



AUDIT AND RISK COMMITTEE MINUTES

Date: Friday, 2 July 2021

Meeting Number: 51

Location: Microsoft Teams

Time: 09:00-11:30

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

In attendance: Ms Somaiya Ahmed, Audit Office (SA)
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 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: Ms Olive Ferino, Audit Office (OF)
Mr Clinton Gould, Department of Customer Service (CG) (for finance discussion)
Ms Pamela Robertson-Gregg, O'Connor Marsden (PR)

ITEM

1. Chair Welcome

The Chair welcomed the attendees.

2. Attendance

Olive Ferino & Clinton Gould provided their apologies.

3. A Declarations of interest

Noted.

B Disclosures

Nil

4. A Minutes of previous meeting 19 March 2021 & 22 April 2021

Endorsed by the Committee and confirmed the publication of 19 March 2021 minutes.

B Rolling Action Report

SM spoke to the attached document and noted the completed items and summarised ongoing action items.

5. A Update from the Chair

The Chair participated in a recent online Audit Office (AO) Forum for Chairs of Audit and Risk Committees. Items raised by AO included:

- ARCs to review that all 30 June Finance Statement requirements are being effectively addressed for their Agencies including key assumptions and valuation bases, as well as impacts of Covid 19 disruptions and application of new Accounting Codes/Standards e.g. AASB 1059 Service Concession Arrangements – Grantors, AASB 15 Revenue Contracts from Customers & AASB 1058 Income of Not for Profit Entities.
- Cyber Security – Was given great prominence. Vital that ARCs are pro-active in this context and are satisfied that the Agency's Cyber Security policies and procedures are current, complete and likely to be effective in the event of a Cyber-attack. Particular attention is to be given to the Self-Assessment answers by Agencies underlying their Cyber Security Attestations due end August each year and whether sound evidence exists to support those Assessments. It was advised that insurance cover for Ransomware attacks on computer systems is being phased out by insurers. This development heightens concerns that more attention will be given by perpetrators to targeting Government IT networks. The vulnerability of legacy systems and management of risks in respect of third-party IT data storage and processing arrangements also need to be carefully reviewed by ARC's.

Action Item: MC to distribute notes taken at the recent AO Meeting for Chairs of Committees

B Update from the CEO/Information Commissioner

ET advised that the Funding situation has changed since the Update was written. IPC has been granted additional funding of \$1.14m for 2021/2022 for the implementation of the Mandatory Notification Data Breach Legislation (MNDB). The IPC is planning the application of the funding from the commencement date of the Legislation.

A response has been received from the Minister to the IPC's request for additional funding for the increased work arising from the Digital Restart Fund (DRF). Advice is that 50% of the funding required for the IPC's work will be available from the DRF Scheme. A further briefing will be prepared to advise the Minister for Digital, Minister for Customer Service that the remaining 50% will be drawn down from IPC cash reserves.

MC commented on the great Report prepared by the Consultants, OCM, appointed by the Department of Customer Services (DCS) to undertake an Operational Review of the IPC. The Review was sought as a condition for the granting of additional funding for IPC. The Review identified the excellent performance of the IPC in respect of the implementation of its functional objectives and priorities. Following the Report, the extra funding of \$700,000 has been released for the IPC.

ET acknowledged the great work done by the IPC officers who contributed to this outcome.

Work Program:

- icare audit phase 2 - The compliance audit was published in May 2021. The audit observed partial compliance in place in some areas with further opportunity for enhancement. A further 6 recommendations were proposed to enhance icare's contract register compliance. All of the recommendations were adopted by icare with a report back to IPC by 1 October 2021 on its implementation of the recommendations. The Chair inquired if icare were taking the audit findings seriously. The Information Commissioner and Director Investigation and Reporting both expressed satisfaction that icare is committed to addressing the matters raised in the compliance audit report.
- Audit of Local Council Sector – Draft report findings confirm levels of non-compliance. The report is to be sent to the Hon. Shelley Hancock MP, Minister for Local Government for consideration prior to publication. Following that action, IPC will correspond with councils in respect of the extensive remedial work required.

- Open Government Partnership (OGP) National Action Plan 3 is being led by Legal Counsel & Regulatory Advice team (LCRA) on behalf of the Ombudsmen and Information Commissioners to identify information that is valuable to members of the public, valuable to the digital economy, and promotes integrity in government. Also promotes the proactive release of information
- Section 37 report is under preparation being led by LCRA. This year will be 10 years' worth of GIPA data and an embargoed report has been made available.
- SG & ET appeared before the Committee on the Office of the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission which went well.

The Information Commissioner congratulated Malcolm Clinch on his re-appointment for the period ending 5 July 2023 as an Independent Member of the IPC ARC.

The Chair queried whether there were any comments on the 10-year GIPA Report. MC asked what purpose this can be put to regarding the increase in activity. ET replied that we are, through our Communications & Corporate Affairs team (CCA), considering publication of an article. ET has had direct discussions with Tom Burton from the Australian Financial Review (AFR) and is also discussing next week with Serena Lillywhite (Transparency International) the possibility of a panel discussion being held. The IPC has also liaised with an external communications expert to look at external avenues. The recommendations are ones that hopefully will elicit responses, e.g citizen access to their personal information; better reporting on the GIPA regulations. One regulatory reform sought by the IPC is to overcome the failure to comply with the mandatory open access requirements. Currently IPC has to do a major audit instead of issuing a notice to comply which would enable IPC to respond more swiftly to agencies and would facilitate the open access goals.

MC acknowledged that combined with the icare and local council work, it is a huge amount of effort from limited resources and a positive result.

MD queried the local government audit and the interface with the GIPA obligations and State Records Act, it is really difficult if they can't identify or locate the records. ET advised that the IPC focused on the open access requirement and what we found was the majority are compliant and have access to the records. The Information Commissioner's function under the legislation provides for her report to be furnished to another agency e.g. State Records where access to records is an issue.

C Update from the Privacy Commissioner

SG took the report as read.

Data Breach – one of the issues coming out of the Auditor General's report on Service NSW and a couple of other breaches at the moment has raised some really sensitive issues in particular, health information. The IPC is considering how we can take the lessons learnt to whole of government and are looking at a roundtable later in the year which fits very well with the MNDB Scheme. Work is continuing by the Department of Communities and Justice (DCJ) & the Department of Customer Service (DCS) on the scheme. The consultation period has closed. IPC has seen 3 or 4 submissions which are useful.

IPC hosted the Privacy Authorities Australia (PAA) meeting last week online (WA & SA included although they don't have privacy legislation) and discussed privacy developments across Australia. A number of states are introducing legislation about the QR tools to ensure government does not use this information except for contract tracing (NSW has implemented this via the Public Health Direction).

MD queried the legislative prohibition against using the information from QR codes. SG advised that WA had to put emergency legislation through Parliament to clarify that information collected by their QR coded data could not be used for purposes other than contact tracing, when Police produced a warrant to access QR code information to investigate a criminal incident. QLD had a similar incident to WA, where the media picked up on a request by Police to access QR code information. VIC is considering introducing similar legislation to WA. Police do not need to use this data as they have access to telecommunications data to investigate crime, but in the WA case, they wanted to access it to identify witnesses, rather than to apprehend a perpetrator. While investigation of serious criminal activity is an important issue, Privacy Commissioners do not believe that locating witnesses would be an appropriate use of QR code data.

The Chair asked if there is a legislative timetable for the MNDB Scheme. SG confirmed that there will be consideration of what has been put forward and the major decision is whether this needs to go back to Cabinet. The current timetable provides for the Legislation to be introduced into Parliament this October. JK advised that DCJ advised it will need to go back to Cabinet which will push back the timetable.

The Chair asked for an update on DRF. SG sees this as a positive process as we now have visibility over the digital projects in their preliminary stages and can provide privacy advice at that point, rather than when a project is nearing completion. A prime example being the DRF project to provide a QR code for school visitor check-ins which has significant privacy implications.

6. Agency Planning and Reporting

A IPC Case File Dashboard (May 2021)

IN took the report as read.

The Dashboard report ties into the Operational Review. Results at end May record 100% performance for information access reviews and privacy reviews.

A three-year Work Health & Safety Plan has been circulated to staff which is based on a DCS model.

The Operational Review is attached to the papers which highlighted that IPC is operating at a higher capacity given limited resources, when compared to other jurisdictions.

It was noted that the cash balance was higher when this report was produced. The \$700k loan has now been re-paid to DCS. (The need for this loan arose from DCS's difficulties in providing the relevant funding code data to Treasury.) This figure will be slightly lower at year end expected to be just under \$700k.

Superannuation Guarantee Contributions: past contributions have been paid by DCS to the Australian Tax Office (ATO) for that Department's portion. However, the DCJ portion is yet to be paid and advice is awaited on when this will occur. Also, ATO advise that if an individual ARC member believes that their superannuation cap for a financial year will be exceeded due to those payments, they need to complete an exemption form (attached to papers) to avoid adverse taxation implications.

Payments going forward: DCS have come to a position based on advice that they will process ARC member superannuation payments through the payroll going forward. DCJ are still however doing vendor payments. IPC is considering single touch payroll system (STP) which was mandated from 1 July 2021 for all payments to be submitted to the ATO. STP payment for the IPC will have implications and new software will need to be purchased. DCS's position is that super payments should be made to individuals and not companies (for further discussion).

MC advised that years ago they were instructed to set up a company for ARC fee payments. This advice was in recognition of the ARC Members remaining independent. Subsequent advice about the ARC Members being considered 'employees' hasn't taken independence into account. IN said that there is a different approach taken by DCS compared to some other clusters. The Chair noted that the Ministry of Health has adopted the payroll basis for payment of ARC member fees. MD declared that advice seems to be ad-hoc throughout government about the independence of the ARCs which has not been addressed in a consistent way which is a representational risk. How can we raise this at a higher level, how these changes work with the requirement for ARCs to be independent? What can be done to improve the situation?

IN reported that the DCS have organised retrospective superannuation payments to the March quarter. IN said that we need to work out what we do for super payments beyond March as we need to pay superannuation within 28 days. The Chair does not think we can change from the DCS Clusters' advice. The Committee agreed.

B Quarterly Report to the Attorney General & Minister Dominello – Quarter 3, January 2021 to March 2021

Report noted.

E IPC Financial Dashboard (May 2021)

AM advised that DCS are currently finalising the June Financial Dashboard.

Net Cost of Services \$5.8m actuals v \$5.9m budget. Forecast 30 June NCOS \$6.5m. Actuals variance \$90k YTD favourable with forecast to budget favourable by \$11k.

ERE YTD is \$4.4 actuals v \$4m budget before the \$400k transfer. Forecast at 30 June is \$85k unfavourable.

Contractors are at 20-30% higher costs.

Other operating expenses \$1.2m actual v \$1.62m budget. \$420k favourable (before the \$400k movement). Forecast at 30 June is \$1.5m v budget \$1.47m. \$33k unfavourable.

Where there are overspends in operational expenditure against budget DCS will work with the IPC in fixing this for 2021/22.

Discussion will be had around whether Operating Expenses & Employee Related Expenses need adjustment (due to Contractor costs).

MC advised it might be worthwhile having a closer look as to where the budget allocations in the Accounts are identified in the detailed schedule.

IN noted a couple of minor changes to the budget allocations 2021/22.

The Chair queried the Corporate Support costs. IN advised the \$200k is the fixed charge and there is also other 'pass through' charges of \$260k within the other operating expenditure figures.

The Chair advised that the bottom line for end June is a better result than budget which shows we are doing very well. He asked if the \$700k grant is included in the grant revenue figures. IN said that it is.

The Chair queried the leasing charge and IN advised it is located in 'Premises'. AM advised that this is not a lease, but a rental charge and therefore there are no leasing comments to be made in the 30 June Financial Statements. SA advised that the Audit Office will need to see a formal assessment as to why AASB 16 doesn't apply to the IPC. The Chair said that he also doesn't understand this. SA advised that Property NSW actually holds the lease for its office space in the building including that of the IPC.

IN confirmed that the Budget Papers predicated a deficit at 30 June 2021 of \$473k for the IPC. The net result should be about \$280k deficit, a sizable improvement.

Efficiency dividends have been queried with Treasury. There was no ED in 2020/21. The ED from 19/20 was however carried forward. Once an ED is applied, it carries forward for future years and the effect in 2020/21 was \$180k charge against the IPC's Budget Allocation.

Review of the Asset Register: One of the expenses contributing to the deficit of \$55k is a write off of Property Plant and Expenses from Elizabeth Street (in addition to laptops). The Chair asked who does the independent check. IN advised he is not aware of an independent check. The Chair asked for confirmation that this would stand up to any audit. IN confirmed.

IN mentioned that the IPC were in the process of revising the Business Continuity Plan.

The Chair asked about the status of the Memorandum of Understanding (MOU) with DCS for Corporate Support Services. ET advised that we are conscious of other entities within DCS that have an MOU. ET has met with Belinda Lawn regarding IPC's needs in this context.

The Chair acknowledged the IPC's impressive results with Performance Development Plans for staff. He also commended the reported increase in the payment processing percentage against the targets.

MC thanked AM for showing the dashboard on the screen during the MS Teams online meeting.

IN noted that the Financial Dashboard will appear slightly different going forward.

The Chair asked for the final line wording in the Dashboard to be changed from 'Total' to 'Net Result'.

Action Item: AM/IN to ensure future dashboards note Net Result (from Total)

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

As above.

E NSW Treasury key matters for ARCs in 2020-2021

Paper attached and summarised in Paper 6.

7. External Audit

A 2020/2021 Financial Statements Timetable

IN noted the timetable attached.

B Early Close Financial Statements – Status

SA took the report as read.

Leasing disclosures: The AO requires a formal assessment to show why AASB 16 doesn't apply to the IPC. The assessment needs to show exclusive use of space by the IPC. If the IPC occupancy is covered by a rental agreement should IPC have a sub-lease arrangement? This matter needs to be clarified before the audit of the IPC 2020/21 Financial Statements is finalised.

All relevant disclosures need to be included in the Statements.

AM advised that they would add a Note to the Financial Statements that relate to the IPC which were previously not included.

A Management Letter will be provided by the Audit Office following the audit of the Financial Statements.

The Chair asked when the post Financial Statements will be available for review by the ARC. SA will check (The timetable will be in the Annual Engagement Plan) and understands that it will be mid/late September.

Action Item: IN to advise ARC Members of the date above (provided by ET below)

ET advised by Instant Message: ARC Chair and others Annual Engagement Plan provides - AO issues closing report on 21 September and ARC meeting is scheduled for 24 September.

DCS Finance left meeting

8. Internal Audit

A Internal Audit Reports & Recommendations Register

SM took the paper as read.

SM apologised for the lateness of audits, a little bit late trying to do all of these through April & May. The final report for Engagement Strategies will be provided to the ARC when available 'out of session'. All fieldwork has been completed and the report and agreed management actions will be finalised prior to distribution.

IPC Governance Health Check draft report is attached with a range of actions proposed. Opportunities identified to better articulate our KPIs. We are proposing to take these actions forward as part of our next Strategic Planning meeting covering measures, objectives and demonstrate how these measures are mapped against the KPIs. JM confirmed that this was a fair assessment. The Chair asked if there was anything urgent, or do we wait for the next Strategic Planning Review? JM confirmed there are no risks, and it was a job well done. SM advised that the delegation's action has been taken forward. Status Registers will be provided for the next meeting. MD commended the team which shows that things are going very well with continuous improvements. Agreed to by the Committee.

The Committee noted the Gap Analysis which identified the key changes required to implement the revised requirements of TPP20-08 Internal Audit and Risk Management Policy for the General Government Sector. The timetable provides for this to be completed by 31 December.

SM drew the ARCs attention (useful exercise) to the recommendations made and the timeframes, there is a 12-month hiatus but from January 2022 IPC needs to be in compliance with the new provisions. An update will be provided to the IPC in September.

B Strategic Internal Audit Plan

The Chair asked if there was another internal audit due to be undertaken in respect of the 2020/21 Internal Audit Plan. SM advised that No further internal audits for 2020/21. There had been a further audit – titled Knowledge Management which at the December meeting was agreed to move to prospective audits. This audit will be taken into consideration in the development of the 2021/22 Internal Audit Program following the development of the forward Strategic Plan and Risk Register review. The Chair is conscious that we are at the end of 2020/2021 financial year and that the ARC might not see any further internal audit reports before January 2022. SM advised this is normal as we perform audits in the first half of the year. SM suggested that the timing of the audits be separated to one in the first half of the year and one in the second half of the year to spread the work and impact on resources.

9. Risk Management 2020-21

A Review of IPC Risk Register (includes WHS) Q4 2020-21

SM took the paper as read. By and large there is not a lot of change in the risk ratings (noting S4, S6 & O1 have been revised upwards to Moderate and are all interrelated in some ways). Consequence of staffing change and movement in the Investigation & Review (I&R) team which impacts the ability to manage increasing volumes and statutory timeframes. SM mentioned the inability to recruit to fill all roles. The field of applications is not always strong which makes recruitment a challenge. The IPC is applying mitigation strategies as best as possible but there are gaps in core staffing. Regarding whether staff departures are linked to staff morale, SM noted that there is no information to say that this is the case. Exit interviews indicate that departing staff have enjoyed their employment with the IPC and are leaving for higher roles. Collectively as a team this issue has not taken away staff commitment to outcomes but does present a risk for sustaining the work volumes and the exacting timeframes. SM advised a 9% increase in the number of reviews & complaints and that the closure rate exceeded the closure rate for the similar period last year based on the data for the end of year 2020/21.

The Chair mentioned the positive PMES comment from staff. SM advised the reputational risk of concern is that the volume of work at the IPC and performance targets appear higher than for other agencies.

The Chair is concerned about the Extreme rating for the Funding Risk. SM advised that this pre-dated the recently announced budgetary enhancements beyond 30 June 2021. The risk rating will now be adjusted in the Risk Register. The funding announcements were not available when the ARC papers for today's meeting were distributed.

B IPC HSC Meeting

Minutes attached noted.

The Chair queried the wellbeing of staff during Covid-19. SM advised that the IPC receive broad communications from DCS about checking in and the Benestar assistance available. At a more localised level I&R check in on each other and have regular communications. The IPC is looking at Resilience Training. ET noted that one of the issues discussed at the Executive level was the front-line calls staff take and the tension associated with some calls. This is very different in a remote location and there is a difficulty in debriefing with colleagues. The IPC are working to support staff and are acutely aware that isolation can increase tension.

10. Review of ARC Charter Annual Calendar

A Annual Calendar

Calendar noted.

The Chair noted 4.1 and the Q4 target dates. He asked if all items have been actioned or is there something to be carried forward to the next ARC meeting? IN advised that the only item to be deferred is the Legislative Compliance Register Update. This Register was updated last September and it was suggested the 2021 update be postponed to the next ARC Meeting.

The Committee agreed however compliance with this requirement is one of the certifications required for the endorsement of the post audited 2020/21 Financial Statements. A current certification will need to be available to the Committee for its meeting of 24 September when it reviews the post audit Statements.

Other Business

As the meeting concluded early, the in-camera session with OCM is to continue now.

Action Item: LM to send a separate invitation to the AO & Committee for 11:15

The meeting closed at 10:37am.

Schedule for 2021

- Tentative OOS – 22 July 2021 @ 13:30
- Friday, 24 September 2021 @ 14:30
- Friday, 26 November 2021 @ 10:00

Tenure Dates

Member	Appointment	Commencement Date	End Date	Extension End Date 1	Extension End Date 2
Malcolm Clinch	Member	5 July 2015	5 July 2018	5 July 2021	5 July 2023
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		