



AUDIT AND RISK COMMITTEE MINUTES

Date: Friday, 19 March 2021

Meeting Number: 49

Location: Microsoft Teams
Information & Privacy Commission NSW
Level 15, McKell Building
2-24 Rawson Place
Haymarket NSW 2000

Time: 10:00-12:30

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

In attendance: Ms Somaiya Ahmed, Audit Office (SA)
Ms Olive Ferino, Audit Office (OF)
Ms Elizabeth Tydd, Information & Privacy Commission (ET)
Ms Samantha Gavel, Privacy Commissioner, Information & Privacy Commission (SG)
Ms Jessica Kavanagh, Information & Privacy Commission (JK)
Ms Judy Malpas, O'Connor Marsden (JM)
Ms Sonia Minutillo, Information & Privacy Commission (SM)
Mr Ian Naylor, Information & Privacy Commission (IN)
Ms Pamela Robertson-Gregg, O'Connor Marsden (PR)
Ms Yasmine Salameh, Information & Privacy Commission (YS) (for finance discussion)
Ms Alexis Mitchell, Department of Customer Service (AM) (for finance discussion)

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

Apologies: Mr Clinton Gould, Department of Customer Service (CG) (for finance discussion)

ITEM

1. **Chair Welcome**

The Chair welcomed the attendees.

2. **Attendance**

Clinton Gould provided his apologies.

3. **A Declarations of interest**

Noted.

B Disclosures

The Chair advised that he has been re-appointed Chair of Multicultural NSW ARC

4. **A Minutes of previous meeting 14 December 2020**

Endorsed by the Committee.

B Rolling Action Report

A couple of items on the Register will be discussed during this meeting.

5. **A Update from the Chair**

The Chair advised that he has been to a few ARC Chair Meetings for the Justice Cluster and received papers from Treasury identifying what they are looking for in the coming year (Treasury guidance on the risk structure). A copy of the papers will be provided to Sonia Minutillo for circulation to the ARC.

The Chair has recently completed survey on Audit Office services which included the IPC ARC.

Action Item: SM to circulate Treasury Guidance to the ARC

B Update from the CEO/Information Commissioner

ET took the report as read.

Outlined the Funding Review. IN met with OCM yesterday and an index was created to manage this process in a forward planning way. ET will provide updates to the ARC. It is possible that the Review may examine the ARC Minutes. There is a timeframe which is ambitious, and ET spoke to a perceived conflict of interest as OCM are our independent auditors – therefore ET developed protocol to address. An additional clause has been entered into the TORs.

The Chair queried the timing and ramifications of the Review for the IPC Financial Statements for 2019/20. ET advised that it will be Period 10 before the Review is finalised and the ERP funding is released. The Committee reflected their concerns around the delay in the allocation of the additional funding to the IPC.

Government is yet to respond to the PAC Report and there are 2 issues relevant to the IPC. 1. The Budget is being overseen by the NSW Parliamentary Committee on the Office of the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission and it would be unusual for the IPC not to be included as the IPC is recognised as an integrity agency in the Premier's Memo. 2. Exclusion of efficiency dividends for integrity agencies going forward. This information should be included in the Review. The Chair asked if the PAC recommended that the IPC be recognised as an independent oversight body? ET replied that the Premier's Memo 21-08 reflects this. The Chair requested a copy of this memo. MD advised that she thinks this is an important report and spoke to the Government's acceptance of the IPC as an independent oversight body.

The Chair congratulated Malcolm Clinch on his reappointment to the ARC.

MD questioned scope of the Review. ET advised The IPC were required to ensure that the Review had regard to the sustainability of the IPC from a budget perspective going forward, including new programs of work (ie. MDBN and DRF). IN advised he has been working with DCS and Treasury. The Review is being sought by Treasury in the context of the Funding Model. IN pointed out that Judy Malpas is not part of the OCM team working on the Review. The scope includes current and future workloads and the budget required for the IPC. Worth noting that \$700k is appearing in expenses and not revenue following ERC's approval of the funding. A new 2 stage process has been introduced for funding and IPC has passed the first stage in Prime.

MC thought it was quite good the mention of additional work in the future which was quite specific and highlighted the issues.

ET spoke to the Local Government Audit which is the largest audit the IPC has ever undertaken. SM noted that the IPC recognised early managing data capture for the audit. The IPC utilised internal intelligence to inform the target selection of councils and engaged early with the Office of Local Government (OLG) to utilise a categorisation of councils to make sure our selection was representative and included the various types of councils within the council sector. The IPC has engaged a supplier and created an excel tool to capture the information which will provide graphs to show the statistical representation for each question. Data capture is complete and report writing has commenced. SM confirmed regular engagement with the OLG.

Action: LM to forward a copy of M2021-08 to the ARC members

C Update from the Privacy Commissioner

SG took the report as read.

The IPC have reviewed the latest draft of the MDBN Bill and comments have been submitted. This will have resourcing implications for the IPC which needs to be included in the Funding Review.

Cybersecurity became a large issue last year and the IPC has recently engaged with Health & Transport regarding the Accellion breach. The breach did not compromise Health Records or Drivers Licence information. A forensic investigation is being undertaken.

Discussion was had around the Solar Winds Breach worldwide.

The Chair asked what percentage of the DRF would be high-risk projects. SG advised we do assess these on a risk matrix and we provide risk mitigation advice. Most are assessed as low to moderate. Biometrics Facial Recognition falls into high risk. Vaccination information re COVID is interesting and the IPC has drafted a fact sheet.

The Chair thanked the Privacy Commissioner for her comprehensive Report which depicts the scope of the work of the IPC in respect of privacy related matters..

6. Agency Planning and Reporting

A IPC Financial Dashboard (February 2021)

IN took the report as read and highlighted the financial situation regarding the Funding Review. IN does not think Treasury understands the breadth of the work of the IPC who queried whether work around the MDBN could be conducted without the additional funding sought. IN made clear that this is a new function for the IPC. MC mentioned the RFQ wording that the IPC is part of DCS which is fundamentally incorrect and that those involved with drafting may not comprehend the standing of the Commission. IN advised that the IPC are going to make the point of the IPC being an independent integrity agency.

The \$700k funding has not been received yet. The IPC's request to transfer \$400k of the budget allocation to salary costs required/requested has not yet been approved by Treasury.

Assuming the \$700k will be paid this financial year, the IPC is on track to record a year end excess of expenditure over income of \$200k. Need to remember the depreciation costs are higher than that. The IPC is projecting a small improvement on its cash balance which is lower than usual due to three grant payments in March.

IPC's funding bid for a total of \$919k for the MDBN has passed the first review and needs to go to a second review.

The IPC is working with DCS on the MOU and discussing the amount of corporate services being charged.

The Chair queried whether the \$700k is included in the 2020/21 budget forecast. IN replied that it is included in the operational expenses. Treasury advised that the efficiency dividend would not be charged this year.

B Quarterly Report to the Attorney General & Minister Dominello – Quarter 2, October 2020 to December 2020

Report noted.

The Chair noticed the audits being done which are informative. Useful for the Committee to receive these reports as part of the ARC papers.

Action Item: LM to forward Audits as mentioned in the 2020/21 Q2 Report (and to include all future audit papers going forward)

MD noted that the IPC must have had the best PMES scores in the sector and congratulated the IPC.

E Superannuation Guarantee (Administration) Act 1992 (Cth) (SGAA) – Contributions for ARC Members

IN spoke to DCS advice of a tax ruling re comparable members (SIRA etc) appointed under legislation. PAYG should be held from members. Legal advice is being sought and the ARC will be advised once that is received. The next stage is that calculations of superannuation contributions from 2012 payable to ARC members will be provided to past & present ARC members for their verification. There will be forms to be completed for the Tax Office and advice will be provided. Justice have been very proactive and have submitted these to the ATO already without advising the IPC first. The IPC is working with DCS for a cut-off date to avoid double payment. The Chair mentioned the \$25,000 annual limit on superannuation contributions and presumes that one can make an appeal to the tax office for recognition that the arrears have occurred over many years. IN offered to follow that up and provide further advice. MC would be interested in the response.

Action Item: IN to investigate the limit of superannuation contributions annually and provide advice to the ARC

D IPC Dashboard (January 2021)

Case Management results for January are quite outstanding. IN advised that in the report we just have the January figures. There has been quite an increase showing the IPC has had a 25% increase in Enquiries, with a 10% increase in Applications.

ET advised that SM and the team worked in earnest in December before the two-week shutdown and we are very fortunate to have that engagement in December and in January we start to see the figures as reported. SM highlighted that one of the consequences of the annual shutdown is leave being taken and the accumulation of matters continues and it does cause some consequential delay. The IPC does see an increase in January but that does not appear to have slowed subsequently now that we are in March. The Chair suggested this be kept under review from a risk perspective.

7. External Audit

A IPC Annual Engagement Plan (AO)

IN noted the Engagement Plan and said that he has been talking with DCS and AO about the Early Close dates. ET pointed out an issue regarding the corporate services charges and how the IPC would wrap this up under an MOU. DCS differentiates the charges under the MOU and the *passthroughs* which are a different quantum. Previously IPC's charges were all covered under the MOU including services. This differentiation might need to be recognised in the budget and from an audit perspective how these differentiation in charges are perceived. SA advised that these costs are recorded under operating expenses (Opex), it's more about understanding how the costs are calculated and understanding the variable factor. ET mentioned the *passthrough* costs are not envisaged to be part of the MOU and there is no visibility regarding the methodology. SA confirmed that they would like visibility around these costs. IN commented that part of the issue is that Unisys and Infosys billing cycles come in three months later and there is a lag in data available which is an issue as IPC have only been provided with an estimate. IPC have moved from \$200k fixed costs to nearly double with DCS. IN advised that GovConnect is contracted by the Cluster. IN detailed that IPC are also receiving costs from the Cluster as they are scoping Unisys and bringing the services back in-house. The Chair asked if this is separate to the MOU. IN noted that these are *passthrough* costs. The Chair asked if other departments within the Cluster experience this. ET identified that she is meeting with another agency this week to discuss and will keep the ARC informed.

8. Internal Audit

A Internal Audit Scopes

SM took the paper as read.

The December meeting of the ARC endorsed two internal audits. Governance Health Check which has identified a couple of targeted areas from the AO lighthouse that will be the focus of the audit.

IPC Engagement Strategy is the second audit.

Additional to the two audits is a third paper which is an audit scope for a Gap Analysis regarding the Risk Register Framework as part of the new TPP 20-08 which will provide support to the IPC to address the changes from TPP15-03 to TPP20-08.

Committee endorsed the audit scopes.

Action: SM to report to the ARC on the internal audits at future meetings

B Strategic Internal Audit Plan

The attached paper was noted including the Internal Audit Plan progress and that the Plan will be reviewed in the second half of this year following the Strategic Plan and review of the risk framework.

The Chair suggested a rolling three-year indicative audit plan would be appropriate. SM confirmed that we have done the two year and included the third year as prospective.

C Audit and Risk Committee Charter 2020-2021

A revision was provided in December which was endorsed. This Charter has been revised to confirm the status of the IPC as an independent body which has its own ARC reflective of TPP20-08.

The Committee endorsed the minor changes to the Charter.

MC noted that in context to earlier discussions regarding independent bodies, the Charter is consistent with this

Guidance on emerging Risks is the largest change.

D Internal Audit & Risk Management Policy for the General Government Sector (TPP 20-08)

Paper noted.

E Treasury Risk Maturity Assessment Tool Guidance Paper (TPP 20-06)

Paper noted.

9. Risk Management 2020-21

A Review of IPC Risk Register (includes WHS) Q3 2020-21

SM took the paper as read. The main observation in terms of change is that the risk profile 04 has been revised upwards in set of circumstances where the funding remains a risk and noting there is continued progress in terms of the implementation of the MDBN scheme and a broad commitment to funding, no confirmation that the funding will flow remains a risk.

The IPC have been engaging with Cyber NSW in providing some expert advice to the IPC in terms of our case management system which is ongoing. The IPC is undertaking a range of testing. The office relocation risk on the report should be marked as closed as the relocation is now finalised. The Committee endorsed the removal of that item from the Risk Register in addition to the other changes mentioned.

B IPC HSC Meeting

Minutes attached noted.

It was noted that the IPC still has staff working a combination of WFH and from the office with no notable issues. The Chair asked about the situation of working from home whether there is a program to encourage staff to come into the office. The IPC has been encouraging staff to come in and there is a roster in which the Managers and Directors nominate days to come in and staff are encouraged to attend. ET advised that there have been no targets established in DCS but the IPC are working towards greater attendance. Currently the IPC has a maximum limit of 50% capacity in the office. Where there are events the IPC encourages staff to reach the 50% capacity. At other agencies there is a greater level to return to work (ie. Treasury). The IPC are comfortable with the level and pattern of attendance. Culture is a feature of the environment which enables you to be able to respond to the extra caution as a regulatory agency which is a driver in terms of our workforce and engagement. MD agreed as an integrity agency and the IPC's credibility to maintain the culture.

MC asked about Benestar whether this was the online support system. SM confirmed, that was correct.

10. Review of ARC Charter Annual Calendar

A Annual Calendar

Calendar noted.

B Review Performance Management Framework

Paper attached noted.

C IPC Code of Conduct

Paper attached noted.

D Review of Trends on Gifts & Benefits

The Paper was noted and the ARC said that it was pleasing that the Executives donated the gifts received to the staff.

Regulatory Priorities paper noted. ET recognises that we report against our Strategic and Regulatory Plan. A quarterly report to consider how we are tracking. A discussion was had around the Compliance Committee and the utility of the report in determining future regulatory action taken in respect of identified risks.

MD asked whether we have WHS on all staff meetings and ET confirmed that the Executives meet weekly and on our quarterly meetings we include it there. Discussion was had around relationship management and cultural management and a recommendation from the DCS advice that additional sessions be provided. MD advised this should be noted in the minutes. IN advised that at our February meeting Benestar presented to staff and advised that there is a broader range of issues that can be presented to staff during the second half of the year. WHS is discussed in team meetings weekly. SM added that Managers and teams adopted during WFH undertaking regular catchups and check-ins to maintain regular contact to keep the connection and to see how people are coping more generally. ET noted that the IPC has new risks from a WHS perspective and the dependency on IT service provision and the impact on staff. IPC needs to start recording and reporting on these issues.

The Chair requested face-to-face ARC meetings going forward.

Action Item: LM to book rooms and update calendar invitations

11:22 – DCS Finance joined meeting

AM spoke to the \$700k Grant which is not yet included in IPC revenue. YTD the Budget is \$256k favourable, full year forecast \$3k favourable to Budget being a \$200k deficit. ERE 3 FBPs in with Treasury. The priority is FY21 funding. \$400k in full year ERE would be still be \$182k adverse. Does the IPC wish to review that figure as the ERE will need to be re-allocated?

Opex is looking positive and with the adjustment \$155k positive for the full year.

Forecast, past ARC payments \$22k in the forecast. There is still some depreciation coming through from Elizabeth Street which needs to be cleaned up.

Audits of \$28k and a small adjustment will be needed (\$6k).

The Chair queried ERE and asked for further explanation. AM advised that the full year forecast is looking to be \$583k unfavourable, noting nothing further on the reasoning. The Chair just queried the terminology.

ET addressed the above and advised the \$400k movement was IPC's response to the legislative amendment in 2018 where there was an organisational restructure. At that time, the IPC estimated an additional \$400k minimum would be required. It appears that the figure is a little bit more than that and is not adverse to adjusting the ERE to what IPC truly utilised from a staffing perspective.

Action Item: AM will touch base with IN to firm up a figure on the ERE

AM declared that regarding the FBP, Treasury are not going to the ERC until April which may flag a potential cash flow issue.

Action Item: The Chair requested IN liaise with AM and take this forward

Action Item: AM to challenge the above further as previously approved by ERC

IN noted ERC has approved \$700k additional funding for 2021/22.

AM acknowledged that Superannuation back pay is nearly finalised.

ET sought advice from Alexis about LSL payments and their impact of our statutory charges.

Action Item: AM will investigate further and advise

Other Business

SM noted that 26 November 2021 coincides with a study commitment which will have her absent at this stage. The Chair advised that SM's absence can be accommodated. On that note, The Chair said that he had a clash of meetings on f 24 September 2021 and asked if the IPC ARC Meeting could be moved to another day.

Action Item: LM to liaise with members to arrange new date

IN mentioned the Early Close Financials out of session meeting. An out of session has been scheduled for the end of financial year Financial Statements. The Chair confirmed that a meeting for the Early Close is required for April.

Action Item: LM to liaise with members and arrange a date in April between 18 and 23 April 2021

The Chair thanked SM & LM for their work in preparing the Agenda Papers and for the timely distribution.

The meeting closed at 11:44.

Schedule for 2021

- Friday, 19 March 2021 @ 10:00
- Friday, 25 June 2021 @ 10:00
- **Action Item: Early close financial statements meeting date to be confirmed in July**
- Friday, 24 September 2021 @ 10:00
- Friday, 26 November 2021 @ 10:00

Tenure Dates

Member	Appointment	Commencement Date	End Date	Extension End Date 1
Malcolm Clinch	Member	5 July 2015	5 July 2018	5 July 2021
Paul Crombie	Member	17 September 2014	17 September 2017	20 September 2020
Paul Crombie	Chair	16 June 2019	16 June 2022	
Marcia Doheny	Member	28 June 2019	28 June 2022	