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INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

CORRUPTION AND INTEGRITY IN THE NSW PUBLIC SECTOR: an assessment of current trends and events

DECEMBER 2018

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INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

Level 7, 255 Elizabeth Street
Sydney, NSW, Australia 2000

Postal Address: GPO Box 500,
Sydney, NSW, Australia 2001

T: 02 8281 5999

1800 463 909 (toll free for callers outside metropolitan Sydney)

TTY: 02 8281 5773 (for hearing-impaired callers only)

F: 02 9264 5364

E: icac@icac.nsw.gov.au

www.icac.nsw.gov.au

Business Hours: 9 am–5 pm Monday to Friday

ICAC

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Foreword

This report by the NSW Independent Commission Against Corruption (“the Commission”) is an important addition to its body of corruption prevention work. It describes the state-of-play with regard to both corrupt conduct, and conduct that is conducive to corruption in the NSW public sector.

All NSW public sector agencies should take a zero-tolerance approach to corruption and serious misconduct that is uncovered in the workplace. Ideally, however, agencies should be equally committed to preventing misconduct or, at the very least, building a workplace climate that is resistant to misconduct in all its forms. Agencies should also be fostering a climate of integrity and accountability. This report assists this objective by identifying areas that are susceptible to corruption and describing relevant prevention tips, red flags and case studies.

By global standards, NSW is rightly regarded as not having a significant level of public sector corruption. Citizens can go about their regular dealings with government; safe in the assumption that they will not have to pay or offer a bribe for services they require. But, despite this sanguine assessment, the Commission retains a significant caseload of investigations, and reported incidents of corrupt conduct continue to attract a high level of public concern.

As this report indicates, there can be no room for complacency. If systemic and operational weaknesses are not addressed, corruption can take hold and cause significant damage to an agency’s finances, productivity and reputation. The issues, examples and suggestions contained in this report will assist agencies to target the areas of greatest risk.

We encourage all public sector executives and employees in integrity roles to read this report.



The Hon Peter Hall QC
Chief Commissioner



Patricia McDonald SC
Commissioner



Stephen Rushton SC
Commissioner

Executive summary

As the NSW Independent Commission Against Corruption (“the Commission”) nears its 30th year of operations, it is timely to take stock of the nature of corruption and integrity in the NSW public sector.

This report does just that – in effect, it is a scan of the contemporary factors that contribute to corruption and other serious forms of misconduct. It also canvasses a number of emerging trends, hotspots, case studies and notable practices that have been brought to the Commission’s attention.

For agencies to understand their vulnerabilities, it is useful to have an overall understanding of the shifting public sector landscape.

In chapter 2, the report highlights:

- changes in the way government services are delivered (for example, commissioning and contestability reforms and the blurring of lines between public, private and not-for-profit sectors)
- risks associated with poorly executed change management, which, in the Commission’s experience, can be associated with an increase in the risk of corrupt conduct
- the impact of technological, legislative and social change.

On global measures of corruption, integrity and transparency, Australia generally sits within the top 10% of countries. Nevertheless, Australia is just one of eight countries that has experienced a statistically significant fall on Transparency International’s Corruption Perception Index. Chapter 3 provides further information on Australia’s ranking across a range of integrity measures.

The Commission’s analysis of contemporary investigation reports also points to a number of systemic factors that are associated with the incidence of corrupt conduct. Some of the factors that stand out include poor management of information, unfettered discretion or authority and governance failings. The analysis suggests corruption prevention efforts should focus on processes where individuals have the ability to exercise unilateral control over key decisions and where information can be obscured or manipulated.

Chapter 4 sets out observations in relation to the incentives, cues and motives that encourage

misconduct. The report notes that, in many situations, an agency’s workplace climate can create the preconditions for misconduct; that is, poorly designed processes and perverse incentives can lead to unintended consequences.

This chapter examines some of the key performance indicators, targets or rules that might encourage misconduct. It also outlines some basic advice for agencies to consider when designing performance indicators.

Chapter 5 deals with the issue of speaking up and reporting misconduct. Reporting by whistleblowers remains the number one method for detecting corruption. However, the pervasive nature of social media and other technologies means that it is becoming increasingly easy – and socially acceptable – to broadcast complaints or opinions about behaviour. Agencies therefore need to be aware that complaints about misconduct may not necessarily arrive via conventional reporting channels.

The chapter also lists some of the common mistakes that agencies make when managing internal complaints, such as failing to incorporate whistleblower protection measures in an investigation plan and disregarding information that arrives via unofficial channels.

Chapter 6 addresses conflicts of interest that continue to be a source of many complaints to the Commission. In particular, concealed conflicts of interest are often correlated with complaints about procurement and recruitment activities, compliance and regulatory functions and the development application process.

The chapter also points to the potential for the gig economy to aggravate risks associated with secondary employment and the potential for social media to change the way in which conflicts of interest are detected.

Finally, this chapter also sets out some of the common practices and rationalisations used by conflicted individuals to justify their failure to make a full disclosure.

Chapter 7 analyses the trends related to undue influence on decision-making. The report notes that hidden and vested interests are often behind unethical attempts to influence public officials. Some of the techniques used to exert undue

influence include interfering in the appointment of a decision-maker, providing false information, forum shopping, using personal connections to secure access and hiding lobbying activities.

This chapter also highlights the practice of “lobbying from within”, where a public sector decision-maker (or public official with influence) attempts to advance their own concealed business interests.

The report goes on to address three functional areas that are often the subject of complaints to the Commission: human resources (chapter 8), procurement and contract management (chapter 9), and regulation and accreditation (chapter 10).

While they tend not to be serious or systemic, complaints about human resource issues – primarily hiring, firing and performance management – comprise around a quarter of all matters reported to the Commission. Alleged favouritism during the recruitment process remains one of the main types of complaints received by the Commission.

The Commission’s key observation is that many agencies are falling short of acceptable employment screening practices. Agencies tend to underestimate the likelihood that employment applications will contain false information. If a public official is disposed to secure employment by using a dishonest job application, there is a likelihood that they will subsequently engage in other forms of dishonesty, including corruption.

Chapter 8 also raises the risks associated with short-term labour hire, which has gained in popularity as a form of staffing, and the problems associated with failing to take proportionate action against staff that have engaged in misconduct. Regrettably, the Commission has identified a number of cases where an agency has allowed an employee to resign, or accept a redundancy, when there is sufficient evidence to dismiss them. This practice does not send a strong zero-tolerance message and also makes it easier for the employee to regain employment elsewhere in the public service.

In relation to procurement and contract management, much of the corrupt conduct that the Commission continues to identify stems from well-known control failings. Issues, such as false invoicing, order-splitting, giving contracts to friends and relatives, and

engaging in unwarranted direct negotiations, continue to feature in the Commission’s work.

An emerging issue is the blurring of the line between public and private sectors when it comes to procuring and delivering services. While the trend towards outsourcing has been in progress for decades, more recently, agencies have come to rely increasingly on the private sector to perform core functions, including setting policy, creating business cases, managing the supply chain, hiring staff, managing projects and delivering public services. This is in part because the agency no longer has sufficient staff with the expertise, knowledge or experience to procure or manage contracts effectively.

Many agencies now routinely engage a private sector “delivery partner” before they embark on complex infrastructure or information and communication technology (ICT) projects. Agencies therefore need to be aware of the risks associated with procurement officers, project managers and contract managers that are themselves contractors. Some of these risks include:

- a lack of awareness that these contractors are likely to fall within the Commission’s jurisdiction
- exposure to additional conflicts of interest
- a lack of familiarity with public sector policies, procedures and customs, possibly associated with poor induction and training
- commercial incentives that are not aligned to the interests of the agency
- access to confidential information.

Chapter 9 also emphasises some of the risks associated with emerging forms of procurement, poor due diligence procedures, subcontracting, and the misuse of supplier panels.

Numerous public officials are employed to regulate the conduct of businesses, individuals or other parts of the public sector. Many of these regulatory activities entail a degree of discretion and high stakes for the regulated party – hence the potential for corrupt conduct.

Chapter 10 discusses some of the ways in which regulatory decisions can be adversely affected. This includes the potential for tension between regulatory

and economic development or customer service objectives. The chapter also examines regulatory capture and areas where fractured oversight can create loopholes in the system.

Chapter 11 addresses risks associated with non-government organisations (NGOs). This is an emerging area of interest for the Commission, following its *Investigation into the conduct of a principal officer of two non-government organisations and others* (Operation Tarlo). This was the Commission's first report containing corrupt conduct findings against an officer of a government-funded NGO. While most NGOs are managed by honest, conscientious personnel, the findings in Operation Tarlo indicate that many small NGOs face challenges, such as insufficient funds to invest in strong internal controls and governance mechanisms, a reliance on volunteer labour and board members, and an absence of formal policies and procedures.

Chapter 1: Introduction

Investigating, exposing and reporting corrupt conduct is an extremely important task. The Commission is best known for this investigative work, which often generates significant public and media interest. However, the Commission's principal functions also include a mandate to examine the factors that allow, encourage or cause corruption and to promote the integrity and good repute of public administration in NSW. This publication focuses on these corruption prevention and public integrity issues.

In practice, it can be challenging to differentiate between corruption, maladministration and misconduct. From a legal perspective, the difference can be very important but for a typical public sector manager, these are all integrity problems that require attention. So, while this report contains many references to corrupt behaviour, the intention is to assist agencies to tackle broader integrity issues.

Many common forms of corruption or misconduct are persistent in nature. Conferring benefits on relatives and friends, unethical gift-giving and false invoicing are examples of conduct regularly reported to the Commission. However, the nature and frequency of these well-known forms of corruption sometimes change in subtle ways. Less frequently, entirely new forms of corruption or misconduct can emerge that threaten the public sector; typically driven by technological changes.

In order to understand the current nature of corruption and better respond to emerging risks, the Commission has researched contemporary publications, including the reports of counterpart agencies, analysed its own data, consulted stakeholders and considered the global context (refer to appendix 1). The Commission is sharing this analysis to highlight some trends and hotspots.

Providing a sector-wide picture of some of the main issues that the Commission has observed complements published information from other sources such as the NSW Audit Office and the NSW Public Service Commission (PSC). Together, these can help decision-makers to withstand, prevent and detect attempts at corrupt conduct.

Using this report

This report is aimed at senior NSW public officials, particularly those in positions of influence in policy or operational roles, who wish to improve their agency's overall effectiveness and resilience against corruption. It is also relevant for those working in governance and integrity roles.

Readers are urged to consider the findings in this report as a potential aid to improved organisational performance. A focus on achieving better outcomes overall is better practice in controlling corruption because it allows an organisation to leverage the controls inherent in well-designed and managed systems. Treating corruption simply as a compliance exercise can be a recipe for failure.

This report focuses on underlying systemic issues and weaknesses that give rise to opportunity for corrupt conduct and, where possible, suggests ways to strengthen systems and address risk. The intention is to help the reader understand the general environment, assist the assessment of risk, focus priorities and allocate resources. It is also designed to help prepare training and education materials. The report will also inform the Commission's strategic planning and corruption prevention priorities.

Readers are encouraged to refer to specific Commission publications or contact the Corruption Prevention Division for advice or further information. Feedback on the report is encouraged. Please email icac@icac.nsw.gov.au or telephone +61 2 8281 5999

Chapter 2: Setting the scene – whole-of-government trends

This chapter describes some of the broad, whole-of-government trends that are having an effect – or could have an effect – on public sector corruption and integrity. That is, trends that might create new corruption risks, enhance or diminish current corruption risks, or provide new means by which to detect corrupt conduct and ensure integrity. One way or the other, some of these trends will have a clear effect on the level of corruption in the NSW public sector. For others, it is too early to determine the likely impact.

Nature of the public service

Over time, the modernisation of the public service has created new challenges and opportunities for corruption. For the most part, these have been gradual, iterative changes.

Governments at the Commonwealth and state levels began the process of extensive reform and restructuring towards the final quarter of the 20th century. This restructuring involved a shift away from the traditional form of public administration characterised by rigid hierarchies and rule-bound bureaucracies perceived by some to hinder innovation and the efficient delivery of public sector goods and services.

Most obviously, the way government delivers services has changed. This means the individuals designing and delivering public services are increasingly less likely to be employees of a public sector agency. Similarly, some of the Commission’s investigations now involve private sector individuals and organisations that deliver public services.

While it is possible to exaggerate the extent of these changes, table 1 compares different perspectives of public sector approaches.

Table 1: Comparison of public sector approaches

| Public Administration | Public Management | Networked Governance |
|---|---|---|
| Government has a “rowing” function, with a focus on delivering services using in-house resources | Government has a “steering” role, in which it oversees and sets the direction for organisations operating in a competitive market | Government has an “enabling” role, negotiating and brokering interests among private/not-for-profit organisations and citizens |
| Program administration and service delivery is made through government agencies | Creating mechanisms and incentives to achieve policy objectives through private and non-profit organisations | Policy objectives achieved through building coalitions of public, non-profit and private sector organisations |
| Public officials work in bureaucratic organisations with top-down authority and control in serving clients and constituents | Public officials work in decentralised public organisations that have primary control in serving customers | Public officials work in complex, collaborative structures with shared leadership; serving citizens |
| Hierarchical structure – with administrators responsible to elected leaders | Accountability is through market-driven outcomes resulting from the accumulation of self-interests | Public officials have a multi-faceted role, guided by legislation, ethical frameworks, professional norms and citizen interests |
| Public officials have limited discretion | Public officials have greater discretion to be innovative and meet entrepreneurial goals | Public officials need to have discretion but are accountable and constrained |

Adapted from Denhardt and Denhardt (2000)¹

One example of a move to a networked governance approach (as described in table 1) is the NSW Government Commissioning and Contestability Policy,² which is characterised by a drive to make government services more customer-focused and a desire to introduce innovation and competitive forces into service delivery.

A consequence of a change in approach is the requirement for different skills. The transition – from rowing to steering to enabling – means a greater proportion of public officials need to have procurement, contract management and negotiation skills, as well as broad commercial acumen.

Similar observations were made by the Western Australia (WA) Corruption and Crime Commission in its inaugural misconduct intelligence assessment of the Western Australian public sector.³

Blurring of lines between public, private and not-for-profit sectors

The changing nature of the public service is such that relationships between government agencies, businesses, and not-for-profit organisations have shifted significantly, to the extent that the dividing line between public and private is now diminished or blurred. This is a recurring theme throughout this report.

A good example is the National Disability Insurance Scheme (NDIS). Under this scheme, thousands of staff from NSW Family and Community Services (FACS) have transferred, or will transfer, to NGOs to help implement the policy initiative and tailor services to the needs of individual clients.⁴ People with disability will be able to choose among a number of different providers to get the care they require. This means that, instead of being primarily responsible for delivering services, agencies such as FACS will be more focused on managing contracts and coordinating the activities of the private sector.

The Commission has identified other examples of blurred lines, including:

- contractors that are managing public sector employees or other contractors
- contractors that exercise financial delegations
- contractors being issued with public sector credit cards
- heavy reliance on contracted “delivery partners” to manage significant infrastructure and ICT projects
- consultants or advisers acting for both the government and a counterparty involved in a transaction

- core agency policy and strategy increasingly being shaped or even determined by consultants and external experts
- increased reliance on labour hire staff to deliver core services
- agencies partnering with technology companies to host data and deliver core public services (which can include reliance on offshore personnel and infrastructure).

While the Commission does not suggest contractors are inherently more prone to corrupt conduct, the differences between the private and public sectors that impact on corruption risks are discussed throughout this report. In particular, a contracted workforce is likely to have a different attitude to the use of public money, the management of conflicts of interest and public sector accountability conventions.

Constrained markets

Public sector agencies are sometimes required to participate in markets where supply is limited. Examples include building public infrastructure during a construction boom, implementing new technology with a small pool of technical experts or introducing new compliance requirements without the available regulatory staff. In a constrained market, there is a tendency to compromise standards. This can manifest in many ways, which can open the door to corrupt conduct. Some of these manifestations include:

- contracting with parties that have conflicts of interest
- placing excessive trust in individuals or counterparties
- failing to segregate duties or protect confidential information
- overlooking poor performance and contract breaches.

Organisational change

The Commission has identified a potential relationship between corrupt conduct and organisational change. A number of investigations have shown opportunities for corrupt conduct can arise either during or after a period of organisational change.

In his August 2018 report, *Water: compliance and enforcement*, the NSW Ombudsman also singled out poor management of restructures as an issue. The report found machinery of government changes and frequent internal restructures “combined to have a devastating impact on staff, continuity of service, retention of expertise, and the ability of the responsible agencies to maintain their systems and corporate strategy”.⁵

Large transformational change, such as merging local councils, restructuring an entire cluster or implementing a new enterprise resourcing planning system, can take years and can be expensive. This may contribute to a loss of focus on important corruption prevention controls and create a climate of discontent, confusion and uncertainty in which corruption can flourish.

For example, in the Commission's Operation Artek investigation, Asset Management Services (AMS) had been restructured to become part of the NSW Department of Justice cluster and had only recently been made responsible for asset works in Corrective Services NSW (CSNSW) properties.

The transition was fraught with confused roles, responsibilities, accountabilities and reporting lines, incompatible computer systems, and significant ongoing tension between CSNSW and AMS. In the confusion, which compounded many of the other issues facing CSNSW and AMS, resident experts became more influential, allowing them to undertake corrupt pursuits.

The Commission's key point is that poorly executed organisational change can lead to agencies losing capacity to manage their own controls.

Examples of the consequences of poorly managed change

- Transformations that are not completed before the next period of organisational change begins. This can occur if a restructure leads to the appointment of new management, who proceed to embark on yet another restructure. This can have an adverse effect on staff morale and the control environment.
- Restructures that involve redundancies or internal competition for roles are associated with complaints about corrupt favouritism (see chapter 8).
- Restructures often focus on obtaining lean processes or cost savings. This can result in important controls being removed or weakened, which inadvertently increases the overall exposure to the risk of corruption.
- The staff deployed to work on the change project are not properly backfilled. This can mean important corruption prevention controls are not performed for extended periods of time.
- Lengthy change projects can result in an unhealthy proportion of staff working in acting roles or in two roles simultaneously. This diminishes the rigour of managerial supervision, which is a key corruption prevention control. Accountability may be fragmented, where:
 - staff are reporting to more than one supervisor, or managers are performing dual roles, resulting in conflicting priorities
 - there is difficulty in keeping track of all the work undertaken by a member of staff
 - changes of responsibility are made without adequate arrangements to ensure capability
 - duplicate or shadow functions exist (which can arise, for example, following a failed attempt to centralise a function)
 - staff are overworked
 - roles are blurred resulting in lack of clarity about who is responsible for exercising particular controls.
- The turmoil of change can make it difficult to keep up with routine controls such as reporting lines, approved holders of financial delegations and information and communication technology access. This can breed a variety of workarounds, including password sharing.
- Policies and procedures may lag the change process and become out-of-date, making them impossible to follow. Alternatively, if agencies are being merged or subsumed into a cluster, there may be multiple policies and procedures, or even no policies and procedures at all.
- Planned corruption prevention initiatives, such as training, audits, risk assessments and data analytics, may be delayed because it is impractical to conduct them during a period of intense change.
- An adverse effect on morale and the willingness to speak up about misconduct.

Agencies have also been under pressure to find efficiencies and prioritise the delivery of frontline services. The NSW Budget Papers note that from 2011 to 2017, “the total number of frontline staff increased by 8,009 FTEs, while non-frontline staff numbers fell by 12,111 FTEs”.⁶ This suggests staff in governance, risk management and corruption prevention roles – who are generally classified as “non-frontline” – are being asked to maintain high standards in an environment of constrained resourcing.

The WA Corruption and Crime Commission has noted that the pressure to deliver efficiencies without cutting frontline staff could lead to a risk that “corners may be cut and compliance and governance controls will suffer”.⁷ This can manifest as an over-reliance on trusted individuals, who often have the greatest opportunities to engage in corrupt conduct.

Legislative and regulatory developments

In recent years, the corruption prevention landscape in NSW has been altered by a number of legislative and regulatory reforms. The key developments, along with some pending changes, are set out below. Overall, these reforms indicate government is committed to tackling the risk of fraud and corruption.

NSW

- NSW Treasury released the *NSW Fraud and Corruption Control Policy* (Treasury Circular 18-02, April 2018). This requires affected agencies to implement a fraud and corruption control framework. This is the first time government has imposed mandatory, sector-wide fraud and corruption controls.
- The *NSW Internal Audit and Risk Management Policy* (issued in 2009 and updated in 2015) requires whole-of-government agencies to comply with the core requirements of the policy, and provide an annual attestation to this effect to NSW Treasury.
- The PSC has created a mandatory *Code of Ethics and Conduct for NSW Government Sector Employees* (April 2015). It has also released mandatory requirements in relation to managing gifts and benefits and the disclosure of personal interests by senior executives.
- The NSW Audit Office has assumed responsibility for auditing the local government sector. In part, this was in response to the Commission’s report, *Investigation into the conduct of the former City of Botany Bay Council Chief Financial Officer and others*.

- Following a statutory review of the *Public Interest Disclosures Act 1994* and the recommendations contained in the Public Interest Disclosures Steering Committee report, the NSW Government has indicated a set of proposed legislative reforms.
- Independent Hearing and Assessment Panels (IHAPs), also known as local planning panels, have been mandated across most metropolitan local councils. IHAPs are intended to enhance the objective rigour of development application determinations.
- Commencement of the *Election Funding Act 2018*, which requires the more timely disclosure of political donations, clarifies the definition of “property developer” (which is a class of prohibited donor), lowers the existing expenditure cap for third-party campaigners and introduces expenditure caps for local government elections.

Australia

- At the time of writing, the Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2017 was being considered by the Commonwealth Parliament. This legislation is intended to strengthen Australia’s foreign bribery laws. It will also introduce a new offence creating criminal liability for corporations that fail to take adequate steps to prevent foreign bribery. Coupled with a stronger commitment to enforcement, this may give corporations across Australia an incentive to invest in corruption prevention initiatives.
- Similarly, the Commonwealth has announced proposed changes to whistleblowing legislation that will strengthen whistleblowing safeguards in the corporate sector. Individuals blowing the whistle on tax evaders will also benefit from additional protections.
- The Commonwealth has also initiated a review of the national arrangements for the protection, and management of identity information. The review will consider ways to enhance or strengthen arrangements for the protection use and management of identity information in Australia.
- The Commonwealth has released an *Open Government National Action Plan*, which contains a number of corruption prevention initiatives.

Private sector attitudes to ethics and corruption

Due to a combination of strengthened laws, stronger enforcement action by regulatory bodies and a number of damaging public scandals, the corporate sector is paying greater attention to integrity issues.

Examples of the private sector stepping up its integrity values

- A new global standard for *Anti-bribery management systems* (ISO 37001) has been introduced and a number of corporations have announced their intention to seek certification.
- One study has found that “Companies have become much more likely to dismiss their chief executive officers over the last several years because of a scandal or improper conduct by the CEO or other employees”.⁸ The study attributes this to a growing intolerance of corporate misconduct rather than an increase in the cases of misconduct.
- The Commission’s own information holdings and discussions suggest crude gift-giving practices are becoming less common. This may suggest the private sector is developing a better understanding of public sector values, or that more subtle techniques of influence are being employed.
- Corporate regulators such as the Australian Securities and Investments Commission and the Australian Prudential Regulation Authority, and the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, have highlighted evidence of misconduct and poor culture in the corporate sector.
- The review of the ASX Corporate Governance Principles, which makes specific reference to the need to examine anti-bribery and corruption policies.

The decline of cash

Many corrupt payments are made in cash. Those not paid as cash usually have to be mischaracterised in order to hide their true purpose. However, for a variety of reasons, cash payments are slowly becoming less common and harder to make.

In its 2017 report, the Commonwealth Black Economy Taskforce reported that:

Cash plays a foundational role in our economic system, but its convenience, ease of handling and anonymity can also facilitate black economy and illegal activity. As non-cash alternatives are becoming cheaper and more accessible, its use has been falling. In 2007, cash accounted for about 70 per cent of the number of consumer payments, nine years later the proportion had fallen to under 40 per cent.⁹

In response to the recommendations of the taskforce, the Commonwealth also announced a proposed ban on cash transactions of more than \$10,000, to take effect from 1 July 2019.¹⁰

While the uptake of alternatives to cash will not eradicate corrupt payments, it is anticipated they may make Australia less attractive for criminal activity and force corrupt individuals to take additional risks or become more secretive in methods designed to hide corrupt payments.

The trend towards a cashless society has meant public sector agencies now physically hold less cash, which in turn has lowered the risks associated with theft. In addition to the move towards a cashless society, more of the assets held by organisations that are of value (and are therefore worth stealing), are intangible (such as data and intellectual property).¹¹ Conversely, many tangible assets are declining in value and inexpensive technology exists that can be used to track their location.

Open government and commerce

At a government level, freedom of information laws have been in place for many years and, according to the Open Data Barometer, Australia ranks equal fifth out of 114 countries for best availability of government data.¹² The appetite for transparency is expanding in both the public and private sectors.

Examples of Australia’s healthy transparency scorecard

- The Commonwealth *Open Government National Action Plan*, which includes a commitment to improve the availability of beneficial ownership data.
- The www.data.gov.au website, which houses thousands of public data sets.
- The publication of NSW ministerial diaries summaries.
- The publish-what-you-pay and Extractive Industries Transparency Initiative movements, which promote supply chain transparency in the oil, gas and minerals sector.
- The development of blockchain (or distributed ledger) technologies, which are designed to expose transactions to the public (or at least a much larger audience).

The gig economy

A great deal has been written about the prevalence of short-term or freelance work, sometimes referred to as the “gig economy” or “on-demand workforce”.

“Whether companies like it or not, corporate information and activities are heading irreversibly towards greater public transparency and visibility. With scrutiny from social media and NGOs meaning organisations now operate in a “global gold fish bowl”, businesses are finding that ever higher levels of openness are being demanded by the public and forced by regulation.”

PricewaterhouseCoopers, 2017¹³

Some reports point to a strong surge in the prevalence of various forms of freelance work, while others suggest the gig economy is simply a re-labelling of Australia’s existing, substantial casual workforce.

From a corruption perspective, the main implication of the gig economy is the growth in the number of public officials that have actual or proposed secondary employment. The Commission’s investigations over many years have shown that the abuse of secondary employment, which can include the misuse of information and resources, is one of the main forms of corrupt conduct.

It should also be noted that those working in the gig economy are likely to have little or no loyalty to their short-term government employers and so it may be harder to align their interests with the interests of their employer. They may also be constantly on the lookout for future work, adding to the risk associated with conflicts of interest and duty as they work for multiple employers simultaneously (see chapter 6).

Technology

One of the clearest trends the Commission and other anti-corruption agencies has observed is the growth in the number of corrupt conduct findings involving the procurement, delivery and monitoring of ICT products.

In part, this is due to the growing volume of public sector expenditure on ICT. However, numerous features of ICT expenditure make it vulnerable to corruption (see chapter 9).

On the other hand, technological developments have the capability to make it more difficult for corrupt individuals to succeed.

Cybercrime

Numerous government agencies, consulting firms and cybercrime experts have highlighted the substantial growth in cybercrime. On 4 August 2017, the NSW Minister for Finance, Services and Property stated:

*In New South Wales, cyber risk and security has emerged as one of the most high profile, borderless and rapidly evolving risks facing Governments across the globe, so it is essential we are at the forefront of new ideas and thinking.*¹⁴

The Australian Cybercrime Online Reporting Network (ACORN) enables the public to securely report instances of cybercrime, and helps government better understand the enablers of cybercrime. In 2016–17, ACORN received 874 reports, with a total estimated loss of more than \$20 million – more than double the estimated loss reported in the previous year.¹⁵

Examples of relevant positive trends in ICT

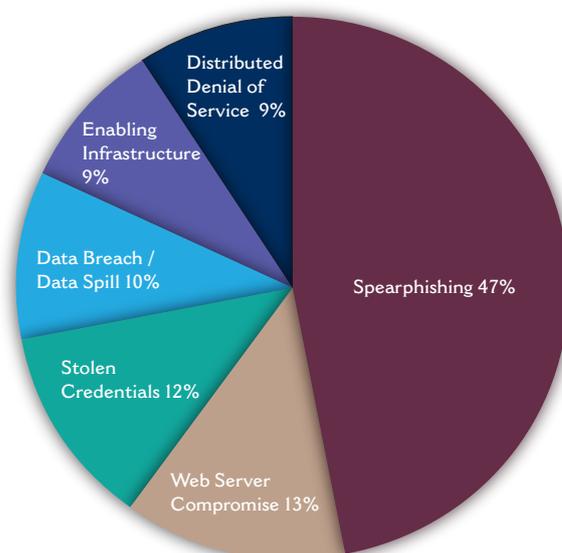
- Reduced reliance on paper-based systems. This makes it harder for corrupt individuals to conceal evidence of their conduct.
- The use of data analytics to identify red flags. Advanced analytic techniques purport to be able to use self-learning algorithms and artificial intelligence to spot misconduct within enormous volumes of data. At a more basic level, improved technology makes it cost effective to analyse data that sits in different databases or to analyse unstructured data. Observers, including PricewaterhouseCoopers, report that organisations are relying more and more on technology, instead of humans, to identify anomalies that might represent corruption.¹⁶
- Technologies that reduce human error and the need for human judgment. This is a vast area, but some examples include the use of technology to:
 - enforce delegations of authority
 - monitor inventory
 - establish identity
 - track the physical location of people and goods
 - review job applications
 - detect plagiarism.
- Social media, which provides information about a person's behaviour, history, associates and habits. Among other things, this information can be used to identify undisclosed conflicts of interest and inappropriate associations.

The Australian Government's 2016 Cyber Security Review found cybercrime is costing the Australian economy up to \$1 billion in direct costs alone.¹⁷

Based on data published by the Australian Cyber Security Centre, the most common types of cybercrime include spearphishing attacks aimed at tricking an agency into paying a false invoice, theft of confidential information (including identity information), and ransomware or distributed denial of service attacks.

The main incident types are illustrated in figure 1.

Figure 1: Top six government self-reported incident types (2017)¹⁸



Identity fraud

Described as a "critical threat to the Australian community"¹⁹, identity theft affects one in five Australians at some point in their lives.²⁰ Stolen identities are often used to perpetrate a range of other serious crimes against individuals and the government.

Agencies that issue identity documents are most at risk but any agency holding data about an individual's personal or financial details could be targeted.

Chapter 3: Australia and NSW in perspective

Accurate figures on the level of corruption in NSW, or in any jurisdiction, are difficult to come by, in part because corruption is inherently secretive.

This chapter presents some of the available figures that tell us about the state of corrupt conduct in Australia and NSW. While individual statistics are unlikely to be of significant value, analysing a number of studies and surveys tells us that, relative to other countries, the level of corruption in Australia is low.

However, there is conflicting evidence about whether these low levels of corruption are edging higher.

Australia's report card

Public sector corruption receives a great deal of media attention in Australia. Increasingly, misconduct in the

private sector is also coming under the media spotlight. While the conduct might be unwanted, the media coverage is highly desirable because it exposes and deters corruption. However, focusing only on media and social media reports would create the misleading impression that Australia is a highly corrupt country.

Table 2 sets out a number of global measures of corruption, integrity and transparency. With one exception, these show Australia is generally inside the top 10% of nations when it comes to clean government.

Other integrity-related measures

Australia also performs well on some related measures. The exception to this is Australia's score for trust in government, as measured by the Edelman Trust Barometer. Australia rates relatively poorly in this measure and recorded levels of trust have fallen.

Table 2: Australia's performance on global measures of corruption, integrity and transparency

| Index | Ranking (countries) | Comment |
|--|----------------------|--|
| Corruption Perceptions Index (CPI) – Transparency International 2017 ²¹ | 13 (180) | While Australia remains a low-corruption country, its CPI score fell between 2012 and 2017. Australia is one of just eight countries that experienced a statistically significant fall over this period. |
| Global Corruption Barometer – Transparency International 2017 ²² | 4 (119) | Australia has the fourth “least corrupt” public sector, based on a survey of perceptions about corruption. Australia was also one of 18 clean countries where fewer than 5% of survey respondents reported paying a bribe in connection with a public service. |
| Bribery Risk Matrix – TRACE International 2017 ²³ | 19 (200) | The matrix is used to help assess business risk in locations across the world. Australia has improved from 29th out of 197 countries in 2014 to 19th in 2017. |
| Rule of Law Index –World Justice Project 2017–18 ²⁴ | | The index ranks countries on a variety of justice measures, including the absence of corruption. Australia was rated as having low levels of corruption in each of the executive, judiciary, police/military and the legislature. |
| <ul style="list-style-type: none"> • “Absence of Corruption” • “Overall Rule of Law” | 12 (113) 10 (113) | |

Table 2: continued

| Index | Ranking (out of number of countries) | Comment |
|---|---|---|
| <p>Worldwide Governance Indicators (World Bank) 2017²⁵</p> <ul style="list-style-type: none"> • “Control of corruption” | 93rd percentile (200+) | The index also measures the extent to which public power is exercised for private gain (including both petty and grand forms of corruption), capture of the state by elites and private interests, and the strength and effectiveness of a country’s policy and institutional frameworks to prevent and combat corruption. |
| <p>Global Competitiveness Index (World Economic Forum) 2018²⁶</p> <ul style="list-style-type: none"> • “Diversion of public funds” • “Irregular payments and bribes” • “Favouritism in decisions of government officials” • “Transparency of government policy making” • “Ethical behaviour of firms” | <p>14 (137)</p> <p>12 (137)</p> <p>21 (137)</p> <p>21 (137)</p> <p>11 (137)</p> | The index ranks 137 countries by a number of measures, some of which are corruption-related. The report also contains data from a 2017 survey of “Most problematic factors for doing business” in each country. In Australia, corruption was ranked as a problematic factor by only 0.5% of respondents (weighted ranking). |
| <p>Financial Secrecy Index (Tax Justice Network) 2018²⁷</p> | 9 (112) | The report on Australia states, “Despite its relatively low ranking on the Financial Secrecy Index, a number of cases demonstrate that Australia undoubtedly hosts significant quantities of illicit funds from outside the country”. |
| <p>World Press Freedom Index (Reporters Without Borders) 2018²⁸</p> | 19 (180) | Results are based on a global questionnaire that addresses pluralism and independence in the media, self-censorship, legislation, the quality of supporting infrastructure and abuse of journalists. |
| <p>Democracy Index (Economist Intelligence Unit) 2017²⁹</p> | 8 (167) | The index rates countries based on strength of electoral processes, functioning of government, political participation, political culture and civil liberties. |
| <p>Edelman Trust Barometer (Edelman) 2018 – trust in government measure³⁰</p> | 19 (28) | The 2018 report found that, in Australia, 35% of survey respondents trust government. The average was 43% across 28 surveyed markets. Australia’s “trust in government” reached a high of 45% in 2016 but has otherwise been between 32% and 38% since 2012. |

Survey insights from the “Big Four”

The four largest global professional services firms – Deloitte, Ernst & Young, KPMG and PricewaterhouseCoopers – publish regular reports on trends in fraud and corruption. Some key observations are set out below.

DELOITTE (AUSTRALIA AND NEW ZEALAND)³¹

- The domestic corruption profile is unchanged and is no more prominent than it was five years ago.
- Approximately one in five respondents identified a domestic corruption incident, which was consistent with previous years.
- Undisclosed conflicts of interest were the most commonly cited type of corruption, followed by inappropriate gifts and personal favours.
- Excessive commissions were identified as an area where corruption had become more prevalent.

ERNST & YOUNG (GLOBAL)³²

- 11% of survey respondents experienced a significant fraud in the last two years.
- 11% of respondents stated it is common practice to use bribery to win contracts in their sector.
- 13% of survey respondents agreed that making cash payments to win/retain work to survive an economic downturn could be justified.
- 38% of Australian and New Zealand survey respondents agreed that bribery/corrupt practices were widespread in their country (up from 30% in 2014).

KPMG (AUSTRALIA)³³

- The average value of a fraud brought before an Australian court is approximately \$3.1 million.
- 76% of fraudsters are motivated by personal financial gain (12% used illegally obtained money to fund addictions).
- While the proportion of fraud committed by professional criminals has continued to increase, “insiders” still pose the biggest threat.
- Fraud is mainly motivated by personal greed including luxury lifestyles but drugs and gambling are also motivating factors.

PRICEWATERHOUSECOOPERS (AUSTRALIA)³⁴

- More than half of survey respondents were victims of an economic crime over the last two years, with 29% losing more than \$1 million.
- 60% of frauds against an organisation are committed by employees, agents, suppliers, consultants and customers.
- One of the key drivers of fraud is the availability of technology that can be used to falsify documentation.
- Cybercrime and external threats have emerged as one of the most prevalent forms of economic crime.

Other states

An analysis by the Commission of 54 public investigation reports issued by anti-corruption agencies in other Australian states indicated that the most common allegations related to procurement, allocation of resources and human resource management. The most common conduct types were improper use or acquisition of funds or resources, improper use of records or information, personal interests and partiality.

Snapshot of the NSW public sector workforce

The NSW public sector consists of approximately 578,300 employees³⁵ and the workforce is primarily made up of permanent staff (see figure 2).³⁶

The proportion of people employed within the NSW public sector has been decreasing (see figure 3).

Figure 2: NSW public sector employment categories, annual FTE, 2017

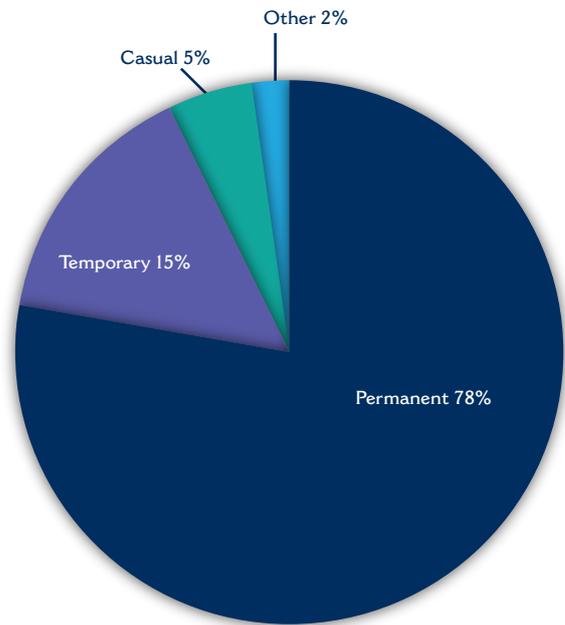
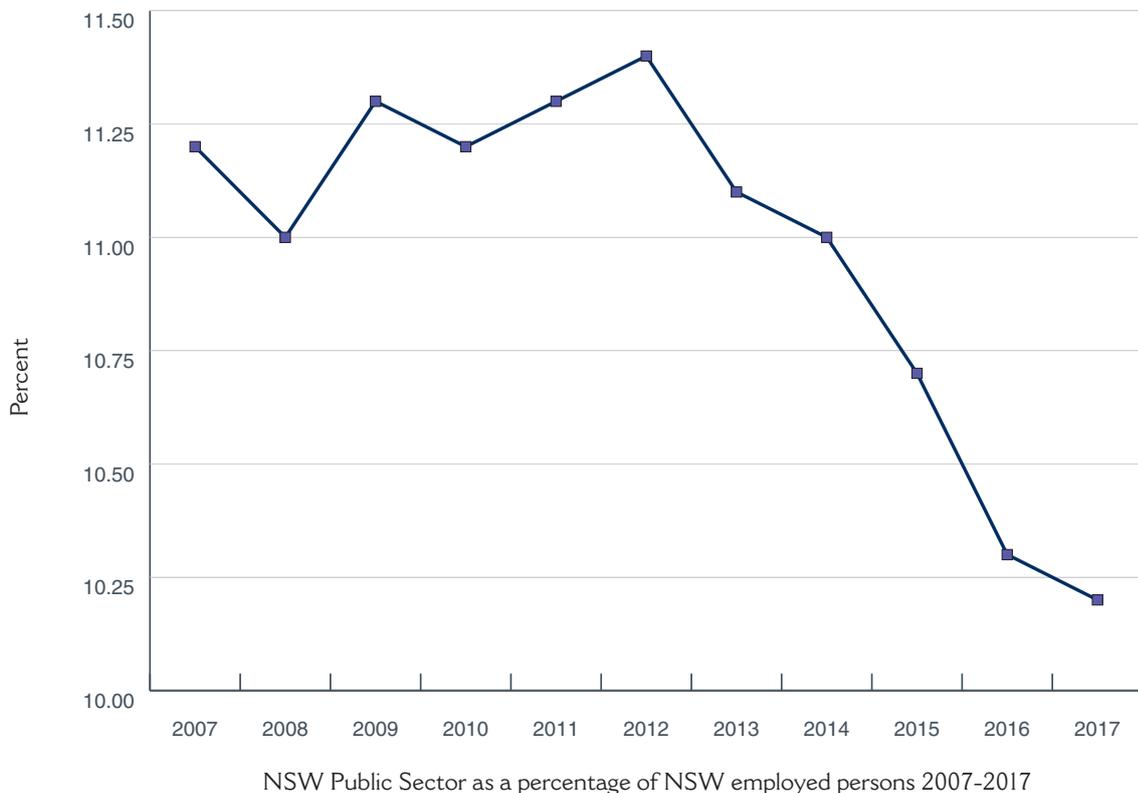


Figure 3: Public sector census headcount as a percentage of NSW employed persons, 2007–2017³⁷



According to the PSC:

...the overall pattern of year-on-year contraction since 2012 is in contrast to the growth observed in the broader NSW workforce over the same period. From 2012 to 2017, the number of employed persons in NSW grew by 9.3%, but the NSW public sector census headcount decreased by 2.1%.³⁸

The decline is partly explained by the partial privatisation of some state-owned corporations, which has triggered the transfer of roles to the private sector.

The significance of public sector information

Improper use and governance of records or information is one of the most common allegations made to the Commission. The theft or misuse of information can be just as attractive as tangible assets. NSW public authorities hold a substantial amount of sensitive information relating to identity, legal and regulatory proceedings, commercial in confidence dealings and intellectual property.

In its 2015 report, *Organised crime group cultivation of public sector employees*, Victoria's Independent Broad-based Anti-corruption Commission highlighted:

Most public sector bodies hold information or commodities that are attractive to organised crime groups. However, the bodies most likely to be targeted are those with access to law enforcement information or large volumes of identity and credit card information. Some public sector regulatory bodies – such as those overseeing the construction, planning, development, prostitution, gaming, and liquor industries – may also face increased risks.³⁹

Some other risks associated with information management include:

- third-party providers generating and holding government information (potentially without the knowledge of the relevant government agency)
- a failure to properly limit or configure the access that contractors have to government data
- an absence of contractual controls that determine how third parties must hold, use and delete data belonging to public agencies.

Other NSW data

The NSW Audit Office's 2016 *Fraud Survey*⁴⁰ reported that, for the period from 1 July 2012 to 30 June 2015, 44% of surveyed NSW agencies reported a total of

1,077 frauds. Based on the frauds for which a loss could be estimated, the average loss was \$21,000. The largest frauds related to procurement activities, where the average was approximately \$225,000.

Bureau of Crime Statistics and Research data indicates all frauds reported to, or detected by, the NSW Police Force were stable in the five years to March 2018 and down 3.5% in the past 24 months.⁴¹ This data does not separately report on public sector fraud.

The PSC's *People Matter Employee Survey* indicated that the percentage of public officials witnessing workplace misconduct/wrongdoing was 24% in 2018 and 25% in each of 2016 and 2017.⁴² This was down from 30% in surveys conducted in 2014 and 2012. Of those who witnessed misconduct in 2018, 66% reported it, a slight increase on the 63% reported in the previous two years.

Systemic issues

As part of its analysis, the Commission examined 28 of its own investigation reports issued in the last five years. For the most part, this reaffirmed conventional knowledge about the systemic factors associated with corrupt conduct. However, some of the factors that stood out included poor management of information, unfettered discretion or authority, and governance failings. The analysis suggests corruption prevention efforts should focus on functions where individuals have the ability to exercise unilateral control over key decisions. Where this cannot be achieved, making proper use of available information and resources to monitor both the use of discretion and the existence of potentially inappropriate relationships, particularly with external parties, is paramount.

The analysis also suggests numerous systemic issues are often present alongside corrupt conduct. It shows that, when corruption occurs, poor information management, recordkeeping, risk management practices and assurance practices often co-exist along with poorly designed and managed processes. There is also some evidence to suggest that sound internal controls may deteriorate during periods of significant change.

The least common systemic failings identified by the Commission are:

- tolerance of misconduct, which suggests agencies have taken steps to ensure anti-corruption messages have been understood and reinforced
- perceived inequity – most corrupt individuals act to obtain a personal benefit rather than to correct a sense of inequity

- poor complaint management – this tends to be more of an issue in cases that either are not formally reported or never get investigated.

arrangement could lead to a dilution of public sector standards in relation to gift-giving, hospitality, whistleblowing, disclosure of conflicts of interest and the management of misconduct.

These general conclusions are reinforced by the NSW Audit Office's *Report on Internal Controls and Governance 2017*⁴³, which identified the common deficiencies, set out in table 3 (reproduced below).

In an audit of procurement and reporting on consultancy services, the NSW Audit Office found that none of the agencies audited materially complied with their procurement and reporting obligations for consultancy services between 1 July 2016 and 31 March 2018.⁴⁴

An emerging issue is the increase in the use of “delivery partners” to manage public sector projects. Among other things, a poorly executed partnering

Table 3: NSW Audit Office summary of key control deficiencies

| Area | Deficiencies |
|------------------------|--|
| Information technology | <ul style="list-style-type: none"> • Poor management of cyber security, including deficiencies in IT controls to mitigate the risk of cyber attacks and a lack of cyber security awareness. |
| Asset management | <ul style="list-style-type: none"> • Lack of, and deficiencies in, agency business impact analyses and disaster recovery plans. • Lack of steering committees to provide strategic direction and oversight of major capital projects. • Deficiencies in information provided to steering committees of major capital projects. • Lack of, and deficiencies in, business cases to support major capital projects. |
| Governance | <ul style="list-style-type: none"> • Missing, ineffective, expired or unenforced service level agreements with shared service providers. |
| Ethics and conduct | <ul style="list-style-type: none"> • Outdated code-of-conduct policies that do not require staff training in the policy, and/or missing annual compliance declarations. • Weaknesses in conflicts-of-interest management, including no requirement for annual declarations. • Missing statements of business ethics. • Weaknesses in gifts-and-benefits management, including not updating registers promptly, and/or not reporting trends to their executive or audit and risk committee. |
| Risk management | <ul style="list-style-type: none"> • Agencies assessed as being in the early stages of developing their risk management frameworks. • Lack of reporting of major risks at a cluster level. |

Chapter 4: Incentives, cues and motivations

This chapter deals with the unintended incentives that arise from poorly designed systems.

Some individuals engage in corrupt behaviour as part of a premeditated plan to enrich themselves. In other cases, the perpetrators may work in an environment that is, “likely to encourage fraudulent behaviour in subtle ways that are not readily observable” or under policies that, “may formally state an expectation of ethical behaviour but informally encourage different behaviours”.⁴⁵

Aggressive sales targets have driven many of the large corporate corruption scandals in recent years. At carmaker Volkswagen, engineering staff created software designed to defeat the diesel emission testing regulations in the United States (US). Some 11 million vehicles were equipped with this software to deceive environmental regulators and assist Volkswagen to meet its sales targets.⁴⁶

In another well-known example, employees at US bank Wells Fargo & Co created approximately 3.5 million unauthorised accounts in order to meet “lofty sales goals”⁴⁷ which led to the observation that “no matter how much compliance training you give your employees, there’s only so much you can do if your pay structures are still encouraging them to be corrupt”.⁴⁸

Closer to home, the report by the Royal Commission into the Home Insulation Program discussed a policy design that relied on the profit motive to deliver a program in a largely unregulated industry.

More recently, the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry has been examining allegations of misconduct motivated by commission and bonus schemes. In its interim report,⁴⁹ the Royal Commission commented on the pursuit of short-term profit at the expense of basic standards of honesty, where selling often became the focus of attention and staff were measured and rewarded by reference to profit and sales.

A Commission investigation, Operation Nickel,⁵⁰ found that a heavy vehicle competency assessor accredited by NSW Roads and Maritime Services had falsely certified at least 95 people as competent to drive heavy vehicles in return for payments averaging \$1,500. The investigation identified a number of weaknesses in the administration of the Heavy Vehicle Competency-Based Assessment scheme.

“Unlike private enterprise, the business of Government cannot be measured by market forces. Its projects need not turn a profit, and the impacts that its projects have may not be seen within a single generation. It is blind, to an extent, to the market signals that inform decisions by private firms. Its sources of knowledge, therefore, are very different from those that guide the private sector.”

I Hanger AM QC, *Report of the Royal Commission into the Home Insulation Program 2014*⁵¹

Among these was the fact that a single individual conducted both training and assessment for a profit, which created an incentive and an opportunity for corrupt conduct.

Counter-productive incentives do not necessarily need to be financial. Victorian police officers reportedly faked at least 258,000 breath tests in order to meet their targets.⁵²

Finally, an analysis of Centrelink found that it became more effective at prosecuting welfare fraud after it dropped a key performance indicator (KPI) mandating the number of investigations referred for prosecution. This followed a conclusion that the KPI encouraged staff to focus on the simplest cases, at the expense of more serious and complex matters.⁵³

These cases indicate that well-intended KPIs can create the preconditions for corruption.

The Commission's observations

When it comes to corruption investigations, it is often the case that an individual is motivated by greed or the prospect of financial gain. A number of relevant investigation reports are canvassed elsewhere in this report but the Commission's general observations about incentives are summarised as follows (and in table 4 overleaf).

- Targets based on quantity or timeliness can encourage poor quality. In a similar vein, when a party stands to make money from delivering a public service, it may have an incentive to prioritise profit over quality and compliance requirements.
- The incentive to cheat the system increases when one side of the transaction has more knowledge than the other. Likewise, the opportunity to cheat increases when it is expensive and time-consuming to monitor the counterparty.
- Often, public sector agencies have an inadequate understanding of the cost structures and commercial pressures that drive the behaviour of suppliers and business partners and how this potentially incentivises their behaviour. The UK Committee of Public Accounts identified a similar issue following the collapse of construction firm Carillion.⁵⁴
- Once an annual target has been achieved, there is an incentive to reduce effort and/or artificially push results into the next year. The same can apply when an individual realises they have no chance of achieving an annual target.

Soft signals and behaviour

Incentives are usually understood in terms of formal KPIs and contract clauses. However, staff members take behavioural cues from the words and actions of their managers. The most obvious and extreme example of this is when a manager engages in misconduct or turns a blind eye to misconduct in the workplace.

While this report is not an exhaustive study of organisational psychology, the Commission has observed some other management failures that are conducive to corruption or may discourage reporting:

Reports of NAPLAN cheating

In reports by the Australian Curriculum, Assessment and Reporting Authority, media articles and some complaints made to the Commission, education departments across Australia have identified evidence of a small number of teachers improperly assisting students to complete National Assessment Program Literacy and Numeracy (NAPLAN) tests. The alleged cheating has included:

- providing verbal hints
- giving students advance notice of the exam questions or extra time to complete the test
- changing the answers submitted by students
- exerting pressure on parents to withdraw underperforming children from the test.

While the testing of students is not new, the alleged cheating has been linked with the practice of publishing NAPLAN results by school and the associated implications for each school's reputation and enrolments.

Annual reports on NAPLAN "test incidents" can be found at www.acara.edu.au.

- using a "just-get-it-done" attitude can encourage staff to cut corners or breach policy
- writing convoluted or inconsistent policies can make it easier for employees to excuse their own non-compliant behaviour
- approving documents and transactions, such as purchase orders, leave forms and overtime claims, without properly checking them can embolden staff to act dishonestly
- having dual reporting lines can dilute accountability for performance (respective managers often fail to coordinate with each other about shared resources, which can create gaps or false assumptions about oversight responsibilities)

Table 4: Observations on the unintended consequences of rules

| Policy or rule says. . . | Intended to encourage. . . | But might actually encourage. . . |
|--|--|--|
| Unspent recurrent appropriations must be returned to NSW Treasury at year end | Fiscal responsibility and accountability | Breaches in procurement policy at the end of the year; paying for goods and services not delivered or not required |
| Purchases must be accompanied by three quotes | Competition and value for money | Quotes that are fake or clearly not intended to be competitive |
| “Buy local” procurement policy | Economic development in a local area | Suppliers masquerading as local companies or collusion between local and non-local suppliers |
| Agency employee headcount should be capped | Savings in payroll costs | Overspending on contractors and consultants that do not fall under the headcount, and hiding the cost of specialist contractors within capital expenditure |
| Reduce number of complaints (about misconduct or bullying, poor customer service, unsafe work practices and so on) | Management action to reduce the incidence of undesirable events | Cover-ups, misclassification and under-reporting of complaints |
| Approval for a transaction requires three signatures | High degree of senior oversight, thereby reducing the chance of fraud or error | Diffusion of accountability, where each signatory assumes the other two will have given the matter their full attention and therefore does not check the paperwork |
| Requiring all purchasing card transactions to be approved by a senior executive | Having a high level of scrutiny over expenditure | Senior executive approving without properly checking or delegating the task to an assistant (possibly by providing a login and password) |
| Repair all serious damage to buildings and facilities within three days | Timely resolution and improved amenity and safety | Serious damage is defined as non-serious and/or quality is compromised; abuse of emergency procurement procedures |
| Academics should maximise the number of publications in recognised journals | The good reputation of the university and its staff | Falsifying or exaggerating research findings, publishing in poor-quality journals, splitting findings across multiple papers and plagiarism |
| Calls to the customer complaint line to be answered within 10 seconds | Good customer service | Customer service operators ending calls prematurely or without actually solving the customer’s problem |
| Procurement staff must achieve fixed-dollar cost-savings | Improved efficiency and cost-savings | The engagement of lowest cost suppliers rather than best overall value for money |
| All relevant documents should be provided in response to a relevant request under the <i>Government Information (Public Access) Act 2009</i> | Open access to information about the affairs of government | Public officials failing to create records, and using unauthorised email or document management systems |
| All invoices should be paid within 30 days | Timely payment and fair treatment for suppliers | Paying an invoice without performing due diligence/assurance checks on the supplier or the goods and services supplied |

- using pejorative language towards complainants and whistleblowers can tacitly endorse reprisal action.

The Commission is not suggesting agencies should dispense with rules and policies. However, the policymaking and implementation process should consider the possibility of unintended outcomes.

Success fees and commissions

The *Lobbying of Government Officials Act 2011* prohibits payment of any form of success fee to registered lobbyists so as to prevent the possibility that success fees could drive dishonest behaviour by those seeking favourable decisions from government.

The Deloitte Australia and New Zealand *Bribery and Corruption Survey* (2017) noted excessive commissions had increased in prevalence as a form of corruption since 2015. The Commonwealth Fraud Control Framework (2017) also notes professional facilitators are a red flag for policy design.⁵⁵

Therefore, while not banned in relation to other areas of public administration, the Commission advises agencies to be mindful that success fees could have a deleterious effect on decision-making in a range of areas, such as:

- recruitment and labour hire services (for example, creating an incentive to fill a vacancy with insufficient regard to the quality of the candidate)
- the sale of land (such as a finder's fee payable to an intermediary)
- winning and retaining government contracts (which might create an incentive to promise outcomes that cannot be delivered)
- unsolicited proposals, public private partnerships and joint ventures (where the counterparty may have a very strong financial incentive to close a deal).

What to do about it

The Commission is not saying KPIs or performance targets are inherently flawed. On balance, sensible KPIs will do more good than harm and having no accountability standards at all is highly undesirable.

Agencies should think about the potential perverse effects that KPIs, targets and behavioural cues could be encouraging. The following suggestions may also assist:

- use a “balanced scorecard” approach; a combination of targets that, when taken together, discourage misconduct (that said, too many targets can promote dishonesty if the cost of reporting is high)
- understand that the figures do not necessarily speak for themselves. There may be valid reasons why a target is not met (for example, the weather, sickness or unclear instructions). Agencies should understand these and apply common sense
- involve operational staff in determining KPIs, since they are likely to have a good understanding of the opportunities for manipulating the system
- recognise there is a need to adjust KPIs that are not working as intended
- minimise reliance on data provided by a party about its own performance (seek to generate the data in-house or obtain it from an independent party such as an auditor, customer or external authority)
- when dealing with a private sector counterparty, ask about its internal KPIs or at least try to envisage the incentives that are operating
- do not have KPIs for which minor failures or shortfalls have major consequences (for example, if a contractor faces an enormous penalty unless it achieves a perfect outcome, it has an incentive to cheat)
- design contracts that provide the contractor with the opportunity to make a reasonable profit (driving a contractor into a loss-making situation without a valid reason could encourage corruption)
- perform an independent post implementation review or benefits realisation exercise, understanding that project participants have a personal interest in the project appearing to have been a success
- be wary of a contractor that relies exclusively on your agency in order to remain viable (a business that faces the prospect of losing its only source of income is more likely to be dishonest)
- vary the go-to-market strategy or contracting model from time-to-time (changing the rules of the game makes it harder to routinely “game” the system)
- use data analytics techniques to identify performance outcomes that are implausible, or otherwise too good to be true.

Chapter 5: Speaking up

Reporting by whistleblowers continues to be one of the primary methods of detecting corrupt conduct. A strong reporting framework is not just a detection control; it prevents corrupt conduct through fear of doing the wrong thing based on the risk of capture.

Tip offs are the number one method of detection, accounting for 40% of all detected occupational frauds. This is more than two-and-a-half times higher than the next most effective detection method – internal audit (which found 15% of frauds).⁵⁶

Facts and figures

In 2017–18, the Commission received 744 public interest disclosures (PIDs), which was approximately 39% of all complaints.

PSC data⁵⁷ shows that, of those who witnessed misconduct or wrongdoing in their workplace over the previous 12 months, 66% reported it. The same PSC data also suggests just 46% of survey respondents think, “[their] manager appropriately deals with employees who perform poorly” (only a slight improvement on the 44% reported in each of 2016 and 2017).

The NSW Ombudsman has reported that the significant majority of public interest disclosures relate to corrupt conduct. This is slightly unexpected given waste and maladministration are more common than corrupt conduct. It might be because corrupt conduct is treated more seriously than other classes of disclosure and because of the mandatory reporting requirements under s 11 of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”), agencies have better systems in place to record reports of corrupt conduct.⁵⁸

Research published by Victoria’s Independent Broad-based Anti-corruption Commission⁵⁹ indicates low reporting rates are associated with a perception that “their direct supervisor would not be supportive if they chose to report”. The same research showed that 69% of survey respondents agreed they would need absolute proof of corruption before they would report it.

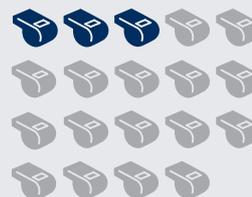
According to Ernst & Young’s 2017 *Asia Pacific Fraud Survey*,⁶⁰ the percentage of organisations with a whistleblowing hotline has increased from 32% in 2013 to 61% in 2017. While the survey did not target NSW public sector agencies, this figure

Whistling While They Work

The *Whistling While They Work* research rated the whistleblowing systems of a number of public, private and not-for profit sectors. The public sector had the best systems, generally speaking, followed by the private sector with the not-for-profit sector even further behind. This suggests agencies that rely on the private sector and not-for-profit sector to deliver services may need to take steps to compensate for the weaker whistleblowing systems in those sectors. At its simplest, this could include giving external service providers access to agency policies, training materials and reporting channels.⁶¹

Strongest overall whistleblowing system

NSW public sector
ranked 3rd out of 19
Australian public,
private and
non-government
sectors studied



(1st = Commonwealth Government,
2nd = Queensland Government)

Support to whistleblowers and addressing detrimental action taken against them

NSW public sector
ranked 7th out of 19



Lowest ranked sector

Not-for-profit education and training sector

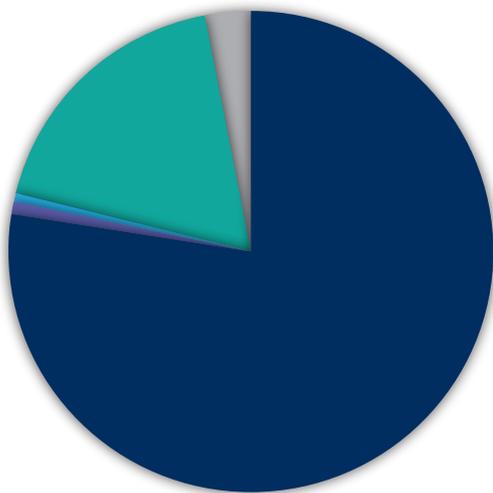
What are public interest disclosures?

Agencies receive complaints, allegations and conduct-related information from a range of sources including staff, contractors, customers, social media users, parliamentarians, regulators and auditors. All of this information should be assessed on its merits.

Certain complaints about corrupt conduct are classed as public interest disclosures (PIDs). Only public officials or persons performing public official functions can make a PID. While all complainants should be treated fairly and reasonably, officials making PIDs are protected against acts of reprisal and benefit from some confidentiality requirements. In fact, taking reprisal action against a person who has made a PID can be a criminal offence.

The *Public Interest Disclosures Act 1994* sets out the technical definition of a PID and more information can be found on the NSW Ombudsman's website, www.ombo.nsw.gov.au.

Primary category of wrongdoing alleged (PIDs received by NSW public authorities in 2016–17)



Corrupt conduct 78%

Maladministration 18%

Waste of public funds 3%

Government information contravention 1%

Local government pecuniary interest contravention 0.5%

Oversight of the Public Interest Disclosures Act 1994, Annual Report 2016-17, NSW Ombudsman, November 2017, p34.

indicates hotlines are becoming more popular as a reporting mechanism.

Retaliation against internal whistleblowers has doubled in the US. A 2017 report⁶² found 44% of employees who reported misconduct experienced some form of retaliation (this has doubled from a figure of 22% in 2013).

Emerging issues

Technology helps people to speak up

With the popularity of social media and access to the internet, it is becoming increasingly easy – and socially acceptable – to broadcast an anonymous complaint, piece of information or opinion about an individual or an agency. Most documented information is now electronic, enabling capture of large volumes of data transportable relatively easily to any part of the world. Wikileaks and the Panama Papers⁶³ are just some of the numerous examples.

Consider this...

- Every smartphone is also a video camera and voice recorder with built-in GPS technology. Given the ubiquity of smartphone technology, this has vastly expanded the ability of ordinary citizens to capture information and behaviour. The popularity of social media allows instantaneous sharing of much of this information with a large number of

people (it should, however, be noted that covertly recording conversations may be a criminal offence).

- There are hundreds of thousands of websites through which individuals can broadcast reviews of the meals they eat, the places they stay, the movies they watch, the manners of their ride-share driver and so on. Websites also exist where employees can write anonymous critiques of the organisation they work for, their manager and their colleagues.
- Websites such as the India-based I Paid a Bribe⁶⁴ aggregate and publish information about misconduct. Over 150,000 reports of bribes have appeared on this particular

website and similar versions are appearing in other countries.

- Under the right conditions, technology can be used to generate rapid shifts in public sentiment about acts of misconduct. Topics trending on social media can attract a much larger audience than traditional media sources and many organisations employ staff to manage social media marketing campaigns.

Depending on your point of view, all of this activity can be healthy whistleblowing or dangerous and defamatory leaking. The salient point for public sector agencies is employees, suppliers, stakeholders and citizens now have a large number of ways to voice their concerns.

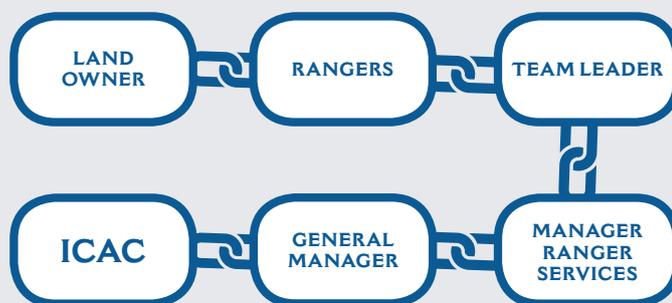
“You people are not from the bloody RID squad are you?”

Complaints often tell just part of the story. In this case, the initial complaint led to a series of discoveries and avenues of enquiry that contributed to a successful investigation. While it is not usually possible to investigate every matter thoroughly, careful assessment of all complaints is important.

In 2017, the Commission made corrupt conduct findings against an officer from a Regional Illegal Dumping Squad (RIDS)⁶⁵ (Operation Scania). The matter came to the Commission’s attention thanks to two local council rangers who were investigating alleged illegal dumping at a site in western Sydney. This led to a conversation with the landowner, who relayed a complaint against the corrupt RIDS officer. The rangers made contemporaneous notes of this discussion and conveyed their information ultimately to the Commission. This was all done without alerting the RIDS officer and the Commission was able to use various covert investigation techniques to obtain relevant evidence.

Lessons learned

- Information about misconduct does not always surface via an official report or a clearly articulated allegation; it often arises from unplanned or casual conversations or observations. It takes nous to identify and escalate these matters.
- Agencies like the Commission rely heavily on robust internal reporting systems. In this case, the information was directed in the following way:



If the process had failed at any of these points, the opportunity to stop the corrupt conduct may have been lost.

Observations from Commission investigations

The Commission's investigations sometimes reveal interesting approaches to complaints and complaint-handling.

- Agencies tend to treat official complaints quite differently to unofficial information. However, as shown by Operation Scania, valuable information often does not arrive via official channels. The Commission has seen other cases where agencies ignored information circulated via informal means, or failed to notice obvious red flags because they did not form part of an official complaint.
- Some of the Commission's investigations have identified short-term labour hire staff that have been underpaid or otherwise disadvantaged. In some cases, these contractors did not have strong English-language skills, were fearful of not being paid and were not provided with information about the agency's internal reporting policy. Despite having strong reasons to complain, it appears these contractors could not or did not know how to speak up about their treatment.
- Suppliers or service providers may be afraid of losing their government contracts if they report suspected misconduct by their own staff or by government officials. This creates an automatic barrier to reporting misconduct.
- The Commission has seen instances where a would-be whistleblower threatens to report information about a person (such as to a newspaper or a regulator) to exert improper influence. In one case, in order to undermine public officials seen as impeding the commercial interests of the "complainant", a deliberately false anonymous report was made to the Commission.
- Some agencies and companies seem to suffer from a form of the bystander effect; sometimes associated with a diffusion of responsibility. In the same way that individuals are less likely to help in an emergency when they are a member of a crowd, the Commission has observed workplaces where widespread knowledge of serious misconduct and red flags goes unreported.

“The fact that *everyone* knows about a particular type of misconduct may actually make people less likely to report it”

Associate Professor Elizabeth Tippet, Co-Director, Conflict Resolution Faculty, University of Oregon.⁶⁶

Commonwealth legislative reform

At the time of writing, the Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017 was in the Commonwealth Parliament. If passed, the Bill will not have a direct impact on NSW government whistleblowing or PID procedures. However, broadly speaking, the Bill aims to enhance statutory protections for whistleblowers who speak up about corporate misconduct and tax avoidance. This could create indirect effects for NSW public sector agencies. For example, whistleblowing about corporate misconduct could be of relevance if:

- the corporation is a NSW government supplier or service provider (or is bidding for a NSW government contract)
- a NSW public official makes a complaint covered by the commonwealth legislation (possibly in addition to the NSW *Public Interest Disclosures Act 1994*)
- a NSW public agency has a role in ensuring retaliatory action is not taken against a whistleblower
- a NSW public official is a witness to, or involved in, the alleged misconduct.

“They ought to have known”

South Australia's Independent Commissioner Against Corruption released a report⁶⁷ into allegations of substandard care provided to patients at the Oakden Older Persons Mental Health Facility, and made numerous observations about the failure to act on complaints, including:

- complaint-handlers wrongly adopted a beyond-reasonable-doubt test and then dismissed complaints that could not be proved to this criminal standard
- policies and procedures discouraged the escalation of complaints to senior managers, which meant lower-level employees were obliged to deal with complaints at a unit level
- complaint-handlers adopted a defensive approach; that is, they acted to defend the interests of the Oakden facility, not find the facts
- evidence staff who complained would be moved to another facility
- evidence that some staff took the view that they could not report unproven allegations of abuse.

Investigating complaints

The Commission's investigations and complaint-handling activities point to a number of common mistakes made by agencies when dealing with whistleblowers.

Common mistakes

- Not incorporating whistleblower protection measures into the investigation. For example, whistleblower management does not form part of the investigation plan (or there is no investigation plan) or the agency wrongly assumes its contracted investigator will comply with the *Public Interest Disclosures Act 1994* and/or take steps to protect the whistleblower.
- Failing to put someone in charge of liaising with the complainant in cases where there is no formal investigation. Agencies still have an obligation to protect complainants even if they decide not to commence or complete an investigation.
- Inadvertently identifying the complainant in the course of the investigation or in the investigation report. This can happen, for instance, if specific phrases or descriptions used by the complainant are unnecessarily mentioned in an interview.
- Failing to protect complainants whose report may not meet the technical definition of a PID. Most staff will not be aware of the finer points of the *Public Interest Disclosures Act 1994* and will judge management on the fairness rather than the legality of their decisions.
- Assuming that, just because the Commission elects not to investigate a matter, the agency should take no further action. The Commission has limited resources and can only investigate a small percentage of matters reported to it. However, agencies are usually free to undertake their own investigations, which should include an assessment of corruption prevention factors.

Better practice tips

- ✓ Ensure contractors and subcontractors have satisfactory internal reporting channels, or provide them with access to the agency's channels. Also (or instead), include whistleblowing obligations in your contracts with suppliers.
- ✓ Provide customers with access to your reporting channels and train your frontline staff in how to recognise and escalate a complaint about staff misconduct.
- ✓ Do not forget volunteers can be a valuable source of information. They should also be aware of your agency's policies and reporting channels.
- ✓ Ensure the investigation plan describes how to protect and manage any complainant or witness. Better still, develop a standard template investigation plan to prompt thinking about these issues.
- ✓ Allow complainants to remain anonymous but contactable by using pseudonyms. Some agencies are also using technologies that allow secure, anonymous communication with complainants via a browser.
- ✓ Treat complainant reports as just one aspect of a broader range of information and intelligence. Analysing data from a variety of sources can provide a more accurate assessment (such as historical complaints, financial reports, personnel files, exception reports, internal audit findings, data analytics findings, publicly available databases and social media).
- ✓ While findings about minor misconduct should not ruin a person's entire career, there should be some consequences. When staff perceive a person with a history of misconduct is "getting away with it", confidence in the agency's processes is likely to fall.
- ✓ Appoint a member of staff to be the dedicated support officer for complainants or witnesses. This lessens the chance obligations under the *Public Interest Disclosures Act 1994* will fall between the cracks.
- ✓ Overt directions from senior management regarding protection of complainants tend to be effective. Managers should not just assume someone might remember to protect the complainant.
- ✓ Complaint-handling is a real skill. It requires the ability to extract relevant information, de-escalate conflict and deliver unwelcome news. It is unsurprising most managers do not like dealing with complainants. While managers should not be able to avoid their day-to-day responsibilities, it may make sense to train specific staff in complaint-handling skills.
- ✓ An agency's ratio of s 11 reports (reports made to the Commission by a principal officer) to s 10 reports (reports made directly to the Commission by a complainant) may indicate whether an agency has a healthy reporting culture (the Commission can provide agencies with aggregated complaint data on request). If staff and members of the public would rather report to the Commission than the relevant agency, there may be a lack of confidence in that agency's systems. A low-level of s 11 reports may also indicate a poor understanding of mandatory reporting requirements under the ICAC Act.
- ✓ Ask; do not wait to be told. It is one thing to have an open-door policy but even better to obtain information by overtly asking staff and suppliers to speak up about ethical issues. In particular, officers in more junior or precarious roles are less likely to speak up because of a fear of reprisal. Moreover, some cultures and workplaces are more deferential to seniority and members of these cultures are unlikely to speak up despite what the written policy says.
- ✓ One way to improve a speak-up culture is to make sure monitoring and implementation of internal audit and management review recommendations occurs. After all, if internal audit cannot get the attention of senior management, what hope do other staff have?
- ✓ Regrettably, some complaints are deliberately false or broadcast to damage the accused person. Agencies should strongly discourage complainants from making comments in public or on social media.

Additional advice exists on the NSW Ombudsman's website at www.ombo.nsw.gov.au

Chapter 6: Conflicts of interest

Impartiality and placing the public interest ahead of personal interests are fundamental aspects of a public official's integrity. Allegations relating to partiality and personal interests were the top two types of alleged conduct reported to the Commission in the 2017 calendar year. By contrast, bribery (including secret commissions and gifts) was only the eighth most common type of allegation.

Similarly, a considerable percentage of published investigation reports by the Commission make reference to a conflict of interest that has been concealed or abused.

Observations about practices

In relation to its *People Matter Employee Survey* of 2016, the PSC reported that:

- 63% of public service employees agreed or strongly agreed that “[Their] organisation provides procedures and systems that ensure employees avoid conflicts of interest”
- 65% of public service employees agreed or strongly agreed that “[Their] manager would take appropriate action if decision-making processes were found to be biased”.

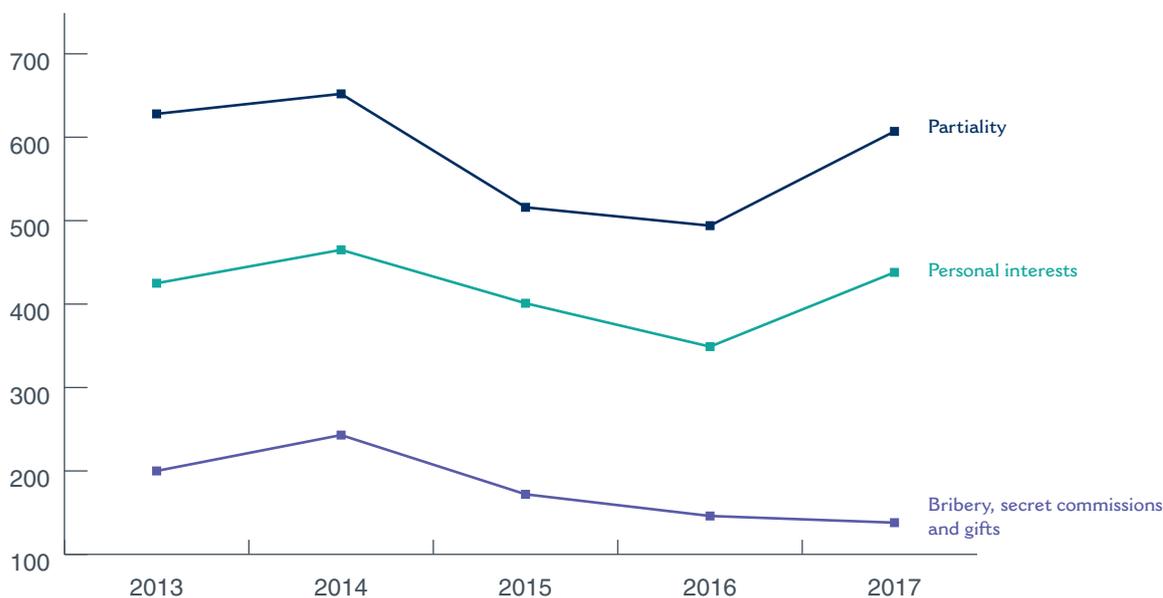
These questions have not been repeated in subsequent surveys but the 2016 results suggest ample room for improvement.

A more recent report by the NSW Audit Office found that, “All agencies have a conflicts-of-interest policy, but most can strengthen the associated processes”.⁶⁸ The failure to properly manage conflicts of interest was noted as a common governance deficiency, with identified gaps in areas such as poor training, incomplete or out-of-date registers and an absence of measures to identify missing disclosures. The Audit Office report also highlighted the failure of agency staff to disclose their interests as directors of private companies that dealt with the agency.

Another survey of the local government sector by the Audit Office found 90% of participating councils had conflicts of interest controls⁶⁹ and almost 100% segregated duties in high-risk areas. However, the survey found less than half of councils asked staff to complete a conflicts of interest declaration upon commencement or as an annual requirement.

While conflicts of interest can arise in many areas (see table 5 on p.34), the Commission's complaint data over the past five years show the following areas are often associated with issues of partiality and/or personal interests:

Figure 4: Complaints to the Commission relating to partiality, personal interests and bribery



- procurement, disposals and partnerships (usually, hidden relationships between a supplier and a buyer)
- human resource and staff administration (for example, complaints about cronyism and nepotism)
- reporting, investigation, sentencing and enforcement (for example, assisting friends to avoid enforcement action)
- development applications (for example, where the owner or developer is closely associated with the decision-maker or the decision-maker themselves has an interest).

Closer analysis of the Commission's investigative work indicates a combination of a concealed conflict of interest, coupled with a role that has end-to-end control over an important process, can be significant in facilitating corrupt conduct.

When misguided loyalty transcends public duty

Individuals naturally look out for family and close friends. But some individuals will take risks and make completely out-of-character decisions in order to assist family, friends and even associates.

The risk is heightened when public officials are in management positions or senior roles that provide discretion to engage in nepotism or make partial decisions, particularly if unsupervised.

The Commission's information holdings point to instances where a public official has:

- repeatedly interfered in a recruitment process so that a family member or friend can be selected
- given casual work to a family member or friend
- made arrangements with a supplier to give work to a family member or friend
- awarded purchase orders and contracts to businesses owned or managed by themselves, a family member or friend.

Identifying and managing a conflict of interest is challenging

We asked attendees at a corruption prevention conference to respond to a series of conflict of interest scenarios. One of the scenarios posed was as follows:

You are a facilities manager. You engage contractors to perform maintenance jobs from a panel. You get on very well with a particular contractor and you both love antique motorbikes. At work, the contractor does a good job, meaning that you are able to devote less effort to overseeing his work. You have agreed to help him prepare a maintenance tender for a different organisation. What do you do?

- Do nothing*
- Informal declaration of the relationship (for example, in an email)*
- Formal declaration of the relationship*
- Use of mitigating mechanisms, such as restricting involvement in process or recruiting independent assistance*
- Individual should be removed from process*
- Conflict of interest is such that the individual's position at the organisation is untenable so long as private interest exists*

A total of 100 respondents replied to this scenario as follows:

| Response | A | B | C | D | E | F |
|----------|----|----|----|----|----|----|
| Number | 21 | 15 | 18 | 13 | 17 | 16 |

While this is a short, hypothetical scenario that does not necessarily have a clear, correct answer, the response (along with the results from other scenarios) shows that even individuals with a degree of subject matter expertise can disagree about the appropriate management approach to a conflict of interest. This degree of subjectivity, in part, explains why conflicts of interest arise in so many of the Commission's investigations and complaints.

Areas for attention

Secondary employment and the gig economy

Unauthorised secondary employment has been associated with the Commission's investigations for many decades. The Commission's view is that the risk will escalate if movements in the gig economy (see chapter 2) are associated with an increase in the proportion of people that make a living from multiple jobs and contracts.

The Commission has received a small number of complaints alleging a public official with unauthorised secondary employment has misapplied an agency's training budget in order to advance their personal business interests. For instance, an employee might ask to attend an agency-funded project management course, which is really intended to improve the skills needed to operate their business.

The Commission has also received complaints about employees using confidential agency information to identify potential customers for their private businesses and even the theft of agency supplies for use in a private business.

Alignment with public sector values and practices

As noted elsewhere in this report, agencies are increasingly reliant on the private sector to manage

projects and staff and deliver core public services including through delivery partner models, outsourcing and shared private/public sector risk-taking. This potentially exposes NSW public sector agencies to the practices of companies that are headquartered or operate in more corrupt countries.

In addition, certain agencies are hiring more staff with little or no public sector experience. Opening the public sector to a broader range of skills and experiences is a good idea. However, the Commission has noticed employees/contractors who primarily have a private sector background:

- may not receive any relevant training or induction about conflicts of interest (especially if they are contractors)
- are less likely to grasp public sector values, such as the importance of placing the public interest ahead of private interests
- may find it difficult to change previous business practices that, at a minimum, might create a perception of a conflict of interest (such as accepting hospitality, exchanging gifts, socialising with suppliers or sharing business information)
- have a primary allegiance to their own company or direct employer rather than to the public interest.

Table 5: Personal interests conflicting with the public interest

| Operation | Nature of conflict of interest |
|--------------|--|
| Cabot, Cyrus | The public official had family business interests in a number of enterprises and used his influence to seek advantageous decisions from government. |
| Credo | Public officials agreed to create a false document in order to confer a benefit on a personal friend. |
| Sonet | The public official had undisclosed ownership of a business that was a supplier to the public agency at which he worked. |
| Spector | The public official sought substantial personal loans from suppliers and colleagues in order to support his daughter's gambling problems, which conflicted with his duty to manage staff and keep suppliers at arm's length. |
| Tunic | The public official with procurement and contract management duties had a longstanding relationship with the director of a supplier. |
| Yancey | The public official had a secret romantic relationship with a contractor's sister, which conflicted with his duty to award contracts under approved procedures. |

The gig economy and the risk of corruption

- As the gig economy (or at least the custom of having supplementary sources of income) becomes normalised, it may become less apparent that secondary employment needs to be reported. When permission is sought to engage in secondary employment, public sector managers may be less likely to refuse requests. In doing so, they may overlook the underlying corruption risks that are associated with the secondary employment. The Commission already receives a significant number of allegations about public officials who often perform paid work outside their public sector role (for example, doctors working in the public and private health systems, university academics with private research interests and local councillors, many of whom have other paid roles).
- More and more public officials (and their close friends and relatives) will have their own Australian Business Number (ABN). The mere availability of an ABN (even if the business is not actively trading), coupled with weak procurement controls, helps facilitate procurement or accounts payable fraud.
- The gig model is prevalent in ICT work. A significant number of ICT staff work as independent contractors and rely on project-based assignments to make a living. As noted in chapter 9, ICT projects have been identified as an area of corruption risk.
- Public officials that start a private company are likely to operate in their area of expertise. For example, a town planner working at a local council may start a small planning consultancy, or a human resources officer may start a labour hire firm.
- Since gigs are temporary in nature, freelance workers may be under financial pressure to find and retain work, which could become a motivation for corrupt conduct.
- Many gig-related jobs can be performed from behind a computer. This means a public official could be running a small business from their desk during work hours. For example, a small number of agencies have reported catching staff using work time and computers for personal endeavours such as mining cryptocurrency.
- By design, most gig-work has comparatively low barriers to entry. This makes it very easy for just about anyone to start up a small business and have an ABN.

Social media

Unsurprisingly, the Commission has started to receive more allegations about hidden conflicts of interest (and other forms of misconduct) based on information from social media platforms. Given most social media companies base their business model on maximising the size and use of networks, it is reasonable to ask whether social media activity indicates a conflict of interest.

The Commission's advice is social media can be used as a source of information about potential personal interests; however, a degree of caution should be exercised.

Social media can be a valuable source of information about a person's associations, career history and interests. It therefore makes sense to make use of social media activity to identify, verify or investigate possible conflicts of interest. It is also reasonable to view open source information in order to assess a person's suitability to work at an agency.

However, agencies should be wary of jumping to conclusions. An association, a "like" or even an endorsement on social media may or may not point to a conflict of interest. In fact, a great deal of information on the internet may be misleading, so agencies should seek to verify any red flags using other information sources.

Common misconceptions and practices

The Commission's analysis points to a number of practices – some deliberate, others inadvertent – that erode the integrity of, and trust, in the public sector.

THE FAUX RECUSAL

This occurs when a conflicted public official is told (or offers) to remove themselves from a particular process or decision but nonetheless retains a significant unofficial role. That can include influencing the remaining decision-makers behind the scenes or misusing confidential information that is still available.

DISCLOSURE, THEN NOTHING

For minor conflicts of interest, it is often acceptable to simply document the disclosure and then take no further action. However, the Commission often sees this “disclose only” approach overused. This appears to happen because the manager:

- is busy or not experienced in dealing with conflicts of interest
- is reluctant to take any action that suggests the discloser is not trusted
- interprets the disclosure as a sign of integrity and assumes the discloser is honest.

EQUATING DISCLOSURE WITH MISCONDUCT

Staff and suppliers that are not acquainted with public sector conventions are more likely to believe that having a conflict of interest is tantamount to a form of misconduct. Alternatively, they may hold a mistaken belief that they will be automatically removed from a project if they disclose a conflict.

UNDERSTATED OR DELAYED DISCLOSURE

The Commission's investigations often uncover evidence that a conflict of interest has been completely concealed. However, sometimes a conflict will be disclosed, albeit in the form of a deliberate understatement. For example, this could involve describing:

- a close friend as an acquaintance
- a current business partner as a former business partner
- an office holding in an organisation as a general membership.

In other cases, the disclosure will simply lack the detail required to make a management decision (for example, it might say, “I know person X” but without explaining the nature of the relationship).

Similarly, delayed reporting of a personal interest can also erode public trust. For example, an officer working on a tender might know a family member is very interested in bidding for the work but say nothing until after the opening of the tenders. The delay gives the officer the *opportunity* to confer advantages on the family member.

FAILURE TO RECOGNISE NON-PECUNIARY CONFLICTS

Pecuniary interests – such as investments, debts and income sources – are usually easy to conceptualise, and, in the corporate environment, the management of conflicts is generally confined to pecuniary interests. This means that non-pecuniary interests are sometimes misunderstood and under-disclosed.

HIDDEN IN PLAIN SIGHT

This happens when an officer makes a large number of disclosures to hide one particular conflict that is to their advantage. For example, a project manager might disclose a dozen or more entities they have worked with in the last year. However, one of these companies might belong to their son, who the project manager plans to use as a contractor. Upon seeing the lengthy disclosure, a supervisor is likely to infer the project manager is honest and thorough, when the opposite is true.

A variation on this practice is to include a conflict of interest disclosure in the body of a much longer document or email.

DISCLOSED, BUT NOT TO THE RIGHT PEOPLE

In order to achieve a degree of compliance, some officers will make their conflict of interest disclosure to the wrong person. Most of the time, disclosures need to be made to an officer's manager and/or the person in charge of a relevant process (such as the head of the tender or recruitment panel). Instead, the officers make the disclosure to an acting manager, a colleague, an executive assistant or some other person who might be less likely to take action.

RATIONALISING NON-DISCLOSURE ON THE BASIS IT IS “JUST A POLICY DISCUSSION”

Discussions about policy are quite different from discussions about how to use an agency's funds or powers. For example, it is easy to see how a team meeting about an agency's ICT strategy differs from a decision to award a contract to a particular ICT company. However, if a relevant participant in the discussion has a known conflict of interest (for example, their spouse works at an ICT company that could supply services to the agency) the disclosure should not be delayed.

Better practice tips

- ✓ The term “conflict” often seems to carry a pejorative meaning. Instead, staff may find it easier to disclose “associations” or “interests”.
- ✓ Some agencies import strict ethical obligations into the terms of contracts and purchase orders. This can include penalties if the contractor fails to disclose conflicts of interest. Senior executives are required to maintain a register of relevant interests, relationships and associations. Not all influential officials are executives. Better practice is to extend similar disclosure requirements to others in high-risk roles.
- ✓ Giving staff specific examples of interests that need to be disclosed including liabilities, debts, property and the interests of close relatives.
- ✓ Providing staff with regular prompts to update their registers of interests, relationships and associations – instead of relying on an annual compliance check.
- ✓ Use of ICT permissions and audit controls to block, or at least record, attempts by a person to make decisions or access information that relate to a conflict.
- ✓ Recognising that conflicts of interest can be difficult to identify, some agencies focus on properly segregating duties involving corruption risk. Use of detailed process maps or flow charts to identify staff with excessive influence over a key process is a good practice.

Table 6: Rationalisations for failing to disclose a conflict of interest

| Scenario | The conflicted person claims that. . . |
|---|--|
| “Everybody knew” | <i>Their conflict is common knowledge, which provides an excuse for not disclosing it. Failure to have a formal record of the interest and its management does not promote transparency and carries a reputational risk for the public agency.</i> |
| “I’m friends with everyone” | <i>They are friends, or friendly, with “everyone”, which makes it too hard to comply with the agency’s disclosure procedures. This is common in small communities or highly networked industries. However, having a wide circle of friends and associates is not a valid excuse for concealing a genuine interest.</i> |
| “I didn’t get a personal benefit” | <i>As long as they have not personally profited from the decision, they do not have a conflict. This is a fundamental misunderstanding of the definition of a conflict of interest.</i> |
| “I didn’t know about my interest” | <i>They are unaware of (or not in control of) their personal interests because they are highly complex. Individuals that are part of a large family may also make this claim. The Commission’s experience is claims of this nature are often false.</i> |
| “They are the best supplier” | <i>Their favoured supplier (or other party which has triggered the conflict) is clearly the best (or the only) available option. They argue there is no harm in concealing the conflict.</i> |
| “It was just a briefing” | <i>They did not need to make a disclosure until the official decision-making process commenced. This fails to understand the undisclosed conflict of interest can cause harm at any stage of a process.</i> |
| “I’m being paid to use my networks” | <i>Their appointment is based on their deep knowledge of a particular market or industry. This does not excuse them from the need to make disclosures.</i> |
| “My vote did not make the difference” | <i>Their role in the decision-making process was not material, so there was no need to make a disclosure.</i> |
| “My involvement is crucial” | <i>If they are removed from the process, the decision will go the “wrong way” or will otherwise be flawed.</i> |
| “It would have looked suspicious if I declared” | <i>The act of making a disclosure would be viewed as irregular or suspicious. This is an illogical excuse; not making a disclosure is clearly more suspicious.</i> |
| “No one else has the skills” | <i>There is no one else in the organisation with the skills, market knowledge or experience to make the decision.</i> |
| “It’s my platform” | <i>Since they are an elected official with a stated policy platform, they are entitled to ignore any conflicts of interest. Having a policy position does not trigger a conflict of interest but this should not be used as a reason for concealing a personal interest.</i> |

Chapter 7: Undue influence on decision-making

Lobbying⁷⁰ is widely regarded as a necessary and legitimate part of the democratic process. This legitimacy is threatened, however, when government decisions are perceived to arise from secret deals being made behind closed doors. While secrecy is not necessarily corrupt, there is evidence of a lack of confidence in many government decisions.

The Grattan Institute 2018 report, *A Crisis of Trust: the rise of protest politics in Australia*, points to declining trust in government and a high percentage of people who agree, “government is run by a few big interests rather than the public interest”.⁷¹ The reality is that public confidence in public sector decision-making is eroded when certain individuals or companies have, or appear to have, ready direct access to public officials.

Evidence from Commission investigations

In recent years, the Commission has completed a number of investigations featuring the practice of “lobbying from within”; that is, where a public official may seek to promote the use of a supplier or party in which they have a hidden interest.

The Commission’s 2017 report, *Investigation into dealings between Australian Water Holdings Pty Ltd and Sydney Water Corporation and related matters* (Operation Credo), was an example of this. It also set out other examples of undue influence, which included:

- Australian Water Holdings’ (AWH) practice of hiring former political insiders, including a former NSW minister and a former senior party official (the latter agreed his appointment was based partly on his political connections)
- evidence of a deliberately false complaint made to the Commission about the conduct of public officials standing in the way of the interests of AWH
- evidence some parliamentarians created a misleading Cabinet minute, contrary to expert advice, in order to benefit a colleague’s interests
- evidence of a beneficial ownership in AWH, which was never formally registered.

Declining trust in government

The Commission suggests the following actual or perceived practices may have contributed to the impression that public confidence in public sector decision-making has eroded:

- key government decisions, including legislative decisions, made (or reversed) without transparency about which interested parties did and did not meet with the decision-maker
- decisions made without following formal or customary consultation mechanisms
- preferential access to decision-makers based on pre-existing relationships or political donations
- former politicians and public officials becoming employed as lobbyists or advisers in industries where they previously had official duties
- using false representations or, alternatively, branding factual information as “fake news” to sway decision-makers or public opinion, including the use of both traditional and social media
- public sector decision-makers advancing their own, concealed business interests, by lobbying from within.

In its 2016 report, *Investigation into NSW Liberal Party electoral funding for the 2011 state election campaign and other matters* (Operation Spicer), the Commission identified:

- numerous examples of conduct that breached NSW election funding laws. These included political donations made by property developers (which are banned under NSW legislation), donations that exceeded legislated caps, and disguising the true source of political donations (including by channelling them via third parties)

- an attempt to induce a politician into accepting a prohibited donation
- a lobbying campaign designed to unseat a member of Parliament without registering as a third-party campaigner. The campaign involved a mailout that included misleading claims (that is, it exaggerated the traffic impact of a proposed development). The mailout was published anonymously and failed to bear a proper authorisation, which was designed to mask the true identity and interests of the campaigner – a self-interested commercial entity.

Observations about lobbying

Registered and unregistered lobbying

The NSW *Lobbying of Government Officials Act 2011*, and associated regulations, requires professional third-party lobbyists to be registered and conform to a regulatory framework. However, organisations and individuals that lobby on their own behalf do not have to be registered.

As shown by recent investigations conducted by the Commission, it is this unregistered lobbying activity that is more likely to cross over into corruption.

In fact, the Commission has not made a corrupt conduct finding against a registered third-party lobbyist and receives relatively few complaints about them. While not suggesting registered lobbyists are incorruptible, the evidence suggests public officials need to be most wary of individuals and organisations lobbying on their own behalf.

Who gets lobbied?

The Commission's analysis, based in part on discussions with academics, indicates in general that lobbying activities do not directly target known opponents. Instead, lobbyists are more likely to target likeminded officials; that is, those who are thought to be already supportive of the lobbyist's position. It is then hoped that these officials will use their own influence to obtain a win, or at least a concession or compromise, for the lobbyist. This type of approach may be effective because lobbyists:

- are specialists, whereas legislators and policy-makers tend to be generalists
- can be a useful source of information for public officials already aligned to their cause
- can analyse, synthesise and summarise information to help a legislator or policy-maker influence others
- can significantly cut down the time and effort a legislator spends on a policy issue.

Where public interest in the matter is low and the policy area is not controversial, it also appears that lobbyists can be more influential, and that regulating their activities can be more challenging. By contrast, where public interest is high and the policy area is highly contentious, lobbying activities are more likely to come under scrutiny, and regulation is more effective. Put simply, lobbying is most effective when out-of-sight.

Overseas influence

Influence peddling and political interference by foreign sources has been the subject of considerable media attention and public comment.

To date, the Commission's investigations and information holdings do not point to corrupt or inappropriate lobbying by foreign powers. It is the case that the Commission's investigations sometimes involve foreign individuals but they are typically acting in pursuit of their own personal interests.

In NSW, only persons on a relevant electoral roll or entities with an ABN may make political donations. While this does not strictly prohibit donations from foreigners, it is intended to:

...remove a perception that certain foreign donors could exert influence over the Australian political process, by requiring a donor to have a legitimate link with Australia, either through residence of the donor or its principal or executive officer or by being registered in Australia.⁷²

However, Australia's intelligence agencies have warned about the dangers of foreign influence, including the potential adverse effect of political donations. At the federal level, the *Foreign Influence Transparency Scheme Act 2018* was recently introduced following a parliamentary inquiry. The Act introduces:

...registration obligations for persons or entities who have arrangements with, or undertake certain activities on behalf of, foreign principals. It is intended to provide transparency for the Australian government and the Australian public about the forms and sources of foreign influence in Australia.⁷³

According to evidence given to the Parliamentary inquiry by officials from the Australian Security Intelligence Organisation, espionage and foreign interference activity against Australian interests is "occurring at an unprecedented scale".

Remarks include:

...What we're dealing with here is the covert – I use the word 'sinister' – nature of influence which is not apparent then to the Australian public and which results in a decision being taken or an outcome being achieved which the Australian people have not had visibility of...

...there's a transactional relationship where a person is cultivated and recruited and, in return for money and finance, they provide privileged information which then goes back to that particular foreign intelligence service and is then used as part of, I suppose, that particular service's overall assessment of Australia's capabilities, vulnerabilities and weaknesses...⁷⁴

Techniques used by vested interests

The Commission has identified a number of techniques or approaches that exert some form of undue influence on public officials. The Commission still receives complaints about improper inducements, such as the provision of gifts and hospitality, aimed at securing a favourable decision or a beneficial relationship.

Some of the less well-known forms of undue influence are set out below.

Interference in the appointment of a key decision-maker

This can entail:

- lobbying in relation to the recruitment (or dismissal) of a particular decision-maker who is thought to be favourable (or unfavourable) to a particular cause
- lobbying in relation to the public official being allocated to assess a particular matter (for example, a development applicant attempting to have their matter dealt with by a particular local council planner or certifier)
- making a tendentious accusation of bias or apprehended bias against a decision-maker (or some other type of complaint), in order to have them replaced.

False or misleading information

Some development applications and other processes require evidence of consultation with affected parties or the community. The Commission receives occasional complaints about false signatures or other false information being provided as proof of consultation. Arguably, these falsehoods are intended to deceive the relevant decision-makers.

Parties submitting some form of application, tender, or business case to government may include (or refer to) "independent" or "expert" advice or research that supports their case. Where the credibility of this information (or its source) is accepted, it may be highly persuasive. However, the material may not be truthful, expert or independent as claimed.

Forum shopping

The Commission has seen evidence of forum shopping by development applicants. Depending on factors, such as the size and nature of a development application, it is determined by different consent authorities, such as council planning staff, the elected council, an independent or local planning panel, a Joint Regional Planning Panel or the NSW Land and Environment Court. Applicants (or in some cases objectors) may provide misleading information about the application, or seek to collude with key decision-makers, in order to have the matter heard in the preferred forum.

This practice potentially extends to other types of decisions, such as the awarding of grants, management of complaints or the consideration of unsolicited proposals.

Making use of the revolving door

Of the 538 lobbyists registered by the Department of the Prime Minister and Cabinet at the time of writing, 191 are former government representatives.⁷⁵

This revolving door issue, where the "lobbied" change jobs to become the "lobbyist" (and occasionally vice versa), has attracted considerable attention, especially in cases where a former minister obtains a position with an organisation associated with their former portfolio responsibilities. There is no doubt that this practice entails some risk of corruption and potentially jeopardises public trust in decision-making.

Forms of hidden lobbying

The Commission has observed techniques aimed at hiding aspects of lobbying activities. Some of these are set out below.

- Conducting commercial lobbying activities by forming or joining a not-for-profit business association or charity. Most of the time these are legitimate organisations but, on rare occasions, they are used to mask vested interests.

- Not-for-profit associations can be set up and used to make political donations, with the intention of avoiding disclosure of the identity of the true donor(s).
- A related technique is known as “astroturfing” (that is, a fake grassroots campaign). If an organisation with commercial or policy interests can generate the appearance of genuine community support for (or opposition to) an issue, its chances of success are improved. Regrettably, the nature of social media makes it easier to engage in astroturfing-like behaviour.
- Lobbying decision-makers (or other influential public officials) outside the approved decision-making process. For example, a tenderer or grant applicant might breach the formal conditions of tendering by pushing its case with a local councillor or minister instead of the proper process established by the evaluation committee.
- The Commission has also observed situations in which the true identity of a development applicant is concealed; for instance, where the nominated applicant or the property owner is not necessarily the real entity behind the proposed development. By omitting the identity of the real applicant, a relationship with a decision-maker, or collusive behaviour, is less likely to be uncovered.
- attempts at flattery, by offering a public official an honorary role or title, or inviting them to become an adviser
- offering to provide private services to a public official, such as home renovations
- offering jobs to the children of public officials.

With regard to the final point, internationally, a number of firms have been prosecuted for corruption-related offences involving the hiring of “princelings” – the children of high-ranking government officials. In one case involving violations of the *US Foreign Corruption Practices Act 1977*, the Securities and Exchange Commission found evidence of:

...a systematic bribery scheme by hiring children of government officials and other favored referrals who were typically unqualified for the positions on their own merit.⁷⁶

Building relationships

Organisations seeking to influence public sector agencies sometimes seek to build relationships with decision-makers or those with actual or perceived influence over the decision-maker. In addition to the provision of gifts and hospitality, some of the approaches employed include:

- aggressive and persistent lobbying of elected representatives (these representations often seek to bypass protocols and test the courage of public officials to ensure probity principles are maintained)
- striking up a false relationship by showing an interest in the private as well as the professional affairs of an official, and gradually using that information to “soften” the official so they are more receptive
- trading in information of use to the public official
- awarding a prize (for example, a study tour or scholarship that involves overseas travel and accommodation) to a public official, which may or may not have been genuinely won
- asking a public official to speak at or attend a conference, which involves free travel and accommodation in a desirable location

Conferring gifts and benefits

The Commission’s Operation Artek⁷⁷ investigated corrupt procurement practices at a public sector agency. In addition to making findings about procurement practices, the Commission also identified a number of public officials engaged one of the agency’s suppliers to perform minor works and renovations at their homes.

In one case, involving construction of a swimming pool, a significant discount was given, which the Commission found to be a corrupt payment. In other cases, there was no evidence of a discount.

In any case, the Commission found this practice creates a significant corruption risk because:

a contractor may provide goods and services at a discount, constituting an actual or perceived corrupt payment. Additionally, a sense of obligation or friendship could arise between a contractor and a public official, resulting in the public official improperly favouring the supplier in the exercise of his or her public functions.⁷⁸

Fabricated news and disintermediation

The term “fake news” is receiving a lot of attention. At the time of writing, a Google search on the term returned almost 52 million hits. While this specific term is generating significant debate, the concept is hardly new. The practice of public officials and lobbyists repeating, believing or tolerating rumour, innuendo, untested claims and misinformation has a long history.

What is new is the emergence of social media and “news” reported by someone other than a journalist. In the past, a vested interest that wanted to advance a self-serving argument in the media, would have to rely on a journalist or presenter who was prepared to give the topic an airing.

Now, journalists face the threat of disintermediation; information no longer has to pass via a journalist before it is published as “news”.

Various studies point to the dangers when information is created for improper motives, for example, to

seriously distort the facts upon which many voters might base their electoral choices. This is illustrated in an academic study of the 2016 US presidential election, which found, “fake news most likely did have a substantial impact on the voting decisions of a strategically important set of voters”.⁷⁹

The interactive nature of social media and online consumption of news is also new. In the past, citizens had to write a letter to the editor if they wanted to express a view (and even then, the letter might not be published). Now, broadcasting an opinion via social media (including anonymously) is easy.

Even if an internet-user chooses not to express an overt view, it is still possible to “harvest” a great deal of information about their tastes, simply by monitoring their browsing activities. For instance, if this information can be analysed jointly with data relating to online purchases, global positioning system location and the activities of friends and relatives, a detailed picture of a person’s life can be assembled. This creates the ability to not just create false or misleading information intended to advance a vested interest, but to tailor and deliver it to specific users for a specific purpose.

Undue influence

The 2017 Queensland Crime and Corruption Commission report, *Operation Belcarra – A blue print for integrity and addressing corruption in local government*, identified a number of important findings related to undue influence, some of which are outlined below.

CANDIDATES FOR OFFICE EXAGGERATING THEIR INDEPENDENCE:

...There is a distortion of the concept of an independent candidate, with many candidates using the independent label despite being closely affiliated with a political party or having other interests that may be seen to affect their independence in the eyes of voters...

...In particular, councillors leave themselves open to suspicions that they know what independence means to voters, but adopt a narrow definition so that they can capitalise on the independent label while still enjoying the benefits of their party connections...

EVIDENCE CONCERNING THE USE OF POLITICAL DONATIONS:

My research suggests that donations are more like a ticket to entry for newcomers to this relationship network. So if you’re not already at the table and well entrenched, then you need to work your way towards the centre, and so you would want to donate. What we see in the donations data is that the largest donors these days are, for example, new Chinese developers. They’re donating the most, because they’re not at the table. They’re not in the network. They have to buy their way in. (As provided by Dr Cameron Murray, then economist from the University of Queensland.)

...Donations may therefore not necessarily lead directly to donors receiving special benefits, but they can ensure that donors are better positioned than others to further their business interests...

THE NEED FOR STRONG CONTROLS OVER CLOSELY CONNECTED LOBBYISTS AND A DECISION-MAKER:

Specifically, the inevitably close connections between property development interests and local government decision-making mean that transparency is insufficient to manage the risks of actual and perceived corruption associated with donations from property developers...

Chapter 8: Human resources

The most common workplace function the Commission receives complaints about is human resources (HR) and staff administration, which accounted for 25% of all matters received by the Commission in 2017–18. Examples of HR-related allegations the Commission frequently receives include:

- biased recruitment process such as a hiring manager awarding a family member or friend a role without a competitive process (similar allegations relating to promotions and lucrative redundancy packages are also received)
- resumé fraud, such as claiming a false qualification or inaccurate work history
- poor control and visibility of contractors and contingent hires
- various forms of payroll fraud, such as false timesheets, overstated overtime claims, failing to record leave taken and over-claiming allowances and benefits
- failure to discipline staff who have engaged in misconduct.

While these issues are not new, the Commission has identified that there is often a temporal connection between these types of complaints and significant organisational change. For example, when agencies restructure around changes in cluster arrangements, amalgamate business units, merge or introduce new ICT systems, or undertake large scale business process reengineering.

Corruption risks in the recruitment process

Merit-based selection involves selecting the best person based on the requirements of the role and the needs of the agency. Yet, many public sector employees have a low level of confidence in recruitment. Only 37% of respondents to the PSC's 2018 *People Matter Employee Survey* agreed that they had confidence in the way agencies make recruitment decisions.⁸⁰

Analysis of the Commission's information holdings suggests the following issues in recruitment are common:

Biased recruitment

An investigation by Victoria's Independent Broad-based Anti-corruption Commission (IBAC) uncovered biased recruitment processes at V/Line, Victoria's regional public transportation service.

Despite the existence of proper recruitment policies and procedures, the CEO and other senior executives at V/Line employed several general managers who were former work colleagues and friends, without advertising the role or engaging in a competitive process.

One important vulnerability was the poor tone from the top at V/Line. For example, one job applicant for a general manager role resisted numerous attempts by HR to complete an international criminal record check and qualification checks. He was concerned he was not sufficiently qualified for the role and falsely claimed his qualifications were in storage or had been lost in a fire. However, when HR continued to follow up the outstanding checks, the applicant escalated the matter to the CEO, whom he knew. The CEO then directed HR to employ the applicant without completing the checks.

Once employed as a general manager, the applicant engaged in misconduct by awarding over \$1 million in contracts to a previous colleague and a friend without any justification and without following proper procurement processes. The IBAC concluded:

Red flags – including blatant contract splitting, a lack of documentation to justify procurement (such as business cases), insufficient segregation of duties, and inadequate contract documentation – were not acted upon.

- creating a role or tailoring the selection criteria to suit a specific person rather than to meet a legitimate business need
- appointing pliable recruitment panel members who will defer to a dominant person, without challenging decisions
- giving the interview questions in advance to a specific candidate, providing free coaching or asking a candidate substantially easier interview questions
- appointing a friend or family member on a contract basis and then transitioning them to a permanent role
- providing people with improper assistance to complete their job application
- limiting the recruitment process to internal applicants or otherwise narrowing the field
- creating exceptions to established procedures when appointing very senior executives, sometimes caused by politicisation of the recruitment process
- permanently appointing a person who is acting in the role without allowing others to apply.

Another factor to take into account during the recruitment process is the engagement and training of staff. This is particularly important for employees unfamiliar with public sector practices and values.

For example, one investigation by the Victorian Ombudsman found senior management and board members of a public sector-owned tourist resort used more than \$30,000 for private travel and personal expenses, and the CEO improperly awarded \$49,000 of bonuses to staff on executive contracts.

The report into the matter identified that the transfer of staff from the private sector to the public sector is a key risk to manage in the recruitment process. Senior staff involved explained that they “were unaware of their obligations with respect to public sector policies, directives and legislation”.⁸¹

How to stop interview questions getting to interviewees

A number of recent complaints to the Commission show evidence of the provision of interview questions in advance to favoured candidates, typically by a person on the interview panel. While it is difficult to stop this form of misconduct, agencies can potentially reduce the consequences by:

- ✓ ensuring proper document control measures are in place to reduce the likelihood of inappropriate sharing of interview questions with others
- ✓ requiring the panel and the candidates to attest they have not distributed or received the interview questions
- ✓ basing the recruitment decision on the candidate’s written application, responses to interview questions and evidence from employment screening checks
- ✓ asking questions that are sufficiently challenging (that is, so only a highly qualified applicant could provide a good answer)
- ✓ giving panel members some latitude to ask follow up questions
- ✓ providing all interviewees with a copy of the questions and preparation time prior to conducting the interview
- ✓ giving all the interviewees a chance to supplement or change their answers.

Employment screening

Resumé fraud is a common problem, as between 20% and 30% of job applications contain some form of falsehood. These falsehoods can range from slight discrepancies in employment dates and job titles to more serious omissions and additions, such as a false qualification or an inaccurate work history.

While most public sector agencies perform some employment screening, the Commission's investigations often identify shortcomings. This poses a considerable corruption risk as agencies could employ staff with a false identity, fake work history or a criminal history.

Over the last 15 years, the Commission has conducted several public inquiries that have uncovered poor employment screening practices (see table 7).

In 2018, the Commission released *Strengthening Employment Screening Practices in the NSW Public Sector*. The key messages in the report include the recommendations to:

- use a risk based-approach to select the types of checks necessary to the role
- rescreen employees throughout their tenure where appropriate (for example, this may occur periodically or in response to a change in risk profile, such as a promotion)
- ensure responsibilities for checks are appropriately assigned for employment screening and there is a tone from the top that recognises the importance of screening
- verify the authenticity of qualifications by checking with the issuing university or educational body
- conduct due diligence on third-party employment screening providers, such as background screening companies and recruitment companies (verify the provider has performed the required checks to the right standard)
- ensure screening of all types of labour engagements.

Table 7: Commission public inquiries featuring employment screening issues

| Operation | Position | Issue | Additional corrupt conduct |
|------------|--|--|--|
| Tarlo 2018 | CEO of government-funded NGO | Failure to detect false qualifications | Misapplication of up to \$773,000 in public funds for a personal benefit |
| Sonet 2016 | Acting ICT manager in the education sector | Failure to rescreen an employee when they were promoted to a new role with a substantially different risk profile | Corrupt overcharging for ICT items to make a \$1.14 million profit |
| Misto 2015 | ICT manager at multiple universities | Poor checking practices failed to detect misrepresented work history, false degrees and professional memberships that had lapsed | Caused universities to pay \$146,165 worth of false invoices |
| Siren 2011 | Property asset manager at a utility | Failure to perform a reference check. Agency did not discover he failed probation in his previous role | Authorised \$300,000 worth of improper payments |
| Avoca 2010 | Council engineer | Several regional councils failed to conduct employment screening. They did not detect the applicant's false references, work history and issues with his professional association membership | Attempted to bribe a recruitment consultant to obtain a job |

Use and oversight of contingent workers

Between 2011–12 and 2015–16, NSW public sector expenditure on contingent workers more than doubled from \$503 million to \$1.1 billion,⁸² and currently more than 7,500 contingent engagements exist.⁸³ Despite this considerable outlay, agencies often lack adequate information about their contingent workers.

Timesheet fraud continues

The Commission continues to receive many complaints each year alleging various forms of timesheet fraud. Since the basis of most public sector remuneration is annual salary, serious forms of timesheet fraud should be relatively uncommon (albeit that timesheet data is usually the basis for time-off-in-lieu and flex-time).

However, where payments are made on the basis of hourly or daily claims, the Commission has observed timesheet fraud remains a problem. This is aggravated by factors such as:

- contractors may not itemise the hours claimed on their invoices and inattentive contract managers may not bother to request detailed information
- poor record-management practices, rostering and use of log books
- an absence of basic staff supervision
- a failure to generate or review payroll exception reports
- a lack of data analytics to detect timesheet fraud
- overtime claims that arrive months after the purported date of the work.

Four key aspects of contingent hires to control

1. Assess the quality of the labour hire company

Most agencies are required to use labour hire companies that are on a whole-of-government prequalification scheme for contingent labour (the “0007 scheme”). Agencies should be extremely wary of using untested labour hire companies recommended by existing staff and contractors. There are low barriers to entry for labour hire companies and the chances of a hidden conflict of interest are high. Using the prequalified panel does not, however, necessarily guarantee good service and quality either. It is therefore important agencies perform their own extensive due diligence.

2. Consider screening and inducting contingent workers as though they were employees

The treatment of labour hire as a procurement rather than a recruitment function (excluding HR from the process) means many of the important employment screening measures described above could be bypassed. While workers on very short-term or low-risk contracts may be an exception, the Commission recommends agencies consider taking steps to ensure contingent workers are subject to the same (or similar) induction, training and supervision as other staff.

3. Ensure contingent workers’ responsibilities are within scope

Corruption risks can arise when contingent workers perform duties intended for permanent employees. The Commission’s work has shown examples of contingent workers exercising financial delegations, overseeing multi-million dollar projects and managing contracts and employees. This may open opportunities for corrupt conduct, where reduced supervision allows temporary workers to make decisions that benefit their personal interests.

4. Assess tenure

Contingent workers are suitable for short-term assignments but both the Commission and the NSW Audit Office have observed cases of nine- to more than 20-year engagements⁸⁴ and other excessively lengthy appointments. Contingent workers may have an incentive to extend the scope or duration of projects or to secure further work. Furthermore, some agencies may find it convenient to keep extending contracts if they come to rely on the specialist skills of a contingent worker, or to avoid short-term recruitment and training costs associated with a replacement.

Payroll fraud issues

A large number of matters received by the Commission relate to various forms of payroll fraud or abuse of entitlements. Common problem areas include:

- timesheet fraud, such as claiming additional hours not worked, recording false overtime or failing to record leave taken (according to a NSW Audit Office survey, timesheet fraud is the most common type of fraud, representing approximately 23% of cases⁸⁵)
- misuse of sick leave, such as forging medical certificates (the ability to obtain medical certificates via an online or telephone consultation may make it easier for a person to exaggerate their symptoms, and some of these certificates may also be easier to forge or alter)
- over-claiming various other allowances.

While most of these issues are not new, the changing nature of work in the public sector has made some of these issues more likely and challenging. For example, flexible work arrangements, such as working remotely, working from home or across multiple work sites, can make oversight more difficult and may increase the risk of timesheet fraud.

Behavioural red flags

Performance management plays a role in preventing corruption by addressing potential issues before they become a bigger problem. Several agencies have identified performance management practices that could be improved. According to one survey, 38% of agencies identified embedding effective performance management practices as a gap.⁸⁶

It is common for corrupt individuals to have performance management issues that warrant further attention. One study found, “39% of fraudsters had experienced some form of HR-related red flags prior to or during their time of frauds”.⁸⁷ These red flags included poor performance evaluations and demotion. The Commission’s own information holdings point to some additional behavioural red flags such as:

- hiding information from, or not cooperating with, internal audit
- passive disobedience such as promising to deal with a matter and then not following through
- refusing to share work or inform team members
- failing to create records or deleting records

- refusing to take leave
- not accounting for whereabouts
- bullying and harassing staff
- consuming alcohol or drugs at work.

Inadequate performance management can negatively influence the culture of an organisation or even encourage widespread misconduct. According to one study of US financial advisers, staff were “37% more likely to commit misconduct if they encounter a co-worker with a history of misconduct”.⁸⁸ This provides some initial evidence that misconduct, if not properly managed, can spread.

Taking disciplinary action

When a public official engages in misconduct or corruption and then becomes aware of a potential investigation, it is relatively common for them to resign. Often, this happens before the official can be interviewed or given a chance to respond to the evidence, which means an adverse finding may never be made or recorded. So, while agencies cannot practically refuse to accept an employee’s resignation, an incomplete investigation or disciplinary process makes it much easier for the person to obtain future public sector employment where they can engage in the same misconduct.

Consequently, the Commission recommends, wherever possible, agencies complete investigations into serious allegations, even if this means proposed adverse findings have to be put to the alleged wrongdoer after their resignation. In cases where it is not possible to complete the investigation, the Commission recommends agencies record that the employee resigned before any potentially adverse findings could be made. Factual information about the circumstances can then be provided in response to a service history check.

More serious is the practice of failing to properly deal with proven serious misconduct (that is, when a fair and thorough investigation process has been completed and adverse findings have been made). The Commission has identified practices including:

- allowing an employee to resign, or take a redundancy, when there is sufficient evidence to dismiss them
- failing to advise the Commission (under s 11 of the ICAC Act) or the police because the employee has already left the agency
- transferring the employee to another department or unit instead of disciplining them (and in some cases, not briefing the new manager about the reason for the transfer)

-
- signing a non-disclosure agreement that prevents the agency from discussing the employee's conduct
 - allowing a former employee with a history of misconduct to be re-employed at the agency (or a related agency in the same cluster). Alternatively, a former employee might return to the agency as a contractor or subcontractor.

A number of agencies maintain "do-not-rehire" databases or similar lists of employees that have been the subject of adverse findings. The Commission supports their use, provided agencies maintain these databases in accordance with procedural fairness and that confidential information is secured.

Chapter 9: Procurement and contract management

According to the Organisation for Economic Co-operation and Development, Australian general government procurement comes to just over 13% of GDP.⁸⁹ Likewise, the annual procurement spend of the NSW public sector is substantial. In 2018–19, budget-funded public sector agencies are expected to spend over \$24 billion on goods and services and a similar amount on purchases of non-financial assets.⁹⁰ When the procurement activities of non-budget funded entities and local government are added, one is given a sense of just how much money is potentially at risk.

Over 50% of the Commission's investigation reports that contain corrupt conduct findings involve procurement and/or contract management processes. The NSW Audit Office reports the largest frauds and the greatest risks relate to procurement and contract management,⁹¹ and earlier research by the Commission has found that almost one-third of NSW government suppliers have not bid on a government contract because of corruption concerns.⁹²

Getting the basics wrong

In many ways, the corrupt conduct that the Commission sees in procurement does not relate to any emerging trend or new form of fraud. Much of it stems from well-known control failings that arise from poorly designed, implemented and managed procurement and contract management processes. Some of the common procurement practices that the Commission sees include:

- buying goods and services that are not needed and unwarranted scope creep
- employees awarding work to suppliers they own or control, without disclosing a conflict of interest (or suppliers owned/controlled by a close friend or relative)
- allowing the supplier to design the scope of work or specifications
- engaging in direct negotiations contrary to agency policy
- paying for excessive hours, or excessive hourly rates, for labour hire services
- paying invoices without performing a three-way match (that is, the purchase order, invoice and

documented receipt of goods and services all correspond) or raising purchase orders after invoices have been submitted

- splitting orders or payments to avoid scrutiny by a more senior officer or to remain below thresholds requiring competition
- failing to issue a tender or obtain three quotes as required by policy
- obtaining false/misleading tender responses or quotes
- failing to record the receipt of goods and services and not updating asset registers.

The Government is a uniquely powerful player in these markets but has failed to understand or manage the market. Public sector contracts cover a wide range of activities and are provided by a wide range of companies. Government has little understanding about how it influences the market and displays little strategic thinking into how it could, or should, be examining or influencing those markets.

House of Commons Committee of Public Accounts⁹³

Key changes in the nature of government procurement

Value of a strategic approach

With regard to changes to the nature of government procurement, the 2018 report, *Strategic Suppliers*, from the UK Committee of Public Accounts, highlights a number of issues similar to those being experienced in Australia.⁹⁴ One lesson from this report is the need for a strategic approach to the market.

Overall blurring of the line between public, private and NGO sectors

Outsourcing is not new. Over several decades, governments have come to rely on the private sector to perform more and more tasks, including the delivery of core services to members of the public. There are, however, some slow-moving trends that have added to the overall risk of corruption.

First, agencies are relying more on outsourced expertise to shape aspects of their broad strategic agenda, which includes their general approach to procurement and contracting. One study of the UK public sector noted the high rate of churn among public servants working on major procurement projects and that, “It is not unusual for external advisers to be the custodians of corporate memory”.⁹⁵

Secondly, the individuals performing procurement activities for agencies are themselves increasingly likely to be contractors, or recently recruited from the private sector. Similarly, project managers and contract managers can be contractors. This means, in some cases, a contractor is either exercising or strongly influencing public sector financial delegations (for example, by getting a person with delegations to rubber-stamp their recommendations).

Contractors also perform tasks such as managing staff, designing internal controls and writing project business cases. One media report on the defence industry referred to a “contractor boom”, where “contractor numbers had risen to the point where it was not unusual in some areas to have only a thin layer of public servants overseeing a project run entirely by contractors”.⁹⁶ In NSW, this has presented as a reliance on delivery partners to carry out many public sector infrastructure and ICT projects.

Thirdly, the prevalence of these contracted specialists makes it difficult for agencies to restrict access to confidential information. In part, as the line between public and private sector continues to blur, agencies need to provide contractors with access to internal databases and documentation (or even rely on the contractor to hold the information).

As permanent employees and contractors mix and work together, it becomes administratively complex to determine who is entitled to access internal information. In addition, as contractors obtain greater access to government information, they become targets for cybercrimes that could harm the public sector.

Fourthly, agencies and other subject matter experts have advised the Commission that there is high turnover of staff working in procurement, contract management and project management roles. This leads to a greater reliance on temporary or untrained staff and heavier workloads for remaining officers.

Fifthly, in some areas (for example, ICT and major infrastructure provision) public sector supply chains are expanding overseas. In many ways, this is driven by technological advancements that make it possible for someone to work on a NSW public sector agency project while sitting at a desk in another country. This may gradually expose public sector agencies to the customs of countries with higher levels of corruption.

Commissioning and contestability

In 2016, the NSW Government introduced its *Commissioning and Contestability Policy*,⁹⁷ in which it explains that public services should be delivered in order to maximise quality and the interests of customers, “regardless of organisational boundaries and constraints”. While the policy is not a directive to outsource all activities, it does point to the need to:

...encourage innovation and an openness to more diverse service delivery models in the public, private and not-for-profit sectors. These models should be flexible, reflect the needs of the customer and recognise the limitations of certain markets.

A “commissioning” approach affects the future procurement of public services from public, private or not-for-profit providers. Commissioning is concerned with high-level decisions about what to buy and

how, rather than the actual process of making the purchase. In some public service sectors, it will involve the design and management of markets, which are new skills the public sector will need to develop.⁹⁸ According to the policy, a “contestability” approach involves, “evaluating and benchmarking services against credible alternatives and/or market testing in order to drive productivity, learning and improvement”.

This policy could create some probity-related challenges. For instance, to comply with the policy, agencies will increasingly turn to “relational” contracts, which aim to create partnerships based on shared values and trust. In this way, contractors are relied on to exercise their professional judgment and pursue the public interest out of their own sense of commitment to the joint enterprise. Examples include the contracting of charitable community-based organisations to provide human services.⁹⁹

Agencies may also find themselves having to wear multiple, competing hats. This could occur if agencies

Consultant kickbacks

In Operation Tilga,¹⁰⁰ the Commission made findings that a security consultant who sat on, or advised, various agency tender committees accepted money from a tenderer as a reward for influencing the tender selection.

The government agencies involved had limited internal knowledge of high-end security systems. To compensate for this, the agencies had to rely on the security consultant. One agency even asked the consultant to develop the tender specifications and select the winning tenderer.

The security market is highly networked and the security consultant did not give objective advice because of his numerous associations with tenderers. The consultant’s conduct also included divulging confidential budget information to a tenderer and persuading an agency to allow a tenderer to revise its pricing.

The Commission recommended agencies adopt a broad approach to due diligence, including scrutiny of low bids, consideration of previous performance, seeking referee reports beyond those provided by the tenderer, verification of case studies provided by tenderers and seeking information from established networks.

The Commission also recommended keeping certain tasks in-house, such as determining budgets and communicating with tenderers.

Understanding the risks

In the Commission’s experience, the use of contractors adds to the overall risk of corruption because contractors may:

- have very different experiences and understanding of integrity and public sector norms
- be less familiar with public sector requirements about managing conflicts of interest, gifts and confidential information and the custom of providing frank and fearless advice
- not have been trained in the agency’s relevant values, code of conduct, policies and procedures
- not be subject to the same pre-employment screening checks
- have more conflicts of interest arising from other existing and potential clients (see chapter 6)
- be subject to commercial incentives or KPIs hidden from the agency
- seek variations or engage in “go slows” and scope creep to secure ongoing work
- not be managed with the same level of care as a permanent employee
- be treated by other staff with the same level of trust as if they were an employee
- be more skilled or experienced and have a greater understanding of costs and other market factors than their public sector manager
- have more allegiance to their own company than they do to the public interest.

are required to prepare an overall commissioning business case, make formal in-house bids in competition with the private sector for the right to deliver services, and then monitor and benchmark the ultimate quality of service delivery.

The policy also envisages less reliance on “traditional” tendering, in lieu of “interactive” tendering.

Innovation

From time-to-time, private sector suppliers raise concerns that government procurement processes

place unnecessary constraints on the opportunities and incentives for innovation.¹⁰¹ They argue that constraints on innovation can undermine the principle of value for money by hindering the government's ability to find the right solution for a project.

Alliances

Contracting models such as alliances are in part a reaction to the perceived failures in traditional contracts. While the alliance contracting model was originally conceived in the 1990s, it has become more widely adopted in the last two decades by government agencies.

Alliances are used in situations where projects are complex, in part because there are many unknowns and project outcomes are unpredictable. Alliance contracting allows agencies and contractors to collaborate to address project complexities and unknowns. In the right circumstances, alliance contracts can drive innovation as participants agree to be jointly responsible for project delivery and to share the management of risks in a collaborative approach. Alliances can represent an inherently risky project delivery method, however, given their complexity and the requirement for a sophisticated internal procurement and contract management capability.

Early tenderer involvement

Over the last eight years, the NSW Government has developed the early tenderer involvement (ETI) process to allow agencies and tenderers to meet, with the aim of improving a project, prior to the finalisation of a tender. The ETI process facilitates the identification of key project risks during meetings between shortlisted tenderers and the client agency. The meetings take place prior to the commencement of the pricing phase of the procurement process and the requirement to submit detailed documentation. This approach provides benefits, such as helping to clarify an agency's risk appetite and its approach to allocating risk. The ETI process also allows agencies to provide feedback to tenderers on innovative approaches in a structured manner.¹⁰²

One concern with the effectiveness of the ETI approach is tenderers may be unwilling to share their ideas with other tenderers in meetings, impacting on the overall effectiveness of this approach in fostering innovative thinking. On the other hand, meeting individually with tenderers can raise fairness concerns and create disquiet about a lack of transparency. To counter such perceptions it is important tenderers be provided with equal access and equal opportunity to information. It is also important that the ground rules for ETI be explained upfront to tenderers, including that any dealings with tenderers will not constitute an offer to contract. Government also needs to understand that tenderers are making an investment

in the process for which they may get no return. This can be a motivating factor for corrupt conduct as they seek alternative avenues for remediation

Early contractor involvement

More recently, some government agencies have adopted early contractor involvement (ECI) procurement methodologies to facilitate the efficient and effective delivery of projects. The ECI process involves the selection of a contractor in the early planning and design phase of a project in an attempt to benefit from their specialist knowledge.

The contractor is engaged via an initial expression of interest to undertake the design development phase of a project during workshops with the client agency. The second phase of the project progresses at the discretion of the agency and may involve a traditional design-build contract. The initial contractor could be selected for the second phase of the project, or alternatively, a competitive process may be undertaken to select another contractor.

The ECI procurement process is associated with benefits, including:

- harnessing the expertise and ideas of private sector participants
- allowing innovative design alternatives to be explored during the initial project phase
- resolving design issues swiftly
- reducing the cost burden on tenderers (as a contractor is selected early on in the procurement process prior to the development of detailed designs)
- engendering a collaborative approach between the client agencies and contractors.

Critics of the ECI process argue that it builds in favouritism and reduces competition. Some agencies have addressed this concern by selecting two contractors during the initial design phase of a project. Other measures can be implemented to help ensure competitive pricing includes the development of cost benchmarks and the adoption of price audits.

An additional probity concern arising from the ECI procurement process is the potential to disclose (either accidentally or deliberately) one contractor's ideas to another in situations where more than one contractor is selected during the initial design phase of a project.

Misunderstandings can also arise from the closed nature of the workshops held with contractors during the initial project phase; for example, the perception one contractor has greater access to information. As is the case with the ETI process, it is important

that agencies establish the procurement parameters upfront, particularly in relation to how confidential information will be protected and the steps that will be taken to ensure contractors are treated fairly.

Proof-of-concept trials

Occasionally suppliers approach government with innovative solutions to particular problems and issues. Unsolicited approaches by the private sector can be a source of competing tensions for government agencies. In order to encourage innovation, the government should recognise and address the private sector's desire to protect its intellectual property. At the same time, the government has obligations to ensure market fairness, confirm a proposal is truly innovative and promote price competition.

The adoption of time-limited trials is a relatively new approach to this dilemma that provides the benefit of allowing agencies to undertake proof-of-concept testing for innovative solutions. In 2016, the NSW Procurement Board issued PBD-2016-05, which allows accredited agencies to engage a supplier through direct negotiation on short-term contracts valued up to \$1 million (including GST) in order to undertake proof-of-concept testing or outcomes-based trials subject to certain conditions, including:

- the allocation of intellectual property rights on a case-by-case basis. Unless agreed otherwise, any intellectual property created during the course of the test or trial is to be retained by the supplier, and the agency should not be licensed for its ongoing use
- the requirement to publish a report that details the treatment of intellectual property created during the course of the trial
- the publication of all data and findings associated with the trial, although commercially-sensitive information may be withheld from publication
- the requirement that any subsequent procurement of goods or services be undertaken through a competitive procurement process, which gives other potential suppliers scope to compete in the market.¹⁰³

The cost of participating in procurement processes

The preparation of a tender can be a costly exercise for some private sector firms, particularly in relation to construction projects. Bid costs is a recurring issue in the market engagement context for government. The Productivity Commission has argued that high bid costs can undermine the principle of value for money

as firms seek unnecessary variations or increase their bids to recoup losses. One idea proposed by the Productivity Commission is for public agencies to contribute to bid costs where innovation is a feature of the project, in return for ownership of the design.¹⁰⁴

The NSW Government has not reached a position on the re-imbursment of bid costs for construction procurements. However, the Commission is aware of at least one agency reimbursing the bid costs of an unsuccessful proponent where two potential contractors participated in a "best-and-final-offers" process for an infrastructure project. The costs in this example were capped at a reasonable rate.

New and emerging themes

ICT procurement

The Commission has seen a noticeable increase in the volume of complaints and findings of corrupt conduct relating to ICT procurement and projects. In part, this is attributed to the growing share of public sector expenditure devoted to ICT, but there are characteristics of ICT procurement that appear to make it more vulnerable to corruption. Control weaknesses can arise because:

- ICT projects often run over time or over budget for reasons unrelated to corrupt conduct. Consequently, corrupt conduct on an ICT project is less likely to stand out
- public sector agencies cannot afford to employ in-house experts for the many ICT solutions they require. Consequently, there is often a gap in knowledge between public sector buyers and private sector sellers of ICT products (also known as information asymmetry). This means agencies often lack the in-house expertise to design the scope of work, set an accurate budget, question the need for variations and manage the contractor
- while some ICT products are commoditised and easy to price (for example, new hardware), many need to be customised to the agency's needs and operating environment. This lack of homogeneity makes it easier for corrupt over-scoping and overcharging. This same reasoning applies to other forms of procurement. To the extent that the deliverable is non-standardised, the gap in knowledge between the buyer and seller widens and the potential for corruption increases
- by custom or choice, many ICT staff work as part of the gig economy (see chapter 6). This means many work as freelancers or independent contractors using their own company, or via one of many ICT labour hire/

recruitment firms. Among other things, this makes it expensive to conduct due diligence on what could be a large number of micro companies. The Commission has also identified that numerous ICT workers have either ownership in, or an association with, an ICT labour-hire company. On several occasions, this has caused staff to corruptly favour the relevant company.

Due diligence

The Commission has found many agencies do not have robust systems for conducting due diligence on suppliers and other counterparties, such as grant recipients, sponsors or business partners. The Commission still sees numerous cases where an employee of an agency has been able to add a supplier they own or control to the vendor master file (VMF). In many cases, some basic checks on the supplier would have detected the conflict of interest, or at the very least, raised flags about why this supplier had been selected.

Due diligence tends to be performed to a higher standard when performed as part of a formal tender process or large project. However, when suppliers are sourced for smaller engagements

(for example, requiring just a single quotation or direct engagement), the standard of checking usually falls away. Once a supplier has managed to get itself onto an agency's VMF, perhaps via an initial small purchase order, it then has the opportunity for more income without being subjected to additional checks.

Agencies sometimes make the mistake of assuming another organisation has completed the necessary due diligence checks. Organisations, such as NSW Procurement and Local Government Procurement, maintain panels of pre-approved suppliers but agencies should not assume all empanelled suppliers have been subjected to an exhaustive set of due diligence checks.

An analysis of past investigation reports by the Commission strongly suggests that suppliers are at a much greater risk of corrupt conduct if there is little or no separation between management and ownership of the company. The Commission has made very few corrupt conduct findings against the staff of large, well-governed companies, typically where management and ownership are separated.

Contract management

Agencies are often eager to benefit from the cost or efficiency savings that might come from outsourcing a task. However, the Commission has observed that when making outsourcing decisions, agencies often fail to grasp the cost and effort associated with monitoring the new arrangement.

This seems to manifest in three subtly different ways.

1. The agency simply fails to properly assess the risks associated with the outsourced arrangements. In part, this seems to stem from a failure to appreciate the different incentives and opportunities for corruption arising from outsourcing. A UK study of public sector fraud found approximately 4.8% of procurement expenditure was lost to fraud. This made procurement the most fraud-prone category of public expenditure. By comparison, the rate of fraud-related loss in payroll was just 1.7% which, on its face, suggests the decision to outsource entails a material increase in the risk of fraud.¹⁰⁵
2. Agencies sometimes anticipate the need for careful management of contracts but then fail to execute their intended plans. A good example of this is when an agency incorporates a right-to-audit clause in a contract but then never uses it. Anecdotally, the Commission has been advised that the quality and completeness of contract management plans is inconsistent across the public sector and contract managers do not have enough time to adequately monitor and document the performance of contractors.

Better practice example

The Commission spoke with one large NSW agency developing an online portal to manage supplier due diligence activities. Suppliers log in to the portal and provide updated information about their relevant:

- details of incorporation
- governance arrangements
- personnel
- accreditations and licences
- insurance
- policies and procedures, including fraud and corruption prevention controls
- risk management practices.

The portal uses a risk-based approach to identify red flags and suppliers that may require closer scrutiny. It is envisaged that the portal will allow suppliers to provide relevant information just once, in a single location, which will eliminate the need to resubmit the same details for each tender process.

Characteristics of a high-risk supplier

Red flags associated with a high-risk supplier:

- has no ABN, an invalid ABN or the ABN does not match to the Australian Business Register
- has an ABN that matches to a similarly named (but not identical or related) entity
- has recently formed or has no track record (ABN check shows the entity was just registered). This might also be noticeable if the supplier has low invoice numbers
- has changed its bank account details shortly after being added to the VMF or just prior to a significant payment
- has not registered for GST (or just recently registered)
- uses a generic email service (for example, gmail, hotmail or bigpond)
- does not list any known physical premises for the business or just has a PO Box
- has no landline or never answers telephone calls
- has no website or an amateur-looking website, stationery and logo
- does not advertise and/or has no online presence
- lacks relevant licences (or licence is recently acquired)
- has a record of adverse court, regulatory or tribunal findings
- is not insured or produces suspicious-looking certificates of currency
- has opaque ownership
- has one or very few customers; that is, a large dependency on the government agency to remain viable (this might be noticeable if the supplier has low and consecutively numbered invoices)
- relies heavily on subcontractors to perform work
- makes exaggerated claims about its client base or cannot provide the contact details of authentic customers that are prepared to provide referee reports
- has company directors with a history of closing down and re-starting businesses under a new name.

3. The Commission has observed situations where an agency places a high degree of trust on the contractor to self-report and self-verify its compliance with the contract. This invites the possibility that false or exaggerated figures and supporting documentation will be provided.

A further practice the Commission has observed involves the incorrect use of project and cost codes. Because contract and project managers are under pressure to remain within budget, they may have both the opportunity and the motivation to misallocate expenses to a code that has more “fat” or will attract less scrutiny.

Shared services

Many agencies use corporate and shared service (CSS) centres to perform procurement- (and HR-)

related transactions. This can include maintaining the VMF, generating purchase orders, processing credit notes, performing a three-way match and processing payments.

From a corruption prevention perspective, using a CSS centre has some advantages. It creates a natural segregation of duties that makes it harder for an individual to have end-to-end control over a purchase. A well-designed CSS centre usually prevents a buyer from unilaterally initiating, approving and executing a purchase.

The transactional nature of CSS centres also inhibits corruption because centre staff generally do not select the transactions they process. Normally, the transactions are allocated from a queue of requests or by a team leader. Similarly, users of the CSS centre (who include agency staff and suppliers) typically

do not get to choose which centre staff member they deal with. They usually make contact via a generic hotline or email inbox.

CSS centres also tend to rely on repeatable rules, which can limit the potential for discretion to be misused. For example, if an agency has a step-by-step process that has to be followed when a non-compliant invoice arrives, it should be more difficult for a corrupt individual to exploit a loophole or make an exception.

Finally, the transactional nature of CSS centres also means recordkeeping is more likely to meet minimum requirements. Conversely, when recordkeeping requirements are left to individuals working in the frontline of the agency, documentation is often not saved in a database that can be interrogated, or in some cases, not saved at all.

For these reasons, the Commission supports the use of well-designed CSS centre arrangements. It should also be noted the Commission receives relatively few complaints about CSS centres and has never made a corrupt conduct finding about a CSS centre staff member. However, there are some issues that should be considered (see below).

Misuse of panels

The Commission often receives allegations about the way agencies use panels of approved or preferred suppliers. These include:

- public officials putting their friends or relatives on panels
- only awarding work to one favoured panel member, potentially on the basis of a corrupt relationship
- having ad hoc or highly subjective processes for awarding work to panel members
- using the wrong panel or using a panel for work it was not intended to perform
- leaving cosy panel arrangements in place for years, without retesting the market.

The Commission often sees a complete absence of formality or agreed processes for appointing and using a panel. In some cases, the “panel” is little more than a list of telephone numbers.

Risks associated with corporate and shared service centres

- CSS centre staff are often measured by how quickly they process transactions. Even if there are compensating KPIs relating to quality, staff may not be properly incentivised to closely check for red flags.
- Spotting red flags that might be associated with corruption requires a degree of nous. Ideally, CSS centre staff should have the skill to identify a false invoice or other questionable transactions. This can be difficult to expect if staff are only focused on processing tasks.
- CSS centres can create a degree of moral hazard if frontline staff wrongly assume the centre is responsible for managing all aspects of a transaction or contract. The hazard can also exist when an agency assumes its CSS centre has used best practice to design workflows, when in fact an off-the-shelf or least cost approach has been taken.
- If the CSS centre's operations are opaque, agency managers may not be able to obtain purchase orders related to a particular transaction, a single view of important data sets, or have a proper understanding of their controls.
- If an agency relies on the standard workflows and governance arrangements offered by the CSS centre, it may be forced to use workarounds in order to meet its own requirements. For example, if an agency wants to alter the payment terms for a particular contract and the CSS centre operations cannot be adjusted to accommodate this, the agency might devise an alternative method for making payment that could create a corruption risk.
- CSS centres can experience high turnover and some staff and data may be located overseas. Agencies could therefore lose sight of who has access to their data and where confidential information is being held.
- A recent report on the local government sector by the NSW Audit Office found that many councils fail to formally monitor and report on the performance of their CSS centre.¹⁰⁶

Using panels

The Commission investigated an agency (department X) that had poor processes for managing its facility maintenance suppliers.

An employee (Mr A) of an existing panel supplier to department X decided he wanted to resign and start his own company. Naturally, he wanted to obtain some work from department X. He had a good relationship with the relevant department X manager, who agreed to give Mr A's new company a few small jobs and make some recommendations to colleagues. At first, these jobs were paid with a department X credit card.

After a while, more jobs began to flow to Mr A's new company, which was starting to gain recognition as a preferred supplier.

When the Commission began investigating, it became obvious that there was confusion about the status of preferred suppliers.

The department X manager denied that any formal panels of preferred suppliers existed. Another manager thought that there were two relevant panels in place and procurement staff could not explain how Mr A's company was ever allowed to become a supplier. At one point, department X banned Mr A's company from being used as a supplier but staff were able to circumvent this ban by making payments by credit card. Over \$500,000 in work was awarded to Mr A's small company, either by purchase order or by credit card.

The Commission's investigations found numerous irregularities that benefitted Mr A, including order-splitting, failure to obtain quotations and bypassing procurement staff.

Subcontracting

Increasingly, the Commission is seeing corrupt conduct resulting from relationships between public officials and subcontractors. Agencies often do not have visibility over subcontractors and do not perform due diligence. Even where agencies require vetting of subcontractors, there is uncertainty about who has responsibility for checking they conform to agency requirements. The Commission has seen arrangements in which the:

- subcontractor is owned by a public official who has a role in awarding or managing the work
- public official forces the lead contractor to engage a particular subcontractor (the public official and the subcontractor collude and share benefits)
- public official and the lead contractor collude on price, then underpay the subcontractor and share the balance
- subcontractor carries out public official duties without the knowledge of the government agency
- subcontractor leaks confidential agency information.

Facilities maintenance

In the past decade, a significant proportion of Commission investigations have involved corruption in facilities maintenance (FM) work. FM contracting is characterised by a variety of delivery models, ranging from a high number of small, specialised firms to one-to-one contracts between large agencies and integrated service providers. The work varies from straightforward services to highly specialised technical tasks, and from planned, preventive jobs to reactive, corrective and emergency work.

If left unchecked, pre-existing or legacy relationships between in-house FM staff and contractors can create opportunities for corruption. Outsourced FM delivery is particularly vulnerable to integrity breaches including nepotism, over-servicing or scope creep and blatant false invoicing.

Management of supplier misconduct

In addition to poor due diligence practices, agencies are sometimes reluctant to investigate suppliers or penalise substantiated misconduct. An agency's ability or willingness to address supplier misconduct can be hampered if the:

- agency does not have the contractual right to interview a supplier's personnel or demand access to relevant information
- supplier disassembles or refuses to cooperate with legitimate enquiries
- supplier threatens legal action or formal complaint
- supplier is of strategic importance to the agency
- costs of terminating the contract are significant

How it can go wrong

A number of the Commission's investigations have illustrated the challenges in managing outsourced FM services, such as the following cases:

- excess budgets and loose cost control enabled a project manager to use his own companies to do the work at inflated prices without the agency noticing it
- a loosely controlled contingency budget was used to source corrupt benefits
- changes to the scope of works, coupled with poor budget visibility, allowed the use of favoured contractors to complete the work.

In other instances, agencies have been provided with false or misleading "before" and "after" photographs by suppliers, purporting to provide evidence of work completed.

A failure to cooperate

In Operation Credo, the Commission investigated the conduct of Australian Water Holdings Pty Ltd (AWH), a supplier of infrastructure services to Sydney Water. Sydney Water became concerned when AWH overspent its allocated budget and requested additional funds for "management and administration" costs. As a result, it sought information from AWH to assess whether its costs were "reasonably and properly incurred". The conduct of AWH included:

- refusing to provide documentation to Sydney Water in support of its claims for additional payment
- failing to cooperate with an independent auditor
- arguing that Sydney Water did not have the power to compel production of relevant documents and threatening litigation
- ignoring the findings of an independent expert determination.

- agency itself is partly responsible for allowing an environment where the misconduct could occur
- supplier dismisses the relevant employees or subcontractors that have been identified as the culprits.

Tighten outsourced facilities management operations by:¹⁰⁷

- ✓ improving visibility about assets and optimal maintenance regimes to tighten scopes of work
- ✓ designing key performance indicators to incentivise desired behaviour
- ✓ tightening budgetary controls and gaining insight into maintenance and transaction costs to avoid over-charging and inflated variation claims
- ✓ integrating databases of asset and contractor performance and obtaining the necessary in-house capability to identify red flags
- ✓ choosing a contracting model that matches the agency's needs and the maturity of its internal capabilities
- ✓ using customer feedback to provide quality information about contractor performance
- ✓ implementing competitive work allocation mechanisms to provide strong performance incentives
- ✓ conducting a random or independent audits of performance.

In addition, many agencies appear to be unaware of the NSW Procurement Board Direction *Conduct by suppliers* (PBD 2017-07). Among other things, this direction requires relevant agencies to advise the Procurement Board when adverse findings are made against a supplier, which provides the option of excluding the supplier from government contracting opportunities.

Agencies do sometimes reach the point where they terminate a contract or otherwise decide to cease doing business with a supplier. However, the Commission is aware of cases where a supplier has been able to continue delivering goods and services despite the termination. At its simplest, this can happen when the agency's systems do not allow it to easily block orders, contracts and payments relating to a particular supplier.

In other cases, the decision to ban a supplier is not properly communicated to relevant staff. However, the problem can also manifest where the supplier:

- simply changes its name or reforms under a new ABN
- repositions itself as a subcontractor
- is paid via credit card, which is usually tracked in a different system to purchase order and contract payments.

A similar problem occurs when an agency dismisses one of its own employees, who is then hired by a supplier (see chapter 8).

These weaknesses are easier to exploit if the banned supplier is colluding with an agency employee or the agency is not vigilant about how suppliers are added to, and removed from, the VMF.

Cybercrime

A great deal has been written about cybercrime in recent years. While the Commission has not yet conducted a public inquiry into a cyber-related matter, public sector agencies have been victimised by cybercrime at an increasing rate. For example, the Australian Competition and Consumer Commission reports scammers swindled nearly \$4.7 million from Australian businesses in 2017 – a 23% increase from the previous year.¹⁰⁸

The Australian Cyber Security Centre (ACSC) reports cybercriminals are more successful when combining false invoicing with social engineering techniques. This entails obtaining personal information that can be used to perpetrate a more convincing fraud. The ACSC reports this can involve:

...reconnaissance of a business' systems to identify how that business' transactions are

Cybercrime and procurement: what does it look like?

- False billing scams, which trick an agency into paying fake invoices or other claims for payment.
- Tricking an agency into providing credit card details, which are then stolen and misused.
- Tricking an agency (or an individual) into providing confidential information that assists in the creation of a more sophisticated false billing scheme.

*authorised ... [and] can take many forms but most commonly involves impersonating a senior employee to change invoice details or generate a sense of urgency to bypass anti-fraud processes.*¹⁰⁹

In one example provided by the ACSC, criminals posed as the CEO of a company and sent a fake email requesting a large payment be made. The email was sent while the CEO was travelling, which made it difficult to verify the request.

Agencies like the ACSC, the ACCC and the relatively new NSW Government Chief Information Security Office provide detailed advice about the technological defences agencies should have in place.

The Commission's view is that the threat of procurement-related cybercrime represents just another reason for ensuring old-fashioned procurement and payment controls are in place.

The Commission recommends agencies:

- only add new suppliers to the VMF if there is a demonstrable business need and the necessary internal approvals and due diligence checks have been performed
- avoid making changes to a supplier's bank account details unless the request has been confirmed with the supplier (independently of the contact details contained in the change request, which could be false)
- make payments on the basis of a three-way match and be highly suspicious of purchase orders that have to be raised after the invoice has arrived (preferably, suppliers should be

required to quote their purchase order or contract number when submitting their invoice/claim)

- strictly enforce the documented financial delegations
- have strict procedures for permitting and conducting emergency procurement
- train staff to identify suspicious invoices, email addresses and accounts payable requests (staff should also be trained to resist demands from senior managers for urgent payment of an invoice, which could be a fraudster impersonating an authority figure).

Chapter 10: Regulation and accreditation

Regulation and accreditation activities play an important role in maintaining the health, safety and order of many aspects of daily life. For example, regulators control how natural resources are allocated, enforce development and planning controls, ensure food safety, oversee the quality of healthcare and education standards and licence many business activities.

Their role entails issuing various fees, fines and penalties. However, because regulatory decisions often lead to significant benefits or costs and entail a degree of discretion, they can be susceptible to corruption.

Corruption can erode overall confidence in a regulatory body: “When the public loses trust in the integrity of the regulator, it can become impossible for the regulator to perform its function” according to the UK Committee on Standards in Public Life.¹¹⁰

Two main ways corruption can emerge in regulation

1. If a person engages in fraud in relation to an application for certain licences, permits or other authorities, or dishonestly obtains, or benefits from, government funds.¹¹¹
2. If a regulatory officer uses their regulatory powers dishonestly or partially, perhaps in order to confer a corrupt benefit or cost on the regulated entity, such as soliciting a bribe in exchange for overlooking a regulatory breach. Other examples include:
 - tipping off the regulated entity about any upcoming inspections
 - processing their application for a permit or licence more quickly
 - delaying an application from their competitor in return for a benefit.

The regulator lacks independence

There are a number of situations where a regulator or accreditation authority may lack independence, which can lead to biased or corrupt decision-making. This can occur when:

- the regulator is financially dependent on the regulated entity
- tension exists between an agency’s regulatory and economy-building or customer service activities
- regulators become captured by the entity they are regulating
- staff cycle between working at the agency and regulated entity.

Financial dependence

Most regulatory activities require payment of a fee. However, regulatory decisions can lack independence when the regulator is financially dependent on the regulated entity. The risk is heightened when the regulated party can act as a customer and take its business to another organisation. Some examples include:

- a developer paying a private building certifier
- an auditor who may have to make adverse findings against a fee-paying customer
- a significant proportion of an agency’s funds come from regulatory fees or penalties
- educational institutions responsible for attracting fee-paying students and enforcing academic standards.

The vocational education and training sector is particularly vulnerable to corruption, which is partially due to financial dependence. The Commission has observed several instances where registered training organisations (RTOs) and private training and assessment providers have engaged in corrupt practices by under-delivering training or over-claiming government subsidies. The sector’s vulnerability is due to:

- pressure to retain and grow funding from government sources

- the expense of closely monitoring a large number of RTOs, some of which may have thousands of students
- the ease with which qualifications can be conferred without actually providing the necessary training and testing (for example, the Commission has received a number of complaints alleging students have been provided with the answers to exam questions, or other forms of corrupt assistance).

One recent public inquiry into corruption in the vocational education and training sector provides a good example of how financial dependence on regulated entities can exacerbate the risk of corruption within a regulator.

In Operation Lansdowne, the Victorian Independent Broad-based Anti-corruption Commission (IBAC) made adverse findings against the director and owner of the company TayTell, which operated a training scam to obtain government funding. Instead of delivering proper training, TayTell accessed personal information from multiple companies to falsify student enrolment forms. TayTell received over \$2 million of government funding via the Victorian TAFE system to provide engineering qualifications, but the IBAC found TayTell provided virtually no legitimate training services.

The IBAC also found TAFE – the funding body – was compromised because the relevant funding was split 80:20 between TayTell and TAFE. This contributed to excessive risk-taking by TAFE. The report found:

The potential value of the contract, at a time when revenue was hard to come by and highly sought after, may have marked the contract as the “gift horse” into whose mouth no one dared look. Due diligence and legal review might well have exposed it as a deal that really was too good to be true.¹¹²

Tension with economic development or customer service functions

By their nature, regulatory duties may conflict with economic development and customer service imperatives. For example:

- tertiary education is a major export industry for Australia but strict application of academic standards may jeopardise fee income
- use of natural resources (for example, water, fisheries and minerals) creates jobs and income but staff in regulatory roles often need to curtail these benefits in order to protect the environment or share the resources fairly. A report issued by Transparency International Australia found this could manifest as inadequate due diligence resulting in mining licences being awarded to “companies or principals with a history of non-compliance, criminal or corrupt behaviour, environmental damage, or other poor business conduct, including human rights violations, operating in Australia”¹¹³
- local councils often want to attract new business activity, which may conflict with their duty to determine development applications in accordance with laws and guidelines and take action against unauthorised building activity
- casinos make profits and generate tourism income by attracting wealthy gamblers and repeat customers but are expected to self-regulate the very activities that make profit
- an agency may have to inconvenience vulnerable customers if it takes compliance action against a government-funded service provider that is underperforming (such as, a provider of aged care or out-of-home care)
- agencies that issue licences and permits often strive to give excellent customer service but this can present difficulties if the “customer” has to be penalised or have their licence revoked.

Ideally, compliance functions should be separate from economic development and customer service functions. Where possible, these should also be physically separate.

The importance of separating regulatory and economic development functions was noted when the Natural Resources Access Regulator (NRAR) was created in 2017. The NRAR has assumed a number of regulatory and compliance responsibilities that were previously the responsibility of WaterNSW, a state-owned corporation with a number of competing functions. The second reading speech for the enabling legislation stated:

In order to give the regulator oversight and to ensure independence from the customer service sensibility of a state-owned corporation, it is also proposed that compliance functions be moved from WaterNSW to the regulator.¹¹⁴

Customer service versus regulation

In the Commission's Operation Churchill, the introduction of a "Fast Track Development Approval" system created a tension between regulating the development process and attracting customers.¹¹⁵ The fast-track system was designed to hasten the process of assessing development applications and issuing construction certificates, so the council could compete with the private sector.

In order to achieve the 5-10 day timeframe, however, the system was redesigned so a single officer had end-to-end control of the development process, which undermined the integrity of the system. The Commission found:

Delivering on this timeframe led to the Council conferring delegated powers on a single officer to issue approvals for development applications, construction certificates and occupation certificates. In so doing, they gave a single officer the power to affect the outcome at every stage of the development process for single premises; from lodgement to construction and to occupation.¹¹⁶

One council officer exploited this weakness by corruptly issuing occupation certificates and manipulated the development process in return for gifts and benefits from business owners and developers.

Are field-based regulators at greater risk?

Any system that relies primarily on trust to ensure public officials are performing their role effectively is susceptible to corruption. Where it is the basis of control for regulatory officers working alone and in frequent direct contact with individuals motivated to avoid regulatory oversight, the system is not simply susceptible, but conducive to corruption.¹¹⁷

This finding from the Commission's Operation Scania report suggests field-based regulators are at greater risk of capture or forming an inappropriate relationship. This risk is amplified when officers are not required to account for their decisions or whereabouts (that is, a high-trust work environment) and they make decisions that have significant implications for the regulated party (for example, issuing a large fine or causing the business to cease operations).

Regulatory capture

Regulatory capture occurs when officers over-identify or align too closely with the party or industry they are regulating, resulting in bias or a loss of objectivity. In some cases, regulatory capture leads to corrupt conduct; for example, if the bias is deliberate or in exchange for a corrupt benefit.

Past investigations by the Commission and other information holdings contain a number of examples of regulatory capture. In Operation Scania, a local government compliance officer solicited corrupt benefits in return for ignoring illegal dumping of waste including asbestos.¹¹⁸ The officer developed unprofessional relationships with a number of illegal dumpers against whom he was supposed to be taking enforcement action. The Commission found:

- there was minimal oversight of the compliance officer
- the officer had dual reporting lines, which diluted responsibility for his actions
- the officer had a high degree of autonomy, could determine his own work patterns and often worked alone
- there was no formal database used by officers to record their activities and decisions.

Potential strategies for minimising the likelihood of regulatory capture

- ✓ Ensure supervisors have regular contact with regulatory officers, especially if they spend a large percentage of time in the field.
- ✓ Allow supervisors to join regulatory officers on a random, unscheduled basis to oversee their work.
- ✓ Require regulatory officers to work in pairs where possible (and alter the pairings from time-to-time).
- ✓ Periodically rotate regulatory officers between sites or geographic territories.
- ✓ Prevent officers from self-assigning the files or matters they work on.
- ✓ Randomly audit a regulatory officer's work.
- ✓ Segregate duties.
- ✓ Increase transparency through public reporting of regulatory activity.

The revolving door

Regulatory work is often specialised and industry specific. This means it is common for an individual to have a career where they work both sides of the fence: regulator and regulated. This is sometimes referred to as the revolving door problem. The main risk is:

...those making and enforcing regulatory policy are overly sympathetic to the needs of the regulated sector. This may be because personnel "come from that world", or that they plan to move back to the private sector after working for the regulator. (UK Committee on Standards in Public Life) ¹¹⁹

In a similar vein, a regulatory officer may have a spouse or close family member who works in the sector they regulate.

It has also been suggested that highly complex regulation can have the unintended consequence of giving regulated companies a strong incentive to make job offers to the government's most capable regulatory experts.¹²⁰ A cynical view might characterise these job offers as corrupt inducements. More realistically, the practice means the regulated industry potentially develops more expertise than the regulator and there is a greater chance of personal relationships existing on both sides of the regulatory fence.

A final risk arises when the door revolves during a sensitive process, such as a prosecution or a controversial change in legislation. This potentially gives a regulated entity access to highly confidential information. Given regulators often have access to information of this nature, robust information security practices and employing a system that can detect the misuse of information are important corruption

prevention controls.¹²¹

While some sectors have cooling off periods or other limitations on revolving door activities, it is generally impractical and undesirable to prevent staff from moving between the public and private sectors. Consequently, the better practice is to take an active approach to managing any conflicts of interest. Among other things, this should entail closely supervising staff dealing with former employers or

The impact of organisational change on regulatory capacity

In operations Jasper and Acacia, the Commission investigated corruption in the granting of coal exploration licences.¹²²

The Mineral Resources Branch (MRB) was responsible for making decisions about the facilitation and regulation of coal mining. The Commission found that the MRB's ability to effectively manage the industry was weakened by substantial structural change.

It had moved from Sydney to Maitland to be co-located with the coal industry, which it regulated, leading to severe staff shortages, as many staff did not wish to relocate. This left the MRB substantially under-resourced, which contributed to the corrupt conduct identified by the Commission.

colleagues and, wherever possible, allocating work so that the potential for bias is minimised.

Inadequate oversight

Fractured oversight by multiple regulators

Regulation may be weakened when there is fractured oversight by multiple regulators, which can create confused accountabilities and a diffusion of responsibility. In Operation Scania, for example, the Commission found that responsibility for regulating the dumping of illegal waste was spread across multiple local councils and two state government agencies with responsibility for the environment and safety respectively.

Regulation can be fragmented and oversight can be particularly difficult when:

- organisational restructures occur and/or where regulatory functions are broken up and dispersed across multiple agencies
- a function is regulated by multiple levels of government and/or multiple agencies without adequate co-ordination, which can lead to one agency assuming (or hoping) another one will take action
- multiple legislative arrangements exist that are not integrated.

When loopholes exist, corrupt individuals can manipulate the regulatory system and corruption may be harder to detect. One relatively common example of this is when a development applicant engages in “forum shopping”, which involves the manipulation of the application (sometimes using false information) in order to have the decision made by the most agreeable person or entity.

The Commission and other anti-corruption agencies have investigated a number of sectors where regulatory responsibilities are spread between agencies and all three tiers of government. These include agencies with responsibility for natural resource management, urban development and planning, regulation of charities and government-funded secondary and tertiary education.

In more extreme cases, regulated parties may be able to exploit the weaker regulatory frameworks in other jurisdictions. The WA Corruption and Crime Commission found that some applicants for heavy vehicle licences had “travelled from elsewhere in Australia to receive instruction and get assessed, avoiding stricter controls in their home state”.¹²³ In its Operation Spicer report, the Commission identified

evidence of political donations being made in the Commonwealth system, rather than the more tightly regulated NSW system,¹²⁴ arguably to hide the identity of the donors.

Poor internal arrangements of the regulator

Dysfunction can also occur within a single regulatory body when there are poor internal arrangements. For example, South Australia’s Independent Commissioner Against Corruption’s *Evaluation of SafeWork SA* inquiry examined a number of integrity risks. One witness gave the following evidence:

Some inspectors had up to 28 separate performance criteria to achieve, some of which were very aspirational and extremely difficult to achieve. Team performance indicators varied enormously between teams and there was no consistency across the Regulator arm of the business. There was also no consistent manner to record compliance work, outcomes or outputs. Each team was working as a silo and not as an integrated regulator.¹²⁵

Regulation can also be impaired when accreditation is outsourced without sufficient oversight to manage the potential risks. In the Commission’s Operation Nickel, a private assessor accredited by Roads and Maritime Services (RMS), solicited bribes from 95 people in return for falsifying logbooks and providing false heavy-vehicle driver accreditations.

During this period, RMS shifted from using in-house testing for heavy vehicle driver licensing to an outsourced training model. This model used private single-operator assessors that entered into contractual service-provider agreements with RMS to provide heavy vehicle training and assessment.

However, in adopting this outsourced model RMS did not implement adequate controls to minimise potential corruption risks. The private assessor was given end-to-end control of the training and testing process. In addition, there was inadequate oversight of the assessor’s activities and he was able to avoid being audited. The incentives for providers to act corruptly were also overlooked.

For an outsourced heavy vehicle trainer/ assessor, these arrangements provided incentives to maximise profit by using, for example, a cheaper vehicle than the class being assessed, by eliciting additional payments to pass the assessment, by minimising actual training or by failing applicants on some competency tests in order to re-test them for additional fees.¹²⁶

Regulatory discretion

Most regulatory agencies have a range of options open to them from least serious (such as a warning letter or reminder notice) to most serious (such as a criminal prosecution or loss of licence). Regulatory agencies need to have these options and the discretion to use them.

The availability of this discretion is, however, what creates the opportunity for corruption. In the past, the Commission has investigated a number of officers in regulatory roles that have colluded with, or solicited corrupt payments from, the very parties they are meant to be regulating.

None of this is new. However, the Commission has identified a number of examples where a regulator's process or judgment has been the subject of a complaint, such as:

- development applicants understating the capital value of their projects in order to pay lower fees and have the matter determined by a preferred decision-maker
- development applicants given discounted infrastructure contribution fees (known as "s 94 fees")
- substantial variations in the approach taken by private certifiers of developments and associated complaints about failure to take action against illegal works
- evidence of inaction against water theft and meter tampering by water licence holders¹²⁷ and similar failures to exercise available regulatory powers
- instances where an officer with a regulatory function has been placed under unreasonable management or political pressure to change their decision
- regulatory officers soliciting bribes to pass people for assessments they had not undertaken.

Chapter 11: Non-government organisations

There are thousands of non-government organisations (NGOs) in NSW that receive some form of state or local government funding.¹²⁸ The services provided by these NGOs are diverse and valuable.

The funding arrangements are also diverse. Some NGOs deliver core public services on behalf of government and are subject to detailed contracts and reporting requirements; others receive one-off grants, donations or concessions that may be subject to less stringent oversight.

While government-funded NGOs are generally not classified as public authorities for the purposes of the ICAC Act, the services they deliver can constitute a public function, thereby bringing them into the Commission's jurisdiction. Alternatively, if an NGO engages in certain conduct that impairs public confidence in public administration (such as dishonestly obtaining government funds and/or defrauding the public revenue), it is also subject to the Commission's jurisdiction.¹²⁹

Increasingly, governments across Australia are outsourcing the delivery of human and community services, which means more and more taxpayer funds are being managed by the NGO sector.

Outsourcing: how does government benefit?

- NGOs deliver services at a relatively low cost, which is, in part, driven by a reliance on volunteer work.
- NGOs are better placed to identify and respond promptly to local and emerging needs than government agencies.
- NGOs know their client base, are visible in the community and easier to access.
- NGOs assist and advocate for people seeking government services.
- NGOs communicate more effectively with clients because their staffing is structured on the same cultural or social demographic.

Since NGOs are not structured and governed in the same way as public sector agencies, their susceptibility to different forms of corruption is heightened. While the control environment implemented by a NGO needs to be fit-for-purpose, it is important to address the risk associated with the amount of public funds under its management. In the case of not-for-profit NGOs, the absence of a profit motive does not necessarily detract from the importance of financial and budgetary controls.

Regulatory framework for NGOs

NGOs can be difficult to monitor because of a complicated regulatory framework. In addition to fulfilling their contractual obligations with funding agencies, which can be numerous, NGOs may be subject to:

- oversight by the Commonwealth Australian Charities and Non-profits Commission
- oversight by the Australian Taxation Office with regard to deductible gift recipient status
- the NSW *Associations Incorporation Act 2009*, which governs the powers and reporting obligations of many NGOs
- the NSW *Charitable Fundraising Act 1991* and associated requirements for a fundraising licence
- the NSW Human Services Outcomes Framework administered by FACS
- the NSW Procurement Board Direction on *Procuring human services from NGOs* (PBD 2017-04)
- the NSW *Commissioning and contestability policy* (TPP 16-05), which refers to partnering with NGOs to deliver services
- interstate and overseas regulation (in cases where the NGO has a presence outside NSW).

This mixture of funding sources, regulators and frameworks can complicate the way in which government funds are distributed, used and accounted for. In addition, some human services activities are outsourced to for-profit companies, which further complicates the range of parties agencies deal with.

Almost \$800k misused by a government-funded NGO

In September 2018, the Commission released its report on Operation Tarlo, in which serious corrupt conduct findings were made against the former principal officer of two government-funded NGOs. It was the first time the Commission had made findings of this nature, in that the officer:

- misused the NGO's credit card to make purchases for herself and her family (including an electronic gate at her home, whitegoods and furniture for her home, membership of a holiday club, jewellery and beauty treatments)
- corruptly obtained reimbursement for numerous private purchases by falsely representing they were work-related (including electronic and whitegoods, jewellery, furniture, holidays and cosmetics)
- used public funds to purchase a car for her husband
- falsely claimed to have tertiary qualifications, including a doctorate in psychology
- falsified statistics in her reports to government-funding agencies, significantly exaggerating the numbers of clients using the services provided by the NGO.

The Commission found that up to \$773,000 in funds were misused, most of which had been provided by the NSW taxpayer. The Commission recommended that funding agencies:

- develop risk metrics and conduct risk assessments of the NGOs they fund, focusing on financial competencies and the adequacy of governance measures
- check the qualifications, and continued registration where relevant, of NGO employees
- develop additional outcomes-based KPIs that reflect the critical objectives of the funded services (where possible, measurement of these KPIs should not be based solely on information self-reported by NGOs)
- consider allocating additional resources to manage NGOs
- require the NGOs to provide audit management letters from external auditors as part of the acquittal process
- consider requiring the NGOs to maintain an internal reporting or whistleblowing program.

The Commission also commented on skills that could assist board members of NGOs to fulfil their duties.

Other recipients of government funds

Sport and the arts

Most government funding of NGOs is for the delivery of human services, but significant public funds are also provided to not-for-profit sporting, cultural and artistic organisations. In some cases, these activities are simultaneously funded, promoted and regulated by government, which arguably creates a set of

competing roles (see chapter 10), and government also competes for the right to host major events, fixtures and exhibitions.

The Commission's jurisdiction generally does not extend to investigating corruption within sporting and artistic bodies (including illegal gambling activities). However, to the extent such conduct could involve the misuse of government funds, or impair confidence in public administration, it is possible the Commission's jurisdiction would apply.

Table 8: Areas of risk for NGOs by activity

| Activity | Areas of corruption risk |
|---------------------------------|---|
| Finance | <ul style="list-style-type: none"> • Funds received from government may be mixed with funds from other sources, which may cloud accountability requirements or create an opportunity to understate the total level of funding • Funds received can be used to deliver a different service than the one contracted • Cheques being pre-signed • Cheques being signed without supporting documentation • Sharing passwords and electronic security tokens (such as those provided by banks) • Not keeping security tokens and passwords in a secure place • One person with end-to-end control over the payments process and poor segregation of duties (small NGOs often only have a single, part-time bookkeeper who looks after finances) • Poor budget management |
| Procurement | <ul style="list-style-type: none"> • Using government funds for commercial or private purposes • Procuring goods and services from family, friends and related parties • Purchasing items with cash • Reimbursing payments without supporting documentation • Misuse of credit cards • Purchases made without a contract or purchase order • Service delivery may be subcontracted to an entity that is not approved by the funding body |
| Reporting | <ul style="list-style-type: none"> • Reports to funding bodies may contain false or exaggerated data about outcomes • NGOs may not have systems that facilitate accurate reporting when multiple activities are funded from multiple sources • Board members not understanding the financial audit procedure or being excluded from seeing the auditor's report • NGOs are less likely to be able to afford a thorough internal audit program |
| Recruitment and human resources | <ul style="list-style-type: none"> • Giving jobs to friends and relatives, with no regard to merit • Failure to declare and manage conflicts of interest • Failure to check an applicant's references and qualifications • Absence of position descriptions or performance appraisals • Poor control over payroll systems • Remuneration set outside relevant award with no supporting documentation • Absence of whistleblowing policies and protections • Failing to take action against bullying and harassment |

| | |
|-------------------------------------|--|
| Governance and recordkeeping | <ul style="list-style-type: none"> • Ad hoc agenda, or no agenda, for meetings • Board does not have access to key reports and data • NGOs may not have the resources to engage independent auditors or implement necessary assurance programs • Dominant CEO can affect the independence of the board or, conversely, the board may try to manage the organisation by working around the CEO • Staff and board members with strong altruistic motivation but little capacity or experience in risk management and governance • Meetings held irregularly with insufficient notice • Poor minute-taking • Minutes being falsified or not being checked as a true and accurate record |
| Culture | <ul style="list-style-type: none"> • NGOs often operate in a high-trust environment, with fewer internal controls • Staff in NGOs may be unfamiliar with public sector values • Staff in NGOs are likely to be driven by their “mission”, which may derogate from governance and probity issues. Alternatively, an NGO may deliberately defy probity and governance measures believing bending the rules is justified if, for example, it brings a positive outcome to a client (this is sometimes called “noble cause” corruption) • The focus shifts to retaining the funding rather than the quality of the outcome |

An Australian Institute of Criminology study into corruption in sport¹³⁰ identified a number of risk factors, three of which are considered by the Commission to apply more generally to NGOs and particularly not-for-profits. These are:

- the “closed environment” in which actors operate
- differential responses to what is perceived as illegal
- negligible pay and lack of financial security, particularly among second- and lower-tier employees and volunteers.

A similar analysis identified four key trends in sport that could be associated with corruption, as follows.

1. De-amateurisation: a greater focus on winning and the associated risk of match fixing and gambling.
2. Medicalisation: advances in sports medicine and the associated risk of doping.
3. Politicisation: competition for major events and the associated risk of bribery for the right to host an event.

4. Commercialisation: pressure to make sport appealing to a broad market and the associated risk of salary cap breaches.¹³¹

Grants to small community groups

Small community and special-interest groups are also regular recipients of funding and grants from state and local governments. For example, in 2016–17, the City of Sydney spent approximately \$11.4 million in cash (and a further \$7.4 million in kind) on a range of grants and sponsorships to over 400 private and public sector organisations, educational institutions, trusts, foundations, associations and individuals.¹³² In-kind contributions included waiver of rental, venue hire, parking and other fees.

This type of funding is often small and irregular and is therefore unlikely to involve serious or systemic corrupt conduct. However, the recipients of these funds are subject to many of the characteristics and risks described in table 8. In addition, the public sector processes for assessing and awarding multiple, small grants, may not entail the same level of probity as larger transactions.

Challenges to managing NGOs

There are some inherent challenges governments face when funding NGOs. NGOs often do not have the governance controls that are taken for granted in the public sector and, further, NGO staff and board members may not understand the importance of basic internal controls. The reasons for this include:

- insufficient funds to make desirable investments in internal audit, staff training, business improvement, employment screening, whistleblowing systems and so on
- a reliance on volunteer staff and board members
- an absence of formal policies understood and followed throughout the organisation
- NGOs are not subject to policies and procedures set by central agencies such as Treasury, the Department of Premier and Cabinet and the PSC and are not subject to legislation such as the *Public Interest Disclosures Act 1994* and the *Government Information (Public Access) Act 2009*
- an inability to properly segregate financial duties and insufficient resources to invest in sophisticated finance and accounting systems
- a higher likelihood of poor financial controls and practices such as pre-signing cheques, sharing bank tokens and passwords, unapproved use of credit cards and poor security over cash
- personal relationships, which are integral to the smooth functioning of NGOs both within the organisation and in the wider community, can make it difficult for conflicts of interest to be identified and managed
- many NGOs are founded and run by a single, trusted individual (it is not uncommon for such an individual to hold a great deal of formal and informal power and be resistant to direction from the board).

Complaints about NGOs

NGOs are subject to most of the same types of corruption and fraud risk as public sector agencies. However, given the common governance deficiencies described above, the Commission has observed allegations about NGOs are more likely to involve:

- misuse and theft of cash and other resources
- misuse of resources such as vehicles
- procuring goods and services from friends and family members without proper management of conflicts of interest
- poor employment practices, including poor timekeeping practices and favouritism in recruiting staff
- poor recordkeeping
- falsification of data/reports submitted to government agencies.

Summary of corruption risk in NGOs

Key areas where NGOs (small NGOs, in particular) are exposed to heightened corruption risk are summarised in table 8 on page 70. Not all NGOs are exposed to these risks but the Commission recommends funding agencies take these into account in their dealings with certain NGOs.

Appendix 1: Methodology

Review

The desktop review for this report drew on insights provided in academic and practitioner-based literature, as well as corruption frameworks in Australian jurisdictions and those overseas.

Forces that influence the corruption environment were considered at three levels, as indicated in table 9 below.

Table 9: The three levels used to analyse the corruption environment

| Level | Topics |
|---|--|
| Macro contextual level – external forces | <ul style="list-style-type: none"> organisational change political influence decentralisation of service delivery allocation of resources cybercrime/information security money laundering state-owned corporations |
| Meso transactional level – market forces | <ul style="list-style-type: none"> procurement purchase card usage planning decisions correctional services healthcare regulation education ICT contracting |
| Micro organisational level and internal forces | <ul style="list-style-type: none"> conflicts of interest codes of conduct gifts and benefits misappropriation of resources unauthorised disclosure of information resumé and recruitment fraud regulatory capture |

Other reference material (such as annual, strategic, intelligence and investigation reports) was sourced from agencies and bodies in NSW and other Australian and international jurisdictions. This included consideration of publicly available reports from:

- NSW public sector agencies such as the PSC, the Audit Office, the NSW Ombudsman and the Information Commissioner
- federal public sector agencies such as the Australian National Audit Office, Bureau of Crime Statistics and Research and the Australian Cyber Security Centre
- anti-corruption agencies from other Australian states
- private sector consultancy firms.

Consultation

The Commission obtained perspectives from a wide variety of external and internal stakeholders through either individual meetings or group consultation sessions. In total, over 80 external subject matter experts were consulted, including:

- public sector senior executives
- public sector managers
- suppliers to government
- integrity professionals
- academics
- peak body representatives.

Internal workshops were also held.

Analysis

The analysis of the Commission's information holdings included three main data sources:

- all allegations received between 1 January 2013 and 31 December 2017 (used to identify overall trends and patterns)
- a subset of 241 allegations, involving a level of investigation by the public authority or the Commission (used to inform areas for further analysis)

- 28 investigation reports, where findings of corrupt conduct or serious corrupt conduct were made (reviewed in detail to identify systemic issues that caused, encouraged or allowed the conduct).

Examination

The Commission examined public information, including 54 investigation reports, available from the websites of sister agencies in Australia. This did not include reports relating to police investigations, which are outside the Commission's jurisdiction.

Appendix 2: Systemic issue categories

Applying to individuals

| Systemic factor | Definition | Examples |
|--|---|--|
| Inappropriate management of external relationships | Management of a relationship between a public official and an external party creates risks to the integrity of the public official's professional judgment. | <ul style="list-style-type: none"> A public official is captured by a regulated entity. A public official's community associations lead to unmanaged conflicts of interest. |
| Inappropriate management of internal relationships | Management of a relationship between two public officials creates risks to the integrity of their professional judgments. | <ul style="list-style-type: none"> A personal relationship between two public officials results in them improperly filtering information to their manager. A manager pressures a public official into violating procedure. |
| Perceptions of risk proposition | Perceptions that a particular situation has an unusual risk proposition. This can include perceptions regarding the likelihood of potential corrupt conduct, the consequence of such conduct or whether such conduct would be detected. | <ul style="list-style-type: none"> A public official perceives that a large gain for them would be a small loss for their organisation. A supplier perceives that a particular transaction with an organisation would constitute a high-risk engagement. |
| Perceived inequity | An individual perceives that they are being treated unfairly compared to other individuals they deem as relevant comparators. This individual could be a public official or another stakeholder such as a supplier or client. | <ul style="list-style-type: none"> A public official perceives that he or she is being allocated more work than their colleagues. A client perceives that other clients are being given special treatment for no apparent reason. |
| Unfettered discretion or authority | An individual has excessive control over a decision, process or function. This can include direct control via formal authority or indirect control via influence. | <ul style="list-style-type: none"> A public official has end-to-end control over a function. A public official is the only person who knows how a key system works. |
| Poor staff management | A public official is subject to poor supervision. This may be due to poor supervisory practices or organisational arrangements making adequate supervision difficult. | <ul style="list-style-type: none"> A line manager rarely checks their employee's work. A public official reports to one person for work allocation, but to another person in a different division for work quality. |
| Tolerance of misconduct | A public official is known to engage in misconduct but does not face any resultant action. | <ul style="list-style-type: none"> A manager refuses to report a public official who is misusing an organisation's vehicle. An organisation fails to appropriately discipline a public official who has engaged in misconduct. |

Applying to business units or organisations

| Systemic factor | Definition | Examples |
|--------------------------------------|--|---|
| Lack of staff capacity or capability | An organisation or business unit lacks a sufficiently competent workforce. This may be due to an insufficient number of staff or insufficiently capable staff. | <ul style="list-style-type: none"> An organisation is under-resourced relative to its workload. A business unit with a strong procurement focus lacks market knowledge. |
| Problematic norms | Problematic behaviour by an organisation or business unit workforce is systemic and/or repeatedly tolerated by its management. | <ul style="list-style-type: none"> Timesheet fraud. A general lack of compliance with certain organisational procedures. |
| Poor performance management | The performance of an organisation or business unit is not sufficiently managed. This can include a failure to measure performance or a performance management regime that does not encourage good performance | <ul style="list-style-type: none"> An organisation's KPIs merely reflect its reactive workload. A business unit has KPIs for the volume of work it performs but not the quality with which it performs this work. |
| Poor change management | An organisation or business unit fails to sufficiently manage internal change or respond to external changes. | <ul style="list-style-type: none"> It is unclear which policies apply to a newly merged organisation. A business unit does not review its stakeholder engagement approach despite the occurrence of marked changes in the relevant industry. |
| Insufficient assurance | An organisation or business unit lacks knowledge of whether its procedural requirements are being followed and/or the means to determine this. | <ul style="list-style-type: none"> A business unit requires that only prequalified suppliers be used but cannot detect the use of a non-prequalified supplier. An organisation makes no effort to ensure that certain assessments are being done in accordance with required standards. |
| Governance failings | An organisation's or business unit's basic governance mechanisms are inadequate or compromised. | <ul style="list-style-type: none"> An organisation's internal audit function has limited independence. A business unit's management has limited visibility over its operations. |
| Poor formal frameworks | An organisation's or business unit's legislative or policy framework is inadequate, poorly implemented or creates marked risk. | <ul style="list-style-type: none"> An organisation performs two fundamentally conflicting functions. A business unit fails to educate its staff regarding basic legal or policy requirements relevant to their work. |
| Structural weaknesses | The structure of an organisation or business unit fails to facilitate accountability and/or information transfer. | <ul style="list-style-type: none"> A process owner has limited access to information about how this process is performed. Segregating elements of a process results in no one being responsible for the outcome of the whole process. |

Applying to organisational processes

| Systemic factor | Definition | Examples |
|-----------------------------------|---|--|
| Poor budgetary management | A budget is managed in a manner that makes it difficult to keep control over relevant expenditure. | <ul style="list-style-type: none"> There is minimal process regarding whether a project budget contingency is spent. An agency deliberately inflates its program budget to avoid a potential future approach to Treasury for supplemental funds. |
| Poor information management | Information relevant to an organisational function, process or decision is not accessible to relevant individuals. | <ul style="list-style-type: none"> When implementing a new program, an organisation does not collect data that would allow this program's effectiveness to be evaluated. A project steering committee has limited information about project progress or expenditure. |
| Poor recordkeeping | Insufficient business records are created, or those that are created are managed in a manner that fails to preserve their integrity. | <ul style="list-style-type: none"> There is no minuting of a meeting at which a key decision is made. Key business documents are stored on a shared drive with limited capacity to track the modification or deletion of files from this drive. |
| Poor risk awareness or mitigation | There are inadequate mechanisms to manage high-risk functions, processes, activities or roles. | <ul style="list-style-type: none"> An inspector is physically located in a regulated entity with no independent review of their work. A contracted ICT project manager has sole responsibility for engaging contractors to work on their project. |
| Lack of due diligence or planning | Insufficient preparatory work is undertaken prior to an organisation activity being performed. | <ul style="list-style-type: none"> No actions are undertaken to determine whether a new small supplier is a genuine supplier and has the experience that it claims to have. An organisation hires a chief financial officer without conducting any criminal record or Australian Securities and Investments Commission checks. |
| Poor consultation or engagement | Key internal or external stakeholders have insufficient awareness or input into relevant organisation actions or initiatives. | <ul style="list-style-type: none"> An organisation performs capital works on one of its buildings but does not tell key internal users of that building what these works are or what they are trying to achieve. An organisation's plan for engaging suppliers across NSW fails to obtain input regarding how the relevant market varies in different regions. |
| Poor complaint management | Actions arising from an external or internal complaint undermine adequate resolution of that complaint and/or discourage future complaints. | <ul style="list-style-type: none"> A complaint from a client is dismissed because it was made verbally. Managers of a business unit openly speculate in meetings who may have made a public interest disclosure. |

Appendix 3: Public sector spending, revenue and assets

The table below presents the NSW Government's 2018–19 budgeted figures for a number of key measures.¹³³ The figures provide a sense of the volume of funds and assets potentially exposed to the risk of corruption.

| Category of expense, revenue or asset | (\$ billion) | Example of risk |
|--|--------------|--|
| Capital expenditure | 17.3 | Procurement and contracting |
| Recurrent expenditure | | |
| Employee expenditure and superannuation | 36.1 | Payroll-related fraud |
| Grants and subsidies | 14.9 | Improper or fraudulent use of funds |
| Other operating expenses | 21.6 | Procurement, contracting and allocation of funds |
| Assets | | |
| Non-financial | 226.7 | Asset theft and improper sale or disposal |
| Financial | 163.9 | Theft or misappropriation of funds |
| Revenue | | |
| Taxation (including GST and grant revenue) | 63.3 | Tax fraud and evasion |
| Sale of goods and services | 9.5 | Improper or fraudulent use of funds |
| Fines, regulatory fees and other revenues | 2.9 | Improper regulatory or compliance action |
| Dividends | 1.8 | Improper or fraudulent use of funds |
| Interest | 0.3 | Improper or fraudulent use of funds |

Data available from audits of the 2017 financial statements¹³⁴ of universities (\$9.4 billion in revenue, \$8.8 billion in expenditure and \$26.2 billion in assets) and local councils (\$15 billion in revenue, \$11.6 billion in expenditure and \$136 billion in assets), also indicate significant amounts potentially at risk in those sectors.

When the volume of expenditure is large, small losses may not be noticeable to an agency. However, these small losses may represent a significant gain for an individual engaged in corrupt conduct.

Appendix 4: Commission operations

The table provides a brief description of the allegations investigated in the Commission operations referred to in this report. The reports are available from the Commission's website at www.icac.nsw.gov.au.

| Operation | Allegations |
|-------------------|--|
| Artek | <p>A NSW Department of Justice asset manager, and, later, a senior manager at Corrective Services NSW (CSNSW), engaged in corrupt conduct by receiving payments and other benefits from a contractor and his wife.</p> <p>The relevant projects were minor capital works and maintenance projects at NSW prisons run by CSNSW. The projects were managed by Asset Management Services, a specialist team of asset managers under the Department of Justice responsible for all asset works across the cluster.</p> |
| Avoca | An applicant for a position offered a payment to secure employment at Woollahra Municipal Council. |
| Cabot | The misuse of position as a member of Parliament to benefit their family's financial interests by improperly influencing a former chief executive of the NSW Department of Water and Energy in the discharge of their public official duties. |
| Churchill | A Willoughby City Council employee corruptly exercised his official functions in favour of various business owners within the council area in return for financial and other benefits. |
| Credo | <p>The main allegations investigated were that:</p> <ul style="list-style-type: none"> • Australian Water Holdings (AWH), a supplier of infrastructure services to Sydney Water Corporation (SWC), corruptly overcharged for services and failed to provide accurate and complete information necessary for SWC to manage its contract • a member of Parliament had an undisclosed family financial interest in AWH and misused their position to advance that interest • two other MPs and a ministerial staffer created a false/misleading Cabinet minute that favoured the interests of AWH. |
| Cyrus | Lobbying by an MP in relation to the management of retail leases at Circular Quay without declaring relevant conflicts of interest. |
| Jasper/ Acacia | Members of Parliament and certain other individuals engaged in corruption associated with the granting of coal exploration licences. |
| Misto | An IT manager at various universities caused, or attempted to cause, the payment of false invoices to an IT consultancy company that did not work for the universities. |
| Nickel | A heavy vehicle competency assessor accredited by Roads and Maritime Services had falsely certified people as competent to drive heavy vehicles in return for payments. |
| Scania | A Regional Illegal Dumping Squad (RIDS) officer corruptly received benefits to ignore illegal dumping and illegal landfill activities and misrepresented to interested parties that, for a benefit, he could assist with development applications being processed through local council. |

| | |
|----------------|---|
| Siren | <p>Various Sydney Water Corporation (SWC) inspectors sought corrupt payments or rewards from contractors in relation to the performance of their SWC duties.</p> <p>The Commission also investigated an allegation that then SWC property asset manager engaged in corrupt conduct in dealings with a certain individual and associated companies.</p> |
| Sonet | <p>An acting manager of ICT services at the South Western Sydney Institute (SWSI) engaged in corrupt conduct by:</p> <ul style="list-style-type: none"> • ensuring SWSI engaged a contractor in return for a personal benefit • ordering goods on behalf of SWSI from a business that he owned and operated without declaring a conflict of interest • supplying false and misleading documentation to SWSI to conceal the fact that he was ordering goods from a business that he owned and operated • falsely certifying that goods and services had been received by SWSI. |
| Spector | <p>A senior RailCorp manager corruptly solicited and received approximately \$1.6 million from various RailCorp contractors and employees.</p> <p>The sister of the senior RailCorp manager, an employee of Housing NSW, corruptly solicited and received approximately \$180,000 from other Housing NSW employees.</p> |
| Spicer | <p>During the lead up to the 2011 NSW state election, certain NSW Liberal Party candidates and others solicited and received political donations that were not declared as required by the <i>Election Funding, Expenditure and Disclosures Act 1981</i>.</p> <p>The Commission also examined whether members or associates of the NSW Liberal Party used, or attempted to use, a foundation as a means of disguising the true identity of donors and evading the prohibition on receiving political donations from property developers.</p> <p>The Commission also examined whether certain members of Parliament used, or attempted to use, their power and influence to improperly benefit a company in respect of a proposed development of a coal terminal at the Port of Newcastle.</p> |
| Tarlo | <p>The CEO of an NGO:</p> <ul style="list-style-type: none"> • falsely claimed qualifications • used public funds for personal expenditure • falsified reports exaggerating the numbers of clients attending, and the numbers and variety of groups that the service provided. |
| Tilga | <p>Partiality in the process relating to the supply of security services to several NSW public authorities.</p> |
| Tunic | <p>Partiality in the awarding of contracts for remedial work to homes damaged by mining subsidence in the Picton region. The corrupt conduct concerned claims for remedial work, assessed and managed by the district manager of the Mine Subsidence Board's Picton office, in return for financial benefits.</p> |
| Yancey | <p>Partiality in the awarding of contracts related to projects mostly for construction and/or project management in relation to the upgrade of courthouses.</p> |

Appendix 5: Endnotes

- ¹ R B Denhardt and J V Denhardt, *The New Public Service, Serving Rather Than Steering*, Public Administration Review, volume 60, no 6 (Nov – Dec, 2000), pp. 549–559.
- ² The Treasury, *NSW Government Commissioning and Contestability Policy*, tpp 16–05, November 2016.
- ³ Western Australia Corruption and Crime Commission, *Report on the Misconduct Intelligence Assessment of the West Australian Public Sector*, 26 March 2015.
- ⁴ *Family & Community Services 2016–17 Annual Report*, volume 1, p. 6, states that 6,226 disability staff successfully transferred to the non-government sector (at end of October 2017).
- ⁵ NSW Ombudsman, *Water: compliance and enforcement. A special report to Parliament under section 31 of the Ombudsman Act 1974*, August 2018, p. J.
- ⁶ NSW Budget Statement 2018–19, budget paper no 1, p. 6.
- ⁷ *Report on the Misconduct Intelligence Assessment of the West Australian Public Sector*, op cit, p. 12.
- ⁸ From <https://hbr.org/2017/06/ceos-are-getting-fired-for-ethical-lapses-more-than-they-used-to>. Accessed 29 October 2018.
- ⁹ Black Economy Taskforce, *Interim Report*, March 2017, p. 20.
- ¹⁰ Minister for Revenue and Financial Services, media release, “Government commences consultation to clamp down on large cash payments”, 25 May 2018.
- ¹¹ G Cliff and A Wall-Parker, “Statistical Analysis of White-Collar Crime”, *Criminology and Criminal Justice Encyclopaedia*, April 2017.
- ¹² From https://opendatabarometer.org/?_year=2016&indicator=ODB. Accessed on 17 August 2018.
- ¹³ PricewaterhouseCoopers, *Five forces that will reshape the global landscape of anti-bribery and anti-corruption*, December 2017, p. 5.
- ¹⁴ From <http://getsydney.com.au/2017/08/04/nsw-enlists-best-brightest-bolster-cyber-security/>. Accessed on 17 August 2018.
- ¹⁵ Australian Criminal Intelligence Commission, *Serious Financial Crime in Australia*, 21 December 2017, p. 10.
- ¹⁶ PricewaterhouseCoopers, *Global Economic Crime and Fraud Survey*, 2018, p. 18.
- ¹⁷ *Serious Financial Crime in Australia*, op cit p. 28.
- ¹⁸ Reproduced from Australian Government: Australian Cyber Security Centre, *2017 Threat Report*, p. 21.
- ¹⁹ From <https://www.afp.gov.au/what-we-do/crime-types/fraud/identity-crime>. Accessed on 1 July 2018.
- ²⁰ From <https://www.homeaffairs.gov.au/crime/Documents/infographic-identity-crime-australia.pdf>. Accessed on 1 July 2018.
- ²¹ From https://www.transparency.org/news/feature/corruption_perceptions_index_2017. Accessed on 17 August 2018.
- ²² From https://www.transparency.org/news/feature/global_corruption_barometer_citizens_voices_from_around_the_world. Accessed on 17 August 2018.
- ²³ From <https://www.traceinternational.org/trace-matrix>. Accessed on 17 August 2018.
- ²⁴ From <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2017%E2%80%932018>. Accessed on 17 August 2018.
- ²⁵ From <https://datacatalog.worldbank.org/dataset/worldwide-governance-indicators>. Accessed on 24 October 2018.
- ²⁶ From <https://widgets.weforum.org/global-competitiveness-report-2017/>. Accessed on 17 August 2018.
- ²⁷ From <https://www.financialsecrecyindex.com/introduction/fsi-2018-results>. Accessed on 17 August 2018.
- ²⁸ From <https://rsf.org/en/ranking>. Accessed on 17 August 2018.
- ²⁹ From <https://www.eiu.com/topic/democracy-index>. Accessed on 17 August 2018.
- ³⁰ From <https://www.edelman.com/trust-barometer>. Accessed on 17 August 2018.
- ³¹ From <https://www2.deloitte.com/au/en/pages/risk/articles/bribery-corruption-survey-2017.html>. Accessed on 17 August 2018.
- ³² From <https://fraudsurveys.ey.com/ey-global-fraud-survey-2018/>. Accessed on 17 August 2018.
- ³³ From <https://home.kpmg.com/au/en/home/insights/2018/02/fraud-barometer-october-2016-september-2017.html>. Accessed on 17 August 2018.
- ³⁴ From <https://www.pwc.com/gx/en/services/advisory/forensics/economic-crime-survey.html>. Accessed on 17 August 2018.

- ³⁵ Australian Bureau of Statistics, *6248.0.55.002 – Employment and Earnings, Public Sector, Australia, 2016–17*, 9 November 2017. From <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/6248.0.55.002Main%20Features22016-17?opendocument&tabname=Summary&prodno=6248.0.55.002&issue=2016-17&num=&view=>. Accessed on 29 October 2018.
- ³⁶ NSW Public Sector Commission, *Workforce Profile Report 2017*, version 1.2, p. 39.
- ³⁷ NSW Public Service Commission, *Workforce Profile Report 2017*, version 1.2, p. 9.
- ³⁸ NSW Public Service Commission, *Workforce Profile Report 2017*, version 1.2, p. 7.
- ³⁹ From http://www.ibac.vic.gov.au/docs/default-source/intelligence-reports/organised-crime-group-cultivation-of-public-sector-employees.pdf?sfvrsn=a18c6975_5. Accessed on 17 August 2018.
- ⁴⁰ From <https://www.audit.nsw.gov.au/publications/latest-reports/special-report-fraud-survey>. Accessed on 17 August 2018.
- ⁴¹ From http://www.bocsar.nsw.gov.au/Pages/bocsar_crime_stats/bocsar_latest_quarterly_and_annual_reports.aspx. Accessed on 17 August 2018.
- ⁴² From <https://www.psc.nsw.gov.au/reports---data/state-of-the-sector/people-matter-employee-survey>. Accessed on 17 August 2018.
- ⁴³ From <https://www.audit.nsw.gov.au/publications/latest-reports/internal-controls-and-governance-2017>. Accessed on 17 August 2018.
- ⁴⁴ NSW Audit Office, *Procurement and reporting of consultancy services*, 4 September 2018, p. 2.
- ⁴⁵ PR Murphy and C Free, "Broadening the Fraud Triangle: Instrumental Climate and Fraud", *Behavioural research in Accounting*, Spring, volume 28, no 1, February 2015, p. 42.
- ⁴⁶ From <https://www.nytimes.com/interactive/2015/business/international/vw-diesel-emissions-scandal-explained.html>. Accessed 18 June 2018. See also <https://www.theguardian.com/business/2018/may/03/vw-emissions-cheating-michael-winterkorn-charged>. Accessed 5 October 2018.
- ⁴⁷ From <https://www.wsj.com/articles/wells-fargos-sales-scandal-tally-grows-to-around-3-5-million-accounts-1504184598>. Accessed 18 June 2018.
- ⁴⁸ From <https://qz.com/work/1087903/the-common-bonus-structures-that-can-lead-to-corporate-corruption-scandals/>. Accessed 25 October 2017. See also <https://www.foxbusiness.com/features/wells-fargo-ceo-on-account-scandal-we-had-an-incentive-plan-that-drove-inappropriate-behavior>. Accessed on 5 October 2018.
- ⁴⁹ See: <https://financialservices.royalcommission.gov.au/Documents/interim-report/interim-report-exec-summary.pdf>. Accessed on 10 October 2018.
- ⁵⁰ NSW Independent Commission Against Corruption, *Investigation into false certifications of heavy vehicle competency based assessments by a Roads and Maritime Services accredited assessor (Operation Nickel)*, January 2014, p. 11.
- ⁵¹ I Hanger AM QC, *Report of the Royal Commission into the Home Insulation Program*, 29 August 2014, p. 313.
- ⁵² From <https://www.themandarin.com.au/93736-fake-breath-tests-show-perils-of-kpi-perverse-incentives/>. Accessed on 18 June 2018. See also: [https://www.ibac.vic.gov.au/media-releases/article/ibac-requires-a-thorough-and-comprehensive-investigation-of-falsified-preliminary-breath-tests-\(pbt\)-by-victoria-police](https://www.ibac.vic.gov.au/media-releases/article/ibac-requires-a-thorough-and-comprehensive-investigation-of-falsified-preliminary-breath-tests-(pbt)-by-victoria-police). Accessed on 5 October 2018.
- ⁵³ From <https://www.smh.com.au/politics/federal/centrelink-dropped-fraud-prosecution-target-got-better-at-finding-fraud-20180405-p4z80o.html>. Accessed 18 June 2018. See also <https://theconversation.com/profiles/scarlet-wilcock-455957/articles>. Accessed on 5 October 2018.
- ⁵⁴ Committee of Public Accounts – Strategic Suppliers, 58th Report of Session 2017–19, 24 July 2018, paragraphs 38 and 83. From <https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/1031/103102.htm>. Accessed on 5 October 2018.
- ⁵⁵ Commonwealth Fraud Control Framework, Attorney-General's Department, 2017, p. C12.
- ⁵⁶ Association of Certified Fraud Examiners, Inc, *2018 Report to the Nations*, p. 4. This is supported by the NSW Audit Office *Fraud Survey (November 2016)*, which found that 47% of frauds were identified via tip off; more than double the next most productive detection method.
- ⁵⁷ From <https://www.psc.nsw.gov.au/reports---data/state-of-the-sector/people-matter-employee-survey>. Accessed on 10 September 2018.
- ⁵⁸ NSW Ombudsman, *Oversight of the Public Interest Disclosures Act 1994, Annual Report 2016-17*, November 2017, p. 34.
- ⁵⁹ Independent Broad-based Anti-corruption Commission, *Perceptions of corruption survey*, September 2017.
- ⁶⁰ From https://fraudsurveys.ey.com/media/1334/ey_apac_fraud2017_preview-single.pdf. Accessed on 17 August 2018.
- ⁶¹ AJ Brown and SA Lawrence, *Strength of Organisational Whistleblowing Processes – Analysis from Australia & New Zealand, Further Results: Whistling While They Work 2*, July 2017.
- ⁶² Ethics & Compliance Initiative, *The State of Ethics & Compliance in the Workplace*, March 2018.
- ⁶³ See International Consortium of Investigative Journalists at <https://www.icij.org/>.
- ⁶⁴ See: <http://ipaidabribe.com/#gsc.tab=0>.
- ⁶⁵ NSW Independent Commission Against Corruption, *Investigation into the conduct of a Regional Illegal Dumping Squad officer and others (Operation Scania)*, June 2017.
- ⁶⁶ From <http://theconversation.com/why-companies-like-wells-fargo-ignore-their-whistleblowers-at-their-peril-67501>. Accessed on 17 August 2017.
- ⁶⁷ South Australia Independent Commissioner Against Corruption, *Oakden – A shameful chapter in South Australia's History*, February 2018.
- ⁶⁸ NSW Audit Office, *Report on Internal Controls & Governance 2017*, December 2017, p. 6.

- ⁶⁹ NSW Audit Office, *Fraud controls in local councils*, Audit Office of NSW, June 2018, p. 14.
- ⁷⁰ In this report, the term “lobbying” refers to any attempt to influence a public sector decision-maker. Lobbying is also not confined to the activities of professional or registered lobbyists.
- ⁷¹ From <https://grattan.edu.au/how-to-rebuild-trust-in-politics/>. Accessed on 21 June 2018.
- ⁷² See s 46(4)(b) of the *Election Funding Act 2018*.
- ⁷³ Prime Minister Turnbull, *Second Reading of the Foreign Influence Transparency Scheme Bill 2017*, Hansard, 7 December 2017.
- ⁷⁴ Parliamentary Joint Committee on Intelligence and Security, *Advisory Report on the Foreign Influence Transparency Scheme Bill 2017*, June 2018, pp. 2, 4 and 10.
- ⁷⁵ From <http://theconversation.com/the-revolving-door-why-politicians-become-lobbyists-and-lobbyists-become-politicians-64237>, Accessed 10 August 2018.
- ⁷⁶ Securities and Exchange Commission, media release, “JPMorgan Chase Paying \$264 million to Settle FCPA Charges”, 17 November 2016.
- ⁷⁷ NSW Independent Commission Against Corruption, *Investigation into the conduct of a former NSW Department of Justice officer and others (Operation Artek)*, August 2017.
- ⁷⁸ *Ibid*, p. 42.
- ⁷⁹ From <https://cpb-us-w2.wpmucdn.com/u.osu.edu/dist/d/12059/files/2015/03/Fake-News-Piece-for-The-Conversation-with-methodological-appendix-11d0n19.pdf>. Accessed on 6 August 2018.
- ⁸⁰ NSW Public Service Commission, *People Matter Employee Survey*, November 2017, p. 63.
- ⁸¹ Victorian Ombudsman, *Investigation into allegations of improper conduct by officers at the Mount Buller and Mount Stirling Resort Management Board*, March 2017, p. 34.
- ⁸² *People Matter Employee Survey*, op cit, p. 63.
- ⁸³ NSW Public Service Commission, *Workforce Profile Report*, 2017 p.48. Note that the NSW PSC does not collect data on contingent workers, as they are not classified as public sector employees.
- ⁸⁴ NSW Audit Office, *Contingent workforce: procurement and management*, April 2017, p. 3.
- ⁸⁵ NSW Auditor-General, *Special report: Fraud Survey*, November 2016, p. 7.
- ⁸⁶ NSW Public Service Commission, *State of the NSW Public Sector Agency Survey 2016*, Main Findings Report, March 2017, p. 3.
- ⁸⁷ From <https://s3-us-west-2.amazonaws.com/acfe-public/2018-report-to-the-nations.pdf>. Accessed on 21 August 2018.
- ⁸⁸ From, <https://hbr.org/2018/03/research-how-one-bad-employee-can-corrupt-a-whole-team>. Accessed on 29 October 2018.
- ⁸⁹ See OECD “Government at a Glance 2017” database.
- ⁹⁰ Budget Statement 2018–19, budget paper, no 1, p. A1–23. The figure is an estimate of cash outlays.
- ⁹¹ *Special report: Fraud Survey*, op cit. p. 6.
- ⁹² NSW Independent Commission Against Corruption, *Corruption risks in NSW government procurement, suppliers' perceptions of corruption*, June 2011, p. 5.
- ⁹³ House of Commons Committee of Public Accounts, *Strategic Suppliers: Fifty-Eighth Report of Session 2017-19*, 24 July 2018, pp. 4 and 17.
- ⁹⁴ House of Commons Committee of Public Accounts, *Strategic Suppliers: Fifty-Eighth Report of Session 2017-19*, 24 July 2018.
- ⁹⁵ G Sturgess, *Just Another Paperclip? Rethinking the Market for Complex Public Services. A Report to the Business Services Association*, 31 March 2017, p. 13.
- ⁹⁶ From, <https://www.smh.com.au/politics/federal/submarines-build-hit-with-conflict-of-interest-hidden-labour-hire-claims-20180424-p4zbeu.html>. Accessed on 29 October 2018.
- ⁹⁷ From https://www.treasury.nsw.gov.au/sites/default/files/pdf/TPP16-05_NSW_Government_Commissioning_and_Contestability_Policy_.pdf. Accessed on 25 July 2018.
- ⁹⁸ G Sturgess, *Diversity and Contestability in the Public Service Economy*, NSW Business Chamber, March 2012, p. 9.
- ⁹⁹ From <https://www.smh.com.au/public-service/outsourcing-failures-expose-weaknesses-in-both-government-and-business-20170426-gvsx0e.html>. Accessed on 29 October 2018.
- ¹⁰⁰ NSW Independent Commission Against Corruption, *Investigation into allegations of corrupt conduct in the provision of security products and services (Operation Tilga)*, November 2013.
- ¹⁰¹ Deloitte Access Economics, *The Economic benefits of better procurement practices*, Consult Australia, February 2015, p. 12.
- ¹⁰² *NSW develops an innovative procurement process*, Government News, 2 November 2010. From <https://www.governmentnews.com.au/2010/11/nsw-develops-an-innovative-procurement-process/>. Accessed on 30 July 2018.
- ¹⁰³ From <https://arp.nsw.gov.au/pbd-2016-05-procurement-innovation-stream>. Accessed on 30 July 2018.

- ¹⁰⁴ Productivity Commission, *Public infrastructure: Inquiry Report*, July 2014, p. 26.
- ¹⁰⁵ University of Portsmouth Centre for Counter Fraud Studies, *Annual Fraud Indicator 2016*, Experian and PKF Littlejohn, May 2016, p. 13.
- ¹⁰⁶ Audit Office of NSW, *Shared services in local government*, Performance Audit, 21 June 2018.
- ¹⁰⁷ NSW Independent Commission Against Corruption, *Controlling corruption opportunities in the provision of maintenance services*, February 2017.
- ¹⁰⁸ From <https://www.scamwatch.gov.au/news/business-losses-to-scams-up-23-per-cent>. Accessed 5 July 2018.
- ¹⁰⁹ Australian Cyber Security Centre, *Threat Report*, October 2017, p. 30.
- ¹¹⁰ UK Committee on Standards in Public Life, *Striking the Balance Upholding the Seven Principles of Public Life in Regulation*, September 2016, p. 15.
- ¹¹¹ Section 8(2A) of the *Independent Commission Against Corruption Act 1988*.
- ¹¹² Victoria Independent Broad-based Anti-corruption Commission, *Operation Lansdowne: An investigation into allegations of serious corruption involving Victorian vocational education and training, and public transport sectors*, December 2017, p. 38.
- ¹¹³ Transparency International Australia, *Corruption Risks in Mining Approvals – Australian Snapshot*, October 2017, p. 9.
- ¹¹⁴ Legislative Assembly Hansard, 22 November 2017, p. 32.
- ¹¹⁵ NSW Independent Commission Against Corruption, *Investigation into the corrupt conduct of a Willoughby City Council officer*, (Operation Churchill), June 2011.
- ¹¹⁶ *Ibid*, p. 39.
- ¹¹⁷ NSW Independent Commission Against Corruption, *Investigation into the conduct of a Regional Illegal Dumping Squad officer and others* (Operation Scania), June 2017. p. 54.
- ¹¹⁸ NSW Independent Commission Against Corruption, *Investigation into the conduct of a Regional Illegal Dumping Squad officer and others* (Operation Scania), June 2017.
- ¹¹⁹ *Striking the Balance Upholding the Seven Principles of Public Life in Regulation*, op cit, p. 20.
- ¹²⁰ C Murray and P Frijters, *Game of Mates – how favours bleed the nation*, April 2017, p. 44.
- ¹²¹ Victoria Independent Broad-based Anti-corruption Commission, *Corruption risks associated with public regulatory authorities*, July 2018, p. 29.
- ¹²² NSW Independent Commission Against Corruption, *Reducing the opportunities and incentives for corruption in the management of coal resources* (Operation Acacia), October 2013.
- ¹²³ Western Australia Corruption and Crime Commission, *Report on Corruption in Respect of Truck Driving Licence Applications*, November 2017, p. 1.
- ¹²⁴ NSW Independent Commission Against Corruption, *Investigation into NSW Liberal Party funding for the 2011 state election campaign and other matters* (Operation Spicer), August 2016.
- ¹²⁵ South Australia Independent Commissioner Against Corruption's, *Evaluation of Safework SA*, transcript of evidence, July 2018, p. 14.
- ¹²⁶ NSW Independent Commission Against Corruption, *Investigation into false certifications of heavy vehicle competency-based assessments by a Roads and Maritime Services-accredited assessor* (Operation Nickel), January 2014, p. 17.
- ¹²⁷ NSW Department of Industry, K Matthews AO, *Independent investigation into NSW water management and compliance – Interim and Final reports*, September and November 2017, pp. 37 and 7 respectively.
- ¹²⁸ For example, in the 2016–17 financial year, the NSW Department of Family and Community Services provided \$2.6 billion in grants to 1,688 NGOs.
- ¹²⁹ Section 8(2A) of the ICAC Act deals with the extension of the Commission's jurisdiction to certain individuals that are not public officials.
- ¹³⁰ From <https://aic.gov.au/publications/tandi/tandi490>. Accessed on 21 August 2018.
- ¹³¹ A Masters, "Corruption in sport: From the playing field to the field to the field of policy", *Policy and Society*, 34(2), pp. 111–123.
- ¹³² City of Sydney Council, *Statutory Returns Annual Report 2016/17*, p. 20.
- ¹³³ Sourced from NSW Budget Statement 2018–19, tables 5.2, 6.3, 6.4 and 7.1.
- ¹³⁴ From <https://www.audit.nsw.gov.au/publications/financial-audit-reports/2018-reports>. Accessed on 17 August 2018.





INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

Level 7, 255 Elizabeth Street
Sydney NSW 2000 Australia

Postal Address: GPO Box 500
Sydney NSW 2001 Australia

T: 02 8281 5999

1800 463 909 (toll free for callers outside metropolitan Sydney)

TTY: 02 8281 5773 (for hearing-impaired callers only)

F: 02 9264 5364

E: icac@icac.nsw.gov.au

www.icac.nsw.gov.au

Business Hours: 9 am - 5 pm Monday to Friday