



**Efficiency and Effectiveness of the Utility
Regulation and Competition Office (OfReg)**



JUNE 2020



To help the public
service spend wisely

G

TABLE OF CONTENTS

Executive Summary.....	1
Introduction	6
OfReg regulates public utilities entities in the Cayman Islands	6
OfReg was established to improve regulation and consumer protection	7
The lack of a merger plan led to problems in the early years of OfReg	8
About the audit	11
Legal Framework and Governance.....	14
The legal framework is generally clear but needs to be updated	14
Governance has improved over time but can be further improved	20
Strategy and Performance.....	29
OfReg’s Strategic and Annual Plans need to improve	29
It is difficult to assess OfReg’s performance because of poor performance measures and a lack of monitoring and reporting	33
Value For Money	36
OfReg’s financial performance improved over the first three years.....	36
OfReg has not obtained value for money from its use of consultants.....	38
OfReg spent significant amounts on official travel with no policy to govern spending	43
OfReg wasted over \$355,000 on a leased property that it never occupied.....	46
Regulatory Impact Assessments	48
OfReg does not conduct formal regulatory impact assessments but has some elements in place	48
More could be done to protect consumers.....	53
Conclusion	54
Appendix 1 – About the Audit	56
Appendix 2 – Assessment of 18 contracts against good practice	58
Appendix 3 – Assessment of selected regulatory decisions against good practice.....	59
Appendix 4 – Recommendations	61

EXECUTIVE SUMMARY

The Utility Regulation and Competition Office (known as OfReg and also referred to here as the Office) is the independent regulatory authority in the Cayman Islands. OfReg was established under the *Utility Regulation and Competition Law* (URCL) and commenced operations on 16 January 2017. It was set up to provide specific sectors with consistent regulatory services in order to promote effective and fair competition, protect the interests of consumers, and promote innovation and facilitate economic and national development. OfReg is a statutory authority within the Cayman Islands' public sector organisational structure, under the sponsorship of the Cabinet Office. It was created out of the merger of the Electricity Regulatory Authority, Information and Communications Technology Authority, Petroleum Inspectorate, and part of the Water Authority.

The URCL states that the Auditor General shall conduct a performance audit of OfReg every three years.¹ OfReg has only been in existence for just over three years, and during this period the Office of the Auditor General (OAG) has raised concerns about a lack of policies and procedures in place and wasting public money. As a result, the OAG decided to carry out a performance audit of OfReg. The objective of this audit was to assess the effectiveness of OfReg in its first three years of operation. We aimed to answer the following audit questions:

- How effective are the legislative framework and governance at supporting OfReg in achieving its strategic objectives?
- How did the Office perform its annual plans from 2017 to 2019?
- How well does the Office ensure that it is delivering value for money in preventing fraud, waste and abuse?
- Have OfReg's regulatory decisions achieved their expected impact?

Our audit covered OfReg's legal framework and governance; strategy, performance and results; use of resources; and regulatory decisions. This report uses published data and financial data for the period January 2017–December 2019.

¹ URCL Section 42 states that the Auditor General shall conduct a performance audit of OfReg every three years, covering the following three areas: performance against the annual plan; the extent to which deployment of financial resources has delivered value for money; and the impact of regulatory decisions to the expected impacts established through regularity impact assessments carried out by OfReg.

KEY MESSAGES

In May 2016, the Government launched a project, led by the Ministry of Planning, Lands, Agriculture and Housing, to merge existing regulatory bodies into a single new body. An Outline Business Case (OBC) for the merger was developed, which included some elements of good practice but also had some major gaps. One of the main gaps was that a merger plan was not developed. The merger process ended when the Government enacted amendments to different pieces of legislation and merged the predecessor bodies into OfReg.

The lack of effective merger planning created some problems for OfReg in its first few years of operation. These included a lack of understanding of the funding needed to fulfil its obligations for all of the regulated sectors; a lack of strategic planning and direction for the first year of operation; limited governance and oversight, as the Board consisted of only two voting members—the Chair and the Chief Executive Officer—for the first five months; and no succession planning for the CEO post, which resulted in inconsistent leadership.

The legislative framework includes a number of laws and regulations, some applying solely to OfReg and others that apply to the wider public sector. The primary legislation is the *Utilities Regulation and Competition Law 2016* (URCL). The URCL outlines what the organisation is; its mandate, powers, duties, functions and areas of operation; and the industries (ICT, power, fuel and water) that are to be regulated. The legal framework provides OfReg with broad powers—for example, three of the four primary sectoral laws grant it the power “to do all things necessary or convenient”—but some important rules and regulations are not yet in place in relation to, for instance, consumer protection. We found that the legal framework provides OfReg with appropriate and sufficient independence from the Government. However, we also found that some provisions in the legal framework create conflict, particularly between the URCL and *Public Authorities Law* (PAL). In practice, OfReg is following the provisions in PAL, which is appropriate, but there is scope for confusion and the URCL should be amended to remove any conflicts.

Good governance is essential for the effective operation of any organisation. Overall, we found that governance has improved over the three years, and there is scope for further improvement. The URCL makes it clear that the Board of Directors is ultimately responsible for OfReg. The Board is currently composed of a Chair, five non-executive directors, the CEO and three executive directors. However, the full Board was not in place at the start of the organisation, and for the first five months board business was carried out with two voting members only, the Chair and the Chief Executive Officer (CEO). During this period, the Board made two decisions, which should have been subject to more extensive scrutiny. The URCL states that the CEO and executive directors are also full members of the Board, although they do not have voting rights. This is unusual; in most other boards of statutory authorities and government companies (SAGCs), the CEO (or equivalent) is the only executive who is a regular, non-voting member of the board, and other senior managers are invited to attend board meetings as necessary. The current

board structure in OfReg means that the traditional roles and responsibilities of non-executive board members and senior management are blurred.

During the first three years, the Board has not always carried out the functions that we might expect. It has focused on regulatory activities and on solving continuing merger issues, such as the prolonged vacancy of the CEO post, rather than providing strategic direction and holding management to account for the performance of the organisation. Boards are responsible for setting the ‘tone at the top’, including setting and demonstrating the expected values and ethical standards. During its first three years of operation OfReg did not have a set of core values. However, it did have a Code of Ethics and Business Conduct for board members from July 2017 and employee contracts refer to the Cayman Islands’ Public Servant’s Code of Conduct. We understand that a set of core values was developed and approved in December 2019. Risk management is an essential element of good governance, but OfReg does not have a risk management process or risk register. Although OfReg is required to have a Risk and Audit sub-committee as part of its governance framework, the sub-committee has only recently come into existence; its Chair was appointed in April 2019, although he did not start until October 2019, and is not a member of the Board. While this is in line with the URCL, it is unusual given that normally the chair of a board’s audit committee is one of the non-executive board members, which helps as they have an understanding of the business. OfReg does not have an internal audit function, so it is not clear how the Risk and Audit sub-committee will get the assurances that it needs on the internal control framework. At the time of this report, the sub-committee had not yet met.

It is good practice for an organisation to have a Strategic Plan to help it direct its activities and set clear goals, objectives and priorities. During 2017, OfReg prepared its first five-year Strategic Plan for 2018–22. This is a good start, but we found that there are gaps in the plan. For example, it does not provide a clear, high-level strategic direction for the full five-year period; does not include baselines or performance measures; and is not clearly linked to financial plans in order to demonstrate affordability. The Plan sets a strategic focus, but this does not adequately cover OfReg’s principal functions as set out in the URCL. For example, it does not mention the principal functions in relation to consumers. During the first year of operation (2017) there was no plan to guide operations. OfReg published annual plans for 2018 and 2019. These annual plans contained different information, improved with the 2019 plan in some respects such as introducing three strategic objectives—consumer protection and benefit, protecting the critical national infrastructure, promoting growth and innovation—that more clearly align with the principal functions set out in the URCL. Both annual plans included budget information, which differed from the approved budget in the 2018–19 Ownership Agreement; we found that there were no explanations for the differences.

Organisations are better focused on achieving results and outcomes and better able to improve their performance when they have well designed performance measures and targets and can take corrective action as a result of effective monitoring and reporting. OfReg’s five-year Strategic Plan did not specify any key performance indicators (KPIs) that would help measure success or demonstrate delivery of the strategic objectives. The 2018 Annual Plan included fourteen KPIs, but these focused on statutory and

operational functions. Our review of the KPIs for 2018 identified a number of areas for improvement: for example, most of the KPIs measure inputs, activities and outputs rather than outcomes; most do not clearly link to the strategic objectives; and some are not measurable or may be difficult to measure. Despite setting KPIs for 2018, OfReg did not have a system for tracking progress or reporting against the KPIs. Further, in order to measure and improve performance, KPIs need to be consistent from one year to the next; we found that the KPIs set for 2019 were significantly different from the previous year, making it impossible to measure performance over time.

The Government envisioned that the cost of running OfReg would be fully financed from the regulatory fees that it collects from industry. However, OfReg has not been able to collect some fees as mechanisms were not in place to allow for this. This resulted in a deficit of almost \$1.5 million in 2017 and the Government providing additional funding in each of the financial years 2018 and 2019. The creation of OfReg was expected to generate savings of \$250,000 a year, although the business case for the merger was not clear how this was to be achieved. We have estimated that OfReg is costing more to operate than its predecessor bodies, and so the anticipated savings from the merger have not been realised.

Public bodies need to ensure that they achieve good value for money by managing their resources well and being accountable for them. Our audit examined three areas of OfReg's spending in its first three years—use of consultants, official travel, and leases. OfReg spent a total of \$1.72 million on consultants between 2017 and 2019. Our review of 18 consultants' contracts identified a number of weaknesses that indicate that the amount spent on consultants did not represent value for money. OfReg adopted a procurement policy and procedures manual (procurement manual) in November 2017. The manual reflects some good practices that should promote value for money in the organisation, but it has not always been followed. The procurement manual was prepared prior to the *Procurement Law* and Regulations coming into force and it has not been amended since. The manual includes more stringent requirements than the *Procurement Law* for some aspects but it needs to be updated to ensure that it complies fully with the Procurement Regulations.

OfReg spent around \$414,000 in total on official travel in its first three years. For the majority of this period there was no policy in place to govern spending. Three trips in 2017 accounted for at least \$79,242; over one third of the \$234,000 spent on travel in that year. OfReg did not monitor or report its official travel costs, and we found significant deficiencies in the collection and retention of information to support travel claims. In October 2019, OfReg adopted an official travel policy that is in line with the CIG Official Travel Policy, and introduced the requirement for business cases for all travel. This is in line with recommendations that we have previously made in our financial audits and should help improve value for money.

We also found that OfReg wasted \$355,000 on a leased property that it never occupied. In August 2017, OfReg signed a ten-year lease for the Smith Road Centre although there was no business case to support the decision to lease the new premises. The office space was never occupied, but OfReg continued to

pay the monthly rental until August 2018. The lease agreement did not have a termination clause, which meant that OfReg also had to pay a pre-termination penalty of \$200,000 for breaking the lease.

The regulation of utilities providers is intended to achieve a range of outcomes for the public, for example, protecting consumer interests. Regulatory impact assessments (RIA) provide important information for decision makers on whether and how to regulate to achieve public policy goals. The URCL expects that RIAs will be used to inform regulatory decisions. OfReg did not complete any RIAs between 2017 and 2019 and does not have a framework or procedures to guide it through the RIA process. However, its approach to making regulatory decisions has some of the elements we would expect to see in carrying out a RIA. The URCL also states that OfReg's functions include "to protect the short and long-term interests of consumers in relation to utility services", but the majority of its regulatory decisions do not directly improve consumer protection. OfReg's 2018 Annual Plan included actions to complete consumer protection regulations by 2019, but this has not happened. We understand that regulations for protecting consumers in the ICT sector have been drafted.

INTRODUCTION

OFREG REGULATES PUBLIC UTILITIES ENTITIES IN THE CAYMAN ISLANDS

1. The Cayman Islands economy depends on the Critical National Infrastructure (CNI) to support the economic activities and quality of life of citizens.² The Cayman Islands Government has identified the following eight national infrastructure sectors: broadcasting, education, health, postal, press, telecommunications, transportation, and utilities.
2. In 2016 the Legislative Assembly passed the *Utility Regulation and Competition Law* (URCL), which created the Utility Regulation and Competition Office (known as OfReg) as a statutory authority with effect from January 2017. OfReg was created out of the merger of two statutory authorities—the Electricity Regulatory Authority and the Information and Communications Technology Authority—and a government department, the Petroleum Inspectorate. The regulatory functions of the Water Authority of the Cayman Islands (WACI) were also transferred to OfReg in May 2017.
3. OfReg came into operation on 16 January 2017 and is responsible for the regulation of the following four sectors that form part of the CNI: information and communications technology (ICT); energy; fuel; and water.³ These sectors ensure that residents and businesses have basic utility services such as water and power, and they also create employment and business opportunities. In 2017, the four sectors collectively contributed \$213 million to Cayman Islands' gross domestic product.⁴ Exhibit 1 provides a summary of the four sectors regulated by OfReg.

² The Centre for the Protection of National Infrastructure defines CNI as those facilities, systems, sites, information, people, networks and processes necessary for a country to function and upon which daily life depends.

³ Section 2 of the *Utility Regulation and Competition Law*, 2016, defines CNI as the systems and assets, whether physical or virtual, so vital to the Islands that the incapacity or destruction of the systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.

⁴ OAG analysis of data from the Economic and Statistics Office of the Cayman Islands Government.

Exhibit 1 – Sectors regulated by OfReg

	ICT	Energy	Fuel	Water
What is regulated?	ICT networks and ICT services.*	Electricity generation and transmission & distribution (T&D).	Importation, safety in depot, safety in stations; and establishments that have fuel storage (from a certain limit).	Production, distribution, supply and treatment of water.
Operating Entities	<ul style="list-style-type: none"> • Cable Companies • Telecommunications • Radio stations • TV Stations • Domain KY • ICT Critical Network Infrastructure (CNI) • Emergency Notification System (ENS) • 911 	<p>Generation and T&D</p> <ul style="list-style-type: none"> • Caribbean Utilities Company (CUC), a public company • Cayman Brac Power and Light (CBPL), a private cooperative <p>Generation only</p> <ul style="list-style-type: none"> • Bodden Town Solar I Limited, a private company 	<ul style="list-style-type: none"> • Rubis • Esso • Home Gas • Clean Gas • Refuel • Two fuel depots and 24 gas stations • Marine fuel: Scott Landing, Cayman Islands Yacht Club and Harbour House Marina. 	<ul style="list-style-type: none"> • Water Authority of the Cayman Islands a statutory authority • Cayman Water Company (CWC), a public company • Morritt's Tortuga Club & Grand Resort, a private company • Wyndham Reef Resort, a franchise • Little Cayman Beach Resort, a private company • Pirates Point Resort, a private company
2017 GDP Contribution	\$113.7m	\$60.6m—cumulative for electricity and gas/fuel		\$38.7m

*Note:** This includes regulation and licensing of telecommunications, broadcasting, and all forms of radio, which include ships, aircraft, mobile and amateur radio.

Source: OAG analysis

OFREG WAS ESTABLISHED TO IMPROVE REGULATION AND CONSUMER PROTECTION

4. The Government's intention was that OfReg improve the effectiveness of regulatory frameworks across the utilities sectors through ensuring that:⁵

- consumer protection is in place across the sectors; and

⁵ Outline business case: Establishing a public utilities commission to be known as the Utility Regulation and Competition Office, Miguel Jacques and J P Morgan, October 2015

- competition and market development are supported to achieve long-term customer benefits.
5. The URCL identifies consumer protection as one of OfReg’s principal functions and sets out how consumer protection should be achieved in the Office’s decisions and operations. However, consumer protection regulations and other supporting regulations envisioned in the URCL have not yet been put into place. We understand that draft consumer protection regulations for ICT were considered by the Board in March 2020. It is also important to note that the Cayman Islands does not have comprehensive legislation for protecting the interests of consumers of goods and services; nor does it have a public body dedicated to, or non-governmental organisations responsible for, consumer protection. According to the United Nations Conference on Trade and Development, of 192 countries, 52 per cent have consumer protection legislation; within the Americas, 66 per cent of countries have such legislation.^{6,7}
 6. The creation of OfReg was intended to improve the effectiveness of regulatory frameworks across the utilities sectors through ensuring that regulatory regimes and their underpinning legislation were up to date and relevant; to improve the efficiency of regulation; and to reduce the number of Government entities.⁸

THE LACK OF A MERGER PLAN LED TO PROBLEMS IN THE EARLY YEARS OF OFREG

7. In April 2014, the Deputy Governor commissioned Ernst & Young (EY) to examine opportunities across the public sector for government rationalisation and commercialisation. In September 2014, EY issued the report *Project Future: Creating a sustainable future for the Cayman Islands* (EY Report). The report included 26 recommendations, one of which was to merge authorities within the public sector to create a utilities commission. The EY report identified the benefits of the merger as potential annual savings of \$250,000 in payroll and lease costs, the ability to shift funding across the regulated sectors, and the opportunity to improve the regulatory process through the sharing of expertise across sectors.
8. It is not unusual for governments to merge public bodies, but careful planning and implementation are needed to ensure that the merger is successful in the longer term. In 2012, Audit Scotland

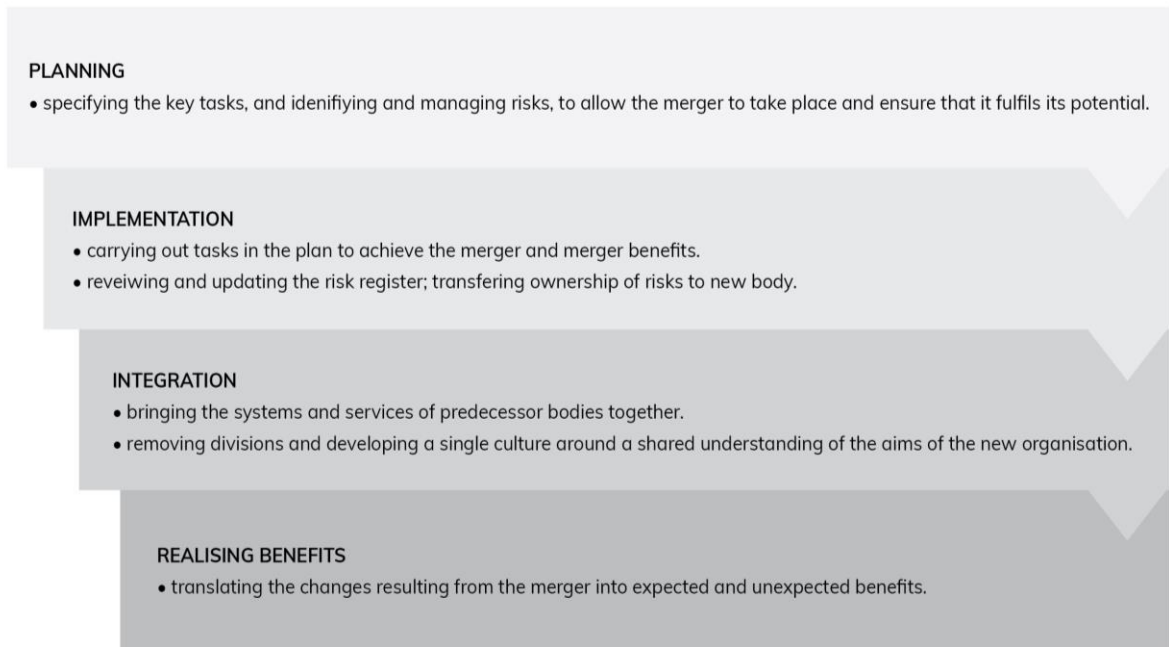
⁶ The Cayman Islands is not a member of the United Nations, and is therefore not part of these statistics.

⁷ *Online Consumer Protection Legislation Worldwide*, website of the United National Conference on Trade and Development (UNCTAD), using extant data in January 2020

⁸ *Outline business case: Establishing a public utilities commission to be known as the Utility Regulation and Competition Office*, Miguel Jacques and J P Morgan, October 2015

carried out an audit of a number of public body mergers and reported that there were four stages to a merger: planning, implementation, integration, and realising of benefits (Exhibit 2).⁹ Audit Scotland recommended that merger plans be created, and that they extend beyond the start date of the new body to ensure business as usual and effective planning for further organisational development focused on delivering improvements.

Exhibit 2 - Key merger stages



Source: Audit Scotland

9. Audit Scotland also highlighted the importance of central government's role and engagement throughout all four phases of merger and identified the following aspects on which every merger should focus:

- setting the strategy for the new organisation in line with government policy;
- establishing a governance and management structure;
- establishing an effective staffing structure;
- establishing a single distinctive organisational culture;
- managing finances; and
- ensuring communication and engagement.

⁹ *Learning the lessons of public body mergers*, Audit Scotland, June 2012

10. In May 2016, under the sponsorship of the Chief Officer of the Ministry responsible for infrastructure, the Government launched a project to take forward the recommendation.¹⁰ The Ministry developed an Outline Business Case (OBC) for the establishment of OfReg, using the Project Future Governance Standards.¹¹ The OBC included some elements of good practice, but it also had some major gaps (Exhibit 3). One of the main gaps was that the OBC took the merger process to only midway through the implementation stage; this is not in line with the good practice suggested by Audit Scotland.

Exhibit 3 – Outline Business Case for the creation of OfReg

Good Practice	Gap
Identified four key deliverables and timelines: three related to the enactment of legislation and amendments, and one broad action to provide support to the affected agencies and facilitate the establishment of the new agencies.	Stated that the project would close when the legislation was enacted and the Board was appointed; did not specify the need to develop a merger plan.
Stated that the merger would improve the efficiency of regulation by reducing back-office support costs, resulting in savings of \$250,000.	Did not make clear how the savings of \$250,000 were to be realised or monitored.
Outlined risks and mitigation strategies.	Did not adequately assess the risks arising from the changes introduced or identify specific actions to address them.
	Set no clear targets or expectations for what should be delivered before and after the merger, for example, corporate identity, risk register, human resources strategy, financial management model, and facilities.

Source: OAG assessment of Outline Business Case

11. In May 2017, the Government reported that it had implemented the merger recommendation through enactment of and amendments to various legislation; the merger of Information and

¹⁰ At the time this was the Ministry of Planning, Lands, Agriculture, Housing and Infrastructure.

¹¹ Government established the Strategic Reforms Implementation Unit (SRIU) to provide expert and administrative support to Government entities undertaking the Project Future merger recommendation. Part of the support is providing governance standards for planning implementing projects coming out of Project Future.

Communications Technology Authority, Electricity Regulatory Authority and Water Authority of the Cayman Islands regulatory functions; and a regulatory framework designed to accommodate additional sectors.¹²

12. Throughout this audit report, we highlight a number of challenges and problems that were faced by OfReg in its first three years of operations that could have been avoided had a merger plan been prepared covering all four stages. These challenges included the following:
- Lack of a full understanding of the funding needed by OfReg to fulfil its obligations in all of the regulated sectors. For example, the impact of not levying regulator fees on operators in the fuel sector.
 - A lack of strategic planning and direction. There was no strategic or annual plan for the first year of operation (2017).
 - Limited governance and oversight. Only the Chair of the Board and Chief Executive Officer (CEO) were in place from inception; the other non-executive directors (NEDs) of the Board were not appointed until more than five months later.
 - Lack of leadership. The first CEO indicated that he intended to remain in post for only a short period of time, and there was no succession planning for the post. The original CEO retired in August 2018 and was not replaced until October 2019.
 - Lack of policies and procedures to ensure that value for money was adequately considered. A procurement policies and procedures manual was introduced in 2017 but other policies did not start being put in place until October 2019, despite Cabinet directing that some CI G policies be adopted in August 2018.

Recommendation 1: The Government should ensure that, for all future mergers, it prepares a merger plan that clearly sets out timelines, deliverables and success measures; that covers the period up to the merger; and that extends beyond the start date. The merger project’s sponsor(s) should play a significant role in developing and monitoring the delivery of the merger plan.

ABOUT THE AUDIT

13. The URCL states that the Auditor General shall conduct a performance audit of OfReg every three years. Section 42 of the URCL specifies that the audit must cover three areas:
- OfReg’s performance against its annual plan;
 - the extent to which OfReg’s deployment of its financial resources has delivered value for money; and

¹² *Creation of a Single Utilities Commission*, website of the Strategic Reforms Implementations Unit – Cayman Islands Government, using extant data as of January 2020.

- the impact of OfReg’s regulatory decisions when compared to the expected impacts established through regulatory impact assessments carried out by OfReg.
14. Our financial audits of OfReg for 2017 and 2018 had identified a number of significant control weaknesses and raised concerns about value for money, which we also took into consideration in proceeding with this audit. It is important that the Government and the general public be provided with assurances on value for money and the impact of OfReg’s operations.
15. The objective of this audit was to assess the effectiveness of OfReg in its first three years of operation. We aimed to answer the following questions:
- How effective are the legislative framework and governance at supporting OfReg in achieving its strategic objectives?
 - How did the Office perform against its annual plans from 2017 to 2019?
 - How well does the Office ensure that it delivers value for money and prevent fraud, waste, and abuse?
 - Have OfReg’s regulatory decisions achieved their expected impact?
16. The audit drew on a range of evidence to inform our findings and conclusion, including:
- Reviewing documents such as legislation; annual and strategic plans; policies and procedures; management documents; and funding, monitoring and reporting arrangements.
 - Holding interviews and focus groups with key stakeholders, including OfReg staff, members of the Board, and civil servants.
 - Analysing a range of data, including expenditure on travel and contracts such as consultants, employment agreements, and leases.
 - Examining international good practices and assessing OfReg’s practices against them.
17. The report is structured into four sections:
- Framework and governance.
 - Strategy and performance.
 - Value for money.
 - Regulatory impact assessments.
18. Appendix 1 provides more information about the audit, including the audit criteria, approach and methodology. Appendix 2 provides a summary of our assessment of a sample of 18 consultancy contracts against good practice. Appendix 3 provides a summary of our assessment of a sample of eight regulatory decisions. Appendix 4 provides a summary of recommendations we have made to

OfReg and the Government for improvement as result of the audit, and managements' responses to these recommendations.

LEGAL FRAMEWORK AND GOVERNANCE

19. It is important that a strong legal framework be in place for regulators to ensure their independence and provide clarity on their role and responsibilities. OfReg is a Statutory Authority, overseen by a Board of Directors. It is therefore essential that good governance be in place to ensure that appropriate strategic direction is provided and management is held to account for the organisation’s performance and for delivering value for money in the use of resources.
20. Our audit examined the legal framework and governance of OfReg and how they support the delivery of its mandate. In particular, the audit considered whether there were conflicts in the legal framework or weaknesses in governance that might impair the ability of OfReg to operate and deliver on its mandate.

THE LEGAL FRAMEWORK IS GENERALLY CLEAR BUT NEEDS TO BE UPDATED

21. OfReg’s legal framework includes a number of laws and regulations. Exhibit 4 provides a summary of the laws that OfReg must comply with.

Exhibit 4 – OfReg’s legal framework

GENERAL PURPOSE PUBLIC SECTOR LAWS	UTILITY REGULATION AND COMPETITION LAW (PRIMARY LEGISLATION)			
	Electricity	ICT	Fuel	Water
Public Management and Finance Law	Electricity Sector Regulation Law	Information & Communications Technology Authority Law	Fuel Market Regulation Law	Water Sector Regulation Law
Public Authorities Law				
Procurement Law	OTHER SECTORAL LAWS			
	Electricity Law Electricity Regulations Electricity Regulatory Authority (Standard of Performance) Rules	Computer Misuse Law The Electronic Transactions Law	Dangerous Substances Law	Water Authority Law Water (Production and Supply) Law Wastewater Collection and Treatment Law

Source: OAG analysis

22. The primary legislation is the *Utilities Regulation and Competition Law (URCL)*, which was passed by the Legislative Assembly in October 2016 and brought in to force on 17 January 2017. The URCL is a comprehensive law that outlines what the organisation is and its mandate, powers, duties, functions and areas of operation. It determines the industries (ICT, power, fuel and water) that are to be regulated (the Cabinet may update this list). The URCL also provides some detailed guidelines on OfReg's governance, human resources, financial management, budgeting and reporting processes, and its relationship with core government. OfReg sits under the Cabinet Office in the Cayman Islands Government. In practice this means that the Cabinet Secretary, as Chief Officer, oversees aspects of OfReg's strategy, performance and financial reporting.
23. In addition to the URCL, there are a number of sectoral laws that provide more detailed legislation on OfReg's role as a regulator for each of the sectors.
24. Public bodies such as OfReg must also comply with a number of other laws that are designed to uphold high standards in public services and protect public interests. These include the following:
 - The *Public Management and Finance Law, 2020 Revision (PMFL)* governs the budgeting, financial management, accounting and reporting activities of public entities.
 - The *Public Authorities Law, 2016 (PAL)* applies to all statutory authorities and government companies and aims to strengthen governance. It also requires public authorities to adopt the Public Service Values set out in the *Public Service Management Law*.
 - The *Procurement Law, 2016* aims to strengthen controls to ensure value for money in public sector spending, such as requiring open competition.

THE LEGAL FRAMEWORK SETS OUT CLEAR REQUIREMENTS AND PROVIDES BROAD POWERS

25. The URCL identifies OfReg's principal functions as the following:
 - Promote Government policy objectives.
 - Promote appropriate effective and fair competition.
 - Protect the short- and long-term interests of consumers.
 - Promote innovation and facilitate economic and national development.
26. The URCL grants OfReg powers to further the implementation of these functions. It also provides for the creation of industry and quality codes to advance consumer protection; mandates how consumer complaints appeals are to be handled by OfReg; and provides for the creation of consumer advisory councils. The URCL allows OfReg and the Government to physically secure CNI facilities to ensure the continual delivery of utility services in circumstances where private operators may face corporate problems, such as liquidity problems.

27. The URCL provides for OfReg to exercise its regulatory powers through administrative determinations.¹³ It also specifies a range of other powers, including the power to require information and enforce it; to investigate in certain instances where competition is alleged to be compromised; to make cease and desist orders in order to protect the public interest; and to impose administrative fines. Some of these powers require court orders to enforce—for example, search warrants.
28. The legal framework provides OfReg with broad powers. Three of the four primary sectoral laws grant it the power “to do all things necessary or convenient”. These provisions give OfReg the flexibility it needs to balance the three main functions set out in the URCL. The Fuel Market Regulation Law (FMRL) differs, providing for OfReg’s supervision over the industry only.
29. The legal framework balances OfReg’s broad powers by setting out obligations such as the duty to consult, and requires that clear consultation procedures be in place. OfReg is required to consult on matters of public significance and to publish decisions of public significance on its website. We found that not all decisions are being published on the website, although we understand that management plans to update the website.
30. The URCL requires OfReg to publish a five-year Strategic Plan and to review it after three years; and to publish an Annual Plan for every calendar year. Other public sector laws, such as the PMFL, the PAL and the Procurement Law, require OfReg to achieve good value for money, have robust financial management and reporting, and comply with good practice in public procurement. The legal framework also outlines reporting requirements, including the Annual Reports accompanied by audited financial statements.

THE LEGAL FRAMEWORK PROVIDES OFREG WITH SUFFICIENT INDEPENDENCE

31. It is essential that regulators be independent to ensure that they are able to deliver their mandate effectively. The OECD has identified the following three essential elements of independence for regulators:¹⁴
 - Independence from the executive (ruling government). The regulator is an independent body and its independence is explicitly stated in the law.

¹³ URCL paragraph 2 defines administrative determinations as including any order, regulation, direction, decision, or other written determination by which OfReg establishes the legal rights and obligations of one or more sectoral participants, but it does not include an advisory guideline. In the same paragraph, an advisory guideline is defined as a written statement, issued by OfReg that provides the OfReg’s views regarding a specific matter but is not legally binding.

¹⁴ *Being an Independent Regulator (The Governance of Regulators)*, OECD, 2016

- Autonomy over human resources. Human resource activities are under the regulator’s control, including hiring, firing and remuneration of both board members and staff.
 - Budget independence. The financing model for the regulator’s activities make it independent of other interests, whether in government or the industry.
32. OfReg is a statutory authority and therefore part of the wider public sector in the Cayman Islands. Our assessment of OfReg against the OECD guidance found that it has reasonable independence from the Government.
33. The legal framework ensures OfReg’s independence by establishing limits on external influences over the Office and its decisions. OfReg is expected to ensure that its principal functions align with the Government’s broader policy and plans while maintaining its independence. For example, OfReg plays a role in supporting the delivery of the Government’s 20-year National Energy Policy through providing technical expertise and policy advice to the Government and regulating the energy sector. The URCL provides for the Government (through Cabinet) to issue directions to OfReg, but it prohibits the Government from giving instructions on any matter pending before OfReg. In August 2018, the Cabinet directed OfReg to adopt a number of CIG policies and procedures, including official travel policy; anti-fraud policy; policy on offering or receiving hospitality, entertainment or gifts; procurement code of conduct; and Procedural Guidelines for Crown Estate Matters (2003).¹⁵ With the exception of the procurement manual and a gifts policy that were already in place we found that OfReg did not adopt the policies at that time. OfReg’s Board approved an official travel policy in October 2019. We understand that an anti-fraud policy was approved in January 2020 and a gifts, entertainment and hospitality policy is due to be presented to the Board in June 2020. We were told that although the Procedural Guidelines for Crown Estate Matters have not yet been formally presented to the Board for approval they have been adopted.
34. The URCL establishes OfReg as a statutory authority with an independent board of directors to direct and oversee its operations. The Board Chair is directly appointed by Cabinet, and non-executive directors are appointed by a Nominating Committee that is chaired by the Cabinet Secretary. However, the appointment process for non-executive directors requires interested persons to apply for posts, who are then considered by the Nominating Committee and nominations made to the Cabinet for final approval. Among all of the statutory authorities in the Cayman Islands, OfReg has the only board whose members are appointed in this way.

¹⁵ The Procedural Guidelines for Crown Estate Matters: Land Valuation, Acquisition, Compensation, Disposal and Exchange (2003) set out the requirement for the Department of Lands and Survey to be consulted in all matters relating to government property, for example providing cost estimates.

35. OfReg has some autonomy over its human resources, as the Board and CEO have powers to appoint employees. Under the PAL, OfReg makes all personnel management decisions including appointments, promotions, remuneration (although PAL sets restrictions on remuneration), discipline and dismissal. The URCL gives the CEO the authority to retain, suspend and dismiss staff. The Board appoints the CEO and the executive directors.
36. OfReg has some degree of autonomy in relation to its budget and finances. It prepares and submits budget documents to the Cabinet Office, which are then provided to the Ministry of Finance and Economic Development as part of the budget process for all statutory authorities. The Government established OfReg to be financially self-sufficient through the collection of regulatory fees to fund operations. However, the regulatory fees are set in law or regulation, which are beyond OfReg's direct control. In its first three years OfReg was not able to charge enough regulatory and other fees for the fuel and water sectors because mechanisms were not in place to allow for this to happen; it therefore had to request additional funding from the Government. In 2018 and 2019, the Government provided additional output funding of \$1.15 million and \$0.47 million (as of 30 September). The additional funding for 2019 has yet to be authorised by the Legislative Assembly.

ABSENCE OF SOME REGULATIONS AND RULES DIMINISHES THE LEGAL FRAMEWORK'S EFFECTIVENESS

37. OfReg's legal framework lays the foundations for its regulatory activities, but some important rules and regulations are not yet in place. The URCL and the sectoral laws are at a high level; policies, processes, criteria and other details are needed to properly implement the objectives of the framework. Our review found that there are no rules and regulations in relation to consumer protection, significant market power criteria, licencing processes, and alternative dispute resolution among licensees.¹⁶ However, OfReg has started consulting on regulations for some of these areas. For example, consumer protection regulations for ICT but these have not yet been finalised.
38. OfReg is expected to establish infrastructure sharing regulations that require licensees to enter into an arrangement where they can share equipment and other assets to deliver services to the public. We found that regulations for infrastructure sharing in the ICT sector existed prior to OfReg being established and we were told that similar arrangements are in place for the fuels sector but these are not written down. OfReg does not yet have regulations for the other sectors.

¹⁶ When a licensee is declared as having significant market power in a regulated market, OfReg may impose specific conditions on this licensee such as cost recovery and price controls, retail prices, provision of standard terms of business (published and accessible to customers) and service level guarantees (with compensation payments to retail customs).

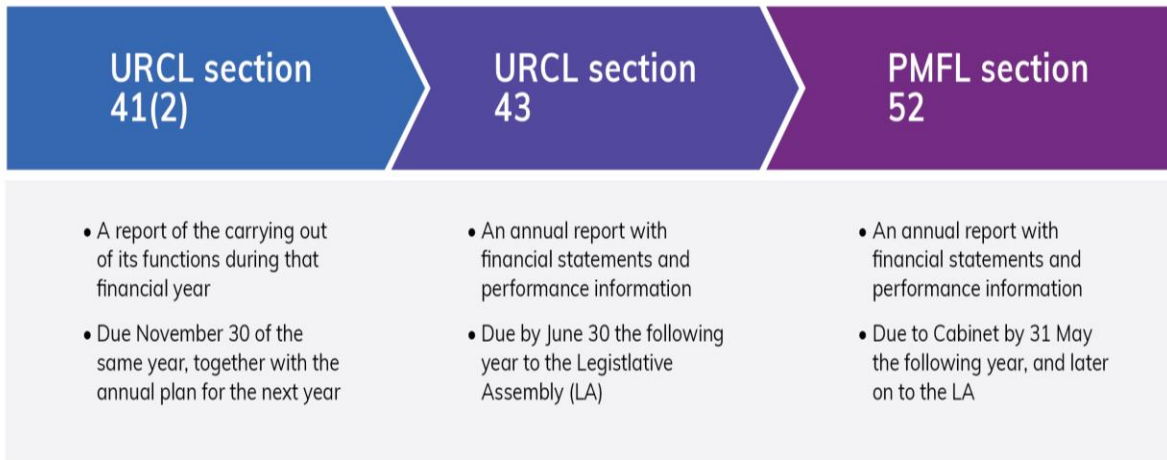
39. OfReg has not carried out an assessment of regulations and rules that are missing and the potential impact of this. Without such an assessment, there is a risk that OfReg is not aware of all of the gaps in the legislation or the actions needed to address any resulting challenges that may arise.

Recommendation 2: OfReg should carry out an exercise to identify any missing regulations and rules and prepare these as soon as possible.

THE LEGAL FRAMEWORK HAS SOME CONFLICTING PROVISIONS

40. The legal framework has some provisions that are found in multiple places and address similar subject matters but that are conflicting. For example, the PAL covers all statutory authorities and government companies (SAGCs); it was introduced to improve governance arrangements and ensure high standards of behaviour and performance. As with other statutory authorities, OfReg was established under its own legislation (URCL). Our review has found some instances where PAL and URCL have conflicting provisions, including the following:
- URCL requires that the decisions of the Board and reasons for those decisions shall be recorded in the minutes, but the PAL requires the redaction of regulatory decisions. In practice, OfReg does not publish its Board minutes; this limits transparency.
 - URCL specifies that the Auditor General’s performance audits should cover regulatory impact assessments, but the law did not define what these assessments are.
 - URCL provides that the CEO is a voting member of the Board, but PAL does not give the CEO the right to vote. In practice, the CEO no longer votes on Board decisions.
 - URCL provides that the executive directors are members of the Board. The PAL states that the Board is appointed by Cabinet, which implies it is comprised of non-executive members. We discuss this later at paragraph 50.
41. We found that in practice, OfReg is mostly following the provisions in PAL. However, the URCL needs to be amended to remove any provisions that conflict with prevailing legislation such as PAL.
42. The legal framework also specifies at least three different requirements for OfReg’s accountability reporting (Exhibit 5). URCL requires that OfReg prepare a report on the carrying out of its functions during the financial year (to accompany the Annual Plan); the deadline is 30 November. Both URCL and PAL require that OfReg prepare an Annual Report, but the provisions in the laws require slightly different content and have different due dates. For example, the URCL requires that the Annual Report include a detailed performance report, reporting performance against key performance indicators and the performance of sectoral utilities; the PMFL does not require this.

Exhibit 5 – OfReg accountability reporting requirements from URCL and PMFL



Source: OAG analysis

Recommendation 3: The Government should review the conflicting and duplicated provisions in OfReg’s legal framework and propose amendments to correct these.

GOVERNANCE HAS IMPROVED OVER TIME BUT CAN BE FURTHER IMPROVED

43. The Independent Commission on Good Governance in Public Services states that “good governance leads to good management, good performance, good stewardship of public money, good public engagement, and ultimately, good outcomes.” It identified the following six principles of good governance, which we have used to assess OfReg’s governance framework:¹⁷

- focusing on results;
- performing effectively in clearly defined functions and roles;
- promoting values and ethics and ensuring that they are followed;
- making informed, transparent decisions and managing risk;
- developing capacity and capability of the governing body; and

¹⁷ *The Good Governance Standard for Public Services*, Independent Commission on Good Governance in Public Services, 2004

- engaging stakeholders.

THE BOARD HAS SO FAR FOCUSED ON REGULATORY DECISIONS RATHER THAN PERFORMANCE

44. During the first three years, the Board has focused on regulatory activities and solving continuing merger issues such as the prolonged vacancy of the CEO post, funding deficiencies, and lack of policies and procedures. In September 2017, the Board approved a procurement policy and procedures manual. However, the majority of OfReg’s policies and procedures were only recently approved, three years after OfReg was created.

45. A Strategic Plan for 2018–22 and Annual Plans for 2018 and 2019 were in place. However, the Board has not focused its attention on performance against these. In August 2019, the Board started to receive dashboard reports that showed the status of each planned action using RAG ratings.¹⁸ However, these reports do not show how the actions contribute to OfReg’s strategic objectives or overall performance. (We discuss performance management later in this report.)

THE MAKE-UP OF THE BOARD HAS THE POTENTIAL TO CAUSE CONFLICT AND CONFUSION

46. In our 2013 report, *Governance in the Cayman Islands Government - The Accountability of Statutory Authorities and Government Companies*, we said that good governance requires that all of the players within the governance framework be clear about the functions of governance and their own roles and responsibilities and those of others; we said they should operate in a manner that is consistent with those roles. In that same report, we outlined what boards and executive management are expected to do (Exhibit 6).¹⁹

¹⁸ RAG stands for Red, Amber and Green. The method of rating progress on each action point was simplistic, as it merely said whether the action is completed (green) or delayed (amber or red).

¹⁹ *The Accountability of Statutory Authorities and Government Companies (Governance in the Cayman Islands Government)*, Office of the Auditor General, December 2013

Exhibit 6 – Roles of board and executive management



Source: Office of the Auditor General

47. The URCL makes it clear that the Board of Directors is ultimately responsible for OfReg, specifically for carrying out the function and powers of the Office and the general administration of the affairs and business of the entity.²⁰
48. OfReg was established on 17 January 2017, but the Board of Directors was not in place at the start of the organisation. The Cabinet appointed the Chair in time for OfReg's first day, but did not appoint any other non-executive director until May 2017 (they attended their first Board meeting in June 2017). This means that for the first five months of OfReg's existence, the Board carried out its business with two voting members only, the Chair and the Chief Executive Officer (CEO). During this period, the Board made the following two significant decisions that in our view were not subject to sufficient governance:
 - In February 2017, the Board approved an additional allowance of \$2,500 a month and an extra five days annual leave to the then-CEO, on top of the remuneration agreed to by the

²⁰ *Utility Regulation and Competition Law*, paragraph 13(1).

Ministry. The minutes of the meeting record that the CEO recused himself from the discussion of this item, which is appropriate. However, this left only the Chair to make the decision. We also noted that all of the other Executive Directors were present for this agenda item, which is highly irregular.

- In April 2017, the Board agreed that OfReg should move to the Smith Road Centre and that a lease should be drawn up. The rationale for the need for larger premises is not documented in Board minutes. We discuss the implications of this decision later in this report, and we raised this as a significant concern arising from our 2018 financial statements audit.

49. As at January 2020, the Board is composed of a Chair, five non-executive directors, the CEO and three executive directors.²¹ The Chair was reappointed by Cabinet in January 2020. The terms of appointment of the five non-executive directors vary to ensure compliance with the PAL, which prohibits replacement of more than two-thirds of Board members at any time.
50. The URCL states that the CEO and executive directors are also full members of the Board, although they do not have voting rights. The executive directors are senior managers who are responsible for directing the activities of OfReg with respect to their areas of responsibility; they act as principal advisors to the Board.²² However, in our experience it is unusual for executive directors (or equivalent) to be full Board members. On most other SAGC boards, the CEO (or equivalent) is the only executive who is a regular, but non-voting, member of the board. Other senior managers are invited to attend board meetings as necessary. The current OfReg Board structure allows the full participation of the executive directors in all Board discussions and deliberations, even though they are not allowed to vote. This means that the traditional roles and responsibilities of non-executive board members and senior management are blurred.

Recommendation 4: The Government should amend the *Utility Regulation and Competition Law* to remove the executive directors as Board members.

OFREG NEEDS TO DEVELOP CORE VALUES

51. Boards are responsible for setting the ‘tone at the top’, including setting and demonstrating the values and ethical standards expected.
52. The *Public Authorities Law* requires public authorities to adopt the eight Public Service Values set out in the *Public Service Management Law* (PSML). These values include adherence to the highest

²¹ The three executive directors are the Executive Director of Information and Communications Technology, the Executive Director of Energy and Utilities, and the Chief Petroleum Inspector.

²² *Utility Regulation and Competition Law*, paragraph 29.

ethical, moral and professional standards at all times. In addition, the PSML establishes a Public Servant's Code of Conduct that stipulates among other requirements that a public servant behave honestly and conscientiously and fulfil his/her duties with professionalism, integrity and care.

53. The Independent Commission on Good Governance in Public Services also sets out good practice for governing boards on how they can promote and uphold values for the organisation and how individual board members can demonstrate values and ethics in practice (Exhibit 7).

Exhibit 7 – Good practice for promoting values for the organisation and demonstrating the values of good governance through behaviour



Source: The Good Governance Standard for Public Services, Independent Commission on Good Governance in Public Services, 2004

54. We found that OfReg does not have a clear set of core values. Although we understand that core values were developed and approved at a strategy workshop in December 2019 and will be applied from 2020. Despite not having core values we found that, in July 2017, OfReg adopted a Code of Ethics and Business Conduct for Board members, and employee contracts refer to the CIG's Public Servants' Code of Conduct as specified in the PSML.
55. Our audit found that OfReg's Board members on the whole show commitment through their regular meeting attendance and behaviour in meetings. However, we are also aware of one

instance where ethical behaviour was raised as an issue. In August 2017 the local media reported on a disagreement in a Board meeting relating to alleged unethical behaviour, as a Board member proposed being appointed CEO. Our review of Board minutes confirmed this disagreement. We also found that in June 2017 the Board had agreed to discourage any Board member from applying for executive posts in OfReg. In the absence of any formal values or Code of Conduct, there were no guidelines on handling such situations.

THERE IS A PROCESS IN PLACE TO SUPPORT INFORMED DECISION MAKING BUT TRANSPARENCY NEEDS TO IMPROVE

56. The Board relies upon the advice of the executive directors to help them make informed decisions. A clear process has been established, which requires the executive directors to make recommendations on regulatory matters, supported by analyses and information, to the voting members of the Board (i.e. the Chair and non-executive directors). OfReg's General Counsel also provides legal advice to the Board.
57. Board meetings are not required to be conducted in public, but the PAL requires that the minutes of meetings be produced upon request by the public. It is essential that minutes of meetings provide an accurate and clear record of decisions made. We found some instances of inaccuracies and gaps in board minutes. For example, as reported earlier, in August 2018, the Cabinet directed OfReg to adopt a range of CIG policies and procedures. The Board minutes for September 2018 make reference to a letter from Cabinet but not to the Cabinet direction to adopt CIG policies or an acknowledgement of the direction. To date, OfReg has released Board minutes under a Freedom of Information request. There is scope to improve the transparency of decision making by proactively publishing Board minutes.

Recommendation 5: OfReg should publish Board minutes on its website to improve the transparency of decision making.

NON-EXECUTIVE BOARD MEMBERS HAVE RELEVANT SKILLS AND EXPERIENCE

58. The current Chair and non-executive directors collectively possess some of the skills and experience required by URCL and PAL. Collectively, the Board has skills and experience in the areas of economics, engineering, ICT, law, accountancy and business. However, none of the current non-executive directors have sectoral experience in energy, fuel and water.
59. OfReg provides orientation training to its non-executive directors to help them better understand their governance role and the organisation's business. The three new non-executive directors who were appointed in May 2019 received an orientation package in June 2019. This included guidance on the governance arrangements, such as rules for Board meetings (called Board Directives and Policy for Secretary); Roberts Rules, which have been adopted for the running of Board meetings;

and the Introduction to Public Sector Good Governance published by the Civil Service College. Orientation also included a presentation from the Finance Department and OfReg's regulatory sectors.

THERE IS NO RISK MANAGEMENT FRAMEWORK IN PLACE TO IDENTIFY AND MANAGE RISKS

60. Risk management is an essential element of good governance. An effective risk management system provides assurance that chosen responses (to risk) are effective.²³ In July 2019 the Cayman Islands Government implemented its Risk Management Framework, which uses the Committee of Supporting Organizations of the Treadway Commission (COSO) definition of risk management: "A process by an entity's board of directors, management and other personnel, applied in strategy setting and across the enterprise, designed to identify potential events that may affect the entity, and manage risks to be within its risk appetite, to provide reasonable assurance regarding the achievement of the risk unit objectives."²⁴
61. OfReg does not have a risk management process or risk register. A significant risk for OfReg is a loss of credibility and reputation (whether with the public or the entities it regulates) if it is not effective or fair in carrying out its role. For example, in July 2019, OfReg lost a Grand Court case to Datalink, an ICT licensee, wherein OfReg was ruled not to have acted fairly in its regulatory decision-making process. Datalink alleged that OfReg had denied it the opportunity to comment on a draft decision (administrative determination); OfReg is required to issue these in draft form for comment prior to finalising them and giving them effect. Since then, OfReg has added this step in its regulatory process to issue the draft decision. OfReg has recognised that it needs to safeguard its reputation and is planning some actions to help mitigate this risk.

Recommendation 6: OfReg should design and implement a fit-for-purpose risk management framework, including the use of a risk register that allows it to identify, assess and manage its risks.

²³ *The Good Governance Standard for Public Services*, Independent Commission on Good Governance in Public Services, 2004

²⁴ *Risk Management Framework*, Ministry of Finance and Economic Development, Cayman Islands Government, July 2019

STAKEHOLDER ENGAGEMENT NEEDS TO BE BETTER

62. OfReg has engaged with stakeholders on a range of issues and has issued a number of public consultations. For example, it consulted on five-year strategic plan, including a regulatory agenda, prior to finalising and publishing the Strategic Plan 2018–22.
63. However, OfReg has a duty to also consult with stakeholders prior to issuing an administrative determination and to publish procedures on its consultation process. We found that it has not always done this effectively. For example, in ruling for Datalink in the case noted above, the court also found that OfReg had not followed a requirement of its Consultation Procedure Guidelines.
64. OfReg did not have a public engagement strategy in its first three years and so there was no clear plan for consumer engagement. Such a strategy needs to be sound and balanced, effectively provide public education on regulation and utilities markets, and encourage legitimate consumer complaints and responses to public consultations. OfReg has said it intends to improve its public engagement. In November 2019, it hired a Consumer Advocacy and Public Education (CAPE) Manager to improve its public relations and develop a public education programme. The CAPE Manager will manage all consumer engagement and put in place a process for consumer complaints appeals to OfReg against service providers. It is too early to comment on the effectiveness of the new process. OfReg has established a public relations committee as a sub-committee of the Board, although it has yet to meet and we understand that a Public Relations strategy is being developed.

THE RISK AND AUDIT SUB-COMMITTEE WAS NOT IN PLACE DURING OFREG'S FIRST THREE YEARS

65. The URCL requires that OfReg have a Risk and Audit sub-committee as part of its governance framework and that the Chair of the sub-committee not be a member of the Board or a staff member. Although it is good practice for public bodies to have audit and risk committees, it is unusual for the Chair to be completely independent of the Board. Normally, the chair of a board's audit committee is one of the non-executive board members, which ensures a good understanding of the business
66. The sub-committee has only recently come into existence. The Board approved the appointment of the Chair of the sub-committee in April 2019, although he did not start until October 2019, and its charter in January 2020. As required by the URCL, the Chair of the sub-committee is not a member of the Board; all other sub-committee members are. The sub-committee's charter is fit for purpose, having the functions of both oversight of auditors' work and risk management. The charter specifies that the sub-committee will meet twice a year and that the Chair is independent and a non-member of the Board. It establishes three non-executive directors as sub-committee members and outlines clearly their roles, responsibilities and tasks, and a clear reporting line to the Board of

Directors. However, OfReg does not have an internal audit function so it is not clear how the sub-committee will get the assurances that it needs on the internal control framework.

67. At the time of our audit, the sub-committee had not met, although we understand that it was due to have its first meeting in early March 2020. It is therefore unclear how the reporting arrangements between the sub-committee and the Board will work in practice to provide the Board with the assurances it needs, and it is too early to comment on how the sub-committee will contribute to the overall governance framework of OfReg.

Recommendation 7: The Government should amend the *Utility Regulation and Competition Law* to make the Chair of the Risk and Audit sub-committee a member of OfReg's Board of Directors.

Recommendation 8: The Chair of the Risk and Audit sub-committee should ensure that regular meetings are held and provide clarity on how the sub-committee will provide the Board with the assurances it needs.

STRATEGY AND PERFORMANCE

68. Strategic planning is an essential process in determining an organisation’s direction priorities as well as in identifying, managing and reducing risks. The *United Nations Strategic Planning Guide for Managers* says, “Strategic planning is about understanding the challenges, trends and issues; understanding who are the key stakeholders and what they need; and determining the most effective and efficient way possible to achieve the mandate. A good strategy drives focus, accountability, and results.”²⁵
69. This chapter of the report reviews OfReg’s approach to strategic and other corporate planning and examines performance planning, measurement and reporting.

OFREG’S STRATEGIC AND ANNUAL PLANS NEED TO IMPROVE

OFREG’S FIVE-YEAR STRATEGIC PLAN HAS GAPS AND DOES NOT CLEARLY ALIGN WITH ITS LEGAL MANDATE

70. It is good practice for an organisation to have a strategic plan to help it direct its activities and set clear goals, objectives and priorities. We would expect strategic plans to cover the medium to longer terms and address a range of issues, including vision, goals and objectives; relevant changes in the organisation’s environment and how it will respond to them; clear baselines describing its current state of affairs; success measures, including outcomes; and a clear link to financial plans to demonstrate affordability and to workforce plans to guide human resources decisions.
71. During 2017, OfReg prepared its first Strategic Plan for the five-year period 2018–22, but there are gaps in the Plan—for example, there is no clear link to OfReg’s approved budget to demonstrate that activities are affordable. We also found that most of the actions relate only to 2018, which means that the Plan does not provide a clear, high-level strategic direction for the full five-year period. Exhibit 8 compares the OfReg Strategic Plan to good practice.

²⁵ *United Nations – Strategic Planning Guide for Managers*

Exhibit 8 – OfReg’s 2018–22 Strategic Plan compared to good practice in strategic plans

Good practice for strategic plans		How OfReg’s 2018-22 Strategic Plan measure against good practice
Sets out organisation's vision, goals and objectives.	Yes	Includes OfReg's mission and vision; and states the strategic focus.
Identifies relevant changes in its environment and details how it will respond to them.	Partly	Mentions Government's strategic broad outcomes, but no details about how it would contribute to them.
Has clear baselines describing its current state of affairs.	No	Includes no baseline information. The accompanying consultation document provided some information on current state, but not actual baseline measures.
Identifies success measures, including outcomes.	No	Does not specify success measures. The strategic focus provides some idea of the intended outcome but not measures.
Links to financial plans to demonstrate affordability and to workforce plans to guide human resource decisions.	No	Provides no link to budget. Includes limited discussion on workforce but only for the first two years. There is no mention of the need to use consultants to deliver services.

Source: OAG analysis

72. The Plan sets a strategic focus, which is “to identify opportunities, develop and implement strategies designed to enable the people of the Cayman Islands to have access to and utilise new technologies to improve their lives through increased economic activity; while ensuring that traditional utility services are delivered efficiently and at least economic cost.” This is summarised into two pillars: innovation and delivery of utility services at least cost. However, the strategic focus does not adequately cover OfReg’s principal functions as set out in the URCL. For example, one of the pillars of the strategic focus is innovation, but this does not specifically tackle OfReg’s principal role of facilitating economic and national development. The strategic focus does not mention OfReg’s

principal functions in relation to consumer protection or promotion of appropriate, effective and fair competition.

73. OfReg is required to review its five-year strategic plan after three years. We understand that a review is currently underway and that a new strategic plan will be prepared during 2020.

OFREG'S ANNUAL PLANS HAVE CHANGED SIGNIFICANTLY BETWEEN YEARS, AND FURTHER IMPROVEMENTS CAN BE MADE

74. The URCL requires that by 30 November each year, OfReg prepare an annual plan for the year ahead. During its first year of operation (2017), OfReg did not have an annual plan to guide its operations.
75. OfReg published its Annual Plan 2018, together with the Strategic Plan 2018–22, in late 2017. The Annual Plan provided clear context, set out plans and targets for the year, and included key performance indicators (KPIs). It also outlined the priorities for 2019–2020, which provided good links to the Strategic Plan. The Annual Plan presented financial information including expected inflows from regulatory fees, the primary source of funding. It also identified how current caps and limits on what OfReg can charge could be changed in the future because of its expanding mandate; major drivers for the planned \$1.1 million increase in expenditures between 2017 and 2018—for example, an increase in-house technical support. However, there was no indication of the proposed extent of outsourcing or use of consultants to deliver operational activities.
76. The 2019 Annual Plan was not ready until April 2019, five months later than required. This plan contained information different from the 2018 Annual Plan. We found that the changes made to the format and content of the 2019 Annual Plan were mixed: some changes improved the information, while others worsened it. Improvements over the previous annual plan include the following:
- The plan introduced three strategic objectives: consumer protection and benefit, protection of the CNI, and promotion of growth and innovation. These are different from the strategic objectives set out in 2018 and the strategic focus set out in the Strategic Plan, but are better aligned with the principal functions set out in the URCL. The plan also more clearly identified actions for each of the strategic objectives.
 - The scope of the plan was extended to cover all activities, including sectoral plans and corporate activities (called Operations). The plan noted that a Chief Operating Officer (COO), seconded from core government, had been appointed in late 2018, and was responsible for administrative support, corporate communication, human resources, information technology, operations, legal and policy, and finance.

77. Both annual plans include budget information differed from the budgets set out in in the 2018–19 Ownership Agreement (OA) approved by the Legislative Assembly (LA) in December 2017; there were no explanations for the differences. For example, in 2018 the total budgeted regulatory fees were \$134,000 lower in the Annual Plan than in the Ownership Agreement. We compared the financial information in OfReg’s 2019 Annual Plan to the approved budgets for 2018 and 2019 and identified a number of significant differences, which were not explained. Exhibit 9 shows significant changes in income, expenses and surplus estimates.

Exhibit 9 – Changes in 2019 income, expenses and surplus estimates

Estimates in millions of \$KYD for the year 2019	Ownership Agreement 2019	Estimates used in 2019 Annual Plan	Change
Regulatory income	\$5.60m	\$4.57m	↓ \$1.03m
Output income	\$0.47m	\$1.84m*	↑ \$1.37m
Other income	\$0.00m	\$0.13m*	↑ \$0.13m
Total income	\$6.07m	\$6.54m	↑ \$0.47m
Total expenses	\$5.52m	\$5.06m	↓ \$0.46m
Surplus	\$0.55m	\$1.48m	↑ \$0.93m

*Note: * Not presented separately in the 2019 Annual Plan; details provided by the Financial Controller.*

Source: OAG analysis

78. As at May 2020, the Annual Plan for 2020 was prepared and was expected to be approved by the Board in June 2020.

Recommendation 9: OfReg should update its Strategic Plan to ensure that the strategic objectives align with its principal functions and to make clear how it intends to contribute to Government’s

broad strategic outcomes. It should ensure that the Strategic Plan clearly links with annual, workforce and financial plans.

IT IS DIFFICULT TO ASSESS OFREG'S PERFORMANCE BECAUSE OF POOR PERFORMANCE MEASURES AND A LACK OF MONITORING AND REPORTING

79. Organisations are better focused on achieving results and outcomes and better able to improve their performance when they have well designed performance measures and targets and can take corrective action as a result of effective monitoring and reporting. Good performance measures exhibit the characteristics of appropriateness, relevance, accuracy, timeliness, completeness and comprehensiveness.²⁶ In addition, performance reporting needs to be at an appropriate level, focused on reporting against the primary purposes of the agency, programme or activity.

OFREG'S KEY PERFORMANCE INDICATORS NEED TO IMPROVE

80. OfReg's five-year Strategic Plan did not specify any key performance indicators (KPIs) that would help measure success or demonstrate delivery of the strategic objectives.
81. The 2018 Annual Plan included fourteen KPIs that were organised into five broad categories, but these focused on a number of statutory and operational functions rather than on outcomes (Exhibit 10).

²⁶ *Collecting Government Revenues*, Office of the Auditor General, June 2018

Exhibit 10 - OfReg key performance indicators for 2018

KPI Category 2018	KPI Description	Target
Statutory Obligations	Compliance with statutory obligations in URC Law and Sectoral Laws	100%
	Compliance with other statutory obligations	100%
Finance Functions	Budget accuracy to the annual actual outcome	±15%*
	Submission of quarterly accounts to Board of Directors	100%
	Management of Payables	85%
	Clean, unqualified external audit	100%
Regulatory Agenda	Completion of the rolling regulatory agenda on schedule	100%
	Positive value for money and triennial performance audit	±15%*
Commitment to Our People	Investment in training and development as a percentage of staff payroll	10%
	Percentage of roles held by Caymanians or those with permanent residency vs. work permit holders	85%**
	Succession plans for key positions in place and updated biennially	100%
Commitment to Consumers	Effectiveness of communications programmes***	1
	At least one executive member interaction with the public per month	1
	Quarterly press updates on Office activities	1

*Note: *2018 was the first 12-month budget year. Accuracy is anticipated to increase with historical data. **Until sufficient historical data is available to make a more informed decision. ***KPI will be determined by mid-2018.*

Source: OfReg's 2018 Annual Plan

82. Our review of the KPIs identified a number of areas for improvement, including the following:

- Most of the KPIs measure inputs, activities and outputs rather than outcomes; this will not drive improvement. For example, the KPI 'Completing the rolling regulatory agenda on schedule' is focused on completion rate only, rather than on any assessment of quality.
- The rationale for some KPI targets is not clear. For example, it is not clear why the KPI 'Completing the rolling regulatory agenda on schedule' has a target of 85 per cent. The KPI 'Effectiveness of communications programme' has a target of "1" but it is not clear what this target relates to or how it will be assessed.

- Some of the KPIs are not measurable or may be difficult to measure. For example, it is not clear how the 85 per cent target for 'Completing the rolling regulatory agenda on schedule' will be measured or if any of the specific targets are weighted more than others in that measurement.
 - Some KPIs are vague. For example, the KPI 'At least one executive member interaction with the public per month' fails to specify the target audience or purpose of the interaction.
 - Some KPIs appear to be missing. For example, there is no KPI in relation to the collection of regulatory fees, despite OfReg's financial dependence on these fees.
83. Although it set KPIs for 2018, OfReg did not have a system for tracking progress against them. The 2018 Annual Report reported on achievement or progress against some planned actions for 2018 but did not report performance against the KPIs set out in the 2018 Annual Plan. We also found no evidence that the Board or management were focused on monitoring performance against the 2018 KPIs.
84. KPIs need to be consistent from one year to the next to measure and improvement performance. Our review of the 2019 Annual Plan found that the KPIs had changed significantly from the previous year, making it impossible to measure performance over time. We also noted that the 2019 KPIs are actually a set of actions rather than measures to demonstrate success or drive improvement. This makes it impossible to manage or report on OfReg's performance during 2019.
85. It is therefore difficult to assess OfReg's performance in its first three years of operation, as there were no KPIs for 2017 or 2019 and those that were set for 2018 were not monitored or reported.

Recommendation 10: OfReg should develop a set of Key Performance Indicators that clearly link to its strategic objectives, are comparable over time and will drive improvement. Progress against these should be monitored throughout the year and reported publicly in Annual Reports.

VALUE FOR MONEY

86. The Government and public bodies are responsible for delivering programmes and achieving outcomes as well as for the proper use of public resources. They need to ensure that they achieve good value for money by managing their resources well and being accountable for them. Value for money is defined as the optimal use of resources to achieve the intended outcome.²⁷
87. Our audit evaluated whether OfReg has achieved good value for money in its operations; we reviewed its policies, procedures, and practices for securing value for money. Our audit focused on areas of significant spending in the first three years, including how well OfReg procured consultants, how well it ensured that travel costs were reasonable, and how it leased new office premises. Our analysis used financial information from the 2017 and 2018 audited financial statements and draft financial statements for 2019 (and expenditure to 30 September 2019).

OFREG'S FINANCIAL PERFORMANCE IMPROVED OVER THE FIRST THREE YEARS

88. In its first three years of operation, OfReg's financial performance has improved, moving from a deficit of almost \$1.5 million in 2017 to surpluses in each of the subsequent years (Exhibit 11). Over the period it has increased its revenues and reduced total expenditure.

²⁷ *About us: Value for money studies*, UK National Audit Office, February 2020

Exhibit 11 – Summary of OfReg’s financial performance, 2017–2019

In KYD \$000	2017	2018	2019*
Revenues	3,011	4,937	4,502
Regulatory income	1,800	2,416	2,615
Output income	700	1,625	1,238
All others	511	896	649
Expenses	4,478	4,802	4,226
Personnel cost	2,235	2,861	2,937
Consultant expenses	1,052	550	217
Leases	95	275	210
All others	807	933	901
Surplus/(Deficit)	(1,467)	135	236

Note: *Figures taken from draft financial statements for year ended 31 December 2019 received on 29 February 2020

Source: OAG analysis

OFREG RECEIVED ADDITIONAL FUNDING FROM THE GOVERNMENT AS IT WAS NOT ABLE TO GENERATE SUFFICIENT REVENUES FROM REGULATORY FEES

89. The entities that OfReg regulates pay fees, which are charged back to the general public as part of the utility service cost. The Government envisioned that the cost of running OfReg would be fully financed from the regulatory fees that it collects from industry.²⁷ The regulatory fee structures and rates were carried over from the former entities (Information and Communications Technology Authority and the Electricity Regulatory Authority). However, as previously reported, the Government did not prepare a merger plan for the creation of OfReg and it was therefore unclear how each of the sectors would be funded.
90. Regulatory fees are a major source of income for OfReg, accounting for at least half of its total annual income. Exhibit 9 shows that income from regulatory fees increased from \$1.8 million in 2017 to \$2.75 million in 2019 (60 per cent of total income).
91. OfReg was not able to meet all of its costs from the fees it collected in its first year of operation, and it reported a deficit of \$1.47 million. Policy decisions were made that no regulatory fees would be charged to operators in the fuel sector, which meant that additional government funding was needed. The Government provided additional funding as ‘Outputs to Cabinet’ in each of the financial years 2018 and 2019. OfReg’s original 2018 appropriation for Outputs to Cabinet was

\$430,000, but a supplementary appropriation of \$1.15 million for the regulation of the fuel sector was approved toward the end of 2018, increasing the total amount to \$1.63 million.

OFREG'S ANNUAL SPENDING HAS AVERAGED \$4.42 MILLION OVER THE FIRST THREE YEARS, MORE THAN THE PREDECESSOR BODIES

92. As previously noted, the creation of OfReg was expected to generate savings of \$250,000 a year but the business case was not clear how this was to be achieved. In the absence of any monitoring of savings, we have compared the costs of the predecessor bodies to the current costs of OfReg to determine whether savings have been made and the objective achieved. It is difficult to compare costs on a like-for-like basis, as OfReg's remit is different from that of its predecessor bodies and the costs of regulating the water industry are not publicly available. However, from the financial information available for 2015–16, the last full financial year before the merger, we estimate that the combined expenditure of the three predecessor bodies (excluding water) was \$2.88 million.²⁸
93. OfReg's total expenses in its first three years of operation totalled \$13.27 million, an average of \$4.42 million annually. Total costs have varied over this period, with costs peaking in 2018 at \$4.8 million and reducing to \$4.2 million in 2019. This is significantly higher than the estimated costs of the predecessor bodies and so it is very unlikely that the savings anticipated from the merger have been realised.
94. OfReg's largest element of spending is on personnel costs, which increased from \$2.24 million in 2017 (50 per cent of total spend) to \$2.87 million in 2019 (72 per cent). This reflects the change in OfReg's staff numbers, which increased from 17 in January 2017 to 22 at the end of 2018. OfReg's staff numbers are similar to those in predecessor bodies.²⁹

OFREG HAS NOT OBTAINED VALUE FOR MONEY FROM ITS USE OF CONSULTANTS

OFREG SPENT \$0.8MILLION OVER THREE YEARS ON FIVE CONSULTANTS

95. OfReg spent a total of \$1.72 million on 36 consultants (individuals and firms) between 2017 and 2019. The majority of this was in 2017, around \$1.05 million, which was equivalent to 23% of the total expenses in that year. The significant use of consultants in 2017 may be partly related to the fact that the organisation had just been set up and was not fully staffed at the time. Since then, OfReg has significantly reduced its spending on consultants to an estimated \$217,000 in 2019.

²⁸ The methodology used to calculate and compare costs is outlined at paragraph 5 of Appendix 1 – About the Audit (Page 56).

²⁹ OfReg's predecessor organizations employed 18 staff (ICTA -11 FTE; ERA 3.6 FTE; and Petroleum Inspectorate – 3 FTE)

96. OfReg spent \$850,000 on five consultants over the three years (Exhibit 12). The highest-paid consultant was Rockwater International Communications Advisors, who received a total of \$288,000 (\$201,000 in 2017 and \$87,000 in 2018).

Exhibit 12 – Top five OfReg consultancies, 2017–2019

Consultant Name	OfReg Sector	Nature and Period of Engagement	2017–2019 OfReg Spend (in \$'000)
Rockwater International Communications Advisors Inc.	ICT	Expert regulatory and policy advice; for two years from 28 April 2016	\$288
Ernst & Young Cayman	ICT	Review of a licensee's quarterly reporting	\$153
Financial Integrated Services Ltd.	Corporate	Accounting services	\$144
Bulatovic & Associates Limited*	ICT and Fuels	Various consultancy assignments	\$136
Glen I. Daykin	ICT and Energy	Consumer protection and consumer complaints	\$129

Note: *Includes payments to this vendor and an individual named Valdimir Bulatovic

Source: OAG analysis

97. Our audits of OfReg's 2017 and 2018 financial statements identified a number of weaknesses in its use of consultants, including the absence of tendering processes. In our reports to those charged with governance, we made recommendations for improvement.

OFREG'S PROCUREMENT MANUAL REFLECTS SOME GOOD PRACTICES BUT NEEDS TO BE UPDATED TO ALIGN FULLY WITH PROCUREMENT REGULATIONS

98. OfReg adopted a procurement policy and procedures manual (procurement manual) in November 2017. Our review of the manual found that it is more stringent than *the Procurement Law* in some aspects, including threshold for procurement, and reflects some good practices that, if followed, should promote value for money in the organisation. These include the following:
- Justification is needed before procurement is initiated for goods and services exceeding \$50,000.

- Dollar thresholds requiring open tendering are clear, and guidelines on how to procure via request for quote are clearly laid out.
- Guidelines on conduct expected of staff involved in procurement focus on ensuring that they act professionally.
- Conflicts of interest and how they are to be managed are clearly defined. A high degree of professionalism is explicitly required of persons involved in procurement.
- Guidelines are included on important terms and conditions that employees should consider when procuring goods and services.

99. Good practice also includes the need to manage procurement risks. However, the procurement manual does not provide guidelines for identifying and addressing risks, except for ensuring that terms and conditions are beneficial to OfReg.

100. In May 2018, the Government brought into force the *Procurement Law* and related Procurement Regulations. Together, these established clear processes and controls for the entire procurement process; set out the responsibilities of key officers involved in procurement; and opened up the possibility of other modes of procurement.

101. OfReg's procurement manual was prepared prior to the *Procurement Law* and Regulations coming into force; the manual has not been amended since then. We found that the procurement manual complies with the *Procurement Law*. The manual sets monetary thresholds to determine the appropriate procurement modes that are stricter than those set out in the *Procurement Law*.³⁰ The manual also specifies the need for an Entity Procurement Committee and sets out its responsibilities, including the need for procurement records to be retained, local benefits and economic development preferences, and confidentiality. OfReg's Entity Procurement Committee (EPC) met between August 2018 and March 2019 but it has not met since. In its meetings, EPC reviewed existing contracts, business cases, and requests for quotes and requests for proposals. However, the manual needs to be updated to ensure that it complies fully with some of the detail in the Procurement Regulations, including:

- Guidelines on how to consider and implement other modes of procurement, such as framework agreements.

³⁰ The thresholds in OfReg's procurement manual that allow for direct awards and open tendering are lower than the requirements of the Procurement Regulations. The threshold for open tendering that requires the approval of the Public Procurement Committee is the same (\$250,000).

- Guidance on how to make direct awards of contracts.
- Guidance on developing business cases, such as justification for a procurement project; consideration of alternative solutions; consideration of assumptions, constraints, benefits, costs and risks; and industry consultation reports where required under the Law and Regulations.
- A duty to publish information, including information on direct awards and contract awards after the competition.

Recommendation 11: OfReg should update its procurement policies and procedures manual to ensure that it fully complies with the *Procurement Law* and Regulations.

OFREG DID NOT ACHIEVE VALUE FOR MONEY FROM ITS USE OF CONSULTANTS

102. In September 2017, the non-executive directors on the Board started a review of OfReg’s contracts with consultants (some of these were new engagements and some carried over from the predecessor entities). The Board concluded in April 2018 that the contracts did not achieve good value for money. It made a number of recommendations to OfReg’s management, including the following:

- All procurement should comply with the procurement manual. For example, one contract needed to be tendered because its value exceeded the threshold.
- Actions should be taken on particular contracts, including Board review of the judicial review legal fees; and senior management should provide clear funding policies for open-ended contracts, including action to be taken when budget is exceeded.
- A contract should be written and signed for one of the contracts because there was no formal, written agreement.
- Accounting services should be brought in-house when a Chief Financial Officer is appointed.
- The incoming General Counsel should check compliance with all contracts. The procurement manual identifies areas that need to be considered when drafting contracts (such as remedies in the event of non-performance, as well as legal prerequisites of insurance and licences of vendors), but there are no specifics to help decide at what level those provisions should be guaranteed.

103. As part of our audit we examined a sample of 18 contracts that had cost \$1.7 million up to September 2019. Overall, we found issues similar to those identified by the Board in 2017. This means that there has been limited improvement in OfReg’s procurement of consultants, despite the introduction of the new procurement manual in November 2017, the Board’s review and

recommendations in April 2018, and previous recommendations made by our Office arising from the financial audits of OfReg. Exhibit 13 compares the findings from this audit to the Board’s findings in 2017.

Exhibit 13 – Findings by the OfReg Board and by the OAG in the examination of OfReg contracts

Findings of the OfReg Board	OAG Findings
No evidence of a fair and competitive process and therefore procurement did not involve fair and transparent competition.	None of the contracts were opened to public tender and all were directly awarded. All but one of these direct contract awards were unsupported by a documented justification.
Insufficient supporting documents in many contracts reviewed.	No business cases were prepared, and because there were no open competition for OfReg’s contracts, no reports on bidding on contracts.
Non-compliance by OfReg with international best practice and/or local legislation for the vast majority of the contracts.	There was significant non-compliance with OfReg’s procurement manual and legislation in-force, particularly with requirements for open tendering, or justification for a single-source procurement.
Insufficient regard for risk management and protection of the organisation in the practices followed for the contracts.	There is no framework for risk identification and management and none included in the manual.
Insufficient evidence that OfReg achieved value for money in the contracts.	Good value for money was not achieved. None of the contracts requiring open competition were tendered; contracts were generally not clear about what needed to be delivered; and the delivery of services was not monitored sufficiently to ensure quality.
Unclear definition of the scope of services, which were not contractually to payment arrangements.	Nine of the 18 contracts examined did not include details on what would be considered acceptable quality of services.
Absence of records to demonstrate that contracts were monitored or managed for performance of contractors.	A total of 16 of the 18 contracts examined did not have any records of progress reports or meetings, and no contract evaluations.

Source: OAG analysis, using the report of the Board’s non-executive directors on procurement

104. We also assessed the same 18 consultant contracts against good practice.³¹ These good practices include, for example, open competition (for contracts above specified thresholds) as part of the procurement process; valid contracts in place for the entire period of service delivery by consultants; and open competition or justification to ensure that continuing contractual

³¹ NAO web-based assessment for the use of consultants, UK National Audit Office. This is the same good practice that we used in our performance audit *Government’s Use of Consultants and Temporary Staff* in February 2018

relationships are in the best interests of the organisation and will continue to achieve good value for money. Our assessment of the 18 consultant contracts found a number of weaknesses, including the following:

- Seven contracts had not been subject to any form of tendering; OfReg spent a total of \$1.03 million between 2017 and 2019 on these seven.³² One of the contracts, with Rockwater International Communications Advisors Inc. (valued at \$320,000), should have been approved by the Central Tenders Committee.³³
- OfReg had continued to receive services from consultants after the expiry of contracts.
- A total of 16 of 18 contracts had been renewed without justification.
- There was no monitoring of consultants' performance or management reporting to inform decision makers about the status of contracts.

105. Our review of these 18 consultant contracts identified a number of weaknesses that meant OfReg did not achieve value for money from the \$1.7 million spent on consultants in the first three years of its existence. Appendix 2 provides a summary of our assessment of the 18 contracts against the good practice.

Recommendation 12: OfReg should ensure that it complies with procurement legislation and good practice to improve the value for money it achieves from its use of consultants.

OFREG SPENT SIGNIFICANT AMOUNTS ON OFFICIAL TRAVEL WITH NO POLICY TO GOVERN SPENDING

106. The nature of OfReg's business means that there is likely to be some official travel needed to keep up to date with developments and innovation in the utilities sectors and regulation. However, it is important that spending on official travel be a good use of public resources and be done with value for money in mind—for example, weighing the expected future benefits against the cost.

107. We found that OfReg did not monitor or report its official travel costs; for purposes of our audit, we used the general ledger and other information to prepare analyses of travel costs. However, we found deficiencies in OfReg's collection and retention of this information, which may limit the reliability of the data. For example, to arrive at the total cost attributed to a particular official travel

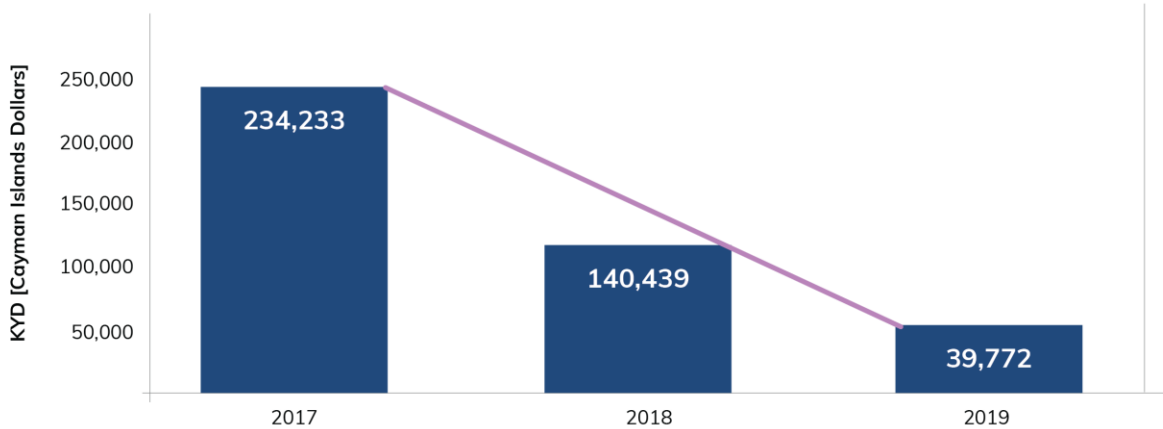
³² The seven contracts here include all consultants in the list of top 5 consultants in Exhibit 11.

³³ Prior to the Procurement Law's introduction, the functions of the Public Procurement Committee in Government were being performed by the Central Tenders Committee.

activity, detailed expenses need to be sorted systematically; OfReg currently has no process to produce this information.

108. Our analysis shows that OfReg spent a total of \$414,000 on official travel between January 2017 and December 2019. Exhibit 14 shows that its annual travel costs decreased significantly over that period, from \$234,000 in 2017 to \$40,000 in 2019.

Exhibit 14 – OfReg's travel expenditure (2017 to 2019)



Source: OAG analysis of travel costs reported in OfReg annual financial statements 2017 and 2018 and draft financial statements for 2019

109. For most of the three-year period there was no policy in place to govern the scrutiny and spending of official travel. OfReg's predecessor organisations had incurred travel costs, so it is not clear why it took almost three years to put official policies and procedures in place to provide internal controls for official travel expenses. Our financial audits previously raised as significant control weaknesses the lack of a travel policy and business cases to justify official travel, and we made recommendations that these should be developed and implemented.

110. Our review of travel costs identified three trips in 2017 that accounted for at least \$79,242 (over one third) of the total spent that year on travel. We found that the documentation supporting the travel costs was insufficient, as it did not clearly specify what the travel was for or who was travelling. Our analysis of the records available for these three trips found the following:

- \$32,476 for three persons to attend the Submarine Networks Conference in Singapore in September 2017 (business class air travel and per diem cost only).

- \$24,443 for three persons to attend the ICANN 58 conference in Copenhagen, Denmark in March 2017.³⁴
- \$22,323 for three persons to attend the Professional Certificate in Technology and Development organised by the International Centre for Parliamentary Studies in London, U.K. in March 2017.

111. We found that officers and Board members did not provide sufficient justification for travel or related costs. We also found that some flights were approved for business class air travel, without any justification for the additional expense. For example, three persons flew business class to Singapore, with each ticket costing \$9,565. In October 2017, one person flew business class to Abu Dhabi in the United Arab Emirates; the ticket cost \$6,539. Due to deficiencies in how the information was compiled, we have not been able to determine the total cost of business class flights in the three years.

112. Our review of travel expenses found that the most expensive travel cost per person was \$11,448 for a trip to Dubai in September 2017; the cost included airfare, hotel and some meals. The supporting documents for this trip were not clear about the purpose of the event and there was no official travel application request form, although payment was supported by a hotel bill and other receipts. In the absence of an OfReg travel policy at the time, we compared these costs to the Cayman Islands Government's (CIG) travel policy. The CIG policy specifies a nightly room rate of \$140 for Dubai, but OfReg paid accommodation costs of \$339 a night, including upgrade charges of \$94 nightly. The room rate paid was therefore more than double the CIG rate and no reason for the upgrade was documented or justified. The dining expenses reimbursed also exceeded the CIG's per diem rates for Dubai, with one lunch costing \$305 compared to the per diem rate of \$40.

A TRAVEL POLICY HAS NOW BEEN INTRODUCED, BUT IT IS TOO EARLY TO COMMENT ON ITS IMPACT

113. OfReg adopted an official travel policy in October 2019, which is in line with the CIG Official Travel Policy. At the same time, OfReg introduced the requirement for business cases for all travel, which must include the benefits of the travel, justification for the travel proposed, and steps taken to minimise costs. The travel policy also requires the following:

³⁴ International Corporation for Assigned Names and Numbers is a not-for-profit public-benefit corporation with participants from all over the world dedicated to keeping the Internet secure, stable and interoperable. It promotes competition and develops policy on the Internet's unique identifiers. Through its coordination role of the Internet's naming system, it does have an important impact on the expansion and evolution of the Internet (from ICANN website, www.icann.org).

- All official travel requests must be submitted at least 30 days prior to proposed travel. Travel cannot take place before approval is granted. If travel deviates from the policy, justifications need to be provided.
- Class of travel must be specified in the application form. All airfare should be prepaid, and there are clear rules about what class of travel is allowable, including what considerations can be made for any exceptions.³⁵

114. The introduction of the travel policy and the requirement for business cases is in line with recommendations that we have previously made in our financial audits. These should help improve value-for-money-audits. However, it is too early to comment on the impact of the new travel policy.

Recommendation 13: OfReg should establish sufficient oversight and scrutiny of business cases for travel to ensure that they are in line with the new Official Travel Policy and that all supporting documentation is collected and retained to allow analysis of travel costs.

OFREG WASTED OVER \$355,000 ON A LEASED PROPERTY THAT IT NEVER OCCUPIED

115. Over the 36 months covered by our audit, OfReg spent a total of \$580,000 on leases, equivalent to about \$16,100 a month. Expenditure on leases increased significantly between 2017 and 2018.

116. In August 2017, OfReg signed a ten-year lease for the Smith Road Centre. The decision to lease the new premises was not supported by a business case, which should have included an assessment of options for accommodations and a demonstration of financial viability. As reported earlier, the decision to sign the lease was made at a time when there were only two members on the Board.

117. The office space at the Smith Road Centre was never occupied. However, OfReg continued to pay the monthly rental until August 2018, a total of \$154,674. The lease agreement did not have a termination clause, that is, a provision that sets out how the parties agree to handle a decision by either to unilaterally terminate the lease. This meant that OfReg was committed to the entire 10-year term of the lease. As a result, it had to pay a pre-termination penalty of \$200,000 over two years for breaking the lease. In total, OfReg wasted \$355,000 in public funds on an office space that it never occupied.

³⁵ All employees are required to fly economy class on flights of less than eight hours. Employees of grade G or above may be upgraded to premium economy on flights exceeding eight hours. Business class flights may be allowable for flights longer than eight consecutive hours but these require a business case to be approved by the CEO. Business class flights may be justified if the travelling employee is required to commence business less than 12 hours after landing.

Recommendation 14: OfReg should ensure that business cases, including appraisal of options, are prepared for future lease proposals and that they are scrutinised and approved before a lease agreement is signed.

REGULATORY IMPACT ASSESSMENTS

118. The regulation of utilities providers is intended to achieve a range of outcomes for the public, particularly the protection of consumer interests through fair pricing and the ability to respond if the services provided are poor in quality. Regulatory impact assessments (RIA) provide important information for decision makers on whether and how to regulate to achieve public policy goals. RIAs are intended to assist with the development of the correct policy responses while maximising societal well-being, through critically examining the impacts and consequences of a range of alternative options. RIAs help provide a strong evidence base for regulation and are one of the most important regulatory tools available to governments.³⁶

119. This chapter of the report examines OfReg’s regulatory activities, including reviews of its regulatory decisions against the expected impact and its performance in relation to consumer protection.

OFREG DOES NOT CONDUCT FORMAL REGULATORY IMPACT ASSESSMENTS BUT HAS SOME ELEMENTS IN PLACE

REGULATORY IMPACT ASSESSMENTS ARE REQUIRED BY LAW BUT OFREG DID NOT CONDUCT ANY IN ITS FIRST THREE YEARS

120. All consumers in the Cayman Islands receive utilities services almost exclusively from private companies that are regulated by OfReg. The OfReg Board makes regulatory decisions, which are usually in the form of an administrative determination.

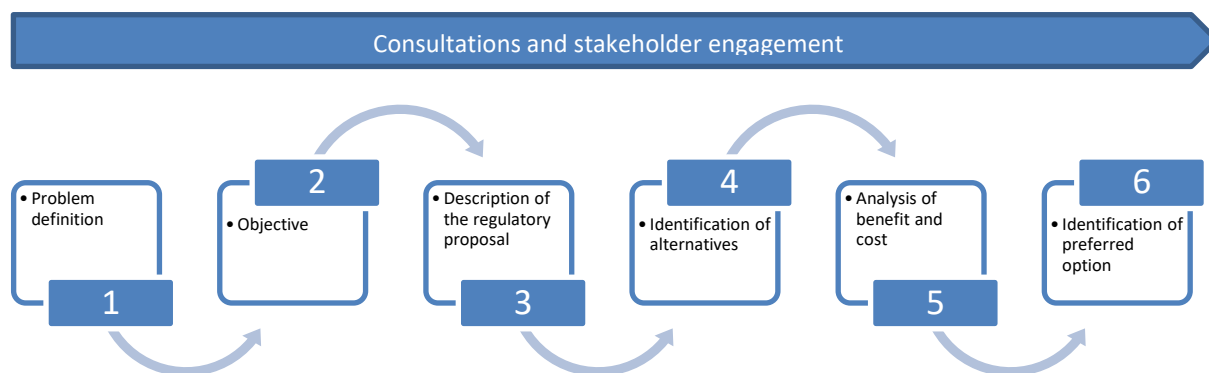
121. The URCL refers to RIAs as the basis upon which its regulatory decisions will be evaluated in the future. However, it does not define what RIAs are, what aspects of regulatory decisions they should cover, or what standards should be applied in their preparation.

122. In the absence of any guidance in the URCL, we reviewed international good practice for conducting RIAs. International good practice has evolved over the past years. The most recent good practice guidance is the *OECD Best Practice Principles for Regulatory Policy: Regulatory Impact Assessments*, which was issued as a public consultation draft in 2019. Although that guidance is currently in draft form, it aligns with other guidance and further improves the process by requiring

³⁶ *OECD Best Practice Principles for Regulatory Policy: Regulatory Impact Assessment (RIA) (Draft for consultation)*, OECD, 2019. OECD uses the terms regulatory impact assessment and regulatory impact analysis interchangeably, using the acronym RIA for both.

an analysis of benefits and costs. The OECD's good practice sets out six steps in the RIA process as well as consultation and stakeholder engagement (Exhibit 15).

Exhibit 15 – OECD's steps in the regulatory impact assessment process



Source: OECD Best Practice Principles for Regulatory Policy 2019 (Draft for public consultation)

123. The first three steps lay the foundations for the assessment and the latter three steps focus on identifying and appraising options. The steps require the following:

- Step 1 requires a clear description of the problem faced by one or more stakeholders. OECD recommends that this step lay out the nature and extent of the problem, preferably in quantitative terms.
- Step 2 requires that the policy objective and goal for action be defined. OECD suggests that policy objectives may include the correction of a market failure, or a need to protect citizen's rights that justifies the use of regulation.³⁷
- Step 3 requires a description of the regulatory proposal, which is clearly in line with the objective and sets out a pathway to solve the defined problem. OECD recommends a description of the existing regulatory framework, the proposed draft, identified administrative bodies and institutions to be involved, an outline of how to enforce the proposal and a strategy for ensuring compliance.
- Step 4 requires the consideration of multiple alternatives that should be practical, including non-regulatory approaches as well as a 'do-nothing' option (or the absence of regulation), which OECD refers to it as 'baseline'. The OECD good practice guidance identifies six

³⁷ Recommendation of the Council on Regulatory Policy and Governance, OECD, 2012

alternatives to so-called “command-and-control” regulation: performance-based regulation, process-based regulation, co-regulation, economic regulation, economic instruments, information and education, and other voluntary approaches.^{38,39}

- Step 5 requires the evaluation to include the expected costs and benefits outlined for each regulatory proposal. OECD states that the choice of the most appropriate methodology to assess the impacts and compare alternative regulatory options is a challenge in the RIA process; it provides the following options: least cost analysis, cost effectiveness analysis, cost-benefit analysis and multi-criteria analysis. In another publication, OECD provides examples of cost and benefits for differently affected groups such as businesses, consumers and government, and gives detailed examples to help RIA preparers start analysing potential costs and benefits.⁴⁰
- Step 6 requires the identification of the preferred option. The preferred option should be sensible in terms of the net benefit to stakeholders as a whole.

124. OfReg did not complete any RIA between 2017 and 2019 and does not have a framework or procedures to guide it through the RIA process. However, its approach to making regulatory decisions has some of the elements we would expect to see in carrying out a RIA—for example, the executive directors prepare support for regulatory actions that are proposed to the Board. Further, OfReg does require an options analysis to be done (steps 4-6 in the OECD process).

OFREG HAS DOCUMENTATION THAT SUPPORTS REGULATORY DECISIONS AND CARRIES OUT ELEMENTS OF THE RIA PROCESS

125. OfReg issues administrative determinations in line with URCL, and this is primarily how it exercises its regulatory powers. We examined a sample of eight regulatory decisions made by OfReg from early 2017 to September 2019, and found that it performed some of the elements in the RIA process. Exhibit 16 summarises our assessment of the eight OfReg decisions against good practice (more detailed findings can be found at Appendix 3).

³⁸ A regulatory action that is described as high level of imposition from the regulator, in contrast to other alternatives that rely on other forces, such as economics.

³⁹ *OECD Best Practice Principles for Regulatory Policy: Regulatory Impact Assessments*, OECD, 2019

⁴⁰ *Introductory Handbook for Undertaking Regulatory Impact Analysis*, OECD, October 2008

Exhibit 16 – Summary of assessment of eight regulatory decisions against OECD good practice

Good practice OCED checklist regulatory decisions	Met	Partially Met	Not Met
1. Is the problem correctly defined?	3	5	–
2. Is government action justified?	–	8	–
3. Is regulation the best form of government action?	4	4	–
4. Is there a legal basis for regulation?	7	1	–
5. What is the appropriate level (or levels) of government for this action?	8	–	–
6. Do the benefits of regulation justify the costs?	–	–	8
7. Is the distribution of effects across society transparent?	7	1	–
8. Is the regulation clear, consistent, comprehensible and accessible to users?	–	6	2
9. Have all interested parties had the opportunity to present their views?	6	1	1
10. How will compliance be achieved?	8	–	–

Note: Definition of good practice evaluation findings: Met - Met requirements of the OECD guidelines; Partially Met - No formal process/documentation seen, or only partial compliance with OECD guidelines; Not Met – Has not met requirements of the OECD guidelines

Source: OAG analysis

126. The OECD’s RIA process requires that the regulator start by clearly defining the problem. We found that OfReg had defined the problem for all eight decisions in the sample we examined: for three decisions this step had been completed fully; the other five were done partially. OfReg’s procedures do not require this to be done, but its guidelines on how to prepare documentation for Board decisions stipulate that the problem is to be defined.

127. We found that for seven of the eight decisions we reviewed, a clear description of the regulatory issue had been set out (step 3 in the OECD’s RIA process). OfReg bases its regulatory decisions on relevant legal requirements. The decisions we reviewed were sufficiently clear as to what the Board was being asked to approve. For example, the decision to impose fines on Sol Petroleum because of the industrial accident in 2017 was based on OfReg’s power to impose administrative penalties, and it specified the exact action to be taken and the basis for the amount of the fine.
128. We found that the documentation to support regulatory decisions was sufficient and provided a sound basis for the decisions made. Had the RIA process been followed, however, the quality of decision making could have been further enhanced through the consideration and appraisal of options.
129. The OECD’s RIA process requires consultation and stakeholder engagement. OfReg is required by law to consult on matters of public significance, and it has adopted Consultation Procedure Guidelines. We found that OfReg regularly consults with stakeholders, including the public. It also consulted widely on one of the administrative determinations we examined, its issuance of Anti-Competitive Practices Penalties Rules. However, we also found that in some cases consultation and engagement were weak. For example, in the Datalink court case that it lost, OfReg had failed to sufficiently consult with the affected entity it regulates. Subsequently, OfReg changed its methodology to add a requirement to share a draft administrative determination with a licensee, reflecting what the Court said it expected OfReg to comply with.

THERE IS SCOPE FOR OFREG TO IMPROVE ITS APPROACH TO REGULATORY DECISION MAKING

130. Our review of eight regulatory decisions also found that OfReg did not comply with the following four steps in the OECD RIA process: definition of the regulatory objective (step 2), identification of alternatives (step 4), analysis of benefit and cost (step 5) and identification of preferred option (step 6). OfReg’s current approach arrives at a proposed action without an options appraisal. There is therefore scope to improve its approach to ensure that it provides the best possible regulatory action.
131. The OECD’s RIA process also requires a cost-benefit analysis to be carried out (Step 5). This plays an important role in the decision-making process by comparing the net benefit and cost of each option. The General Regulatory Principles require OfReg to implement regulation that is at least cost to all stakeholders. However, OfReg does not carry out cost-benefit analyses of regulatory decisions. Of the eight decisions examined, three dealt with extending the scope of regulation for a range of issues, including what are currently considered to be illegal Wi-Fi services in tourist accommodations and unauthorised water installations in tourism properties. Carrying out a cost-

benefit analysis within a multi-option evaluation would have clearly shown the net financial benefit or cost for each course of action.

Recommendation 15: OfReg should revised its regulatory decision-making framework to align with good practice for regulatory impact assessments.

MORE COULD BE DONE TO PROTECT CONSUMERS

132. The URCL states that OfReg’s functions include “to protect the short- and long-term interests of consumers in relation to utility services”.⁴¹ However, the majority of its regulatory decisions do not directly improve consumer protection. The URCL also envisioned that OfReg’s legal framework would include industry codes, consumer codes of practice and consumer protection regulations, which are geared toward ensuring high-quality utility service. OfReg carried over the Standard of Performance Rules 2012 from its predecessor, Electricity Regulatory Authority, but there are no other documents to enhance the protection of consumers.

133. OfReg’s 2018 Annual Plan included actions to complete consumer protection regulations by 2019, but this has not happened. It is also worth noting that there is no consumer protection legislation in the Cayman Islands.

134. OfReg’s strategic and annual plans specify actions for consumer protection, but the performance measures are insufficient to measure this. For example, the key performance indicators (KPIs) in the 2019 Annual Plan relate to activities and do not measure OfReg’s impact on protecting consumers. OfReg has not surveyed the public about their perceptions of its effectiveness in the first three years of its existence.

Recommendation 16: OfReg should prioritise work to complete consumer protection regulations as soon as possible.

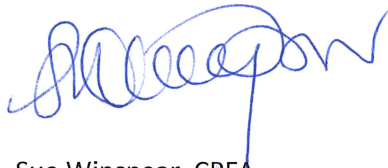
⁴¹ *Utility Regulation and Competition Law*, paragraph 6(c)

CONCLUSION

135. OfReg was created in January 2017 through a merger of the regulatory functions of four existing bodies. OfReg has had a difficult first few years with inconsistent leadership, limited governance and oversight, lack of strategic planning and direction and a lack of understanding of the funding it needed to perform its duties effectively. A number of these challenges can be attributed to the merger being poorly planned. Since OfReg was established, the *Public Authorities Law* has also come into force, which has a number of provisions that contradict OfReg's primary legislation the *Utility Regulation and Competition Law*.
136. As a statutory authority OfReg has a board of directors to oversee its operations. The board has not always carried functioned as we would expect although governance and oversight has improved over the three years reviewed. For the first five months of operation, the board consisted of the Chair and Chief Executive Officer only with other non-executive directors appointed in May 2017. The *Utility Regulation and Competition Law* states that the Executive Directors are full members of the board. This is very unusual and creates conflict as the Executive Directors are part of the decision-making body that is supposed to hold management accountable for their performance. I have recommended to Government that the legislation is changed to remove the Executive Directors from the Board, bringing it in line with the *Public Authorities Law*.
137. The overall aim of the audit was to assess the efficiency and effectiveness of OfReg. This has proven impossible to do due to a lack of performance measures. There were no performance measures in place for the first year of operation as OfReg, some performance measures were set for 2018 but these focused on operational activities rather than service delivery or the impact of regulatory decisions, and an entirely different set of performance measures were set for 2019. Performance management is an essential part of running a business but to do this effectively performance measures need to be focused on the right things, be consistent and capable of measuring performance over time, and be used to drive improvement.
138. During its first two years, OfReg spent significant amounts of money on consultants (\$1.5 million) and official travel (\$375,000). Through this audit and our financial audits we identified a number of weaknesses in relation to spend resulting in poor value for money in these areas. I am pleased to note that spending on consultants and travel has reduced significantly in 2019 and policies and procedures are now in place to control spending and demonstrate value for money. OfReg also wasted \$355,000 leasing a property that it never moved in to.
139. OfReg's role is multifaceted, in regulating the energy, ICT, fuels and water sectors it is expected to promote effective and fair competition, promote innovation and facilitate economic development

and protect consumers. OfReg has made a number of regulatory decisions and has a process in place to consider these. However, a number of areas need to be further developed, including the need for formal Regulatory Impact Assessments and developing a full set of consumer protection regulations.

140. OfReg is still a young organisation and I am pleased to note that it has addressed some and is in the process of addressing many of the issues it faced in the early days and identified during our various audits. Since September 2019, a new Chief Executive Officer has been appointed, a strategy workshop has taken place where amongst other things a set of core values for the organisation was developed, policies and procedures have been or are currently being developed on a range of issues including official travel, and an audit and risk sub-committee has been established.



Sue Winspear, CPEA
Auditor General
George Town, Grand Cayman
Cayman Islands

12 June 2020

APPENDIX 1 – ABOUT THE AUDIT

OBJECTIVE

141. The objective of this audit was to assess the effectiveness of The Utility Regulation and Competition Office (known as OfReg) in its first three years of operation. We aimed to answer the following questions:

- How effective are the legislative framework and governance at supporting OfReg in achieving its strategic objectives?
- How did the Office perform against its annual plans from 2017 to 2019?
- How well does the Office ensure it is getting value for money and prevent fraud, waste, and abuse?
- Have OfReg’s regulatory decisions achieve their expected impact?

CRITERIA

142. Audit criteria set out the expectations, or standards, against which an audit can assess observed performance in order to develop findings, make recommendations as appropriate, and conclude on audit objectives. The criteria below were shared with OfReg at the conclusion of the planning phase of the audit.

- The legal framework and strategic objectives are aligned.
- The Board of Directors is focused on OfReg’s purpose and on outcomes for citizens and service users.⁴²
- The Board of Directors makes informed, transparent decisions, and when making such decisions individual Board members are free of any conflicts of interest.
- The performance management framework is fit for purpose and effective.
- OfReg delivers on its three main objectives.
- OfReg operates consistently with due regard to value for money.
- OfReg conducts its regulatory activities in accordance with high-quality standards.

AUDIT SCOPE AND APPROACH

⁴² *Governance in Auditor Bodies, Summary of Key Findings*, Office of the Auditor General, page 7, paragraph 10

143. The audit focused on the operations of OfReg during its first three years, January 2017 to September 2019. Financial information has been updated to reflect the entire 2019 financial year and figures are based on the draft 2019 financial statements.

144. The audit was conducted in accordance with International Standards on Assurance Engagements.

The approach to the audit included:

- obtaining the agreement of relevant government officials to the audit criteria;
- researching processes to gain a full understanding of activities;
- interviewing key stakeholders, including OfReg staff, members of the Board, and members of Government;
- reviewing documents, such as legislation, annual and strategic plans, policies and procedures, management documents, funding, monitoring and reporting arrangements;
- examining international good practices and assessing OfReg's practices against them;
- analysing a range of data, including expenditure on travel, and contracts such as consultants, employment agreements, and leases;
- estimating the costs of predecessor bodies and comparing to OfReg costs. It is difficult to compare on a like-for-like basis as the costs of regulating the water industry were not published and OfReg's remit is wider than its predecessor bodies. However, we did this by consolidating the total expenses for the three periods 2014-15, 2015-16 and 1 July – 31 December 2016 (annualised) from the audited financial statements of ERA and ICTA and the Budget figures from output relevant to the Chief Petroleum Inspector's activities. These were compared to the OfReg expenses for 2017 (audited, from inception to year-end), 2018 (audited) and 2019 (unaudited).
- analysing audit evidence and assessing it against agreed criteria to develop findings, recommendations and a conclusion on the audit objective; and
- providing a draft report to relevant government officials for review of factual accuracy and obtaining responses to the report's recommendations (see Appendix 4).

AUDIT STAFF

145. The audit was carried out under the direction of Angela Cullen, Deputy Auditor General (Performance Audit), assisted by Julius Aurelio (Audit Manager), Yolanda Clarke (Audit Project Leader), Gay Frye (Auditor), and Erin McLean (Audit Trainee).

APPENDIX 2 – ASSESSMENT OF 18 CONTRACTS AGAINST GOOD PRACTICE

Name of Supplier	Rock-water	Ernst & Young	Financial Integrated Services Limited	Bulatovic and Asso.	Drake Consultants	Glen Daykin	Night Owl Properties Ltd	Kelly Holdings Ltd.	Russell Richardson	Charles Farrington	ICF Consulting Group	Fountainhead	Deloitte and Touche	PW Consulting	Corporate IT Services Limited	Caribbean Inspectorate Company	Jason Abraham	Frontier Economics	Cleary Scott
Service type	Regulatory/ Advisory	Audit	Acctg	Economics	HR Services	Consumer Complaints	Regulatory/ Advisory	Public Relations	Regulatory/ Advisory	Advisory	Market Reviews	Public Relations	Cyber Security	Licensing Software	IT Services	LPG Consultant	Corporate	SMP Reviews	Spectrum surveys etc.
Sector	ICT	ICT	Admin	ICT	Admin	Admin	ICT	Admin		Energy & Utilities	Energy & Utilities	Admin	ICT	ICT	Admin	Fuels	Admin	ICT	ICT
Contract Spending to Date	318,766	152,508	143,613	136,415	71,960	129,100	72,385	37,068	43,575	48,863	20,410	85,108	31,658	38,463		17,901	26,100	23,600	16,973
Contract Pricing	Retainer of CI \$40,000	Phase 1: US\$50K plus expenses	Fixed Rate (per month)	Fixed Rate (not exceeding \$44k)		Fixed Rate (per month)	Fixed Rate (per hour)	Fixed Rate (not exceeding 200 hrs)		Fixed Rate (per hour)	Fixed Rate (not exceeding \$44k)				Fixed Rate (per month) plus		Fixed Rate (not exceeding 200 hrs)	Fixed Fee	Fixed Rate per job type per hour
Business Case Prepared	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×	✓	×	×	×
ITT/RFP Prepared	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×	p[4]	×	×	×
Bidding conducted	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×
Contract was: • Provided and is current (or expired)	Provided / Expired	Provided / Expired	Provided / Expired	Provided / Expired [3]	Provided / Expired	Provided / Expired	Provided / Expired	Provided / Expired	×	Provided / Expired	Provided / Expired	Provided / Expired	Provided / Expired	×	Provided / Expired	Provided	Provided / Expired	Provided / Expired	Provided / Expired
• Includes clearly defined services	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	✓	✓	✓	×	✓	✓	✓	✓	✓
• includes clearly defined timelines	✓	✓	✓	✓	✓		✓		×	✓	✓	✓	✓	×	✓	×	×	×	✓
• includes quality of services	✓	×	×	✓	✓	✓	✓		×	×	✓	✓	✓	×	✓	×	✓	×	✓
Evidence of progress reports, meetings etc.	×	×	×	×	×	×	✓	×	×	×	×	×	✓	×	×	×	×	×	×
Evidence of contract/ performance evaluations, feedback etc.	×	×	×	×	×	×	✓	×	×	×	×	×	✓	×	×	×	×	×	×

APPENDIX 3 – ASSESSMENT OF SELECTED REGULATORY DECISIONS AGAINST GOOD PRACTICE

Good practice OCED checklist regulatory decisions	Cayman Brac Power & Light licence approval	Illegal Wi-Fi issue (new process and not taking action)	Regulatory fees – Cayman 27 etc	Merger approval – 3 telcos	Sol Accident Fine	Advanced Fuel – motion of reconsideration	Illegal water installations	Anti-competition regulations
1. Is the problem correctly defined?	Partially	Partially	Partially	Partially	Yes	Yes	Partially	Yes
2. Is government action justified?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
3. Is regulation the best form of government action?	Partially	Partially	Partially	Yes	Yes	Yes	Partially	Yes
4. Is there a legal basis for regulation?	Yes	Partially	Yes	Yes	Yes	Yes	Yes	Yes
5. What is the appropriate level (or levels) of government for this action?	Approval by the Board of Directors	Approval by the Board of Directors	Approval by the Board of Directors	Approval by the Board of Directors	Approval by the Board of Directors	Approval by the Board of Directors	Approval by Cabinet	Approval by the Premier
6. Do the benefits of regulation justify the costs?	No formal cost benefit analysis	No formal cost benefit analysis	No formal cost benefit analysis	No formal cost benefit analysis	No formal cost benefit analysis	No formal cost benefit analysis	No formal cost benefit analysis	No formal cost benefit analysis
7. Is the distribution of effects across society transparent?	Yes – however, not formal	Yes	Partially	Yes	Yes	Yes	Yes	Yes

8. Is the regulation clear, consistent, comprehensible and accessible to users?	Yes	No	Yes	Yes	Yes	Yes	No	Yes
9. Have all interested parties had the opportunity to present their views?	Yes	No	Yes	Yes	Yes	Yes	Partially	Yes
10. How will compliance be achieved?	Approval by the Board	Warnings by Of Reg	Enforcement of Law by Of Reg	Approval by the Board	Investigative Report, Payment of Administrative Fines	Enforcement and Subsequent Approval	Cabinet to grant a waiver of operation. However, a final decision has not been made	Implementation of an Anti-Competitive Practices Penalties Rules after taking into account consultations with stakeholders.

- Cayman Brac Power & Light licence approval – approval of electricity licence for Cayman Brac
- Illegal Wi-Fi issue (new process and not taking action) – Wi-Fi connections in several locations without approval
- Regulatory fees – Cayman 27 etc – Enforcement of outstanding regulatory fees
- Merger approval – application to transfer shares of TeleCayman to WesTel (Logic)
- Sol Accident Fine – Investigation of an accident at Sol and subsequent enforcement of fines.
- Advanced Fuel – motion of reconsideration for a premises operating permit and import permit
- Illegal water installations – provision of water for third-party consumption without an operating licence
- Anti-competition regulations – Cabinet paper for the approval of the proposed Anti-Competitive Practices Penalties Rules as per section 82(1) of the *Utility Regulation and Competition Law* (2019 Revision)

APPENDIX 4 – RECOMMENDATIONS

Recommendation	Management Response	Responsibility	Date of planned implementation
<p>1. The Government should ensure that, for all future mergers, it prepares a merger plan that clearly sets out timelines, deliverables and success measures; that covers the period up to the merger; and that extends beyond the start date. The merger project’s sponsor(s) should play a significant role in developing and monitoring the delivery of the merger plan.</p>	<p>This recommendation is noted and agreed.</p> <p>Since the time of the OfReg merger, we have made significant investment in training to increase our project management capacity and expertise across the civil service, which has resulted in a cadre of trained and certified Project Managers who are now available to provide stronger project oversight, monitoring and delivery of projects, including major structural changes such as a future merger of multiple agencies.</p> <p>An appropriate merger plan will be a mandatory project requirement for any future mergers of public sector agencies.</p> <p>OfReg response: Agreed. OfReg experienced several unnecessary difficulties as a result of the lack of a comprehensive post-merger integration plan for the dissolved former entities and the petroleum inspectorate</p>	<p>Deputy Governor</p>	<p>Immediately – a merger plan will be a mandatory project requirement for any future mergers of public sector agencies.</p>

Recommendation	Management Response	Responsibility	Date of planned implementation
	department into the newly established Office.		
2. OfReg should carry out an exercise to identify any missing regulations and rules and prepare these as soon as possible.	Substantial work was done to ensure enabling regulations are in place as provided for under the various Laws. The Office continues to progress regulations and is currently drafting and/or consulting on a number of regulations or would have forwarded final determinations and recommendations to Cabinet. These range from Consumer Protection Regulations; Dispute Resolution Regulations; Anti-competitive Practices Penalties Rules; Truth in Advertising Rules; Water Sector (License, Fee, Offence and Penalty) Regulations.	CEO, Ex. Dirs., Legal and CAPE; Cabinet	This is an ongoing exercise
3. The Government should review the conflicting and duplicated provisions in OfReg’s legal framework and propose amendments to correct these.	Government response: This recommendation is acknowledged. Such a review would have to be done in close working partnership with the Law Reform Commission and OfReg. While it is noted that this recommendation aims to bring OfReg in line with the provisions of the PAL and best practice across SAGCs, any draft legislation would be first presented to the Cabinet and	Cabinet Secretary	

Recommendation	Management Response	Responsibility	Date of planned implementation
	<p>subsequently to the Legislative Assembly.</p> <p>OfReg response: Agreed. A number of conflicts have been documented by the Office, and representations made for review and necessary amendments to relevant laws.</p>	Board, Management, Cabinet and the Legislative Assembly	This exercise has commenced
<p>4. The Government should amend the <i>Utility Regulation and Competition Law</i> to remove the executive directors as Board members.</p>	<p>Government response: This recommendation is noted and should be considered in tandem with recommendation 3. While it is noted that this recommendation aims to bring OfReg in line with the provisions of the PAL and best practice across SAGCs, any draft legislation would be first presented to the Cabinet and subsequently to the Legislative Assembly.</p> <p>OfReg response: The Board and Management will review and give consideration to this recommendation.</p>	<p>Cabinet Secretary</p> <p>Board, Management, Cabinet and the Legislative Assembly</p>	To be implemented by Q1 of 2021 if necessary
<p>5. OfReg should publish Board minutes on its website to improve the transparency of decision making.</p>	<p>Agreed. The Office commenced a review of the minutes of all the Board meetings from 2017 to September 2019 to determine what content needs to be redacted (in compliance with the Data Protection Law, the URC Law, Freedom</p>	Board Secretary and the Consumer Affairs & Public Education Manager	To be fully implemented by Q3 of 2020

Recommendation	Management Response	Responsibility	Date of planned implementation
	<p>of Information Law, and the Public Authorities Law). This process is near completion. Once, the minutes are redacted, they will be published on the website.</p> <p>The Office plans to publish the minutes going forward.</p>		
<p>6. OfReg should design and implement a fit-for-purpose risk management framework, including the use of a risk register that allows it to identify, assess and manage its risks.</p>	<p>Agreed. Development of a risk management framework was flagged by the Risk and Audit Committee and is being given due attention by the Board.</p>	<p>Board, Executive Management Team, and Risk and Audit Committee</p>	<p>To be implemented by Q4 of 2020</p>
<p>7. The Government should amend the <i>Utility Regulation and Competition Law</i> to make the Chair of the Risk and Audit sub-committee a member of OfReg's Board of Directors.</p>	<p>Government response: This recommendation is noted and should be considered in tandem with recommendation 3. While it is noted that this recommendation aims to bring OfReg in line with the provisions of the PAL and best practice across SAGCs, any final decision would be first presented to the Cabinet and subsequently to the Legislative Assembly.</p> <p>OfReg response:</p>	<p>Cabinet Secretary</p>	

Recommendation	Management Response	Responsibility	Date of planned implementation
	Agreed. There are merits to improving oversight and overall effectiveness of the Subcommittee.	Board, Executive Management, Cabinet, Legislative Assembly.	To be implemented by Q1 of 2021.
8. The Chair of the Risk and Audit sub-committee should ensure that regular meetings are held and provides clarity on how the sub-committee will provide the Board with the assurances it needs.	The Recommendation is noted on the merits to foster more regular monitoring/reporting and will be put into practice but will also require amendments to the URC Law to amend the legal requirements in terms of the number of meetings per year.	Board, Executive Management, Cabinet.	To be implemented by Q3 of 2020.
9. OfReg should update its Strategic Plan to ensure that the strategic objectives align with its principal functions and to make clear how it intends to contribute to Government's broad strategic outcomes. It should ensure that the Strategic Plan clearly links with annual, workforce and financial plans.	The Recommendation is noted. As per URCL section 41(4), the strategic plan is scheduled to be updated in Q3 of 2020.	Board and Senior Management Team.	The Strategic Plan will be reviewed and updated in Q3 of 2020.
10. OfReg should develop a set of Key Performance Indicators that clearly link to its strategic objectives, are comparable over time and will drive improvement. Progress against	OfReg developed a set of KPIs which are included in the Office's annual plan and annual reports, as per sections 41(2)(c) and section 43(2) of the URC Law. KPIs will be reviewed for improvement going	Board and Senior Management Team.	To be developed in Q3 of 2020

Recommendation	Management Response	Responsibility	Date of planned implementation
these should be monitored throughout the year and reported publicly in Annual Reports.	forward to ensure alignment with the strategic plan and best practices.		
11. OfReg should update its procurement policies and procedures manual to ensure that it fully complies with the <i>Procurement Law</i> and Regulations.	OfReg's Procurement Policy in some respects is more stringent than the Procurement Law and Regulations. The Office will review the policy with the objective to improve and ensure alignment to the Procurement Law.	Board and Executive Management Team	To be updated by Q3 of 2020
12. OfReg should ensure that it complies with procurement legislation and good practice to improve the value for money it achieves from its use of consultants.	Agreed. Steps have already been put in place to ensure compliance.	Executive Management Team	Already Adopted.
13. OfReg should establish sufficient oversight and scrutiny of business cases for travel to ensure that they are in line with the new Official Travel Policy and that all supporting documentation is collected and retained to allow analysis of travel costs.	An official travel policy was implemented in October of 2019. The official travel business case form is required to be filled and annexed to the official travel application form for approval. The business case template documents justification on the following: potential benefits; travel objectives; cost analysis, and benefits to the Office and the Cayman Islands, and	Senior Management Team	Commenced in Q4 of 2019

Recommendation	Management Response	Responsibility	Date of planned implementation
	<p>the consideration of cost minimisation options.</p> <p>All supporting documents are also required to be submitted as part of the process.</p>		
<p>14. OfReg should ensure that business cases, including appraisal of options, are prepared for future lease proposals and that they are scrutinised and approved before a lease agreement is signed.</p>	<p>This process has already been established and in use by the Office.</p>		<p>Was put in place since Q4 of 2019.</p>
<p>15. OfReg should revised its regulatory decision-making framework to align with good practice for regulatory impact assessments.</p>	<p>Although not fully documented, the Office continuously carry out elements of RIA. A framework for conducting RIAs will be implemented by the Office. Training to this effect is underway.</p>	<p>Executive Team</p>	<p>Framework will be developed in Q3 of 2020.</p>
<p>16. OfReg should prioritise work to complete consumer protection regulations as soon as possible.</p>	<p>The Office drafted final determination/recommendation to Cabinet on Consumer Protection Regulations for the ICT sector. Similar work is ongoing for the other sectors.</p>	<p>Executive Team, Cabinet</p>	<p>This is ongoing for completion in Q4 of 2020.</p>

Contact us

Physical Address:

3rd Floor Anderson Square
64 Shedden Road, George Town Grand Cayman

Business hours:

8:30am - 5:00pm

Mailing Address:

Office of the Auditor General
P. O. Box 2583 Grand Cayman KY1-1103
CAYMAN ISLANDS
Email: auditorgeneral@oag.gov.ky
T: (345) 244 3211 Fax: (345) 945 7738

Complaints

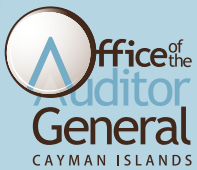
To make a complaint about one of the organisations we audit or about the OAG itself, please contact **Katrina Thomas** at our address, telephone or fax number or alternatively katrina.thomas@oag.gov.ky

Freedom of Information

For freedom of information requests please contact **Katrina Thomas** at our address, telephone or fax number. Or alternatively foi.aud@gov.ky

Media enquiries

For enquiries from journalists please contact **Angela Cullen** (345) 244 3220 or angela.cullen@oag.gov.ky



JUNE 2020