2024 | Contact for feedback: susan.helyar@act.gov.au

Background Briefing Paper

Shared Risks in Human Services funded by ACT Government and delivered by NGOs

Documenting, Controlling and Treating Shared Risks in funding and delivering ACT Government funded Human Services in the ACT Community

April 2024

THIS PAPER HAS NOT BEEN CONSIDERED BY THE ACT GOVERNMNET AND DOES NOT REPRESENT AN ACT GOVERNMENT POLICY POSITION

Background

ACT Government Risk Management Guidance Materials

Procurement ACT has developed guidance material and tools to support Officials to assess risks: Factsheet-Risk-Management.pdf. The tools kits include the following on categorising and assessing the consequences of risks:

Categories of Risk	Sample Consequence					
		Insignificant	Minor	Moderate	Major	Catastrophic
	Assets	Loss or destruction of assets up to $2,000	Loss or destruction of assets $2,000 to $10,000	Loss or destruction of assets $10,000 to $100,000	Loss or destruction of assets $100,000 to $5M	Loss or destruction of assets greater than $5M
	Compliance/ regulation	Non-compliance with work policy and standard operating procedures which are not legislated or regulated	Numerous instances of non-compliance with work policy and standard operating procedures which are not legislated or regulated	Non-compliance with work policy and standard operating procedures which require self reporting to the appropriate regulator and immediate rectification.	Restriction of business operations by regulator due to non-compliance with relevant guidelines and / or significant non-compliance with policy and procedures which threaten business delivery.	Operations shut down by regulator for failing to comply with relevant guidelines and /or significant non-compliance with internal procedures could result in failure to provide business outcomes and service delivery.
	People	Injuries or ailments not requiring medical treatment.	Minor injury or First Aid Treatment Case.	Serious injury causing hospitalisation or multiple medical treatment cases.	Life threatening injury or multiple serious injuries causing hospitalisation.	Death or multiple life threatening injuries.
	Environment	Limited effect to something of low significance	Transient, minor effects	Moderate, short-term environmental harm	Significant, medium-term environmental harm	Long term environmental harm
	Financial	1% of Budget	2.5% of Budget	> 5% of Budget	> 10% of Budget	>15% of Budget

	Sample Consequence					
		Insignificant	**Minor**	**Moderate**	**Major**	**Catastrophic**
Categories of Risk	**Technology**	Interruption to electronic records and data access less than ½ day.	Interruption to electronic records and data access ½ to 1 day	Significant interruption (but not permanent loss) to data and electronic records access, lasting 1 day to 1 week	Complete, permanent loss of some electronic records and/or data, or loss of access for more than one week	Complete, permanent loss of all electronic records and data
	General management activities	No impact on business outcomes and strategic objectives.	Minor impact on business outcomes and strategic objectives. Non-essential or subsidiary services experience minor disruptions.	Moderate impact on business outcomes and strategic objectives. A number of objectives not met, minor or subsidiary services impaired.	Significant impact on business and strategic objectives. Key service delivery impaired.	Strategic business outcomes processes fail and business objectives not met. Unable to delivery necessary services.
	Reputation & Image	Internal Review	Scrutiny required by internal committees or internal audit to prevent escalation.	Scrutiny required by external committees or ACT Auditor General's Office, or inquest, etc.	Intense public, political and media scrutiny. E.G.: front page headlines, TV, etc.	Assembly inquiry or Commission of inquiry or adverse national media.
	Cultural & Heritage	Low-level repairable damage to commonplace structures	Mostly repairable damage	Permanent damage to items of cultural significance	Significant damage to structures or items of cultural significance	Irreparable damage to highly valued items of cultural significance
	Business Process & Systems	Minor errors in systems or processes requiring corrective action, or minor delay without impact on overall schedule.	Policy procedural rule occasionally not met or services do not fully meet needs.	One or more key accountability requirements not met. Inconvenient but not client welfare threatening.	Strategies not consistent with Government's agenda. Trends show service is degraded.	Critical system failure, bad policy advice or ongoing non-compliance. Business severely affected.

ACT Government guidance material on risk assessment, documentation and management also includes the following definitions of risk controls and risk treatments:

Control: A measure that is modifying risk A control can include any process, policy, practice or other action which modify risk. (ISO Guide 73:2009) ***This is something that is currently modifying the risk or managing the risk.***	**Treatment:** A process to modify risk. Treatment can involve avoiding the risk, taking the risk to pursue an opportunity, removing the risk source, changing the likelihood, changing the consequence, sharing the risk or retaining the risk by informed decision. (ISO Guide 73:2009). ***A treatment is a future planned action or process to be put in place to manage the risk.***

Evidence Base Informing Draft Materials on SHaring Risks

Anticipating and mitigating risks in long term partnerships

Evidence relevant to considering sharing risks between government and non-government partners in delivery of human services can be found in the literature on evaluation of Public Private Partnerships (PPPs), which are defined as "cooperative arrangements between public and private partners to share resources, risks, responsibilities and rewards to mutually gain social, economic, or environmental objectives."[1]

A report on the findings from a systematic literature review that analysed 159 articles published in international journals and identified eight major risk factors in PPPs, and documented the mitigation actions that had been effective in both controlling and treating these risks.

Contract risks include:

- negotiation - the duration of negotiations , insufficient processes for getting a contractual agreement, asymmetric information flow and imperfect information
- Incompleteness - In long-term partnerships, contractual arrangements need to cover a long period and it is not possible to define a "complete" contract considering all relevant aspects and future incidents
- Contractual design - an absence of flexibility to allow changes, lacking details or missing transparency of contractual contents

[1] Full article: Risks in Public–Private Partnerships: A Systematic Literature Review of Risk Factors, Their Impact and Risk Mitigation Strategies (tandfonline.com)

These risks can be mitigated by including in contract:

- Agreed mechanisms to flag changing circumstances and agreed roles when responding to changing circumstances;
- Yearly opportunity to negotiate amendments to contract;
- Exit procedures agreed in contract

Resource risks include:

- Financial - cost overrun due to poor initial cost estimates, lack of finance for future capital investment
- Workforce – supply of qualified staff, capability to operate in collaborative arrangement
- Different expectations of timeframes for outcome – short term vs long term return on investment

These risks can be mitigated by:

- Clear and consistent budget reporting,
- Partners supporting each other in terms of workforce recruiting, keeping the right people, consulting internal experts or referring to external advisors, regular and individualized workforce training and permanent education offerings
- Detailed time schedule, milestones, and fixed deadlines, penalties for late project completion or incentives for on-time delivery

Risks to Objectives include:

- Conflicting goals – short term vs long term outcomes, financial return, public value impacts
- Strategic misalignment – different approach to achieving shared objective
- Lack of clarity re goals and strategies - uncertainty about the expected outcome, unclear goal setting or unclear policies

These risks can be mitigated by:

- Documentation of goals of each party
- A common vision is communicated to internal and external stakeholders and maintained by the partners
- Setting milestones and assuring regular negotiations
- Contract states all goals, strategy to deliver on goals, values, assets and management responsibilities

Risks to the Structure of the partnership:

- Roles – differences in roles and responsibilities not understood by all parties
- Decision-making - complexity or insufficient advancement of decision-making processes, different strategies or divergent expectations of partners, the lack of a harmonized decision-making process and the inadequate integration of project members in these processes
- Co-ordination – lack of co-ordination, lack of mechanisms to support co-ordination and incompatible management structures

These risks are important to identify and address promptly because they have significant impacts on credibility and sustainability of the partnership:

- unfair distribution of power, reducing value-add of partnership
- avoidance of responsibility for deadlines or budgets
- impaired progress towards goals
- inefficiently used or wasted resources

These risks can be mitigated by:

- clearly defining roles and responsibilities across all levels of delivery (operational, tactical, strategic)
- democratic and participative approaches helped to enable more open discussions and to build trust
- appropriate and timely decision-making mechanisms
- Deliverables realistic as possible and need to monitor and evaluate them constantly

Commitment risks:

- Lack of identification with project - partners may have an incentive to run a PPP only to serve their own interests before meeting the stated mutual objectives
- Engagement - a lack of motivation, unwillingness to collaborate, reluctance to take risks or to invest

These risks can be mitigated by:

- Freedom for both partners and determine incentives and rules for collaboration
- Willingness to compromise and to collaborate
- Penalties for non-delivery by either party
- Managers work together collaboratively, especially when circumstances change

Risks in the operating Environment:

- Political risks
- Demand/revenue risks
- Risks related to a competitive environment
- Unpredictable incidents

These risks can be mitigated by:

- Engagement of and visibility to key political stakeholders
- Partners are highly experienced in the operating environment
- Pre-planning risks and responses to economic, financial, legal and political complexities

Communication risks include:

- Interactions – barriers include the lack of communication, the intensity of interaction, the complexity of communication processes, the lack of interpersonal communication, and differences in language, culture or power
- Sharing information - information asymmetry, the handling of confidential information and the quality of information flow
- Timeliness - Especially at the beginning, before the contracts are signed and the working phase starts, partners might not focus sufficiently on communication

These risks risk can be mitigated by:

- Regular meetings – more at beginning, less frequent once well established
- Formally agreed information exchange or information sharing between partners
- Adequate skills in each partner to understand and promote their ambitions and interests

Trust/Monitoring risks include:

- Monitoring – enough monitoring capacity to ensure the right quality output
- Building – sufficient trust without leading to neglect of monitoring responsibilities
- Transparency – to enable exchange of sensitive information to identify risks and emerging problems

These risks can be mitigated by:

- sharing of information
- mutual understanding
- formal and informal meetings supported
- practical collaboration among the partners
- open and honest communication
- clear roles and responsibilities for all partners

Documenting and Mitigating Shared Risks

The challenges in sharing risks between funders and deliverers of human services have been identified by the Productivity Commission[2]:

> "Currently, governments' approach to risk management in family and community services involves using prescriptive contract terms to manage the risks to government (such as the risk of cost overruns and the risk of governments being blamed for catastrophic failures in services). Managing risks through prescriptive contracts can achieve security for governments, but it can come at a cost — service provision that does not focus on the need to achieve outcomes for service users…Ultimately, risk averse attitudes that are expressed through prescriptive contract terms have the effect of passing on risks to service providers and service users, who are usually less well placed to manage them." (p247)

Guidance material to support better identification, mitigation and management of shared risks has been developed by the Commonwealth Department of Finance[3]. This guidance material states:

> Shared risks are those risks with no single owner, where more than one entity is exposed to or can significantly influence the risk. These include risks that extend across entities and may involve other jurisdictions.

---

[2] Family and community services: Chapter 8 - Inquiry report - Introducing Competition and Informed User Choice into Human Services: Reforms to Human Services (pc.gov.au)

[3] Element 6: Shared Risks | Department of Finance

Although they will differ in scale and nature, shared risks have a number of distinguishing characteristics.

- A shared risk may have no naturally apparent owner. Unlike simpler risks, no one entity may be able to manage the risk on their own.
- Shared risks often require a network of distributed responsibilities and relationships.
- Shared risks can have complex causes, and can be influenced by the actions (or inaction) of a range of participants in different ways.
- Should a shared risk be realised, they can affect different organisations in different ways, and can have complex and widespread impacts.

The growth of shared services and inter-agency projects means that shared risk is becoming more widespread.

The management of shared risks should be agreed by all parties involved. Accountability and responsibility for the management of these risks should be identified and accepted by those best positioned to manage them.

This guidance material has also noted:

...there can be more benefits associated with more formal processes in managing shared risk. These benefits include:

1. Greater ability to identify and manage challenges

Management of shared risk requires stakeholder collaboration and agreement in order to effectively control the risk. The effective management of shared risk requires ongoing communication between entities sharing the risk to agree on how best to manage complex scenarios. The shared risk process serves as a mechanism to flag dependency and the need to collectively monitor and manage risk more closely.

2. Clarity and understanding of risk drivers

Managing shared risk can pose some challenges. Different entities may view the same risk differently due to different objectives. In some complex situations, their measures for success in managing the risk may even differ too. In these instances, issues may arise due to conflicting interests, resulting in a lack of coordination to manage the risk.

A review of case studies presented by the Department of Finance highlights a number of principles and practices that support effective responses to shared risks:

...Key principle: Include in contract negotiation documentation of thresholds for risk tolerance and how funder and partner will ensure co-operation and alignment of shared risk mitigation strategies

Risk Driver: high degree of interface and shared risk, with many different parties regularly interacting and engaging with each other to achieve the same objectives

Risk Mitigators:
Communication

- Open communication between all relevant parties to maintain a holistic and accurate view of the shared risks that materialise
- Transparent reporting to enable quick and dynamic resolution of potential problems

- Forum to share ideas to reduce risks can support cooperation and connectedness across parties
- Mechanism to flag risk being realised and agree who is responsible for addressing impacts

Planning

- Anticipate and agree responses to risks arising as a result of "interface issues":
- Track and manage the different challenges and issues that presented themselves through various interactions across partner providers, parallel providers and government agencies
- Deed of agreement to agree accountability and understanding surrounding different types of day-to-day interactions that can impact positively or negatively on service delivery

Service continuity plan in event of significant disruption:

- Document key dependencies for service continuity
- Agree adaption and resilience measures that can be implemented, and how these will be resourced

The Department of Finance describes shared risks across portfolios and jurisdictions[4] and makes the following key recommendations:

> The Commonwealth Risk Management Policy states that 'entities must implement arrangements to understand and contribute to the management of shared risks'. The policy provides several 'tips' for managing shared risks, including: establishing memoranda of understanding with partners to formalise shared risk management; development of shared risk registers; educating officials on their responsibilities to identify and manage shared risks; and documenting control owners and governance arrangements for monitoring shared risks.
>
> Entities should be aware of each other's risk tolerances and approaches, as while risks can be common or shared, the two entities can have different risk tolerances and organisational priorities, so the responses to managing the risks are quite different. For example, a program may be of critical significance for achieving the outcomes of a purchasing/policy entity but be considered of low significance among the broader range of programs of the service delivery entity. Audits have highlighted the importance of identifying shared risks and developing an agreed approach to risk management which is documented, setting the framework for how to work collaboratively to manage instances where the tolerances and priorities significantly differ.

[4] Service Delivery through Other Entities | Australian National Audit Office (ANAO)