 payment statements issued by the State.

In May 2018 the State issued Celsus a payment statement which reserved the State's right to apply, at a later date, abatement amounts of:

- $31.1 million for the September 2017 quarter
- $95.3 million for the December 2017 quarter.

Celsus subsequently advised the State that it disputed the State's calculation of abatements for these quarters. It indicated it would issue a written notice of dispute if the State applied these abatements.

4.3 June 2018 Suspension Deed

4.3.1 Background

The State and Celsus entered into the June 2018 Suspension Deed to address:

- abatement disputes
- other disputes over patient minding and Mental Health Unit security services
- Spotless's 'reset proposal'
- operational issues affecting the new RAH.

A summary of these matters is provided below.

Celsus disputed the abatements applied by the State to the March 2018 QSP

In May 2018 the State issued Celsus a payment statement for the March 2018 quarter. The payment statement:

- recalculated abatements for the March 2018 quarter of $96.8 million
- reserved the State's right to apply, at a later date, abatements for the September 2017 and December 2017 quarters.

After applying abatements the State paid Celsus $1.6 million ($1.5 million for the QSP and $83 000 for the State loan payment) for the March 2018 quarter. The amount Celsus invoiced the State for the March 2018 quarter was $98.2 million ($75 million for the QSP and $23.2 million for the State loan payment).

On 5 June 2018 Celsus issued a notice disputing the payment statement for the March 2018 quarter.

Other disputes

In addition to disputing the abatements applied by the State to the June 2017 and March 2018 QSPs, Celsus has issued disputes notices for:

- patient minding services
- Mental Health Unit security services.

Patient minding services dispute

Spotless has been providing patient minding services within the hospital. Celsus considers that these services are not within the scope of the Services Specification and are a modification for which they are entitled to payment. In March 2018 the State advised Celsus that, in its view, providing patient minding services was within the scope of the Services Specification.

On 5 June 2018 Celsus issued the State a dispute notice seeking a determination that Celsus is entitled to payment for providing patient minding services.

Mental Health Unit security services dispute

The Project Agreement requires Celsus to provide a functioning duress alarm system. In July 2017 the State issued a defect notice for the duress alarm system due to concerns with the accuracy and functionality of the system provided.

So the Mental Health Unit could open in the absence of a functioning duress alarm system, additional security guards were required along with CB two-way radios for staff.

Celsus asserts that the additional contingency Mental Health Unit security services provided are not within the scope of the Services Specification and are a modification. Celsus is seeking $2.8 million for providing these services.[14]

The State advised Celsus that these extra security services were a direct consequence of defects in the duress alarm system. It advised that these were not additional services, but rather services that Celsus must provide to meet its contractual obligations.

[14] The $2.8 million is Celsus's claim for the costs of the additional contingency Mental Health Unit security services included in its dispute notice (for the period 5 September 2017 to 15 April 2018). Celsus is also claiming the ongoing costs of providing these additional security services. At the time of this Report the State was yet to receive Celsus's claim for the costs of additional security services provided after 15 April 2018.

On 5 June 2018 Celsus issued the State a dispute notice seeking a determination that Celsus is entitled to payment for providing the additional Mental Health Unit security services.

Spotless submitted a 'reset proposal'

Due to a higher number of full-time employees delivering the services than originally forecast, Spotless's parent company indicated that its subcontract with Celsus is currently cash negative and underperforming.[15]

In May 2018 Spotless submitted a 'reset proposal' to the State and Celsus. It outlined from Spotless's perspective the issues it faces in delivering the services at the new RAH and proposed revised commercial arrangements, including an increase to its monthly service fee.

Operational issues affecting the new RAH

There are a number of issues under the Project Agreement that have affected the operation and full availability of the new RAH. These include completion of:

- rectification works due to failures of the central cooling system (which impacts a number of critical facility systems including air-conditioning)
- rectification works to the duress alarm system to enable the opening of the 10 Psychiatric Intensive Care Unit beds in the Mental Health Unit
- modification works to enhance the duress alarm system to allow for clinical led responses to duress events in the Mental Health Unit
- rectification works in response to a power outage on 7 February 2018
- commercial acceptance outstanding items yet to be finalised.

4.3.2 The State and Celsus entered into a second process suspension deed

In early June 2018 the State, Celsus, Spotless and the Builder[16] sought to address, through mediation, the abatements raised by the State to Celsus (and in turn by Celsus to the Builder and Spotless) and other issues including:

- the level of patient minding services
- orderly services regime
- building legacy issues including defects.

On 22 June 2018, as a result of the mediation process, the State and Celsus entered into a second process suspension deed (the June 2018 Suspension Deed). Celsus also entered into a second process suspension deed with Spotless.

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[15] Downer EDI Limited 2018, *FY18 Half Year Results Webcast Transcript*, viewed 23 October 2018, https://www.downergroup.com/Content/cms/Documents/2017-18_Half_Year_Results/Downer_HalfYearResults_Transcript_210218.pdf.

[16] The entity subcontracted by Celsus to design, construct and commission the new RAH.

SA Health documentation indicated that Celsus informed the State that the level of abatements present financial risks which could impact continuity of services at the new RAH.

Information provided to us to support the decision to enter into the June 2018 Suspension Deed indicated this will ensure continuity of services at the new RAH, postpone the risk of formal dispute processes and potentially improve the facility by resolving existing defects.

4.3.3 Aim of the June 2018 Suspension Deed

The aim of the June 2018 Suspension Deed is to:

- resolve a number of operational matters affecting the operations and full availability of the new RAH including as a priority:
    - the opening of the 10 Psychiatric Intensive Care Unit beds in the Mental Health Unit
    - completing rectification works for the central cooling system
- work cooperatively to attempt to resolve disputes relating to the:
    - abatements applied to the June 2017 QSP
    - September 2017 and December 2017 abatements calculated by the State
    - abatements applied to the March 2018 QSP and the State loan payment
    - provision of patient minding services
    - provision of additional security services in the Mental Health Unit.

4.3.4 Impact of the June 2018 Suspension Deed

Suspension of dispute resolution processes

The June 2018 Suspension Deed temporarily suspends dispute resolution processes included in the Project Agreement for abatements, patient minding services and Mental Health Unit security services disputes.

The dispute resolution processes were suspended until the September 2018 QSP was paid or 19 November 2018, whichever was earlier.

The June 2018 Suspension Deed preserves the parties' rights to commence and/or continue dispute resolution processes after it expires.

Suspension of abatement regime

The June 2018 Suspension Deed temporarily suspended the State's right to deduct an abatement amount for the September 2017, December 2017, March 2018, June 2018 and September 2018 quarters.

The State can, however, apply an abatement:

- for any system failures and emergency events during the June 2018 and September 2018 quarters[17]
- amount of up to $7.8 million per quarter due to 10 Psychiatric Intensive Care Unit beds not being opened (a system failure for the Mental Health Unit). The Chief Psychiatrist refused to approve the opening of this space without a functioning duress alarm system.

The June 2018 Suspension Deed preserves:

- the State's right to deduct abatements for the quarters from September 2017 to September 2018, and apply this to any subsequent QSP
- Celsus's right to dispute any abatements applied by the State for the quarters from September 2017 to September 2018.

Review of the abatement regime

The June 2018 Suspension Deed provides that the State and Celsus will attempt, by 30 September 2018, to seek to agree:

- a revised abatement regime
- the extent to which the revised regime will apply to the June 2017, September 2017, December 2017, March 2018, June 2018 and September 2018 quarters.

Payment arrangements

The June 2018 Suspension Deed requires the State to repay the abatements deducted from the March 2018 QSP and State loan payment except for an abatement amount of $7.8 million. On 25 June 2018 the State paid Celsus $89 million.

The State is required to pay the June 2018 and September 2018 QSPs free of abatements except for:

- an amount of $7.8 million per quarter (or lesser amount in the September 2018 quarter should the Psychiatric Intensive Care Unit open in the September 2018 quarter)
- abatements arising from a system failure or an emergency event in the period June 2018 to September 2018.

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[17] A system failure is an event, incident or state of affairs that has a substantial adverse effect on the operation of certain systems.

An emergency event is a circumstance where there is a risk of immediate or potential threat to: the health or safety on or relating to the facility, its functions or facility users; or the structural integrity of or safety of the facility, or any assets of the State. An emergency event also includes a circumstance where it may be necessary for the State to take immediate action to discharge statutory duties or powers and a casualty occurrence (destruction or damage to the facility).

The June 2018 Suspension Deed required the State to, subject to the State's verification of scope and costs, pay $4.7 million (or such lower amount as the verification determines) for the patient minding dispute. On 23 July 2018 the State paid Celsus $3.8 million.

The Deed also required the State to pay Celsus the ongoing costs of providing patient minding services. The State has done this based on its assessment of the level of patient minding services included in the Services Specification. However, the State and Celsus disagree about the included level of service. This matter remained unresolved at the time of this Report.

4.3.5 Operational workstreams

To resolve various issues, the June 2018 Suspension Deed provided for the establishment of three operational workstreams.

An executive steering committee was established to oversee the workstreams comprising an independent chairperson and representatives from the State, Celsus, Spotless and McGrath Nicol (representing the Financiers).[18]

Workstream One

Workstream One focused on resolving matters affecting the operations of the new RAH. The operational matters covered by this workstream are summarised in Appendix 2.

Workstream Two

Workstream Two focused on reviewing Spotless's 'reset proposal' to seek to establish an agreed position for ongoing commercial arrangements for facility management services, including:

- any additional revenue to Spotless from September 2017 to compensate for its additional staffing costs
- opportunities to reduce Spotless's cost base
- efficiencies that can be obtained through joint collaboration with clinical staff
- alteration of service measures, key performance indicators, quality failures and failure events
- orderly services benchmarks
- agreeing the abatement regime going forward.

Workstream Three

Workstream Three focuses on agreeing amendments to the Project Agreement to provide a more efficient and productive way for the parties to cooperatively interact on operational issues and problems.

[18] The Financiers arranged by Celsus to raise funds to pay for the construction of the hospital and other associated costs.

4.3.6 Current status

The status of the workstreams and disputes are summarised below.

Workstream One

SA Health advised that the State and Celsus made progress in resolving the various operational issues. However, a number of these issues are still to be fully resolved.

The status of the operational issues is summarised in Appendix 2.

Appendix 2 highlights that not all commercial acceptance outstanding items (CA OIL items) have been closed out. The Financier's Cure Plan and Completion Deed[19] envisaged Celsus would complete these before 30 September 2017.

At the time of this Report 13 CA OIL items remain outstanding.

The State and Celsus have agreed to transition the outstanding CA OIL items into a business as usual model under the Project Agreement. Under these arrangements:

- Celsus will use operational governance arrangements to manage work delivery
- the State will manage Celsus's compliance with completing the outstanding CA OIL items through the protections afforded by the Project Agreement including abatements, defect notices, and default and major default notices.

The Independent Certifier's confirmations, the final technical completion report and final commercial acceptance report are now due before 31 December 2018.

Workstreams Two and Three

The matters covered by Workstreams Two and Three are yet to be resolved.

SA Health advised that Workstream Two was intended to be secondary to Workstream One and is presently on hold as a number of issues in Workstream One have not progressed. Workstream Two has been taken over by ongoing high level discussions between the parties on key performance indicators and abatements.

Workstream Three, the purpose of which is to renegotiate (to the extent necessary) terms of the Project Agreement, has not progressed due to its dependency on completing Workstream Two.

Disputes

The State and Celsus are continuing to work towards resolving disputes over:

- the extent of patient minding services included in the Services Specification

[19] Refer to my Supplementary Report for the year ended 30 June 2017 'New Royal Adelaide Hospital: March 2018', section 7 for details of the Financier's Cure Plan and Completion Deed.

- whether additional contingency Mental Health Unit security services provided by Celsus are a modification
- the abatements applied by the State for the June 2017 and March 2018 quarters.

4.4 Finding

4.4.1 No documented contingency plan/framework

Recommendation

SA Health should implement a robust contingency management framework that includes:

- identifying and assessing potential contingency events and consequences
- outlining strategies and interim measures it can put into place to ensure the continuation of services
- developing appropriate contingency plans including business continuity plans, step-in plans and default plans.

Finding

As noted in section 4.2.1, the State has identified a risk to the continuity of services and operations at the new RAH.

An important element of effectively managing PPP arrangements is establishing contingency plans to address the risk and consequences of the private party failing to deliver the contracted level of services. The State is ultimately responsible for delivering public health services. As a result, the State should have contingency plans in place that outline the strategies and interim measures it can put into place to ensure the continuation of vital services if the service provider fails to provide services.

The National PPP Guidelines state:

> *Contingency planning is vital to a PPP project because it may not be possible to fully transfer responsibility for the risk of service delivery failure to the private party. If the private party fails to deliver services according to the requirements of the contract, the government party, and possibly government as a whole, may retain accountability and potentially face adverse reaction from end users and third parties.*
>
> *In a well-managed PPP project:*
>
> - *potential contingency events have been identified and their financial consequences have been assessed*
> - *appropriate contingency plans have been developed. These may include disaster recovery and business continuity plans, step-in plans and default plans.*[20]

[20] National Public Private Partnership Guidelines – Volume 2 'Practitioner's Guide', Department of Infrastructure and Regional Development, October 2015, pp. 154-155.

We sought to understand whether the State has developed any contingency plans or framework in response to the risk arising from Celsus no longer being able to continue providing facility management services.

We found that SA Health has not established a contingency plan or contingency management framework to address the continuity of services risk. SA Health advised that it has established a number of risk management plans and guidelines including the Business Continuity Management Framework Policy Directive and Guideline and the SA Health Risk Management Framework.

SA Health also advised that there are robust protections available to the State under the Project Agreement which serve to protect the State to the extent possible against this risk. For example, there are step in rights and the Financiers have obligations to cure/step-in under the Financier Direct Deed. Further, in terms of the risk of Spotless terminating its subcontract, Celsus retains the contractual obligations to the State to provide the services under the Project Agreement. The State expects that if Spotless terminates its contract with Celsus, Celsus would take immediate steps to replace them to ensure there is no interruption in providing services.

SA Health response

The importance of contingency plans in a scenario such as this is acknowledged and the State will prioritise the development of appropriate contingency plans. However, as noted above, SA Health is confident that the Project Agreement mitigates many contingency risks.

5 Contract management governance

What we found

The PPP Management Committee was not provided with any written reports on the delivery of the services to enable it to monitor that Celsus is providing services in line with contractual requirements in the Services Specification.

What we recommended

SA Health should review current reporting provided to the PPP Management Committee to help it monitor the services delivered by Celsus.

5.1 Introduction

5.1.1 Importance of effective governance in managing a PPP contract

In a PPP contract the State is ultimately accountable for the delivery of the government services even though the contractual responsibilities to deliver them are transferred to the private sector. To ensure project risks are being managed effectively and project objectives are being achieved, the State needs to implement appropriate governance arrangements during the operating phase of the PPP contract.

5.1.2 Overview of governance and accountability arrangements established by the State for the operating term

The Minister for Health and Wellbeing represents the State as the party to the Project Agreement. The former Minister for Health appointed a Contract Administrator who administers the Project Agreement on behalf of the State during the operating term.

The State has established an internal governance and accountability structure for the operating term that incorporates governance established under the Project Agreement (the Facility Management Committee) and:

- a peak governance committee comprising the Contract Administrator and representatives from SA Health, Department of Treasury and Finance and the Crown Solicitor's Office (the PPP Management Committee)
- Contract Administration and Facility Operator Teams.

Figure 5.1 summarises the governance and accountability arrangements established by the State for the operating term.

Figure 5.1: State governance and accountability arrangements for the operating term

PPP Management Committee
The State's peak governance committee for the operating term of the new RAH project.

The PPP Management Committee provides strategic leadership and support for making decisions and recommendations to the Chief Executive, SA Health and the Minister on any matter that could have a material impact on the Project Agreement.

The PPP Management Committee has terms of reference, meets monthly and first met on 11 December 2017.

Facility Management Committee
The Project Agreement provides for the establishment of a Facility Management Committee which is required to meet regularly (at least monthly).

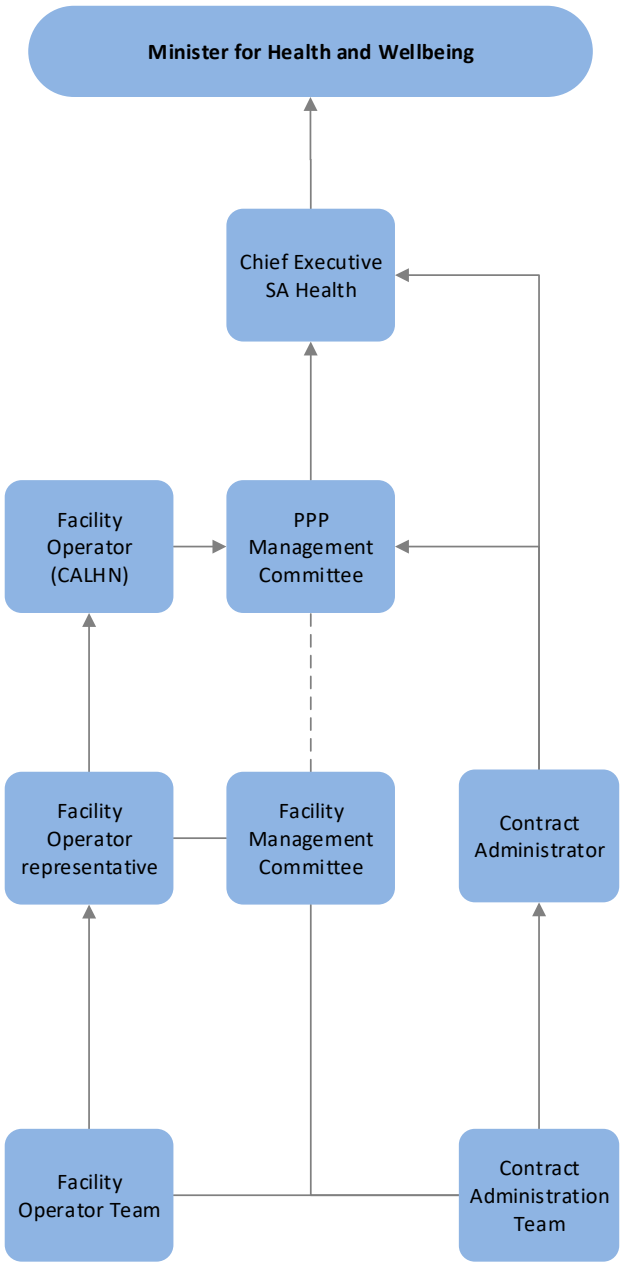
The Facility Management Committee is consultative and advisory and is established to consider issues in respect of the maintenance of the facility and the delivery of the services.

The Project Agreement requires the committee to comprise representatives from the State, Celsus and Celsus's subcontractors (Spotless and DXC Technology).

The Facility Management Committee first met on 17 July 2017.

Contract Administrator
The Project Agreement requires the State to appoint a Contract Administrator responsible for administering the Project Agreement as the State's delegate from commercial acceptance.

Facility Operator
The Facility Operator ensures the day-to-day relationship with Celsus underpins the smooth operation of the new RAH. The Facility Operator is the key interface with Celsus in the delivery of the services.



5.2 Finding

5.2.1 No reporting on the services to the PPP Management Committee

Recommendation

SA Health should review current reporting provided to the PPP Management Committee to assist with monitoring the services delivered by Celsus. In doing so, it should consider

developing and implementing a dashboard report that outlines for each service stream:

- the extent to which the services are being delivered in line with the Services Specification
- any issues with the delivery of the services.

Finding

We noted the PPP Management Committee was not provided with any written reports on the delivery of the services to enable it to monitor that Celsus is providing services in line with the Services Specification.

A monthly progress report is provided to the PPP Management Committee each meeting. It provides the Committee details of issues affecting the new RAH project. However, it does not specifically outline whether services are being delivered in line with the Services Specification.

The PPP Management Committee's terms of reference outline that one of its activities is:

> *High level monitoring of the delivery of the Services to ensure these are in accordance with the Agreement (in particular the Services Specification) and support safe and effective patient centred care.*

SA Health advised that reporting to the PPP Management Committee included abatements, which provided some information about the quality of services being delivered. We reviewed this reporting and the minutes of meetings and found reporting on abatements was limited, with little information provided on the quality of Celsus services.

Failure to report on the quality of the Celsus services increases the risk that the PPP Management Committee may not be aware of service delivery issues, including areas where Celsus is not delivering the services in line with the Services Specification. As a result, the PPP Management Committee may not be able to take action to address issues with Celsus's performance.

SA Health response

SA Health responded that a report on the delivery of the services will be prepared by the Facility Operator and included in the monthly report provided to the PPP Management Committee. It will highlight service line issues and any other general issues.

The Chair and members of the PPP Management Committee will be consulted to determine whether Celsus's monthly performance report, or sections of the report, should be provided to the PPP Management Committee.

6 Contract management plan and procedures

What we found

The register detailing contract obligations is not used to actively monitor or action the State's and Celsus's obligations under the Project Agreement.

The Contract Management Manual, developed in 2015, is not current and needs updating as it does not reflect some contract management arrangements implemented by the State. There are some supporting procedures, process flows and a workbook referred to in the manual that are yet to be developed.

What we recommended

SA Health should:

- develop and implement a contract management plan to monitor and action the State's and Celsus's obligations under the Project Agreement
- finalise the review of the Contract Management Manual as soon as practicable.

6.1 Introduction

6.1.1 Importance of a documented contract management manual and contract management plan

The National PPP Guidelines state:

> *In a well managed PPP project, the contract director, with the assistance from the procurement team, prepares a comprehensive contract administration manual (or similar) that enables the contract director to understand the key contract provisions and the environment in which the contract must be administered. The contract administration manual answers the following questions:*
>
> - *What needs to be done, by whom and when?*
> - *How will the government's role be performed?*
> - *What are the ramifications of any non-performance or default by the private party or government, and how should these be addressed?*[21]

The absence of a comprehensive contract management manual and plan, including clearly defined responsibilities and expectations, may result in inconsistent practices and expose SA Health to financial and service delivery risks. Poor contract management practices,

[21] National Public Private Partnership Guidelines – Volume 2 'Practitioner's Guide', Department of Infrastructure and Regional Development, October 2015, p. 151.

including not ensuring that all parties are meeting their contractual obligations, can adversely affect value-for-money outcomes.

6.2 Findings

6.2.1 Contract management plan (contract obligations register) not implemented

Recommendation

SA Health should develop and implement a contract management plan that:

- identifies significant obligations/requirements of the Project Agreement
- assigns responsibility to specific officers for ensuring compliance with the obligations/requirements
- includes time frames for required actions
- incorporates regular monitoring and reporting to management on compliance against key contractual provisions identified in the contract management plan.

Finding

We found that a register (in spreadsheet form) outlining significant obligations for the operating term has been developed (the contract obligations register). However, for a number of the contract obligations/requirements the State officer responsible for ensuring compliance and the action required to ensure compliance, including specific time frames, was not documented in the register.

The Contract Administration Team advised that the register has not been used to actively action or monitor the State's and Celsus's obligations under the Project Agreement. An effective contract management function includes regular reporting on compliance against key contractual provisions identified in the contract management plan.

We were advised that as part of the current review of the Contract Management Manual the Contract Administration Team is considering whether there may be more effective processes/controls to monitor and action compliance by all parties with their contractual obligations.

In the absence of a structured and documented approach to ensuring that all obligations under the Project Agreement are addressed, there is an increased risk that these obligations will not be met and the full benefits of the Project Agreement will not be achieved.

SA Health response

SA Health acknowledged the risk exposure. It responded that moving to the new facility and dealing with residual transition issues has impacted on its ability to implement a contract management plan in full.

The contract obligations register has been drafted and is currently under review to ensure obligations are assigned. Each task will then be recorded in the contract management system and assigned to individuals for action.

6.2.2 Contract management manual needs updating

Recommendation

SA Health should:

- finalise the review of the Contract Management Manual as soon as practicable
- ensure all supporting procedures, process flows, templates and tools referred to in the Contract Management Manual are developed and readily available to assist officers in their contract management function.

Finding

A Contract Management Manual was developed in 2015 to help the Contract Administration and Facility Operator Teams administer the Project Agreement during the operating term. The manual included guidance notes, procedures, process flows and templates.

We noted aspects of the contract management arrangements in the manual (for example governance arrangements) were not implemented in practice. In addition, some supporting procedures, process flows, templates and tools referred to in the manual were yet to be developed.

The absence of a complete and up-to-date Contract Management Manual increases the risk that contract obligations and issues, performance management concerns, value added opportunities and risks may not be identified and appropriately managed.

We were advised that the Contract Management Manual was under review with the assistance of specialist expertise.

SA Health response

SA Health responded that a review of the Contract Management Manual is in progress and is due to be finalised by the end of 2018.

7 Risk management for the operating term

What we found

A contract risk register was not in place at the start of the operating term. It is still being developed, is incomplete and therefore is not actively used to manage contract risks.

There was no formal reporting to the PPP Management Committee on contract risks and shared risks (risks where the State and Celsus share management responsibility).

There were delays in finalising reporting on shared risks. A shared risk report was not developed and presented to the Facility Management Committee until May 2018 (11 months after the operating term commenced).

Reporting risks treatments for shared risks to the Facility Management Committee could be improved.

What we recommended

SA Health should:

- finalise the contract risk register including complete risk assessments, control actions, risk treatments and assignment of actions
- implement regular reporting to the PPP Management Committee on contract risks and shared risks. Reporting should include details and current status of strategies/treatments implemented to mitigate significant risks
- report details of shared risks to the Facility Management Committee, including treatments to mitigate significant risks, timely and regularly
- review and implement enhancements to reporting provided to the Facility Management Committee on significant shared risks.

7.1 Introduction

7.1.1 Importance of risk management in managing a PPP contract

A key feature of effective contract management is effective risk management, including the identification, implementation and ongoing monitoring of risk mitigation strategies.

The National PPP Guidelines state:

> *To be effective in the context of a PPP project, contract management must identify, monitor and manage all risks over the life of the project contract to achieve project objectives and value for money outcomes.*[22]

[22] National Public Private Partnership Guidelines – Volume 2 'Practitioner's Guide', Department of Infrastructure and Regional Development, October 2015, p. 143.

The failure to implement effective risk management reduces the ability of the State to foresee, prevent or appropriately respond to risks and events that may adversely impact project objectives and value-for-money outcomes.

7.2 Findings

7.2.1 Risk register documenting the contract risk assessment not finalised

Recommendation

SA Health should finalise the contract risk register including complete risk assessments, control actions, risk treatments and assignment of actions to facilitate adequate risk management monitoring by management and governance groups.

Finding

We found that a register detailing contract risks was not in place at the start of the operating term. It was still being developed and is currently incomplete. Consequently, this register is not being actively used to manage contract risks.

For example:

- there were risks identified that were yet to be assessed (such as the accuracy of performance data, and Celsus resourcing and expertise)
- no treatments had been identified for one risk assessed as 'high' after controls.[23]

The new RAH operating term Contract Management Manual states that one guiding principle for managing contract risk is:

> *Early and systematic identification, analysis and assessment of risks including conflict of interest and development of plans for managing them.*

Effective contract management requires identification and assessment of risks relevant to the operating term of the Project Agreement before the start of the operating term.

SA Health response

SA Health responded that a workshop is to be held with its System Assurance Manager to review the current risks and ensure controls, treatments and assignment of actions are in line with SA Health's risk management processes.

The Contract Administration Team has been provided with access to SA Health's risk register. Finalised risks will be entered into this register and regular reports forwarded to the Contract Administrator. Reporting to the PPP Management Committee will be by exception.

[23] The SA Health Risk Management Framework requires treatments to be defined for all risks assessed as 'high' after considering existing controls.

The status of treatments will be discussed at regular Contract Administration Team meetings.

7.2.2 No formal reporting to the PPP Management Committee on contract risks and shared risks

Recommendation

SA Health should implement regular reporting to the PPP Management Committee on contract risks (and shared risks with Celsus). Reporting should include details of:

- significant contract and shared risks, including their risk assessment
- strategies/treatments implemented to mitigate the significant risks and their current status.

Finding

We found the PPP Management Committee did not receive any written reports on the contract and shared risks. Matters not reported included:

- details of the significant contract and shared risks, including their risks assessments
- the strategies/treatments implemented to mitigate significant risks
- the current status of strategies/treatments.

Risk reporting to the PPP Management Committee was limited to reporting risks and issues related to the facility.

The PPP Management Committee, as the State's peak governance committee for the operating term of the new RAH project, has a role in ensuring risks to the success of the project are appropriately managed. This role is reflected in the Committee's terms of reference, which indicate that it will monitor high level PPP contract risks, including risks shared with Celsus.

In August 2018 the draft contract risk register was provided to the PPP Management Committee. We note there were aspects of the register that were incomplete, as discussed in section 7.2.1.

SA Health response

SA Health responded that members of the PPP Management Committee were provided with a current risk register, although the risks included in this register were more operationally focused than contractual and shared risks.

As of August 2018, the PPP Management Committee was provided with a draft risk register that focused on contractual risks.

Regular reports will be forwarded to the Contract Administrator who will then direct which reports will be forwarded to the PPP Management Committee.

7.2.3 Delays in finalising the shared risk report and reporting of shared risks to governance bodies

Recommendation

SA Health should:

- finalise the shared risk report
- continue to ensure details of shared risks, including treatments to mitigate significant risks, are reported to those charged with governance timely and regularly.

Finding

We found that a shared risk report (ie a report on risks shared between the State and Celsus) was not developed and presented to the Facility Management Committee until May 2018 (11 months after commercial acceptance).

The Contract Administration Team advised us that the shared risk report is still being developed.

The terms of reference of the Facility Management Committee identify that one of its functions is:

> *… identifying risks and mitigation strategies relating to activities involving the State and Celsus jointly.*

The delay in reporting shared risks increases the risk that the Facility Management Committee may have been unaware of significant project risks and mitigation strategies with joint activities of the State and Celsus. Consequently, these shared risks may not have been appropriately managed.

SA Health response

SA Health advised that a shared risk subgroup that meets fortnightly has been established and reports to the Joint Services Review Committee.

7.2.4 Improvement required to reporting on treatments for significant shared risks

Recommendation

SA Health should review and implement enhancements to the reporting provided to the Facility Management Committee on significant shared risks by including:

- sufficient details on the nature of the treatment, including what will be delivered
- details of who is responsible for implementing the treatment
- the time frame for implementing the treatment
- the current status of treatments.

Finding

Our review of the shared risk reports presented to the Facility Management Committee since May 2018 found details of treatments designed to mitigate significant shared risks were very brief and general in nature. We consider that in many instances the treatment description did not convey a sufficient understanding of the treatment. Further, the shared risk report did not include:

- details of who was responsible for implementing treatments
- the time frames for implementing treatments
- commentary on the current status of the treatments.

As noted in section 7.2.3, the Contract Administration Team advised that the shared risk report is still being developed.

The shared risk report is provided to the Facility Management Committee to help them confirm that significant shared risks are being appropriately managed. Without sufficiently detailed reporting on risk treatments it is difficult for the Committee to ensure these risks are being appropriately managed.

SA Health response

SA Health responded that a shared risk subgroup that meets fortnightly has been established and reports to the Joint Services Review Committee. This subgroup will be responsible for addressing the information requirements for the shared risk report.

8 Performance reporting

What we found

The State did not always document its assessment of whether Celsus's performance reports complied with the minimum information requirements of the Project Agreement. This assessment was not documented for some monthly performance reports and not at all for the quarterly and annual performance reports.

For performance reports where the State did document its assessment, the State concluded these reports did not comply with some of the minimum information requirements of the Project Agreement.

Service failures, due to Celsus's failure to submit monthly performance reports that complied with contractual requirements, were not raised prior to April 2018.

The State and Celsus re-established the Performance Report Working Group in March 2018 to improve Celsus's monthly performance reports. The Contract Administration Team advised improvements have been made in the data and information provided in Celsus's subsequent performance reports.

The State relies on performance data provided by Celsus to assess performance. Celsus has advised the State that the data it has provided to assess performance is not reliable.

The State has identified the risk of inaccurate and unreliable performance data. However, this risk has yet to be assessed to determine treatments required to mitigate it.

What we recommended

SA Health should:

- assess all Celsus performance reports for compliance with the minimum reporting requirements of the Project Agreement, and ensure this assessment is documented
- develop the Performance Report Compliance Workbook to help perform and document the State's assessment of compliance with the minimum reporting requirements of the Project Agreement
- finalise the risk assessment on the accuracy and reliability of performance data, and determine and implement treatments to mitigate this risk.

8.1 Introduction

8.1.1 Performance reporting required by the Project Agreement

The Project Agreement requires Celsus to provide comprehensive reporting on the delivery of services. This includes providing the Contract Administrator with daily, monthly, quarterly and annual performance reports.

Appendix 3 outlines the minimum information that Celsus is required to include in its performance reports.

A service failure arises if Celsus fails to provide a performance report in line with the time frames and minimum information requirements of the Project Agreement. Service failures enable the State to apply abatements (ie reductions) to Celsus's service payments.

8.1.2 Purpose of performance reporting

Celsus's performance reporting forms a key part of the performance monitoring regime in the Project Agreement.

The monthly performance report must contain enough information for the State, through the Contract Administrator, to determine the quality and quantum of the services provided and calculate the QSP for the month.

Celsus's performance reports, together with service monitoring activities, can be used by the State to confirm that Celsus is delivering services of the quality and quantum required by the Project Agreement.

8.1.3 Validating and verifying performance reported by Celsus

SA Health's Contract Management Manual requires the:

- Contract Administration Team to perform a compliance check on each performance report to confirm whether it complies with the minimum reporting requirements of the Project Agreement
- Facility Operator to verify or refute the level of performance reported by Celsus in its performance reports.

8.1.4 Celsus's monthly performance reports assessed as non-compliant with Project Agreement requirements

As explained in section 8.1.1, a service failure arises where Celsus fails to provide a performance report that meets the minimum information requirements of the Project Agreement. We noted the State did not raise service failures prior to April 2018 for this non-compliance.

SA Health advised that it did not raise service failures as it was working with Celsus to ensure an appropriate monthly performance report was developed.

8.1.5 Performance Report Working Group

In response to Celsus's failure to comply with monthly performance reporting requirements, the State and Celsus re-established the Performance Report Working Group in March 2018.

The aim of re-establishing this group was to enable the State to work with Celsus to improve performance reporting by:

- clarifying what the State wanted to see in the performance report
- providing a forum for feedback on Celsus's performance reports and discussing improvements
- highlighting key issues.

The Contract Administration Team reported improvement in the data and information provided in performance reports since re-establishing the Performance Report Working Group.

8.1.6 Performance data

The Project Agreement requires Celsus to ensure the availability and continuous integrity of performance data and under the Project Agreement Celsus warrants that performance data is accurate and complete.

SA Health relies on performance data provided by Celsus to assess Celsus's performance in delivering the services, including identifying service failures.

8.2 Findings

8.2.1 Assessment of Celsus's performance reports against the Project Agreement was not always documented

Recommendation

SA Health should ensure Celsus's performance reports are assessed for compliance with the minimum reporting requirements of the Project Agreement. Where performance reports do not comply with these minimum reporting requirements and a service failure is not raised, the reasons should be documented.

SA Health should develop the Performance Report Compliance Workbook to help perform and document the State's assessment of whether Celsus's performance reports comply with the minimum reporting requirements of the Project Agreement.

Finding

We found the State did not always document its assessment of whether Celsus's performance reports satisfied the minimum reporting requirements of the Project Agreement. In addition, we found the Performance Report Compliance Workbook, a tool envisaged by the Contract Management Manual to document the State's assessment, is yet to be developed.

The Contract Administration Team advised us that the State's assessment of whether Celsus's performance reports comply with the minimum reporting requirements was documented as part of the feedback the State provided Celsus on their monthly performance reports.

However, we noted that:

- the State did not provide feedback on the June 2017, September 2017 and November 2017 performance reports, and therefore there is no evidence of the State's compliance assessment
- the State's feedback on the August 2017, April 2018 and May 2018 performance reports did not include the State's assessment of their compliance with the minimum reporting requirements
- the State's feedback on the January 2018 performance report was incomplete (in draft), with the State's assessment of some minimum reporting requirements 'to be confirmed'.

We also noted the State did not provide feedback to Celsus on its quarterly and annual performance reports. Consequently, there is no evidence of the State assessing these reports for compliance with the minimum reporting requirements of the Project Agreement.

SA Health response

SA Health responded that significant work has been undertaken by the Contract Administration Team (and the State's advisor) in providing feedback to Celsus to ensure its monthly performance report is compliant. Celsus's initial monthly performance reports did not meet the requirements of the Project Agreement.

The Performance Report Working Group was re-established to work with both Celsus and Spotless to re-work the monthly performance report. As a result, the monthly performance report has shown continuous improvement and is close to a standard the State expects.

At present work is being undertaken to review the format and content of the quarterly performance report. Feedback will be provided to Celsus and an invite has been extended to Celsus and Spotless to further discuss it.

8.2.2 Risk of inaccurate and unreliable performance data not assessed

Recommendation

SA Health should finalise the risk assessment on the accuracy of performance data and determine treatments to mitigate this risk. It should implement any required treatments to provide assurance that performance data is accurate and reliable.

Finding

We noted the draft contract risk register, submitted to the PPP Management Committee in August 2018, identified the accuracy of performance data as a risk. However, it had yet to be assessed to determine the level of risk and the treatments required to mitigate it.

Celsus's performance reports have indicated that performance data is not reflective of its actual performance and should not be used as the basis for making abatement calculations. The State relies on performance data provided by Celsus to assess performance.

Our inquiries revealed that the State has not implemented a formal process to provide assurance that performance data provided by Celsus is accurate and reliable.

We recognise that Celsus is responsible for ensuring its performance data is accurate and reliable. However, it is important that the State develops a process to provide independent assurance that the data is reliable. This may require a specific risk analysis, including documenting the measures currently in place that may provide assurance and identifying gaps that may require additional processes.

The Australian National Audit Office's 'Developing and Managing Contracts' better practice guide states that:

> *Information provided by a third party or contractor for monitoring purposes should be reviewed and audited as necessary to ensure its accuracy and reliability. It can also be tested through consulting end-users regarding the goods and services they have received.*[24]

SA Health response

SA Health responded that:

- it is not the State's role to verify the accuracy of Celsus's performance data. Celsus provides a contractual warranty as to the accuracy of this data
- the State has engaged an advisor to monitor the accuracy and reliability of performance data
- the accuracy of performance data is being assessed with assistance from the Facility Operator Team. The State continues to investigate why the system is not recording data accurately.

[24] 'Developing and Managing Contracts: better practice guide', Australian National Audit Office, February 2012, p. 96.

9 State service monitoring

What we found

CALHN, as Facility Operator, developed a Services Monitoring Plan which details its approach to monitoring that Celsus has delivered a satisfactory level of service.

We found that service monitoring was not implemented as provided for in the plan as:

- there was no effective control to ensure planned service audits were completed and no reporting to management on the status of the service audit program
- not all service audits included in the service audit program were undertaken
- there was no service inspection program and the inspection records indicate, for most service streams, that limited or no inspections were done
- improvement/corrective action plans were not documented for a number of service audits where Celsus did not satisfactorily meet the audit criteria
- quality failures were not raised in response to some failed service audits, and the reasons for not raising them were not documented in the audit record.

What we recommended

SA Health should:

- undertake service audits as required by the service audit program and monitor their conduct to ensure they are in line with the service audit program
- implement a program of service inspection activity and monitor their conduct to ensure they are in line with the program of service inspection activity
- ensure the results of all service inspections are recorded on the inspection record
- document in the audit record the reasons for not raising quality failures where service audit results indicate a failed audit. A senior officer should review for reasonableness and approve the reasoning for not raising a quality failure
- ensure Celsus develops and implements an improvement/corrective action plan where it does not satisfactorily meet the criteria of a service audit. The improvement/corrective action plan should be endorsed by the State and form part of the audit management record. Its implementation should be monitored by the service working groups.

9.1 Introduction

9.1.1 Importance of the State monitoring Celsus's performance in delivering services

The Project Agreement requires Celsus to self-monitor and assess its performance in delivering the services against the Services Specification and the Service Delivery

Requirements. Further, Celsus must regularly report to the State on its performance, including any service failures. Section 8 provides details of Celsus's performance reporting.

The Australian National Audit Office's 'Developing and Managing Contracts' better practice guide indicates:

> *Whether monitoring is undertaken directly by the acquiring entity or indirectly by another entity final accountability for accepting deliverables remains with the acquiring entity.*[25]

While the Project Agreement requires Celsus to report on its performance in delivering the services, the State is ultimately accountable for ensuring that Celsus has delivered the contracted services to the required standard.

The State should have processes to verify the achieved level of performance reported by Celsus in its performance reports.

9.1.2 Overview of the State's approach to monitoring the services

The Project Agreement allows the State and the Facility Operator to monitor, review or audit Celsus's performance.

CALHN, as Facility Operator, has developed a Services Monitoring Plan which details its approach to monitoring that Celsus has delivered a satisfactory level of service.

The Services Monitoring Plan provides for the following service monitoring activities:

- service inspections
- service audits
- data analysis.

Service inspections

Service inspections are an observation based method of services monitoring. Service inspections may be undertaken cooperatively or independent from Celsus.

The Services Monitoring Plan requires the inspection record to detail service inspections undertaken, including the results and any issues.

Service audits

Service audits are a more structured and formal approach to service monitoring than service inspections and are undertaken in conjunction with Celsus. Service audits target predetermined attributes of the Celsus management framework.

[25] 'Developing and Managing Contracts: better practice guide', Australian National Audit Office, February 2012, p. 96.

To ensure a robust audit, the audit criteria is linked to contractual obligations. The results of service audits are recorded in an audit record and used to evidence any claim that a service failure has occurred.

Data analysis

Data analysis is an ongoing desktop analysis method used to confirm Celsus's reported performance achievements.

9.2 Findings

9.2.1 Service audits included in the 2018 service audit program not undertaken

Recommendation

SA Health should:

- undertake service audits as required by the service audit program
- implement processes for management to monitor and ensure that Facility Operator staff undertake service audits in line with the service audit program.

Finding

The Services Monitoring Plan requires the Facility Operator to undertake service audits. A service audit program detailing audit activity commencing from January 2018 was developed. We found:

- no effective control was in place to ensure service audits were completed in line with the service audit program and there was no reporting to management on the status of the program
- service audits were not occurring as intended. For the period 1 January 2018 to 31 May 2018, of the 84 services audits scheduled, only 37 (44%) were completed.

SA Health advised us that management monitors the service audit program at Facility Operator contract manager meetings.

Our review of the minutes of these meetings found that although the outcomes of service audits were discussed, there was no discussion on service audits included in the program that were not undertaken, and why they were not done.

We also noted there was no formal reporting to the Director Operational Services on the status of the service audit program. The Services Monitoring Plan indicates the Director Operational Services is responsible for managing the service audit program.

Without undertaking required service audits the Contract Administrator and Facility Operator may not be able to reliably verify the achieved level of performance reported by Celsus. In turn, this may compromise the quality of services provided.

In addition, service failures may not be identified resulting in the State paying for services not delivered or not delivered to the required standard.

SA Health response

SA Health responded that the service audit program was developed as a base guide for Contract Managers to plan their audit activity.

A checklist has been created to address key outcomes from service audits in the previous period. This will form part of the minutes of the contract manager meetings. If an audit has been delayed this will also be reported. The Director Operational Services will be included in the circulation of the weekly minutes and attachments.

9.2.2 Records indicate limited service inspections undertaken

Recommendation

SA Health should:

- ensure service inspections are undertaken consistent with the Services Monitoring Plan
- review and where appropriate update the Services Monitoring Plan to ensure it reflects management's current expectations for the conduct of service inspections. In determining required service monitoring activities, SA Health should consider the most cost effective and efficient way to assess Celsus's performance
- record the results of all service inspections in the inspection record.

Finding

The Services Monitoring Plan requires the Facility Operator to undertake service inspections and indicates that inspections should account for approximately 20% of the Services Co-ordinators' monitoring activities.

We found that, for most service streams, the inspection records indicate that limited or no service inspections have been undertaken.

We were advised that as service inspections are an observation based method of service monitoring they may not have been recorded. We note the Services Monitoring Plan requires the inspection record to record the results of service inspections completed.

We were also advised that inspections are optional and are not used as the formal method to apply quality failures. This is inconsistent with the Services Monitoring Plan and the Contract Management Manual.

Without undertaking required service inspections and recording the results, the Contract Administrator and Facility Operator may not have the information needed to reliably verify the achieved level of performance reported by Celsus. As a result, service failures may not be identified resulting in the State paying for services not delivered or not delivered to the required standard.

SA Health response

SA Health responded that an audit and inspection log is maintained by each service line contract manager to record details of each audit and inspection undertaken including outcomes/findings.

A training session was held in November 2018 to discuss the format of the 2019 audit and inspection log which will come into effect on 1 January 2019.

9.2.3 No service inspection program

Recommendation

SA Health should:

- develop and implement a program of service inspection activity
- implement processes to monitor and ensure that Facility Operator staff undertake service inspections in line with the program of service inspection activity.

Finding

We found that there was no service inspection program specifying the inspections required to be done to help the Facility Operator verify the level of performance reported by Celsus.

The Services Monitoring Plan requires an audit and inspection program to include the service inspection activity planned for the next six months.

The absence of a service inspection program increases the risk that insufficient service inspections will be undertaken. This may compromise the State's ability to reliably verify the level of performance reported by Celsus.

SA Health response

SA Health responded that inspections are intended to be reactive and ad hoc to respond to concerns in the environment. Inspections may then inform areas that should be audited.

9.2.4 Quality failures not raised for failed cleaning audits

Recommendation

Where audit results indicate a failed audit and quality failures are not raised, the reason should be documented in the audit record. Further, the audit record should be reviewed and

approved by a senior officer to ensure the approach to not raising a quality failure is appropriate and consistent with the overarching contract management strategy.

Finding

Our review of cleaning audits performed by the Facility Operator up to 31 May 2018 found there were a number of audits where the audit criteria was assessed as either:

- 1 – fails to meet expectations and requires significant improvement
- 2 – requires some improvement.

For a significant number of these cleaning audits (16 out of 27) quality failures were not raised, and the reasons for this was not documented in the audit record.

Not raising quality failures increases the risk that the State may pay for services not delivered or not delivered to the required standard.

SA Health response

SA Health responded that in future, if a quality failure is not applied, the reasons will be documented in the audit and inspection log, and approved by the Manager Facility Services.

This process will be outlined in the Contract Management Manual approved by the Contract Administrator.

9.2.5 Improvement/Corrective action plans not documented for failed service audits

Recommendation

SA Health should ensure that Celsus implements an improvement/corrective action plan where it does not satisfactorily meet the criteria of a service audit. This plan should:

- be endorsed by the State to evidence the State's agreement that the proposed actions address the matters identified by the service audit
- form part of the audit management record, and its implementation monitored by the service working groups.

Finding

We found improvement/corrective action plans were not documented for a number of service audits (27) where the audit criteria were assessed as either:

- 1 – fails to meet expectations and requires significant improvement
- 2 – requires some improvement.

The Services Monitoring Plan requires the State to request Celsus to develop and implement an improvement/corrective action plan where Celsus does not satisfactorily meet the criteria of a service audit.

SA Health advised that responses to failed audits were managed through engagement with the direct Spotless Manager and the working groups. Our review of minutes of working groups found that, for a number of failed audits, they did not record details of improvement/corrective actions and time frames.

SA Health also advised that a new audit record template was implemented in July 2018. This template includes a section for Celsus to formally respond to the audit findings, including remedial actions.

The absence of a documented and agreed improvement/corrective action plan increases the risk that improvement/corrective actions and time frames are not understood and agreed between the parties.

SA Health response

SA Health responded that corrective action plans can be monitored through the next operating period outside of the auditing process through the service working groups.

This process will be formalised from 1 January 2019 across all services lines in accordance with the 2019 auditing schedule.

10 Celsus performance monitoring

What we found

Celsus has developed a performance monitoring program and a quality assurance plan.

We noted the State had not:

- confirmed that Celsus's quality assurance plan was certified by a third party certification body as complying with the Australian Standard on quality management systems
- established a control/process to ensure Celsus implemented all actions in its quality assurance plan.

The Project Agreement requires Celsus to arrange for specific audits to be undertaken as part of its self-monitoring and reporting. We found:

- due to a number of defects with Celsus ICT systems used in delivering services, the independent audit to confirm that applications, systems and components of Celsus ICT used in delivering services are fit for purpose has been deferred
- Celsus's Logistics and Technology Delivery Plan did not include procedures for auditing the accuracy of data recorded on its ICT systems, and the State had no process to ensure Celsus performed these audits
- Celsus's Catering Soft Services Manual did not include processes to regularly audit the meal ordering system, and the State did not have documentation to evidence that Celsus undertook these audits.

What we recommended

SA Health should:

- confirm that Celsus's quality assurance plan has been certified by a third party certification body as complying with the Australian Standard on quality management systems
- ensure appropriate processes are in place to monitor Celsus's implementation of its quality assurance plan
- ensure Celsus implements independent audits of applications, systems and components of its ICT as soon as practical
- ensure Celsus updates its Logistics and Technology Delivery Plan to include procedures for auditing the accuracy of data recorded on its ICT systems
- implement processes to ensure Celsus conducts audits of the accuracy of data recorded on its ICT systems in line with the agreed procedures in the Logistics and Technology Delivery Plan
- work with Celsus to ensure processes for regular audits of the meal ordering system are included in Celsus's Catering Soft Services Manual, and that audits of the meal ordering system are regularly undertaken in line with the manual.

10.1 Introduction

10.1.1 Celsus performance monitoring program

The Project Agreement requires Celsus to:

- provide comprehensive and complete self-monitoring and assessment on the delivery of services
- undertake the self-monitoring in line with the endorsed Performance Monitoring Program.

Celsus, as part of its operating term documentation, has developed a Performance Monitoring Program. This outlines the performance monitoring activities that Celsus will undertake to monitor the quality and delivery of services against the requirements of the Services Specification.

Celsus's Performance Monitoring Program comprises the following monitoring activities:

- internal quality management system audits
- service delivery audits
- customer satisfaction surveys
- key performance indicators
- analysis of customer complaints
- external audits.

10.1.2 Celsus quality assurance plan

The Project Agreement also requires Celsus to develop a quality assurance plan as part of its Contract Management Manual. It must include a quality assurance manual that details all Celsus activities to ensure quality assurance in the delivery of services.

10.1.3 Celsus audits required by the Project Agreement

As part of its self-monitoring and reporting the Project Agreement requires Celsus to arrange for specific audits including:

- cleaning
- catering (food safety, menu and meal ordering system)
- waste management
- independent confirmation that Celsus's applications and systems used in delivering services are fit for purpose
- the accuracy of data recorded on Celsus ICT systems
- internal linen distribution.

10.2 Findings

10.2.1 Certification of Celsus's quality assurance plan

Recommendation

SA Health should confirm with Celsus whether its quality assurance plan has been certified by a third party certification body as complying with the Australian Standard on quality management systems, and obtain evidence of this certification.

Where Celsus's quality assurance plan has not been certified as complying with the Australian Standard on quality management systems, SA Health should require Celsus to obtain this certification.

Finding

We were not provided with evidence that Celsus's quality assurance plan was certified by a third party certification body as complying with the Australian Standard on quality management systems. The Services Specification specifically requires this.

We acknowledge that Spotless (the facility management subcontractor) and DXC Technology (the ICT services subcontractor) have a certificate indicating they operate a quality management system in line with the Australian Standard on quality management systems.

SA Health response

SA Health noted that the Services Specification requires Celsus to provide and submit a quality assurance plan that is certified to AS/NZS 9001:2000 'Quality Management Systems' or an equivalent standard. To date this has not occurred and is, in technical terms, a breach of the Project Agreement by Celsus.

SA Health considers the risks associated with this failure to be negligible as Celsus is required to prepare a contract management manual. The State has always understood that Celsus's contract management manual requires Celsus to monitor its subcontractors' compliance with their quality assurance plans.

As a result, SA Health considers the entities providing the services at the facility operate under appropriate quality assurance plans.

10.2.2 No control/process to ensure Celsus implements its quality assurance plan

Recommendation

SA Health should ensure that appropriate processes are in place to monitor Celsus's implementation of its quality assurance plan.

Finding

We found there was no control/process established to ensure that Celsus has effectively implemented all quality assurance activities (ie performance monitoring and audit) in its quality assurance plan. We would expect a documented approach identifying:

- all performance monitoring and audit activities
- who is responsible for ensuring the performance monitoring and audit activities are undertaken.

Further, the outcomes of Celsus's performance monitoring and audit activities should be reviewed by the State as part of its contract management monitoring of Celsus's service delivery.

Celsus's quality assurance plan outlines a range of performance monitoring and audit activities designed to monitor and measure the effectiveness of its quality management system.

In the absence of a structured and documented approach to ensuring Celsus implements its quality assurance plan, the State has no assurance that these monitoring and audit activities have been performed. Failure by Celsus to perform these activities may compromise the quality of the services.

SA Health response

SA Health advised that this is to be included in the Facility Operator's audit and verification plan.

10.2.3 Independent audit to confirm Celsus applications and systems used in delivering the services are fit for purpose deferred due to defects

Recommendation

SA Health should ensure that Celsus implements independent ICT audits as soon as practical as required by the Project Agreement.

In the interim, it should ensure that measures are in place to assess and manage any risks arising from known defects and/or concerns about the reliability of systems.

Finding

The Contract Administration Team advised that an independent audit of Celsus ICT used in delivering services, which is required by the Services Specification, has not been performed.

The Project Agreement requires Celsus to:

- procure an independent audit of all applications, systems or components of Celsus ICT used in delivering services
- obtain an independent auditor's confirmation that all applications, systems or components of Celsus ICT:
  - comply with the service delivery requirements
  - are fit for intended purposes
  - adequately interface with the ICT network and State ICT
  - perform to the requirements set out in the Services Specification and the Design Requirements.

This audit is required to be carried out at intervals not exceeding 12 months.

The Contract Administration Team advised that, given there are some outstanding defects with Celsus systems used in delivering services, the State made enquiries with Celsus requesting its opinion on the appropriate timing of this audit.

We note the State has issued defect notices to Celsus for a number of key systems including the duress alarm system. Further, Celsus has indicated to the State that some elements of the QFM system are not configured in line with the Services Specification.

SA Health response

SA Health responded that once the defects in the ICT systems have been resolved, the Contract Administration Team will follow up, as soon as practicable, the independent audit of Celsus ICT used in delivering services.

For known issues the State has processes in place for workarounds. Further, project teams have been established to review and manage known issues/defects.

10.2.4 No procedures documented or monitoring of Celsus audits of the accuracy of data recorded on its ICT systems

Recommendation

Consistent with the requirements of the Services Specification, SA Health should ensure that Celsus updates the Logistics and Technology Delivery Plan to include procedures for auditing the accuracy of data recorded on its ICT systems.

SA Health should implement processes to ensure Celsus conducts audits of the accuracy of data recorded on its ICT systems in line with the agreed procedures outlined in the Logistics and Technology Delivery Plan.

Finding

We found Celsus's Logistics and Technology Delivery Plan (part of its operating term documents) did not include procedures for auditing the accuracy of data recorded on its ICT systems, as required by the Services Specification.

We also found no processes had been established by the State to ensure Celsus conducted audits of the accuracy of data recorded on its ICT systems.

Failure to ensure these audits are performed increases the risk that inaccurate and/or incomplete data may be used by the State to monitor and/or assess performance and make decisions.

SA Health response

SA Health responded that the State, as part of its formal review of Celsus's operating term documents, will request that Celsus updates its Logistics and Technology Delivery Plan to include procedures for auditing the accuracy of data recorded on its ICT systems.

ICT audits have been included in the Facility Operator's audit schedule for 2019.

10.2.5 Celsus meal ordering system audits not undertaken

Recommendation

SA Health should work with Celsus to ensure:

- processes for regular audits of the meal ordering system are included in the Catering Soft Services Manual
- audits of the meal ordering system are regularly undertaken in line with the manual.

Finding

We were not provided with documentation to evidence that Celsus has undertaken audits to ensure it is complying with the meal ordering system requirements in the Services Specification.

The purpose of these audits is to assess the accuracy of meal ordering, including whether the:

- right meal was delivered to the right patient
- meal was delivered within the applicable meal time required by the Services Specification.

We also found that Celsus's Catering Soft Services Manual did not include processes to undertake regular audits of the meal ordering system.

The Services Specification requires Celsus to:

- develop and update, as part of the Catering Soft Services Manual, processes for regularly auditing its compliance with meal ordering system requirements in the Services Specification
- regularly audit its compliance with meal ordering system requirements.

SA Health response

SA Health responded that the State, as part of its formal review of Celsus's operating term documents, will request that Celsus updates its Catering Soft Services Manual to include procedures for auditing the accuracy of the meal ordering system.

Audits of Celsus's auditing activity have been recognised by the Facility Operator and will be undertaken in line with the Services Specification.

11 Quarterly service payment

What we found

The State has established controls and processes to verify the Celsus QSP invoice. However, the:

- Facility Operator's authorisation (verification) of pass through costs claimed by Celsus was not always documented
- State was yet to recover from Celsus the costs of utilities for the designated commercial areas.

What we recommended

SA Health should:

- determine the cost of utilities for the designated commercial areas and recover these costs from Celsus timely
- document the Facility Operator's sign-off confirming the validity of pass through costs and retain it to evidence control performance.

11.1 Introduction

11.1.1 Overview of the quarterly service payment

In return for providing services, the State is required to pay service payments to Celsus during the operating term.

The service payments, which are paid quarterly, include:

- finance charges (comprising principal repayments, interest payments and equity distributions)
- Celsus's fees for providing non-clinical services.

The baseline of these costs has been pre-determined and is included in the Financial Model which forms part of the Project Agreement. The baseline cost can be adjusted for:

- energy usage (gas and electricity)
- meal volumes
- pass through costs[26]

[26] Pass through costs comprise amounts paid by Celsus for utilities, external waste collection and grocery items, Celsus's costs of inspection and testing in respect of completion tests, Celsus's additional costs of providing the services as a direct result of a compensable intervening event, Celsus's costs of auditing the Financial Model and amounts paid by Celsus to the Escrow Agent.

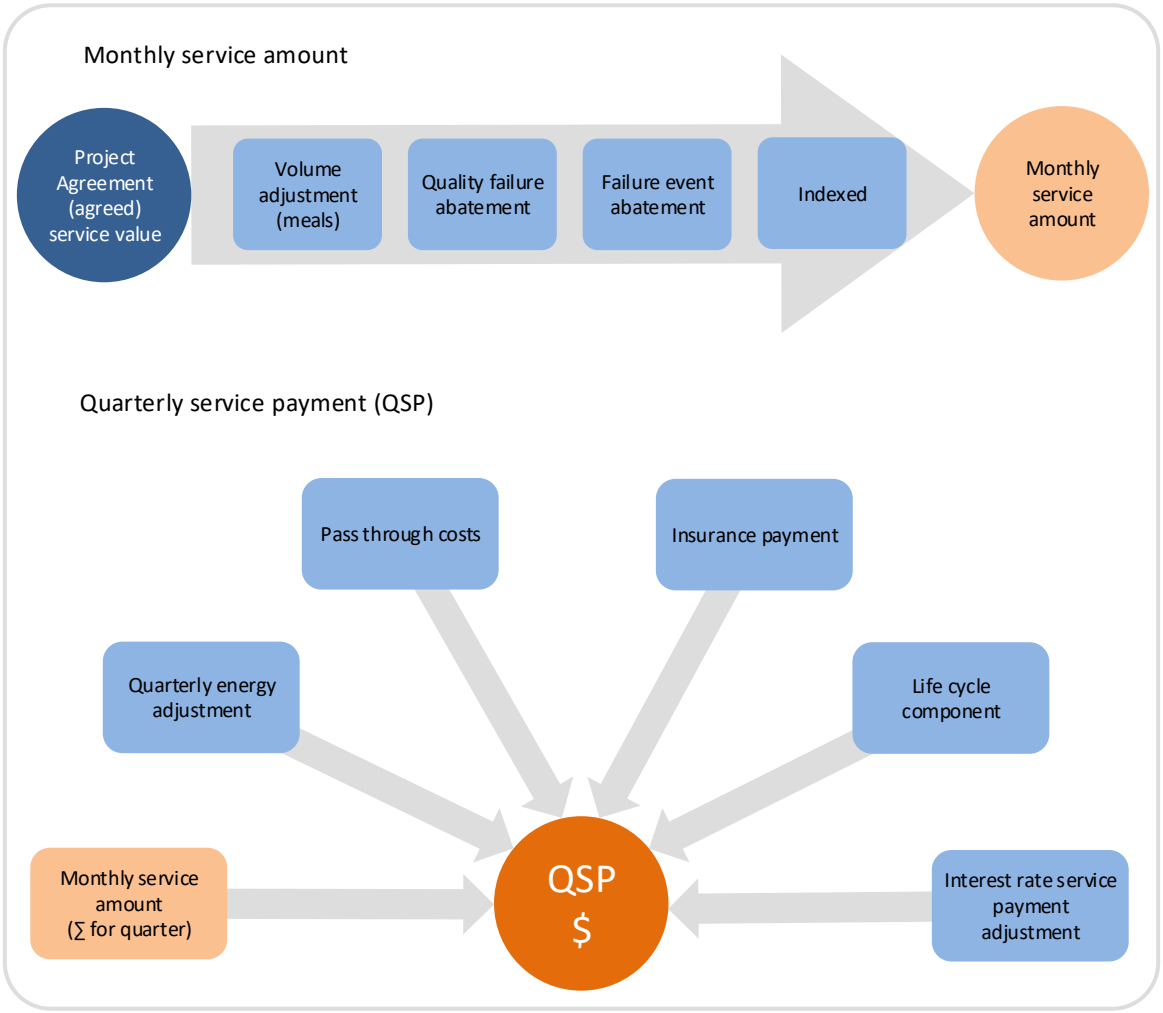
- modification lifecycle and service costs[27]
- abatements (reductions in QSPs) for service failures.

In addition, the QSP includes the State's payment for shared operating insurance and an interest rate service payment adjustment.

The interest rate service payment adjustment adjusts the QSP for the movement in the floating base interest rate on the project debt relative to the assumed base interest rate over the life of the project which is included in the Financial Model.

Figure 11.1 is a simplified representation of how the payment mechanism works.

Figure 11.1: Overview of the new RAH QSP mechanism



Source: SA Health, Quarterly services payment and other payments under the Project Agreement guide note.

[27] Lifecycle costs are replacement costs including parts/components and service costs are the costs of planned preventative maintenance.

11.2 Findings

11.2.1 Costs of utilities in designated commercial areas yet to be recovered from Celsus

Recommendation

SA Health should determine the costs of utilities for the designated commercial areas for the September 2017, December 2017 and March 2018 quarters and recover these costs from Celsus.

It should also recover from Celsus the costs of utilities for designated commercial areas timely.

Finding

We found the QSP has not been adjusted to recover from Celsus the costs of utilities for designated commercial areas.

The Project Agreement allows Celsus to carry out, in designated commercial areas of the hospital, permitted commercial opportunities. Under the Project Agreement Celsus is responsible for paying the costs of utilities for these areas.

The Contract Administrator's payment statement for the March 2018 quarter indicates that the costs of utilities for the designated commercial areas in the September 2017, December 2017 and March 2018 quarters require reconciliation at a future date. We note the Contract Administrator's payment statement indicated that the State has reserved its rights to recover these costs from Celsus.

SA Health response

SA Health responded that Celsus now has the ability to provide the cost of utilities for designated commercial areas and will adjust the QSP.

11.2.2 Facility Operator's authorisation and verification of pass through costs not documented

Recommendation

SA Health should document the Facility Operator sign-off confirming the validity of pass through costs and retain it to evidence control performance.

Finding

We found that the Facility Operator's verification of pass through costs included in the June 2017, September 2017 and March 2018 QSPs was not documented. We were advised that evidence of the authorisation (verification) of the pass through costs claimed by Celsus was provided verbally.

The Project Agreement allows Celsus to recover, as part of the QSP, certain costs (referred to as pass through costs) including the cost of utilities, waste removal and grocery items. The Contract Management Manual requires the Facility Operator to confirm that pass through costs claimed by Celsus are valid.

Where the Facility Operator's confirmation of pass through costs claimed is not documented and retained there is no evidence the control activity has been performed. As a result, there is no assurance that pass through costs claimed by Celsus are valid.

SA Health response

SA Health advised that a new process has been established to ensure pass through costs are confirmed by email and the emails are retained.

12 Application of the abatement regime

What we found

The Project Agreement includes an abatement regime to reduce QSPs to Celsus where it fails to deliver the services in line with the requirements and minimum standards in the Services Specification.

The State has calculated significant abatements ($471 million).[28]

The abatements calculated for the quarters up to and including March 2018 were:

- $1.4 million – June 2017
- $59.2 million – September 2017
- $245.8 million – December 2017
- $164.3 million – March 2018.

The State applied abatements of $1.4 million for the June 2017 quarter and $96.8 million for the March 2018 quarter. It has also reserved its rights to apply to subsequent QSPs, abatements of:

- $31.1 million for the September 2017 quarter
- $95.3 million for the December 2017 quarter.

The abatement amounts the State applied/reserved it rights to apply were less than the amounts calculated under the Project Agreement as there is a cap on the amount that can be applied.

Celsus disputed the abatements applied by the State for the June 2017 and March 2018 quarters. It also indicated that if the State applied the abatements calculated for September 2017 and December 2017 it will issue a formal dispute notice for these abatements.

Under a process suspension deed, the abatement regime was temporarily suspended (until after the payment of the September 2018 QSP) to enable the State and Celsus to work together to resolve abatement disputes. In addition, under the deed the State paid Celsus $89 million representing the abatement applied for the March 2018 quarter of $96.8 million less an amount of $7.8 million withheld for not opening the Psychiatric Intensive Care Unit.

This is discussed further in section 4.

[28] The abatements calculated by the State represent the gross abatements before applying the abatement limit. The Project Agreement limits the abatements that can be applied each month to the monthly service amount and the State loan payment.

We also found that:

- the State and Celsus have a different interpretation of what constitutes a failure event. Celsus has reported no failure events while the State has calculated failure event abatements of $43.4 million.[29] The definition of a failure event is fundamental to the operation of the abatement regime in the Project Agreement
- Celsus has indicated that the QFM system is not configured to accurately capture the performance of orderly services, and the orderly performance data in QFM cannot be relied on to assess performance or calculate abatements. The State has relied on QFM data to determine quality failures for orderly services (gross abatements of $303.4 million).[30]

What we recommended

SA Health should continue to work with Celsus to:

- clarify and reach a consensus on what constitutes a failure event
- ensure the QFM system is accurately configured to capture the performance of orderly services as intended by the Services Specification.

Further, SA Health should obtain a complete understanding of Celsus's processes for identifying, recording and reporting quality failures and:

- assess the risk of incomplete and/or inaccurate reporting of quality failures
- where required, implement processes to provide assurance that all quality failures are identified and reported.

12.1 Introduction

12.1.1 Overview of the abatement regime

A key principle of the contractual arrangements between the State and Celsus is that the State will only pay for the quantum and quality of services actually provided.

To achieve this, the Project Agreement includes an abatement regime to reduce the QSP where Celsus fail to deliver services in line with the requirements and minimum standards set out in the Services Specification. These service failures may be in the form of a **quality failure** or a **failure event**.

[29] Represents the gross abatements calculated by the State for the period June 2017 to March 2018. The State's right to apply abatements has been temporarily suspended under a process suspension deed entered into in June 2018.

[30] ibid.

Quality failures

Quality failures are where Celsus fails to comply with a provision of the Services Specification. This gives rise to quality failure points. The quality failure abatement for the month is determined by multiplying the quality failure points accrued for the month by the quality failure abatement amount per point detailed in the Project Agreement.

Additional quality failure points are accrued for repeat quality failures and where certain quality failures are not rectified within specified time frames.

Failure events

A failure event occurs when a quality failure or other event:

- impacts on the availability, proper use, functions or enjoyment of one or more functional units
- prevents safe and convenient access to and from a functional unit.

Celsus incurs a failure event abatement when it fails to respond to or rectify the failure event within the required response and rectification times. The required response and rectification times are determined by reference to the failure event priority level (ie emergency, medium priority, low priority).

A failure event also includes system failures, which occur where an event has a substantial adverse effect on the operation of certain systems.

Abatement limit

The Project Agreement limits the abatements that can be applied for each operating month to an amount equal to the monthly service amount and the monthly State loan payment.

12.1.2 Responsibilities to identify and record service failures

The Project Agreement requires Celsus to provide comprehensive and complete self-monitoring and reporting on the delivery of services. The self-monitoring is based on the identification of service failures.

Celsus is required to report service failures in its monthly performance reports.

Recording of quality failures

Celsus uses the QFM system to record all quality failures and calculate the abatement amount.

While it is Celsus's responsibility to identify and record quality failures, the State has a role in verifying that Celsus is reporting all quality failures. The State achieves this by collating the necessary information gathered through its service monitoring activities and other reporting to confirm or refute the performance results reported.

The Project Agreement also allows the State to notify Celsus or the helpdesk of any quality failures, which Celsus must then record in the QFM system and report.

Recording of failure events

The QFM system records details of the time taken to respond to and rectify service requests. The State uses the information in the QFM system to calculate the failure event abatement amount.

The State and Celsus currently have a different interpretation of what constitutes a failure event. This matter is discussed further in section 12.2.1.

12.1.3 Contract Administrator adjusts Celsus's quarterly service payment invoice for service failures

Celsus is required to prepare and submit to the Contract Administrator each quarter an invoice for the QSP. The invoice must be calculated in line with the Project Agreement payment schedule and the abatement regime.

The Project Agreement allows the State to adjust Celsus's QSP invoice where the Contract Administrator reasonably believes this is necessary to correctly reflect the payment schedule and the abatement regime.

The Contract Administrator is required to provide Celsus with a payment statement detailing any adjustments. The Project Agreement requires Celsus to issue a revised QSP invoice to reflect the Contract Administrator's adjustments.

The Contract Administrator has made adjustments to Celsus's QSP invoices to reflect additional service failures which were not included in Celsus's QSP invoice.

12.1.4 Summary of abatements calculated by the Contract Administrator

The Contract Administrator calculated gross abatements of $471 million for the period June 2017 to March 2018.

The State applied abatements of $1.4 million for the June 2017 quarter and $96.8 million for the March 2018 quarter.[31] Further, the State reserved its rights to apply abatements of $31.1 million for the September 2017 quarter and $95.3 million for the December 2017 quarter.

As noted, the Project Agreement limits the amount of abatements than can be applied for each month to the monthly service amount and the monthly State loan amount.

While the QSP is paid quarterly, the service payment and abatements are calculated monthly. Figure 12.1 shows, for each month since operational commencement, the abatement limit (ie monthly service amount and monthly State loan payment), and the abatements calculated by Celsus and the Contract Administrator.

[31] Under a process suspension deed, the State repaid the abatements applied for the March 2018 quarter, except for an amount of $7.8 million.

Figure 12.1: Summary of monthly abatements since operational commencement

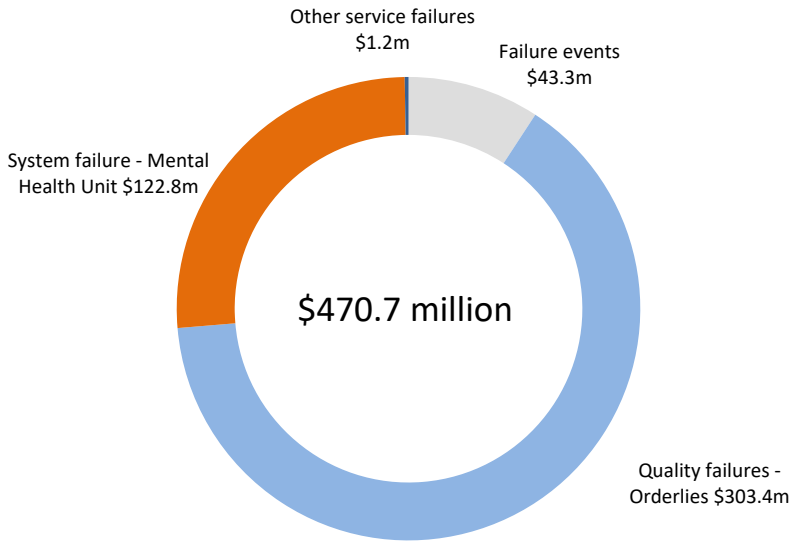
Month	Monthly abatement limit $'000	Abatements calculated by the contract administrator $'000	Abatements calculated by Celsus $'000
September 2017	31 050	59 229	83
October 2017	32 109	128 428	56
November 2017	31 073	65 514	18
December 2017	32 109	51 854	804
January 2018	33 356	50 884	155
February 2018	30 128	49 200	44
March 2018	33 356	64 252	44

Source: Contract Administrator's payment statements (September 2017 and March 2018) and Celsus's monthly service amount calculations.

As shown in figure 12.1 the abatements calculated by the Contract Administrator are significantly more than the monthly abatement limit and the abatements calculated by Celsus.

Figure 12.2 provides a breakdown of the abatements calculated by the Contract Administrator by type of service failure.

Figure 12.2: Abatements calculated by the Contract Administrator by type of service failure for the period June 2017 to March 2018



Source: Contract Administrator's payment statement for the September 2017 and March 2018 QSPs.

Figure 12.2 highlights that most of the additional abatements calculated by the Contract Administrator are orderly service quality failures. The Contract Administrator has calculated abatements of $303.4 million for orderly services (for the period June 2017 to March 2018).[32]

The State relies on data from the QFM system to determine orderly service quality failures. Celsus advised the State that, due to configuration issues, data in the QFM system could not be relied on to assess performance or calculate abatements. This matter is discussed further in section 12.2.2.

The State has raised system failure abatements for the Mental Health Unit ($122.8 million for the period June 2017 to March 2018).[33] Celsus is required under the Project Agreement to provide a functioning duress alarm system. In July 2017 the State issued a defect notice for this system. As a result, some areas of the Mental Health Unit were unavailable.

Abatements of $43.3 million have been calculated by the State for failure events in the period June 2017 to March 2018.[34] Celsus has a different interpretation to the State of what constitutes a failure event under the Project Agreement. Celsus included zero failure event abatements in its QSP invoice for services provided by its facility management subcontractor. This matter is discussed further in section 12.2.1.

12.1.5 Disputes relating to the application of abatements

There are formal disputes between the State and Celsus relating to the abatements applied by the State to the QSP. Figure 12.3 summarises these disputes.

12.3: Summary of abatement disputes

Dispute	Summary of dispute
June 2017 payment statement	Celsus disputes the abatements applied by the State. Celsus believes the abatements applied do not accurately reflect the services provided by Celsus and Spotless during June 2017.
March 2018 payment statement	Celsus disputes the abatements applied by the State. In Celsus's view the Contract Administrator has incorrectly applied the Project Agreement payment schedule and the abatement regime.

In addition, Celsus has advised the State that it will issue a formal dispute notice if the abatements calculated by the Contract Administrator for the September 2017 and December 2017 quarters are applied to any subsequent QSPs.

[32] The abatement amount represents the gross abatements calculated by the Contract Administrator. The Project Agreement limits the abatements that can be applied to an amount equal to the monthly service amount and the monthly State loan payment.

[33] ibid.

[34] ibid.

12.1.6 Process suspension deeds entered into to attempt to resolve abatement disputes

The State and Celsus entered into two process suspension deeds (November 2017 and June 2018) to work cooperatively to resolve disputes relating to the abatements calculated by the Contract Administrator.

The June 2018 Suspension Deed also provides for the State and Celsus to review the abatement regime.

The effect of the June 2018 Suspension Deed is that abatements continue to accrue. The State retains the right to apply the accrued abatements at the expiry of the June 2018 Suspension Deed. Under the June 2018 Suspension Deed the State repaid $89 million of the abatements it applied to the QSP and State loan payment for the March 2018 quarter.

Section 4 provides further details on the process suspension deeds.

12.2 Findings

12.2.1 The State and Celsus have a different interpretation of what constitutes a failure event

Recommendation

SA Health should continue to work with Celsus to clarify and reach a consensus on what constitutes a failure event.

Finding

The State and Celsus have different interpretations of what constitutes a failure event.

Celsus has reported no failure events in its performance reports for services provided by its facility management subcontractor.[35] In contrast, the State has calculated failure event abatements of $43.3 million to March 2018.

The definition of what constitutes a failure event is fundamental to the operation of the abatement regime outlined in the Project Agreement.

SA Health response

SA Health advised that this will be reviewed and discussed in a series of meetings with Celsus and Spotless over the next three months.

[35] Celsus's performance reports for June 2017, July 2017 and August 2017 included failure events. However, Celsus indicated in their performance report for September 2017 that the failure events previously identified in June 2017, July 2017 and August 2017 were not failure events.

12.2.2 Celsus advised that the QFM system is not configured to accurately capture the performance of orderly services

Recommendation

SA Health should continue to work with Celsus to ensure the QFM system is accurately configured to capture the performance of orderly services as intended by the Services Specification.

Finding

Celsus has indicated in its performance reports that the QFM system is not correctly configured to capture the performance of orderly services as intended by Services Specification. Specifically, Celsus advised that the QFM system configuration does not capture the relief provision in the Services Specification for delays or other times agreed with State officers.

The State relies on data from the QFM system to assess Celsus's performance in providing orderly services, particularly completion of orderly services within the required service completion time. Failure to complete an orderly service within the relevant orderly service completion time gives rise to a quality failure.

While Celsus has a contractual obligation to ensure and warrant that all performance data is accurate, due to the configuration issues with the QFM system Celsus has advised the State that orderly performance data in the QFM system cannot be relied on to assess performance or to calculate abatements.

The State has raised significant quality failures (gross abatements totalling $303.4 million) for the failure to achieve completion times for orderly services. The use of QFM data to assess orderly services performance forms part of Celsus's dispute of the March 2018 payment statement issued by the Contract Administrator and is being considered as part of the June 2018 Process Suspension Deed.

SA Health response

SA Health advised that this matter will be reviewed at ongoing meetings with Celsus and Spotless.

SA Health also advised that it should also be noted that Celsus provides contractual warranties as to the accuracy of this data.

12.2.3 The State is still to obtain a full understanding of Celsus's process to identify, record and report on quality failures

Recommendation

SA Health should obtain a complete understanding of Celsus's processes for identifying, recording and reporting of quality failures. Based on this understanding, it should assess the

risk of incomplete and/or inaccurate reporting of quality failures. Where required, SA Health should work with Celsus to implement processes to provide assurance that all quality failures are identified and reported.

Finding

Our review of the State's comments provided to Celsus on its monthly performance reports indicates the State had concerns that Celsus was not reporting all quality failures. The State requested Celsus to provide details of its processes to identify, record and report on quality failures.

We noted the State obtained Spotless's 'Guide to processing quality failures'. However, this did not address all the State's concerns.

The Contract Administration Team advised us that the State still requires an understanding of the:

- method of calculating quality failures
- application of repeat quality failure deduction period and persistent quality failure mechanisms.

Without understanding all of Celsus's processes for identifying, recording and reporting quality failures the State cannot fully assess the risk of incomplete reporting of quality failures by Celsus. This may limit the State's ability to implement alternative processes to provide assurance that all quality failures are identified, recorded and reported.

SA Health response

SA Health responded that this matter is discussed at the helpdesk working group and the State has set up without prejudice discussions with Celsus about the QFM, orderly key performance indicators and the abatement regime.

13 Operating term disputes

What we found

Celsus has issued the State dispute notices disputing:

- the abatements applied by the State to the June 2017 and March 2018 QSPs
- the State's view that patient minding services and Mental Health Unit security services provided by Celsus do not constitute an operating term modification.

Under a process suspension deed dispute resolution processes in the Project Agreement have been temporarily suspended for these disputes.

The State and Celsus disagree on the margins and other indirect costs to be applied for minor works. At the time of our review, formal dispute processes under the Project Agreement had not commenced.

What we recommended

SA Health should work with Celsus to reach a consensus on the margins and other indirect costs for minor works that Celsus can charge the State. Where agreement cannot be reached, the State should commence the dispute resolution processes in the Project Agreement.

13.1 Introduction

The Project Agreement outlines processes for resolving disputes between the parties through a dispute panel, independent expert determination and arbitration.

13.1.1 Current disputes

There are currently a number of disputes relating to the operating term of the project. Figure 13.1 summarises the dispute notices issued by Celsus.

Figure 13.1: Dispute notices issued by Celsus for the operating term

Dispute	Summary of dispute
June 2017 QSP	Dispute as to the abatements applied by the State to the June 2017 QSP. Refer to section 12.1.5 for more details on this dispute.
March 2018 QSP	Dispute as to the abatements applied by the State to the March 2018 QSP and State loan payment Refer to section 12.1.5 for more details on this dispute.

Dispute	Summary of dispute
Patient minding services	Dispute as to whether patient minding services provided by Celsus are a modification. Refer to section 4.3.1 for more details on this dispute.
Mental Health Unit security services	Dispute as to whether the additional contingency security services provided by Celsus in the Mental Health Unit are a modification. Refer to section 4.3.1 for more details on this dispute.

Further, the State and Celsus disagree on the margins and other indirect costs that can be applied by Celsus for minor works under the Project Agreement. At the time of our review, a formal dispute notice under the Project Agreement has yet to be issued. Refer to section 13.2.1 for further details.

13.1.2 Dispute resolution processes in the Project Agreement suspended under process suspension deed

In June 2018 the State and Celsus entered into a process suspension deed (June 2018 Suspension Deed).

The June 2018 Suspension Deed temporarily suspends the dispute resolution processes in the Project Agreement for the following disputes:

- abatements applied to the June 2017 QSP
- abatements applied to the March 2018 QSP and State loan payment
- patient minding services
- Mental Health Unit security services.

Dispute resolution processes were suspended until the September 2018 QSP was paid or 19 November 2018, whichever was earlier.

Section 4 provides further details on the June 2018 Suspension Deed.

13.2 Finding

13.2.1 Dispute between the parties on margins and other indirect costs for minor works

Recommendation

SA Health should work with Celsus to reach a consensus on the margins and other indirect costs for minor works that Celsus can charge the State. Where agreement cannot be reached, the State should commence dispute resolution procedures in the Project Agreement.

Finding

We noted there is currently a disagreement between the State and Celsus on the margins and other indirect costs that can be applied by Celsus for minor works.

The State's position is that Celsus is not entitled to charge the State any of the following:

- margins (except for a margin on recurrent elements)
- administration related overheads for minor works
- project management services
- services that the facility management subcontractor would reasonably provide as part of its services.

The State has paid the margins and other indirect costs applied by Celsus to minor works whilst reserving its rights to recover these costs.

In September 2018 the State wrote to Celsus indicating that should Celsus not agree with the State's position on the costs of minor works, the matter should be resolved through the dispute resolution processes of the Project Agreement.

At the time of our audit this matter was unresolved.

SA Health response

SA Health responded that this matter will be reviewed and addressed in a series of meetings with Celsus over the next three months. In the event that these discussions fail to resolve this matter, the dispute resolution processes of the Project Agreement will be pursued by the State.

Appendix 1: Summary of non-clinical services provided by Celsus

Service	Description
Services provided by Celsus's facility management subcontractor – Spotless	
Helpdesk	Provision of a manned 24 hours per day, 365 (or 366) days per year, helpdesk. The helpdesk is the day-to-day notification interface between the Facility Operator, facility users and Celsus for requests, queries or complaints relating to the services or the facility.
Facility maintenance	Provision of facility maintenance services to ensure the integrity, security and functionality of the facility and site.
Utilities and medical gases	Optimise the efficient use of utilities and medical gases within the facility. Ensure the provision of utilities to the facility are maintained and the reliability of all utilities and medical gases systems.
Grounds and gardens maintenance	Grounds and gardens maintenance services to maintain an aesthetically pleasing landscape that is functional, contemporary and promotes a positive image of the facility to users and members of the public.
Security	Comprehensive security services to the facility and site, 24 hours per day, 365 (or 366) days per year, to create a safe and secure environment for all facility users.
Car parking	Comprehensive car parking services to provide a secure and safe car park environment for car park users.
Pest control	Comprehensive pest control services to ensure the facility and site are clear of pests including catching, destroying and safely disposing of or relocating (as applicable) pests.
Cleaning and domestic	Comprehensive cleaning and domestic services on both a planned and reactive basis to provide a sanitary, clean, hygienic and tidy environment for facility users.
Orderly	Provision of orderly services on a programmed and ad hoc basis in response to service requests for orderly services. This includes moving patients, janitorial services, support to facility treatment areas and assistance to patients and clinical staff.
Catering	Provision of a wide and varied range of appetising and nutritious food and beverages to patients.
Waste management	Undertake and manage the safe collection, segregation, handling, transport and disposal of waste from the facility.

Service	Description
Services provided by Celsus's facility management subcontractor – Spotless	
Internal linen distribution	Provision of internal linen distribution services to ensure there are no 'stock outs' of linen supplies and that provision of linen adheres to infection control policy.
Bulk stores distribution	Management of the inward and outward movement of stores including local imprests, and the provision courier and mail services at the facility.
Services provided by Celsus's ICT services subcontractor – DXC Technology	
ICT reviewable services	Provision of labour and consumables for the maintenance and support of the Integration Engine, IP PABX and telephone headsets, and the Wireless Location Tracking System.
ICT lifecycle replacement services	Lifecycle replacement services for the Integration Engine, IP PABX and telephone headsets, and the Wireless Location Tracking System.

Appendix 2: Operational matters: June 2018 Suspension Deed

Operational matter	Summary of operational matter	Status of operational matter as advised by SA Health
Reconfiguration of the QFM system	The State and Celsus working together to reconfigure the Quantitative Facilities Management (QFM) system to provide accurate data.	The QFM system was updated in August 2018.
Condenser Chilled Water system	Two failures of the Condenser Water Sub-system occurred on 30 November 2017 and 6 January 2018. Completion of rectification works.	Final close out report received from Jacobs on 23 October 2018. The final report was submitted to the State on 30 October 2018. The State's engineers are currently reviewing the report. The Jacobs' report suggests that the Condenser Chilled Water system's capacity is not N+1[36] – that is, from the State's point of view it is not built to the technical specifications.
Outstanding Commercial Acceptance Items	As noted in my March 2018 report commercial acceptance was achieved with a number of commercial acceptance outstanding items (CA OIL items).[37] Completion of the outstanding CA OIL items by 30 September 2018 with the final technical completion report provided within 10 business days of closing the last CA OIL item.	At the time of this Report there were 13 CA OIL items outstanding. The State and Celsus have agreed to transition the completion of the outstanding CA OIL Items into a business as usual model under the Project Agreement. The final technical completion report and commercial acceptance reports, which are still outstanding, are now due before 31 December 2018.
Power outage	On 7 February 2018 there was a power outage at the new RAH. Completion of rectification works.	Rectification work completed.

[36] Means one above the required standard to operate.

[37] Auditor-General's Report for the year ended 30 June 2017 'New Royal Adelaide Hospital: March 2018', p. 66.

Operational matter	Summary of operational matter	Status of operational matter as advised by SA Health
Duress alarm system	In July 2017 the State issued a defect notice for the duress alarm system due to concerns with the accuracy and functionality of the system provided. Completion of rectification works.	The base accuracy of the duress alarm system has been addressed in the Mental Health Unit. However, latency[38] still exists in the duress alarm system which the parties are continuing to rectify. This is a defect in the duress system facility-wide. The accuracy of the duress alarm system in other areas of the hospital is also still to be remedied.
Mental Health Unit	Completion of modification to enable clinical led responses to duress events in the Mental Health Unit.	This modification has been completed. Further testing of this modification is to occur when the latency defect is resolved.
Patient tagging	In June 2018 the State issued a defect notice for the Wireless Location Systems used to track wandering patients and notify staff of whereabouts. Completion of rectification works.	This issue remains outstanding.
Asset tracking	In June 2018 the State issued a defect notice for Wireless Location Systems used to provide alerts for assets in the facility. Completion of rectification works.	This issue remains outstanding.
Building Management System (BMS)	Rectification of issues with BMS configuration including the setting and response to alarms.	Report produced for Celsus on the optimisation and management of BMS alarms. The report has been received and reviewed by the State's engineers. The State's comments are currently with Celsus.

[38] Means the time delay between initial input and system response.

Operational matter	Summary of operational matter	Status of operational matter as advised by SA Health
Environmental Monitoring System (EMS)	Development of a EMS maintenance and services plan (monitoring) for both Pharmacy and Pathology.	There is disagreement between the State and Celsus as to whether developing a EMS maintenance and service plan for Pharmacy and Pathology is within Celsus's scope of services.
Handset messaging	Configuration and implementation of messaging to mobile handsets carried by staff and associated procedures/training.	A project is in place to deliver handset messaging. Roll out was expected at the end of October 2018. The project has been placed on hold as there is an issue with handset messages 'dropping out'. This has been formally escalated to Cisco who is working on a solution and a way forward.
Inventory Management System (IMS)	Resolution of issues with stock not being generated. RFID stock cards not consistently generating imprest orders. Improved reporting from the IMS.	The State is working with Celsus to determine whether this is a system issue or a process issue (ie RFID stock cards not being dropped properly). Work is progressing on improved reporting from the IMS.
Outstanding minor works	The State and Celsus agreeing a process to more efficiently implement minor works pricing and delivery. This will help Celsus to meet contractual requirements.	This issue remains outstanding. A process has been agreed along with a pricing schedule for minor works. Spotless has also made some changes which should see a more streamlined process.
Rectification of miscellaneous defects	Rectification of a range of legacy building defects.	A significant number of the defects have been closed out. Officers responsible for completing the remaining defects are being finalised.

Appendix 3: Minimum information required in performance reports

Report	Minimum information required in performance report
Daily performance report	The status of: • all incidents • all service failures recorded for that day • any failure events that Celsus has not responded to or rectified or quality failures that remain unremedied.
Monthly performance report	Details of the extent (if at all) Celsus has failed to comply with the requirements of the Services Specification and how it intends to address the shortfall in performance. Quality failures that are the subject of a dispute. Updated risk matrix that includes new risks identified during the operating month and proposed mitigation strategies to counter these new risks. A summary of all incidents, service failure and complaints relating to any of the services for the operating month. A statement of whether any temporary fix is being implemented and the relevant details for the permanent fix time.
Quarterly performance report	Summary of information provided in the monthly performance reports for the relevant quarter. Minutes of any meetings of the Facility Management Committee relating to matters raised in relevant monthly performance reports. Specific reporting on: • contract management • helpdesk • facility maintenance • utilities and medical gases management • catering services • waste management services • car parking services.

Report	Minimum information required in performance report
Annual performance report	Summary of the overall performance of each service. Summary of the progressive activity levels and rolling 12 month trends associated with the services. Analysis of each service and any proposed changes to them or the manner in which they are delivered, including: • a program for implementing the proposed changes • any impact on the Facility Operator's ability to undertake the facility functions • the financial implications of the proposed changes • any other matter the Facility Operator may require. Confirmation all insurance policies are in place. Confirmation that all authorisations have been obtained including: • confirmation the facility complies with minimum requirements of relevant building and emergency services laws relating to fire and safety • the current status of the fire certification issued by the fire brigade • confirmation that all statutory declarations have been provided. Specific reporting on: • contract management • helpdesk • facility maintenance • utilities and medical gases • grounds and gardens maintenance services • cleaning and domestic services • orderly services • catering services • waste management services • security services • internal linen distribution • bulk stores distribution • pest control services • car parking services.