NSW Department of Primary Industries

Commercial Fisheries Adjustment Subsidy Program (ASP)

Probity Audit Report

January 2018

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Mr David McPherson
Group Director - Commercial Fisheries and Aquaculture
Department of Primary Industries
36 Marina Drive
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12 January 2018

Dear David,

Probity Audit Report: Commercial Fisheries Adjustment Subsidy Program (ASP)

O'Connor Marsden & Associates (OCM) was engaged to provide probity audit services to the NSW Department of Primary Industries (DPI) in relation to the Commercial Fisheries Adjustment Subsidy Program.

In accordance with the Agreement signed by DPI and OCM and the Scope of Services in the RFQ Response, OCM provided its services with a view to providing a report with a conclusion on the compliance of the evaluation process with the probity principles. This report also provides observations and any recommendations in relation to the probity aspects of the evaluation process, particularly in regard to procedural fairness and equity.

If you require any further information or wish to clarify any matters, please contact me on 1300 882 633.

Yours sincerely

Signed

Andrew Marsden
Director

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1 Executive Summary

1.1 Introduction

At the request of NSW Department of Primary Industries (DPI), O'Connor Marsden and Associates (OCM) provided probity audit services in regard to the Commercial Fisheries Adjustment Subsidiy Program (ASP). The engagement was performed in accordance with Australian Standard on Assurance Engagements ASAE 3000, *Assurance Engagements Other than Audits or Reviews of Historical Financial Information.*

Further information in relation to the extent of the procedures performed and the scope of our engagement is detailed below and in the Statement of Responsibility in **Appendix A**.

1.2 Background

The Adjustment Subsidy Program (ASP) is the $16 million package provided by the NSW Government to assist commercial fishers in the transition to the new share linkage arrangements as part of the wider Commercial Fisheries Business Adjustment Program (BAP). The BAP Share linkage aims to provide stronger access rights for business owners, improve DPI's ability to sustainably manage harvest, and improve the capacity of these fisheries to adjust in future using market-based mechanisms.

The first stage of the ASP included fishing business buyouts, training sessions and a preview share trading market. This first stage allowed fishers to apply for a fishing business buyout if they wished to exit the industry or consolidate their current shareholding. Fishers were also trained on how to use the share trading program and participate in a preview market. The second stage is a subsidised share trading market which facilitated trading of shares. The market program matched bids to buy and offers to sell shares placed by commercial fishers in each share class. The total subsidy budget for the share trading market phase was the remainder of the $16 million at the end of the fishing business buyout in the first phase. This Government subsidy was paid to active fishers who bid to buy shares to support them in continuing their current operations.

1.3 Objectives

As detailed in our proposal dated 24 October 2016, the overall objective of our engagement was to provide a conclusion, based on the work performed, on whether anything came to our attention to indicate that the process for the evaluation on the outcomes of the subsidised share trading market program did not comply with the probity principles in all material aspects.

If considered appropriate, OCM was also to provide observations and/or recommendations in relation to the probity aspects of the evaluation process, particularly in regard to procedural fairness and equity.

1.4 Scope

The scope of our engagement covers the probity aspects of the evaluation process undertaken by DPI for the ASP share trading market program. In accordance with generally accepted probity principles, we have focused on DPI's systems and processes in regard to:

- accountability of the participants and transparency of the process
- fairness, impartiality and honesty in carrying out the process
- management of actual, potential and perceived conflicts of interest
- maintenance of confidentiality and security of documentation and information
- attaining best possible value for money under the prevailing circumstances.

This probity report covers the period from the commencement of our engagement to the date of the above letter. As the engagement was a probity audit of the process, the work was undertaken as a retrospective review of the process (refer to the Methodology in Section 1.5). Probity advice was provided during the procurement activity by APAC.

1.5 Methodology

During this engagement, OCM has undertaken the following activities in order to provide the Department with a report at the conclusion of the audit:

- Held discussions with key individuals involved in the program to understand the process followed and identified any key issues or risks that have arisen during the evaluation;
- Reviewed reports to identify any relevant issues and recommendations relating to the Program and this audit process;
- Reviewed the risks identified in the Probity Plan and the risk mitigation strategies and undertook audit activities to confirm that there have been adopted and managed during the program;
- Gained an understanding of the program and the processes adopted, including the use of the share trading market software and controls on the management of confidential information;
- Reviewed the records of the program including but not limited to:
    - The subsidised share trading market manual
    - The market rules (16 January 2017), including the Amendment Supplement
    - The overview document of how the subsidised market works
    - The information presented to the Evaluation Panel from reports generated by TUM and the records of the assessment by the Evaluation Panel consistent with the Terms of Reference of the Panel
    - The recommendation reports to the DPI Director General in relation to the outcome of the Rounds and recommendations to proceed with additional rounds.
- Provided a report at the conclusion of the audit identifying the outcome of the audit against the probity principles and compliance with the established process.

1.6 Conclusion

Nothing has come to our attention to indicate that the processes undertaken by DPI for the subsidised share trading market were not compliant with the probity principles described in the Scope in all material aspects.

Minor areas for improvement and recommendations have been included in our report in regard to procedural fairness and equity but these did not impact the overall conclusion in relation to compliance with the probity aspects of the evaluation process.

2 Work Performed

OCM has undertaken the following tasks with respect to the processes adopted by the Department in the Fisheries Adjustment Subsidy Program and the subsidised share trading market processes:

2.1 Accountability of the participants and transparency of the process

OCM has not identified any significant evidence to suggest that the registration and application process did not have due regard to accountability and transparency. This view was formed based on the below activities:

1. Reviewed the following documents:
    a. Subsidised share trading market manual
    b. Market Rules and supplement
    c. Things you need to know
    d. Round Outcomes and what they mean
    e. Presentation slides on 'How the market works'
    f. Participation Deed
    g. Registration Form
    h. Log of Training sessions/schedule to fishers and coop boards

    These documents appeared appropriate for the process and gave adequate guidance to fishing businesses on the share trading process.

2. Reviewed the Evaluation Plan and observed this was sufficient to address probity risks and approved at the relevant senior level (Director-General) on 17 March 2017. The Plan includes the key decisions, thresholds on level of subsidy, criteria for closing and/or opening another market round and the evaluation process and timeline to be adopted.

3. Confirmed that the underlying technology was developed by an Australian company, Spatial Vision, and the Technical University of Munich (TUM). Spatial Vision was primarily responsible for the market user interface and transaction entry system. TUM was responsible for the transaction-matching algorithm and generation of reports using this algorithm based on a number of parameter sets (called scenarios).

4. Confirmed that a preview round of the share trading market was held in October 2016. The preview market enabled participating businesses to 'practice' logging in to the system and placing bids or offers on the market portal. There were no actual shares exchanged and no subsidy paid from the preview market.

    OCM also confirmed that roadshows and training sessions were conducted to provide further support to the market participants.

5. Confirmed that registrations to the share trading market closed on 27 March 2017. There were a total of 597 fishing businesses that registered to participate in the market. As part of the registration process, fishing businesses were to complete two forms:

    - Participation Deed - formal agreement between the fishing business shareholder, the participant (if using an agent), the Department and the Rural Assistance Authority setting out the terms and rules of participation to the market.
    - Registration Form – nomination of fishing businesses to be registered and participant/s for that business i.e. the shareholder/owner or an appointed agent.

    The Registration Form and Participation Deed are required to be submitted prior to the closing date, 27 March 2017. The registration form clearly states that *"registrations will not be processed if not completed and submitted by the closing date."*

Our review of a random sample of 10 fishing businesses noted that 1 fishing business had signed and dated their registration form on 28 March 2017 and another had signed and dated their Participation Deed on 29 March 2017. There is evidence that both these businesses were allowed to participate in the market despite their late submission.

We have been advised by DPI that no application was rejected on the basis of being received after the closing date and DPI followed up those applications that had not been finalised due to problems such as missing information or incorrectly signed deeds. This approach was consistent with the program's intent of increasing the participant numbers. In relation to the exceptions noted, we have confirmed that both these samples submitted their original application within the due date but due to problems with the original documents submitted, both were asked to complete and sign updated forms.

6. Reviewed the Registration Form and Market Rules from a probity perspective and confirmed that it clearly articulated the objectives, requirements and operations of the share trading market and the evaluation process, including any discretion given to the Department through the Director-General for deciding the outcomes on each market round.
7. Confirmed that the Evaluation Plan contained an outline of the evaluation process that would be adopted, as follows:
   a. Registration process
   b. Share trading market operations
      i. Opening of market
      ii. Participant biddings for one week
      iii. Closing of market
   c. Evaluation of the market bids:
      i. Scenarios ran by TUM
      ii. Reports prepared for the Evaluation Panel
      iii. Evaluation Panel meetings
      iv. Briefing and recommendation to DG
      v. Close the market or open another market round

   During a market round, participants could change/remove their bids up to the closing date and time. The bids placed at the closing point will be the final bids used for evaluation. We observed from a sample screenshot that the closing date and time can be clearly seen on the market portal.

   We have been advised that once the closing date and time of each market round have been approved, this can be set in the system by any one of the 3 Department officers working on the project. Once set, the date and time are 'locked' in the market portal and cannot be amended e.g. extended. We were unable to test or confirm this system configuration.
8. Reviewed the Evaluation Plan from a probity perspective and confirmed that it clearly articulated the following:
   a. Market objectives against which the outcomes of each market round will be evaluated:
      i. reduce overall, across all share classes, share deficits of active fishers by maximising the number of successful bids by active fishers with share deficits;
      ii. maximise the number of successful buy bids by active fishers without share deficits;
      iii. maximise the number of successful package offer;
      iv. match any remaining bids and offer.
   b. Thresholds for closing a market round:
      i. > 90% successful buy bids by active fishers with share deficits
      ii. > 80% successful buy bids by active fishers without share deficits

iii. > 80% successful package offers

c. Key decision points for evaluation:

i. Have the market objectives been sufficiently achieved, having regard to all share classes in aggregate, to justify closing the market?

ii. If yes, which scenario best achieves the market objectives while providing value for money?

iii. If no, is there potential for market objectives to be achieved if another round is held?

iv. If another round is to be held, which scenario should be chosen as the basis for outcomes from this round?

v. If another round is to be held, do any share caps need to be amended or removed?

vi. Have the market objectives been sufficiently achieved, having regard to all share classes in aggregate, to justify closing the market?

9. Confirmed that the Evaluation Plan contained discretions for the Evaluation Panel on decisions including:

   a. Recommendation to close the market even if the thresholds have not been met or have only been met for some share classes, provided it is satisfied that the objectives have been sufficiently met for a subsidy spend that provides value for money.

   b. In cases when two or more scenarios are similar in the extent to which they achieve market objectives, consideration of other factors when choosing which scenario to recommend e.g. number of share classes with market prices, degree of variance in subsidy paid, number of individual bids rejected.

10. Confirmed that the approved Evaluation Plan for the process provided a clear framework for the management of probity during the assessment process including the probity principles on fairness, accountability and confidentiality. The probity advisor provided independent oversight on the evaluation process and was present at evaluation meetings.

    There was also an opportunity for participants or anyone to anonymously report any incidents of actual or suspected unethical or anti-competitive behaviour during the share trading market through the Department's website.

11. Sighted the Issues Register maintained by the probity advisor and noted that there were 20 issues logged in the register. We have confirmed that no issue was outstanding or unresolved at the time the Probity Report was issued on 18 December 2017.

2.2 Fairness, impartiality and honesty

During the share market trading program, OCM has not identified anything to suggest that the assessment process did not have due regard to fairness, impartiality and honesty. This view is formed based on the below activities:

1. Confirmed that the approved Evaluation Plan identified the roles and responsibilities of the Evaluation Panel members during the evaluation process including:

   a. The panel will evaluate completed rounds of the share trading market and make recommendations to the DG DPI on how to proceed;

   b. The panel will work through the key decisions for evaluation i.e. market objectives, key measures and decision thresholds;

   c. The panel will exercise its judgement, particularly if results do not conform to expectations, there is highly unusual or suspicious bidding activity, or the distribution of successful outcomes is highly inequitable.

2. Confirmed that while there were no completed COI forms and no Conflict of Interest (COI) Register maintained, there have been no conflicts declared throughout the process by any individual involved in the evaluation of the market rounds (refer also to the section below).

3. Confirmed that testing was done on the trading system by the primary developer Spatial Vision. The testing plan was agreed between DPI, Spatial Vision and TUM.
4. Sighted the Evaluation Panel Recommendation for each of the three market rounds. The key outcomes under each round are summarised below:
    a. Round 1:
        - Market closed on 8 May 2017
        - 552 registered fishing businesses had placed at least one bid
        - Bids made: 747 to buy, 421 to sell and 95 package offers
    b. Round 2:
        - Market closed on 22 May 2017
        - 551 registered fishing businesses had placed at least one bid
        - Bids made: 739 to buy, 439 to sell and 101 package offers
    c. Round 3:
        - Market closed on 5 June 2017
        - 547 registered fishing businesses had placed at least one bid
        - Bids made: 740 to buy, 432 to sell and 107 package offers
5. We confirmed from interviews with the DPI Fisheries Manager that upon opening and prior to the close of each round, all registered fishing businesses were sent an SMS reminder. At the end of each round, all registered fishing businesses were also advised via email that the round has closed, the outcomes and what the next steps were. We have sighted the text of the SMS and email notification that went out to fishing businesses.
6. We confirmed from interviews with the DPI Fisheries Manager that DPI offered a dedicated Hotline for the subsidised share trading market. DPI officers assigned to the hotline were given ‘scripts’ in relation to the outcome of each round and how to address queries from fishing businesses. We have sighted the ‘scripts’ for each market round. We were advised that the officers in the hotline did not have access to the actual bids made by the fishing businesses.
7. OCM confirmed, via review of the Evaluation Reports and the Final Probity Report, that the assessment process was conducted in accordance with the approved Evaluation Plan with specific reference to the following:
    a. all participants involved in the assessment of the applications had signed the Confidentiality Deed for the program;
    b. there was no conflict of interest declarations received by the probity advisor;
    c. the evaluation panel received probity training from the probity advisor APAC; and
    d. the evaluation of market outcomes was undertaken in accordance with the objectives, criteria and thresholds in the Evaluation Plan.

    Our review of the recommendation reports prepared by the Evaluation Panel and the assessment of the market round outcomes, is that these were developed consistent with the role and responsibility of the Evaluation Panel, and as described in the Evaluation Plan. OCM did not identify anything to suggest that the assessment was inconsistent with the methodology communicated to the fishers.

    At the end of each market round, the Evaluation Panel met via tele-conference and reviewed the summary reports on the results. The deliberations of the Panel were overseen by the independent probity advisor. DPI officers then prepared a draft report containing the recommendations by the Evaluation Panel which were circulated for endorsement by members of the Evaluation Panel before presentation to DPI management.

OCM noted that, as a potential area for improvement, the recorded outcomes of the Evaluation Panel could be further supported through the taking of minutes of evaluation meetings or an outline of the meeting, including attendees and outcomes/decisions, in addition to the formal report prepared for each round.

2.3 Management of actual, potential and perceived conflicts of interest

During the share trading market program, OCM has not identified anything to suggest that the assessment process did not have due regard to the management of actual, potential or perceived conflicts of interest. This view is formed on the basis of the below activities:

1. Confirmed from interviews with DPI officers that the project team, Evaluation Panel and recommending officer/s were required to adhere to the Code of Conduct of the Department but were not required to complete the Conflict of Interest Declaration form, unless there is a conflict to be declared. There was also no Conflict of Interest Register maintained.

   Based on the final probity report, we noted that no Conflict of Interest Declaration form was received by the probity advisor.
2. Confirmed from interviews with DPI officers that other advisers and consultants were not required to complete and sign a Conflict of Interest Declaration form. We confirmed that the contractual agreements with these parties have included clauses on conflicts of interest declaration and confidentiality of information.
3. OCM met with the Probity Advisor and confirmed that probity, including conflict of interest were discussed during the workshops. The topic of probity, particularly collusion, was also included in the presentations made to participants.

Improvements could be made regarding the controls in relation to conflict of interest. COI declaration forms are ideally required from all parties involved in the project for completeness, even though there is no conflict to be declared. A COI register could also be developed and maintained to capture declarations made and to document the management strategies applied and any actions taken to mitigate the interest. OCM understands that DPI relied on the conflict of interest provisions within the Department/s Code of Conduct. However, for projects such as this, which are complex and subject to external scrutiny (or high value), it is recommended that project specific conflict of interest declarations are required to be completed and maintained in a register.

2.4 Maintenance of confidentiality and security of documentation and information

During the share trading market program, OCM has not identified anything to suggest that the assessment process did not have due regard to the management of confidentiality. This view is formed based on the below activities:

1. Confirmed that Confidentiality Deed Poll was required to be signed by all members of the Evaluation Panel and project team. The Deed included the following provisions and conduct obligations:
   a. results of each market round will be provided to the Evaluation Panel in a secure format, e.g. password protected files;
   b. members are not to share information on market results with any other party without express authorisation from the Chair of the Evaluation Panel and the probity advisor;
   c. members are not, under any circumstances, to answer any questions or provide information to the media in relation to the share trading market and market results; and
   d. store the confidential information secure and use only for approved purposes.

2. Confirmed through interviews with DPI officers that security of the bids and market results was maintained through the following:
    a. unique/individual access to the market portal to place bids by participants using their own username (email address) and password;
    b. access to the Administration side of the market portal is restricted to 3 officers from the Department using a single/shared log-in name and password;
    c. TUM has direct access to the database holding all market data;
    d. the Evaluation Panel received and reviewed the market results electronically using password-protected reports and the decryption key to the documents was changed for each evaluation meeting; and
    e. access to market results data, reports and other market relevant information was limited to those involved in the project.

    Improvements could be made regarding the controls in relation to confidentiality and security of information and document. Log-in and password details to systems should be unique for each individual instead of a shared access.

2.5 Obtaining best possible value for money under the prevailing circumstances

During the share trading market program, OCM has not identified anything to suggest that the assessment process did not have compliance with the Evaluation Plan. This view is formed on the basis of the work described below:

1. Noted he outcomes and recommendations at the end of each market round from the Evaluation Reports were as follows:

	Target in Evaluation Plan	**Round 1**	**Round 2**	**Round 3 - Final**
No, of scenarios ran	[redacted]			
Scenario				
Subsidy				
Allocation of active FBs with share deficits				
Allocation of active FBs without share deficits				
Allocation of package offers				

We confirmed, and as outlined in the Evaluation Report and agreed by the Panel, that even though the targets and thresholds in the Evaluation Plan were not achieved in the final round, the outcome was a significant improvement in the primary objective of reducing the share deficits. The Evaluation Panel weighed the extent to which market objectives are achieved against the cost and the participation rate from a value-for-money perspective.

2. We confirmed from the Evaluation Panel considered increasing the total subsidy to achieve higher rates of success for the other objectives of matching bids for fishers without deficit and matching package offers. However, this was voted against on the following grounds:

   - *higher budgets did not result in any improvement in the primary objective of reducing share deficits of active fishers;*
   - *consideration was made to stay within the advertised total budget for the share trading market, as any use of additional funds would only generate questions as to why the budget could not be increased still further;*
   - *success of active fishers without deficits and package offers are second-order priorities, and the degree of improvement did not warrant expenditure of additional public funds beyond the agreed budget.*

We confirmed that the recommendation for the outcome of Round 3 with total subsidy pay-out of [redacted] was approved by the DG DPI and Minister.

3. [redacted]

Appendix A: Statement of Responsibility

Management's Responsibility for the Assessment Process

The management of the Department are responsible for the design and implementation of the assessment process controls in accordance with Government and Department policies. This responsibility includes establishing and maintaining processes relevant to the evaluation process to ensure that the process meets appropriate probity policies, laws and regulations; and leads to selecting the most appropriate applicant or applicants under the prevailing circumstances.

Assurance Practitioner's Responsibility

Our responsibility is to express a conclusion on the Assessment Process based on our review. We conducted our review in accordance with Australian Standard on Assurance Engagements ASAE 3000, *Assurance Engagements Other than Audits or Reviews of Historical Financial Information,* in order to state whether, on the basis of the procedures described and witnessed where appropriate, we have become aware of any matter that makes us believe that the evaluation process is not in accordance with the principles described above.

A review consists primarily of making enquiries, primarily of persons responsible for undertaking the evaluation process and its underlying documentation, applying analytical and other review procedures, and examination of evidence for a small number of transactions or events. A review is substantially less in scope than a reasonable assurance *audit* conducted in accordance with ASAE 3000. Accordingly, we do not express an audit opinion. Had we performed a reasonable assurance *audit* as defined by ASAE 3000 or an audit as defined by Australian Standards on Auditing, additional information may have come to our attention, which would have been reported to Department.

While conducting our review and/or in our report we may provide advice and/or recommendations in relation to the mitigation of risk of challenge to the processes undertaken by the Department. In these cases, our responsibility is limited to providing such advice and/or recommendations, based on our experience and knowledge of the subject matter of the project. For the avoidance of doubt, the procedures performed in providing advice and/or recommendations do not constitute an assurance engagement in accordance with Australian Standards for Assurance Engagements, nor do they represent any form of audit under Australian Standards. We have therefore do not express any form of assurance in relation to the advice and/or recommendations, and none should be inferred from any such commentary in this report.

Inherent Limitations

Our Work is subject to the following limitations:

Owing to the inherent limitations of any internal control structure, it is possible that errors or irregularities may occur and not be detected. Our procedures were not designed to detect all weaknesses in control procedures as they were not performed continuously throughout the period and the tests performed are on a sample basis.

Any projection of the evaluation of the control procedures to future periods is subject to the risk that the systems may become inadequate because of changes in conditions, or that the degree of compliance with them may deteriorate.

The matters raised in this report are only those which came to our attention during the course of performing our procedures and are not necessarily a comprehensive statement of all the weaknesses that exist or improvements that might be made. We cannot, in practice, examine every activity and procedure, nor can we be a substitute for management's responsibility to maintain adequate controls over all levels of operations and their responsibility to prevent and detect irregularities, including fraud. Accordingly, management should not rely on our report to identify all weaknesses that may exist in the evaluation process, or potential instances of non-compliance that may exist.

Advice and/or recommendations for improvement should be assessed by management for their full commercial impact before they are implemented.

Limitations on use

This report is made solely to the Department in accordance with our engagement letter dated 18 July 2017, for the purpose of providing comfort to senior management on the appropriateness and robustness of the evaluation process and should not be quoted in whole or in part without our prior written consent. We disclaim any assumption of responsibility for any reliance on this report to any person other than the management of the Department, or for any purpose other than that for which it was prepared.

We disclaim all liability to any other party for all costs, loss, damages, and liability that the other party might suffer or incur arising from or relating to or in any way connected with the contents of our report, the provision of our report to the other party, or the reliance on our report by the other party.

Independence, Competence, and Experience

All professional personnel involved in this engagement have met the independence requirements of the Australian professional accounting bodies. Our team has been drawn from our Probity Services team and has the required competencies and experience for this engagement.

Appendix B: Schedule of Interviews

Ref	Name	Position / Company	Company
1	[redacted]	Group Director	DPI Fisheries
2	[redacted]	Senior Project Officer	DPI Fisheries
3	[redacted]	Fisheries Manager	DPI Fisheries
4	[redacted]	Probity Advisor / APAC	APAC