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Memorandum of Understanding

1 May 2020

Parties

The State of New South Wales by its Department of Communities and Justice

The State of New South Wales by its Department of Premier and Cabinet

The State of New South Wales by its Executive Agency Resilience NSW

Memorandum of Understanding

Parties

The State of New South Wales by its Department of Communities and Justice of Parramatta Justice Precinct, 160 Marsden St, Parramatta NSW 2124 (**DCJ**)

Department of Premier and Cabinet of 52 Martin Place, Sydney NSW 2000 (**DPC**)

Resilience NSW of Level 4, 180 Thomas St, Haymarket 2000 (**RNSW**)

Background

- A. Resilience NSW commences as a new Executive Agency of the Premier and Cabinet cluster on 1 May 2020.
- B. Staff of the Office of Emergency Management (OEM) are transferred from the Department of Communities and Justice (DCJ) to Resilience NSW on commencement of the new agency.

This is reflected in the *Administrative Arrangements (Administrative Changes—Resilience NSW) Order 2020*, published on 6 April 2020.
- C. Given the limited time available, DPC is not in a position to provide corporate services to OEM staff on transfer from DCJ to Resilience NSW on and from 1 May 2020.
- D. To ensure business continuity, DCJ has agreed to continue to provide a range of corporate services to OEM staff on and from 1 May 2020 in accordance with the terms of this Memorandum of Understanding (MoU), and until such time as the services are transitioned from DCJ to either Resilience NSW or DPC (under a shared services arrangement) or a combination of both.
- E. The range of corporate services that DCJ will continue to provide to OEM staff once they transfer to Resilience NSW is outlined in Schedule 1.
- F. The range of services that Resilience NSW will provide to itself are outlined in Schedule 2.
- G. The fees and payments that apply are outlined in clause 4 of this MoU.

General terms

1. Aims

Set out below are the aims of this MoU:

- (a) to deliver business functionality from day 1 of Resilience NSW;
- (b) to provide seamless corporate support to transferred staff of OEM while Resilience NSW is consolidated as an Executive Agency – noting that further consideration of the longer term model for the corporate services functions of the new agency will be considered in the period immediately after commencement.
- (c) to outline the general responsibilities of DCJ, Resilience NSW and DPC, together and separately in relation to this MoU.

2. Principles

DCJ, DPC, and RNSW (the Parties) will act according to the following principles:

- (a) the Parties will act in good faith in relation to dealings with each other (such as discussions or reviews), or any acts in relation to the provision of corporate services;
- (b) the Parties will have open and ongoing communications in relation to the MoU and the provision of the corporate services;
- (c) the Parties will work to minimise the risk of conflict of interest;
- (d) every effort should be made to minimise changes to the way corporate services are provided by DCJ to Resilience NSW, and to reduce the duplication of service delivery, whether it be by DCJ or DPC, unless there is a good economic, legal, or efficiency case for doing so, or the changes are necessary to support the transition of services out of this MoU;
- (e) each Party will conduct its activities in a way that does not adversely affect the costs of the other Party in relation to the provision and receipt of corporate services;
- (f) each Party's costs of administering and managing this MoU should be kept to a minimum; and
- (g) this MoU is not legally binding and does not create any legal relationship between the Parties.

The Parties may modify or develop further principles as part of ongoing MoU management.

3. Corporate Services

3.1. Provision of corporate services

On and from 1 May 2020, DCJ will continue to provide to OEM staff transferred to Resilience NSW the range of corporate services provided by DCJ to OEM immediately before 1 May 2020 (**Schedule 1** contains a general description of the corporate services to be provided), except for the services specified in **Schedule 2** which will be provided by Resilience NSW.

3.2. Changes to the provision of corporate services

The following provisions apply:

- (a) The principle outlined in clause 2(d) is to be observed in relation to proposed changes to the corporate services provided by DCJ to Resilience NSW under this MoU.
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- (b) Any changes to the range of corporate services provided by DCJ to Resilience NSW under this MoU (including changes in the way the services are provided) will require written agreement between DCJ, Resilience NSW and DPC.

3.3. Performance levels

DCJ will endeavour to provide corporate services to Resilience NSW within the terms of this MoU, at the same (or improved) level of performance that DCJ had been providing those services to OEM immediately before 1 May 2020.

4. Corporate Services Fees

4.1. Payment of Corporate Services Fees

The costs for corporate services provided by DCJ to Resilience NSW will be 8 percent of the operating budget that DCJ identifies for transfer to the separate company code it establishes for Resilience NSW within its financial accounting systems.

This 'corporate overheads percentage' will be transferred by DCJ to DPC and will form the annual fee for service that DPC will pay DCJ for DCJ's provision of corporate services to Resilience NSW.

DCJ will provide DPC with a monthly invoice for payment, and the amount will be 1/12 of the annual fee for service.

4.2. Reimbursement of costs

In addition to payment of Corporate Services Fees, DPC will reimburse DCJ for all other costs paid on behalf of Resilience NSW and/or costs paid directly by DCJ while the costs are relevant to Resilience NSW.

DCJ will continue to seek full reimbursements for all costs associated with Resilience NSW until corporate services are fully transitioned to Resilience NSW or DPC and/or a service provider approved by DPC.

The following conditions apply:

- (a) DCJ will maintain and substantiate all claims for reimbursement from DPC with appropriate records.
- (b) DCJ will provide a monthly claim to DPC in the form of a tax invoice to recoup the costs paid on behalf of Resilience NSW and/or costs paid directly by DCJ while the costs are relevant to Resilience NSW.
- (c) DPC will pay GST if required by relevant legislation.

5. Responsibilities

5.1. DCJ responsibilities

DCJ will:

- (a) perform the corporate services that are the subject of this MoU with the same care and responsibility that it would exercise when performing or procuring corporate services for itself;
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- (b) not, without prior consultation with and the agreement of Resilience NSW and DPC, do anything (including enter into any arrangement with a third party) that changes the corporate services in such a way that materially adversely affects Resilience NSW's operation of its business;
- (c) perform transactions on behalf of Resilience NSW on the assumption that appropriate approvals and controls have been exercised by Resilience NSW in line with relevant DPC approvals mechanisms and limits ('delegations') and
- (d) DCJ will provide appropriate attestation of financial and process controls, for DPC to provide to auditors.

5.2. DPC and Resilience NSW responsibilities

DPC and Resilience NSW will:

- (a) provide general assistance (including provide information) to DCJ that is reasonably required by DCJ to perform the corporate services. DPC acknowledges that DCJ will not be able to provide the corporate services to the extent it has not received the assistance reasonably required by DCJ from DPC and Resilience NSW to provide the corporate services;
- (b) not, without prior consultation with and the agreement of DCJ, do anything (including enter into any arrangement with a third party) that would materially affect DCJ's provision of the Corporate Services, including result in DCJ incurring additional costs to provide the corporate services; and
- (c) ensure that appropriate approvals and controls have been exercised in line with relevant DPC approvals mechanisms and limits ('delegations'), prior to DCJ performing associated transactions on behalf of Resilience NSW.

5.3. DCJ, DPC and RNSW responsibilities

Each Party will:

- (a) notify the other Party as soon as practicable of any issues or incidents that it becomes aware of which would affect the provision of the Corporate Services;
 - (b) respond to the other Party's requests or queries (including the provision of information) to the best of its knowledge, and within a reasonable period;
 - (c) use best efforts to resolve any issues or concerns of the other Party in relation to the Corporate Services or the management of this MoU;
 - (d) take responsibility to avoid any conflicts of interest and raise with the other Party where necessary to manage any such conflicts;
 - (e) will be subject to its own legal and probity obligations which to the extent of any conflict will take precedence over this MOU; and
 - (f) make available appropriate personnel to attend any meetings or discussions with the other party at reasonable notice. The personnel should be informed about the subject matter of the meetings or discussions.
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6. Privacy and Personal Information

- 6.1. DCJ, Resilience NSW and DPC will only provide each other with personal or health information that is necessary, and only use that personal or health information, for the purposes of providing Corporate Services to Resilience NSW.
- 6.2. Each party is required to take security safeguards as are reasonable in the circumstances to protect the provided personal and health information against loss, unauthorised access, use, modification or disclosure and against all other misuse.
- 6.3. At the request of either party, the other party will return or securely destroy any personal or health information provided to it for the provision of Corporate Services to Resilience NSW.
- 6.4. In collecting any personal or health information relating that could be provided to the other party for the provision of Corporate Services to Resilience NSW, DCJ and DPC will take reasonable steps to seek the individual's consent to provide that information to its service providers if it is necessary to disclose that information for services to be provided.

7. Ongoing MoU management

7.1. Ongoing review and discussion

DCJ, Resilience NSW and DPC will review and discuss the existing and future provision of Corporate Services under this MoU as required.

7.2. Contracts with external suppliers

- (a) If DPC or Resilience NSW wish to end any Corporate Services that are covered by contracts with external suppliers, DCJ will review the contract to determine whether the contract, or the level of services provided under the contract, can be varied or terminated (in whole or in part).
 - (b) The Parties acknowledge that:
 - (i) DCJ is committed to the contracts it has entered into in relation to some of the Corporate Services; and
 - (ii) DCJ may not be able to vary or terminate (in whole or in part) those contracts, or the level of services provided under those contracts, without paying significant amounts of compensation or experiencing adverse outcomes.
 - (c) The Parties will, as part of the ongoing MoU management, consult with each other in relation to:
 - (i) any renewals, expiry, or termination of Corporate Services that are covered by contracts with external suppliers;
 - (ii) their plan in relation to those Corporate Services that are covered by contracts with external suppliers, e.g. to renew with the existing supplier, go to market, provide the services internally, or to separately procure the services; and
 - (iii) the impact of the Parties' plans in relation to those Corporate Services on the Corporate Services Fees and the other Corporate Services.
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- (d) If DCJ undertakes a procurement process in relation to Corporate Services that are or will be provided by external suppliers, it will consult DPC and Resilience NSW in relation to its requirements, and provide opportunities for a DPC and Resilience NSW representative to be involved in the procurement process.

7.3. Request for Corporate Services and support

Any requests or support queries in relation to the provision of the Corporate Services will be raised through existing channels that were in place for the Corporate Services immediately before 1 May 2020.

7.4 Issues and escalation

Any issues in relation to the provision of the Corporate Services (including repeated failures to meet quality and performance levels) should, in the first instance, be raised and resolved at the lowest level possible in the escalation hierarchy.

Where queries or issues remain outstanding or cannot be resolved at a lower level they should be escalated to the DCJ and DPC contacts identified in clauses 9.2 and 9.3.

8. Term and termination

8.1. The MoU will commence on and from 1 May 2020 and end on the earlier of the following:

- (a) there are no Corporate Services to be provided by DCJ to Resilience NSW;
- (b) any Party terminating this MoU on three months' written notice; or
- (c) the Parties enter into an arrangement that expressly supersedes this MoU.

8.2. The Parties acknowledge that this MOU, if signed by the incoming Head of Resilience NSW before 1 May 2020, applies to Resilience NSW from 1 May 2020 as if it was signed by the Head on that date.

9. Notices

9.1. Receipt of Notice

A notice or other communication connected with this MoU will be in writing and:

- (a) sent by post to the address for notices of the addressee; and
- (b) sent by email to the email address of the addressee.

9.2. DCJ's details for service

DCJ's details for service are:

Name: NSW Department of Communities and Justice
Attention: John Hubby, Deputy Secretary Corporate Services
Address: Locked Bag 5111, Parramatta NSW 2124

Email address:

9.3. **DPC's details for service**

DPC's details for service are:

Name: NSW Department of Premier and Cabinet

Attention: Samara Dobbins, Chief People Officer

Address: 52 Martin Place Sydney NSW 2000

Email address:

9.4. **RSNW's details for service**

Name: Resilience NSW

Attention: Marg Prendergast, Executive Director

Address: Level 4, 180 Thomas St, Haymarket 2000

Email address:

9.5. **Change of details**

A Party may change its details for service by giving notice of that change to each other Party.

10. **Interpretation**

In this MoU, unless the contrary intention appears:

- (a) a reference to:
 - (i) the singular includes the plural and the plural includes the singular;
 - (ii) a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this MoU;
 - (iii) a document (including this MoU) includes any variation or replacement of it;
 - (iv) a statute, ordinance, code or other law includes a regulation or other statutory instrument made or issued under it and consolidations, amendments, re-enactments or replacements of any of them; and
 - (b) the words **include, including, for example** or **such as** when introducing an example, do not limit the meaning of the words to which the example relates to the example or to examples of a similar kind;
 - (c) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning; and
 - (d) headings and any index are for convenience only and do not form part of this MoU or affect its interpretation.
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11. General

11.1. Further assurance

Each Party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this MoU.

11.2. Variation

An amendment or variation to this MoU is not effective unless it is in writing and signed by the Parties.

11.3. Assignment

A Party cannot assign all or any of its responsibilities under this MoU without the prior written consent of each other Party.

11.4. No right of set off

Except as expressly stated in this MoU, a Party has no right of set-off against a payment due to another Party.

11.5. Existence and terms confidential

Each Party must keep all information concerning the existence and terms of this MoU (and any draft of this MoU) confidential and must not disclose the information to any person except:

- (a) to a director, officer, employee or professional adviser of the Party that has a clear need to use the information to carry out their duties or to provide professional advice to the Party and then only if the person undertakes to keep the information confidential; or
 - (b) as required by an applicable law or order of a court, regulatory body, or governmental agency.
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SIGNED as a memorandum of understanding.

Signed on behalf of the State of New South Wales by its **Department of Premier and Cabinet** by:

Signature of delegate

Tim Reardon

Name of delegate

Secretary

Position

Signed on behalf of the State of New South Wales by its **Department of Communities and Justice** by:

Signature of delegate

Michael Coutts-Trotter

Name of delegate

Secretary

Position

Signed on behalf of the State of New South Wales by its Executive Agency **Resilience NSW** by:

Signature of delegate

SHANE RIZSIMMONS

Name of delegate

COMMISSIONER

Position

Schedule 1 – Corporate and legal services to be provided by DCJ

In accordance with clause 3.1 of this MoU, on and from 1 May 2020, DCJ will continue to provide to OEM staff who transfer to Resilience NSW the range of corporate and legal services provided immediately before 1 May 2020, except for the services specified in **Schedule 2** which will be provided by Resilience NSW on and from 1 May 2020.

Notes:

- This schedule provides a general description of the range of corporate and legal services that DCJ will continue to provide.
- This schedule is not intended to be an exhaustive list of the corporate and legal services that DCJ will continue to provide to Resilience NSW on and from 1 May 2020, and is subject to any changes that are agreed between DCJ, Resilience NSW and DPC.
- Any changes to the range of corporate and legal services provided by DCJ under this MoU (including changes in the way the services are provided) will require written agreement between DCJ, Resilience NSW and DPC – per clause 3.2(b).

1. Overview of corporate services

Corporate services consists of services in the following areas:

- Finance
- Procurement
- Information, communication and technology (ICT)
- Human resources
- Asset, fleet and facilities management
- Legal Service
- Ministerial and Parliamentary Services

1.1. Finance

- Strategic planning
 - Target setting
 - Compliance management
 - Capital planning
 - Tax management
 - General ledger accounting (strategic finance)
 - Treasury management
 - Budgeting and forecasting
 - Management accounting
 - Capital planning
 - Fixed assets
 - Additional fixed asset services
 - Project accounting
 - Manage report request
 - Consolidation
 - External reporting
 - Accounts payable
 - Revenue management
 - Purchasing card administration
 - Travel and expenses
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- General ledger accounting (operational finance)

1.2. Procurement

- Organisation procurement strategy
- Supply base strategy development and sourcing execution
- Compliance management
- Vendor management and development
- Agency accreditation scheme
- Requisition and purchase order processing
- Supply data management
- E-procurement requisition and purchase order processing
- Contingent labour management
- Customer management
- Vendor scheduling
- Receipt processing

1.3. ICT

- Service desk
- ERP maintenance and support
- End-user support services
- End-user support services - VIP option
- End-user support services - on-site support option
- Print management service
- Telephony management service
- Video conferencing management and subscription service
- Mobile device management service
- Additional approved software support service
- Application management services
- Infrastructure management services
- Electronic Document Management/Records Management

1.4. Human resources

- Strategic workforce planning
 - Recruiting and on-boarding
 - Performance management and career planning
 - Organisational design and management
 - Staff movement
 - Learning and development
 - Human resources strategy and planning
 - Exit management
 - Employee relations
 - Employee data management
 - Remuneration administration
 - Time administration
 - Remuneration planning
 - Payroll administration
 - Benefits planning
 - Benefits administration
 - Work Health & Safety Management
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1.5. Asset, fleet and facilities management

- Asset planning
- Asset maintenance and monitoring
- Asset acquisition and build
- Fleet management
- Facilities management (including security management)
- Asset management and administration

1.6 Legal services

Legal advice and representation as required, including briefing of external legal providers and processing of GIPA and privacy matters.

1.7 Ministerial and Parliamentary Services

- Support Resilience NSW to brief Minister Elliot and deliver correspondence services on behalf of the Minister in the same way as prior to 1 May using DCJ systems, until such time as Resilience NSW centralises its ministerial and parliamentary services functions internally – noting this is an immediate priority.
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Schedule 2 – Corporate Services to be provided by Resilience NSW

In accordance with clause 3.1 of this MoU, on and from 1 May 2020, the services specified in this Schedule will be provided by Resilience NSW to itself.

1. Financial services

Natural Disaster Finance Function – Disaster Relief Account

- Manage the Disaster Relief Account and ledger including accounts payable/receivable, month end and year end work.
- Prepare cash flow forecasts and liaise with Treasury for budget supplementation, including monthly, quarterly and annual reporting for State and Commonwealth.
- Prepare and obtain audit opinion on annual financial statement for natural disaster expenditure.
- Manage two layers of independent audits undertaken by State (E&Y) and Commonwealth (PWC).
- Manage in-house internal audit function to ensure 16 partners agencies within NSW Government and the 128 councils are claiming the natural disaster expenditure in compliance with the DRFA and the NSW DAG.

Financial management – OEM Finance Performance

- Liaise with DCJ Finance on accounts payable/receivable and prepare month end journals including project journals for upload.
- Prepare monthly management report for leadership team and DCJ financial reporting.

Additional finance functions for Resilience NSW (unfunded)

- Cash flow forecast for Resilience NSW including inflows and outflows.
- Manage and monitor Resilience NSW's ledger on a day to day basis to ensure Justice has processed the transactions correctly.
- Manage and monitor the Prime report to ensure Treasury data submission is correct.
- Liaise with DPC and Treasury on budget proposal submissions like PTAs, carry forwards and NPPs.
- Review monthly reconciliations, approve adjusting entries and month-end and year-end requirements.
- Monitor overall finance service provided by Justice to ensure it meets the required standard to satisfy the external regulatory requirements like the Audit and Treasury Circulars.
- Liaise with Justice/DPC/Treasury on all financial matters related to Resilience NSW's finance.

2. Strategic Communications services

Strategic communications including:

- Mainstream media and government relations – leads collaboration across all Government agencies relating to bushfire recovery communications, metro media strategy and execution, liaison with relevant PO/MO/ DPO media teams
- Content stream – internal communications, social media, website, creation of stakeholder collateral including newsletters
- On-the-ground services – support for local media and council communications teams

3. Office Management services

Business support coordination services

4. **Cabinet Services**

Cabinet services and support

- Resilience NSW will be responsible for its own Cabinet services function
 - DCJ will maintain technical/ICT access under the services to be delivered in Schedule 1.
 - DPC will establish Resilience NSW as a stand-alone entity in eCabinet as per the approach with other DPC cluster entities
-