

AUDIT AND RISK COMMITTEE AGENDA

Date: Friday, 26 June 2020 **Meeting Number:** 45

Location: Information & Privacy Commission NSW
Level 17
201 Elizabeth Street
Sydney NSW 2000

Time: 10:00-12:30

Members: Mr Paul Crombie (Chairperson) (PC)
Mr Malcolm Clinch (MC)
Ms Marcia Doheny (MD)

In attendance: Ms Samantha Gavel Privacy Commissioner, Information & Privacy Commission (SG)
Ms Weini Liao, Audit Office (WL)
Ms Kylie McRae, O'Connor Marsden (KM)
Ms Sonia Minutillo, Information & Privacy Commission (SM)
Mr Anish Patel, Department of Customer Service (AP) (for finance discussion)
Ms Elizabeth Tydd, Information & Privacy Commission (ET)
Mr Ata Siddiqui, Information & Privacy Commission (AS)
Ms Rachel Bindner, Information & Privacy Commission (RB) (for finance discussion)

Minutes: Lynley Mattes, Information & Privacy Commission (LM)

Apologies: Ms Olive Ferino, Audit Office (OF)
Mr David Marcus, Information & Privacy Commission (DM)
Mr Clinton Gould, Department of Customer Service (CG)
Ms Pamela Robertson-Gregg, O'Connor Marsden (PR)

ITEM

1. **Attendance & Chair Welcome**
2. **A. Declarations of interest & Disclosures**

Nil.
3. **A. Minutes of previous meeting (27 March 2020)**

The Minutes of the 27 March 2020 Meeting were endorsed by the Committee.

B. Rolling Action Report

SM advised 44.2 remains outstanding. Will be actioned by the next ARC. All other matters complete.
4. **A. Update from the Chair**

The out of session meeting to review the Early Close Financial Statements was cancelled as the extension of time granted for the submission of the Statements meant that the Statements could be reviewed by the Committee as part of today's ARC meeting.

2021 will be a very challenging time for organisations from a budget perspective and key risks will need to be considered. A major consideration for agencies is the Strategic Plan in the context of any deferral of priority strategies over the next 12 months.

B. Update from the CEO/Information Commissioner

ET explained that the report traverses all current issues and invited questions. The Chair noted the accommodation relocation item. In that context, SG & ET felt it appropriate to update the Secretary of DCJ (joint legislation) at the regular quarterly meeting and provided a copy of recent correspondence to DCS. In the absence of a resolution it would be remiss not to brief both Ministers. A COVID-19 report to the Joint Parliamentary Committee (JPC) is under preparation and this may need to include accommodation to reflect reporting arrangements to JPC and Parliament.

In response to MD questions ET advised that DCS had not previously presented the McKell building as an option for IPC's office accommodation during some 12 months of discussion. Payment of rent by IPC to DCS would assist the overall cluster position. However the costing estimates need to provide a like for like comparison in order for an informed decision to be made. The other aspect is the IPC's independence as we are increasingly involved with DCS regarding their compliance. On the 18 June 2020 Hansard reported amendments to Minister Dominello's Digital Restart Bill which has now given functions to the IPC and mandated that the Minister consider IA & Privacy advice in respect of potentially funded projects. DCS will administer the funds. These arrangements heighten the requirement for perceived and actual independence.

MC pointed out that the analysis on page 45 of the papers was very simplistic and did not capture all costs. ET is happy to share her response to Deputy Secretary Stephen Brady with ARC members out of session.

Action Item: LM to send a copy of the correspondence to the Committee.

MC advised they are happy for an out of session meeting on the accommodation issue if further discussion is required.

The Chair said that the Greyhound Welfare and Integrity Commission (GWIC) GIPA Act Compliance Report was an interesting document. SM said that the IPC is now leading a review into the racing arm as distinct from the Integrity Commission which has the oversight function. SM noted that the agency is relatively new (3 years young) and that consideration of the agency's maturity is reflected in the report. They were very cooperative and positive.

The Chair asked how IPC identifies which organisations to audit for GIPA Act Compliance? ET advised that a Quarterly Compliance Meeting is held and decisions are informed by internal and external sources/data. A risk-based framework is applied, and a Compliance Calendar has recently been established so that we can better manage the operational workload. The Chair requested that a copy of these be provided to ARC members

Action Item: SM to provide the Committee with Quarterly Compliance Papers.

The Chair announced that despite COVID-19, management of the organisation's work program is being handled very effectively. ET advised that given the current Covid-19 restrictions, this outcome is quite remarkable. Tribute to staff (The Chair).

C. Update from the Privacy Commissioner

COVID-19: Privacy Commissioners around Australia formed a team in response to the pandemic and that forum has been very useful (COVID-19 app). IPC has provided advice to the DAC to assist with its data projects, which use deidentified data and have been used to assist the Government's response to the pandemic. Assistance has been provided to Minister Dominello's office in relation to Commonwealth privacy issues relevant to the NSW COVID-19 response. Privacy concerns have been heightened due to the pandemic.

Legislative Matters: The Government is considering the extension of the Privacy Commissioner's jurisdiction to state owned corporations (SOCs); the IPC recently released a fact sheet for citizens in relation to their privacy rights in respect of SOCs. IPC is continuing to engage with DCJ & DCS around the proposed Mandatory Data Breach Scheme, in anticipation of the introduction of a draft bill to Parliament later this year. There may be resourcing implications for the IPC with the scheme. The Privacy Commissioner noted a number of areas where discussion on the scope of the scheme is on-going. On a positive note, SG advised that we had a great Privacy Awareness Week Event which was held online with over 350 attendees. Tony Chapman & Professor Lacey were our speakers and highlighted relevant issues in regards to COVID-19 and cyber security. Great feedback was received from attendees. Important resources were also released to agencies and the public during PAW, including updated guidance on Privacy Impact Assessments.

The IPC is intending to make further enquiries in relation to two voluntary data breach notifications, with the intention of identifying learnings that will assist agencies across government.

There has been a cyber security breach involving Service NSW. The IPC has been briefed on the incident and mitigation steps are being taken by Service NSW. The Minister referred the breach to the Audit Office and the IPC has consulted with both DCS and the AO in relation to the scope of audit. Once the audit has been finalised later this year SG will consider whether there is any further regulatory engagement required with Service NSW in relation to the breach.

The Chair is amazed at the high number of privacy issues and asked if SG was comfortable that the associated risks are being managed effectively. SG said that she was confident this is being done, a lot of work has been undertaken and significant privacy protections have been put in place.

Returning to the above bill to capture agencies that have engagement with government agencies and NGOs, this is actually a recommendation the former Privacy Commissioner made in her 2015 report. The key to addressing this issue will be the way any legislation is drafted.

MC spoke to possible enforcement measures that may be applied to NSW Government agencies under the proposed Mandatory Data Breach Notification Scheme, what leverage would the IPC have if they did not comply? SG agreed that the IPC needs to consider what sort of enforcement measures are appropriate and how they might be enforced. We are intending to consult with OVIC regarding how some of these issues are managed under their scheme shortly.

MD queried, in terms of response to COVID-19 and Privacy whether there is any discussion about pubs/clubs etc. collecting information. Yes, SG advised those entities (if they meet the \$3 million threshold) are regulated by the Commonwealth. OAIC is very alive to that issue and there is guidance on their website and they will certainly look to do some compliance work on those issues.

SG apologised that she had to leave the meeting early.

5. Agency planning and reporting

A. IPC Dashboard

ET spoke to the dashboard paper and asked for any questions from the Committee. The Chair agreed it is very self-explanatory and good to see all holding up. MD asked for further explanation on the aged privacy complaints (open cases). SM advised that the majority of complaints are access to Health Records from private service providers. A number of complaints are a consequence of trying to resolve them and providing procedural fairness to both parties and the process of the legislation. If the legislation extending our remit goes through this may expand the need for resources.

B. Quarterly Reports to the Attorney General & Minister Dominello – Quarter 3, 2019-20

The Chair had a query around 500k budget supplement. ET advised the provision of corporate services is still under discussion with DCS. The Chair asked where we are at with the Service Level Agreement (SLA). ET advised we are working with DCS to have the SLA in place and maintain the like for like commitment noting new IT charges. WL advised this issue has been raised in the audit and this is an area that AO want to see further work on. ET asked WL if we could touch base with AO to ensure IPC & DCS are able to progress this.

C. Chronology of accommodation engagement

Noted.

D. Correspondence regarding accommodation from DCS

Noted.

E. IPC WHS Action Plan 2020 - 2022

The Chair noted that the WHS Action Plan appears to be progressing satisfactorily. He asked if there are any pending actions not being progressed? SM advised that staff are aware of action being taken and that there is a good line of oversight on WHS which has been built into IPC's regular activity which will continue to be monitored.

MD asked about the working from home - WHS question re isolation & stress levels? ET confirmed IPC approach and proactive approach using DCS framework which will be run through the HSC as well. A Pulse survey closes today and results will be built into IPC procedures to start addressing the health and wellbeing in the workplace (also social and emotional). MD inquired if there is any plan for staff generally to return to work. ET advised that staff who might need or prefer to be in the workplace are being accommodated. MD noted IPC's WHS plan is very good and seems real (sincere and practical). Commendations and endorsement by the Chair.

11:00 - DCS Finance to join meeting

F. Financial Dashboard

The Chair welcomed the new attendees and noted that IPC are forecasting a deficit at the end of the Financial Year much higher than the deficit figure forecast in the IPC's 2019/20 Budget and he assumes that this will be funded by the Cluster? AS advised that DCS will not fund the forecast deficit and have said that it is the IPC's responsibility. AS advised that IPC have sufficient cash balance at the moment to fund operations. The financial viability of the organisation will need to be addressed in respect of the 2020/21 Financial Year. ET added that we would continue our fiscally responsible fashion and there is a buffer that must be maintained approx. \$260k. WL added that there are sufficient current assets to cover current liabilities. AO will request a letter of support for IPC from the principal department.

The question was asked if there was any discussion at a government level about restrictions based on budgets to respond to COVID-19. ET requested AP to respond. AP, Treasury's focus is to fund the base budgets and consider each agency in circumspect by themselves, and if there is any peripheral activities these will need to be deferred. Budgets will be impacted but they are trying to do this on a gradual basis and they haven't quite worked out what the impacts are. MD noted that the question will be what falls into the category of peripheral. IPC operates core services which are required under the IPC legislation. AP will share more information when available.

6. External Audit

A. 2019/20 Financial Statements Timetable

Noted.

B. TPP19-08 Agency Direction for Mandatory Close

Noted.

C. Brief to ARC from DCS

Noted.

D. Early Close Financial Statements 2019/20

The Chair noted up a couple of minor corrections to be made (as advised to IPC). MC picked up the cash position discussed above. MD has had her questions answered. SM advised that some queries have been made to DCS.

The Committee endorsed the Statements for signature by the Information Commissioner and submission to the Audit Office. The Committee thanked those who prepared the Statements on a job well done.

The Audit Office Engagement Letter for the 2019/20 Audit was considered last meeting. WL advised no further issues have been identified.

ET acknowledged for the benefit of the Committee, Ata Siddiqui's excellent work in respect of the Financials.

DCS Finance, AS & RB left meeting

7. Risk Management 2019-20

A. Risk Register (including WHS)

SM advised that we have consolidated the two risk registers into one with WHS at the end of the document. There will be some further refinement and alignment of WHS to Operational Risks as there are overlaps (or similar risks). The notable changes are identified as O9 (reduced), S9 (reduced) & CHS3 (increased). The other additional matter is that a new risk has been added to reflect the COVID-19 environment.

The minutes of the last HSC meeting were noted by the Committee.

MC thanked SM for her thorough update. She asked how does the IPC keep the Risk Register live and use it as a positive tool for management? SM advised that it is part of our business discussions at Executive level and that discussions on risk management at an operational level occur regularly with staff.

MD asked how do you update and consider the Risk Register? SM applies a sharing practice with other Executives and always with the CEO. MD suggested that another way of embedding the culture and risk management is for each manager to consider the Register at a team level. SM appreciates the guidance from the Committee. Certainly, working with the Managers will be taken forward.

The Chair requested that the word 'Residual' be removed from the heading 'Residual Risk Assessment' above columns 6 -8 in the Risk Register. (These columns deal with Inherent Risks prior to mitigation and control measures being affected).

Action Item: SM/LM to remove Residual from the first group of Headings.

Given budget considerations certain matters might increase to a higher level.

The Chair mentioned that Cyber Security is covered in the Risk Register somewhat indirectly rather than being included in the Register in its own right. It was advised that the IPC is reliant on the cluster for Cyber Security. SM reported IPC has control over messaging and communication to staff to contribute to Cyber Security.

The Committee endorsed the changes in the Residual Risk Ratings.

B. IPC HSC Minutes of Meeting

The Chair noted Item A above and the seriousness IPC has taken with the issues identified.

8. Internal Audit

A. Internal Audit Reports – Service Delivery

SM spoke to the two reports and recommended actions, happy to take any questions. Some opportunities were identified.

A few records management issues were identified in the Service Delivery Audit where there were approvals in place but not necessarily applied on the electronic record. Some progress has been made due to the move to electronic documentation due to COVID-19.

The audits were undertaken remotely but worked well.

Some inconsistencies were identified in the dashboard (calendar days v working days) synchronisation.

The Chair found the Reports self-explanatory and asked if the date in the recommendation Register of 30 June 2020 was too optimistic. SM advised that staff have already been advised verbally.

The Chair queried the wording of the Conclusion on Page 5 of the Audit Report which contains some issues that were not included in the Audit Findings as reported. Similar wording appears on Page 5 of the Staff Retention and Performance Audit. KMc advised that these comments were not relevant to the audits and the Reports need to be amended in that respect.

Action Item: KMc to amend papers and return.

B. Internal Audit Reports – IPC Staff Retention and Performance

Moderate risks identified and recommendations are already being implemented. We will be in a much better position having transitioned to DCS.

MD spoke to the audit and the incredibly impressive increase in PMES scores. The Chair also endorsed the outstanding results.

KMc was pleased with the outcomes and to thank SM in particular and the staff of the IPC to perform these audits remotely.

C. Recommendations Register – Staff Retention and Performance

Noted.

D. Recommendations Register – Service Delivery

Noted.

E. IPC Internal Audit Plan 2019/2020- 2020/21

SM advised that consideration may be taken towards the end of year as to whether these are still appropriate. The Chair asked that it be considered whether the Plan should relate to a 3-year rolling period which occurs with many agencies. The Committee discussed the inter relationship between the IPC internal audit plan and internal audits undertaken by DCS which may have direct relevance or impact to the IPC in circumstances where the IPC depends on DCS for provision of shared services. The Committee discussed the value of such internal audit reports being shared with the IPC that could be relevant to the IPC's Internal Audit Plan. In that context the Committee supported further engagement to request the provision of relevant DCS internal audit reports. ET asked WL if this is a usual request and how we might more effectively build the bridge and give our internal audit more visibility. KMc noted it took them some time in previous employ to get information that impacted or showed control issues and recommended this be built into the SLA.

Action Item: SM to consider increasing Audit Plan to a 3-year period.

Action Item: IPC (DM) to engage with DCS on the sharing of DCS Internal Audit Reports relevant to support functions being undertaken by DCS for IPC, including IPC access to related DCS Audit Reports covering services provided under the Service Level Agreement.

ET returned to the issues in relation to the sharing of audit reports and the value within cluster arrangements. WL agreed it makes sense to cover internal audit reports from DCS in the SLA.

Action item: IPC to raise with DCS inclusion of DCS internal audits in SLA.

9. Review of ARC Charter Annual Calendar (*standing item*)

ET spoke to the paper:

Review of Key Risks taken (risk mitigation) and provided an overview of the migration to DCS.

Review of Financial Statements – IPC is working very closely with DCS and mapping issues. Working towards mitigation to documenting mapping issues and you will see amendments to the final papers. SM is taking forward relationship with DCS.

Pending litigation about an applicant in NCAT is explained in Item 4 (instructed CSO).

In-camera meeting with Internal Audit & External Audit to be postponed.

Action Item: LM to include In-camera meeting with Internal Audit & External Audit to 25 September 2020 Agenda.

Legislative Compliance Register: ET requested a postponement. Look to do an out of session if possible. The Chair pointed out the CEO's end of Financial Year Attestations which must include compliance with the legislative requirements that underpin the operations of the IPC

Action Item: SM to arrange an out of session meeting about the Legislative Compliance Register.

MD spoke to Item 3.3 and advised that the comments didn't really satisfy the requirements. There is normally a register which has been proposed to be postponed (3.10) and distributed out of session as an update.

Action Item: SM to provide a clean copy of the Legislative Compliance Register with tracked changes.

ET clarified that reviewing the compliance register dictated IPC's need to update the Code of Conduct and ensure the Declarations of Interest are submitted.

MD returned to the financial statements and remapping issues. ET advised there are some elements that might not necessarily realign and new fees (currently include Unisys, Infosys etc), that were previously under DCJ SLA. MC asked if the AO had any concerns over the remapping. WL it is a concern and will be considered in the next report.

10. Other Business

A. Schedule for 2020

- Friday, 25 September 2020 @ 10:00
- Friday, 27 November 2020 @ 10:00

The Chair advised the meeting closed at 12:09.