PRACTICAL GUIDE
TO
CORRUPTION PREVENTION

*"He keeps offering me dog biscuits to
roll over...is that corruption?"*

ACKNOWLEDGMENTS

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This Guide has been developed to provide practical assistance to public sector agencies on establishing systems to prevent corruption from occurring. We have provided information on a range of topics, however, agencies should not treat either the list of topics or the information contained in each module, including checklists, as exhaustive. Managers are responsible for ensuring that corruption does not occur within their area of responsibility and they should consider all relevant factors when implementing corruption prevention measures.

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COMMISSIONER'S FOREWORD

The mission of the Independent Commission Against Corruption is to expose and minimise corruption in the NSW Public Sector. We do this by investigating allegations of corruption, working with the public sector to introduce or improve corruption prevention systems and procedures, and informing the community and the public sector about the detrimental effects of corruption and the benefits of prevention strategies.

Since 1989 our Corruption Prevention staff have provided a vast amount of advice to public sector agencies on how to minimise the opportunities for corrupt behaviour to occur. This Guide distils much of that advice and presents it in a practical and useful form. It answers the most commonly asked questions and provides practical solutions to everyday corruption prevention issues.

Chief Executive Officers and those with the responsibility for ensuring their organisations maintain the highest ethical standards will find the Guide an easy-to-use reference.

I encourage you to make the most of the Guide by carefully considering the relevance of each topic to your organisation and developing an action plan to implement corruption prevention strategies or to overhaul existing systems.

The Guide will be updated with new modules regularly. Please let the Commission know what you like and don't like about it or suggest other areas which you would like to see included. A feedback form has been included for this purpose. Your response will help to ensure that this document remains an effective weapon in our fight against corruption in this state.

The Hon B S J O'Keefe AM QC

Commissioner

INTRODUCTION

Who Should Read The Guide?

This guide is for all public sector and local government staff, but primarily for those who are responsible for coordinating, developing and/or implementing corruption prevention measures in their organisation.

You may work in a large organisation with an established corruption prevention infrastructure or in a smaller organisation where corruption prevention is just one of your responsibilities. This guide will help you understand the important issues, develop appropriate policies, implement effective corruption prevention strategies, and motivate both senior and other staff in your organisation.

We wish you luck with a challenging but very worthwhile task!

How To Use The Guide?

The guide is made up of self contained modules. Each module covers a major corruption prevention area and includes material generated by the ICAC and information from other relevant sources.

You may find some modules immediately relevant to your organisation while others you may refer to at a later date. Some modules cover related issues, such as Secondary Employment and Conflicts of Interest or Purchasing and Plant Hire, and you may want to read these modules together.

While each module is on a different topic, they all have some important sections and headings which are the same. Each module has an introduction, some case studies, a series of corruption prevention guidelines for developing policy and procedures, a checklist, and a list of additional resources.

The modules are not, and do not try to be, definitive and complete statements on a particular subject area, but they should give you enough information and ideas to start developing a corruption prevention program. Similarly, the case studies in the modules are not necessarily models of good practice but just practical things that have happened or are happening in other areas of government.

If you need more detailed information or specific advice, please contact Corruption Prevention staff at the ICAC on 02 318 5999. The ICAC's postal address is GPO Box 500 Sydney 2001.

A Corruption Prevention Action Plan

We hope you enjoy reading the modules in this guide, but we also want you to take some action.

You may want to develop an action plan to help you decide which modules are relevant to your organisation, what your organisation needs to do, and how you are going to achieve these goals in practice.

Questions for the Action Plan

- Name of module
- Does this module apply to us?
- If so, to which areas of the organisation?
- What issues could be/are relevant to us?
- Why are these issues important?
- What current policies/procedures do we have?
- What action do we need to take?
  - short term
  - long term
- Who needs to do what?
- What resources will we need?
- Do we need extra help or training?

Updates

This Guide will be updated by the ICAC as new modules are prepared or as we find that it can be improved. Your comments on the Guide will be appreciated. Please use the enclosed feedback form.

A data base has been established to register current holders of the Guide to facilitate the update process. Please inform the ICAC if responsibility for this copy is transferred to someone else.

If your organisation is not sure how to specify appropriate selection criteria or performance measures, you should try to get specialist assistance and provide training for your staff so that they can develop the necessary skills.

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1   CORRUPTION PREVENTION PLANS

INTRODUCTION

Community attitude surveys conducted by the ICAC since 1993 indicate there is considerable concern about corruption in the NSW public sector. Reliable estimates of the extent and impact of corruption are difficult to obtain, but literature suggests that corruption in any public or private organisation is likely to lead to losses of between 2–5% of turnover. This means that the NSW public sector could be exposed to a potential risk in excess of $1 billion each year.

Significant cost savings can be made and loss of public confidence in organisations avoided if, managers plan, develop and implement an integrated corruption prevention policy across their organisation. Each module in this Guide provides practical information about key areas that should be considered when developing the corruption prevention plan.

Corruption prevention is about changing organisational features that allow corruption to occur and possibly go unnoticed or unreported. Strategies incorporated in the corruption prevention plan should address issues such as accountability, efficiency and effective administration. They should focus on improving systems and procedures, changing the attitudes of staff, and improving the overall integrity and performance of the organisation.

Since 1990, all NSW state public sector organisations are required to develop and implement strategies to prevent fraud and corruption. It is understandable that managers who are told to develop a corruption prevention plan or to implement corruption prevention strategies can feel overwhelmed by the task.

"But I only took a highlighter."

In fact, many organisations are already doing a lot in the area of corruption prevention although some just call it something else. Fundamental management tools such as; documented and current policies and procedures, clearly defined and understood roles and responsibilities, supervisory and accountability structures, and efficient decision-making systems all contribute to a well-run, healthy organisation where opportunities for fraud, corruption and maladministration are minimised.

If the basic tools of good management are in place, then building on them and developing some specialised corruption prevention strategies is not a very difficult task. A good starting point is to list all the features of the organisation. These should include; a code of conduct, an internal audit program, a gift register, a staff induction program, a complaints handling system, as well as other things.

Then look at what you don't have. For example, your organisation may not yet have an internal reporting system, or enough staff trained in the proper procedures for undertaking internal investigations. Make a list of your organisation's weaknesses and gaps in relation to corruption prevention and then decide how these can be tackled in a realistic timeframe.

The development of a corruption prevention plan does not occur in isolation. It is affected by a range of factors, often outside the organisation's control, such as restructuring, budget cuts, political decisions and changes in leadership. For example, if an organisational restructure occurs midway through the plan's implementation, the priority areas, responsibility structure and timetable may need to be revised.

At least if a plan exists, there is a framework and focus for the corruption prevention process, even though implementation of the plan may need to be altered and updated to reflect the changes in the organisation. Developing a realistic and flexible plan will help you cope with and respond effectively to, these unanticipated but often inevitable changes.

Four important factors in developing and implementing a corruption prevention plan are:
- management commitment
- staff commitment
- resources
- networking.

Management commitment

All senior managers need to be aware of the plan's importance and the resources and effort they should commit to it. Managers with particular responsibilities for corruption prevention need to know what these responsibilities are, when they must be fulfilled and how they contribute to the overall strategic approach.

Management behaviour and expectations play a significant role in shaping the ethical culture of an organisation. All managers must therefore act and be seen to act with integrity.

Staff commitment

If staff feel that the corruption prevention plan is yet another mechanism imposed on them from above which gives them more work and responsibility, they are unlikely to feel committed to its goals or implementation. The plan is more likely to work effectively if staff have been part of the formulation process, see the benefits for themselves and the organisation and understand that management is serious about preventing corruption.

Resources

The allocation of sufficient resources is crucial to the success of a corruption prevention plan. The organisation must have a person with the time, skills and support to drive the plan and to play a leadership role. This person must have influence in the organisation and be able to motivate others to fulfil their responsibilities.

If there is a commitment from the top, if staff and sufficient resources are allocated, then the implementation of the plan will be a cost effective exercise. It is a matter of incorporating a corruption prevention focus into existing roles, responsibilities and policies and setting priorities for any necessary improvements rather than implementing something completely new.

Networking

Many organisations have already done a lot of work on developing effective corruption prevention strategies. Contact with people in organisations similar to yours who have been involved in this work will provide some ideas which you can tailor to meet the needs of your organisation. Most people are quite happy to share their expertise, and discussing the issues and pooling ideas often leads to benefits for both organisations.

A group of people involved in corruption prevention work in the NSW public sector realised the benefits of networking with other professionals and decided to establish the NSW Public Sector Corruption Prevention Forum. The Forum organises seminars and discussion groups, publishes a newsletter, and has a list of corruption prevention officers in the NSW public sector.

If you contact staff in the Corruption Prevention section of the ICAC, they will arrange for you to be put on the mailing list and invited to Forum functions.

CASE STUDY

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1. State Rail Authority

The following case study outlines the approach taken by the State Rail Authority to preventing corruption. Clearly, not all organisations can or should commit this level of resources.

The Fraud Prevention Unit in the State Rail Authority was set up in 1992 after an ICAC investigation into contracts management in the Northern Region of New South Wales. The aim of the Unit is to develop a pro-active corruption prevention presence

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within the SRA and to change the culture of the organisation to one where corruption is identified, reported, dealt with and eliminated.

The Unit currently has three Corruption Prevention Officers and four Investigators and a budget of $1,000,000. Investigators are trained not only to find corruption but also to identify why it has occurred and look at ways to prevent it from happening again.

The SRA's Corruption Prevention Plan includes a continuing risk assessment, based on a standard questionnaire completed by auditors on a regular basis and training for staff with a strong focus on cultural change.

The SRA has undergone almost continuous restructure during the last ten years. Decision-making has been pushed further down the hierarchy, staff numbers have been cut from over 40,000 to less than 20,000 and greater productivity is expected. In some cases policies, procedures and control mechanisms have not kept pace with these rapid changes.

There was a belief in certain areas of the SRA that the organisation had not looked after its staff so why should the staff look after the organisation. This belief, and the accompanying dissatisfaction felt by staff, has been linked to some of the corruption that has been uncovered. As with many organisations, there was also a cultural dislike, mistrust and victimisation of those who make disclosures.

One of the major components of the SRA's approach to corruption prevention has been training for managers and staff, with a focus on identifying corrupt conduct and understanding policies and responsibilities. The trainers have had to take into account the widely varied English language skills and formal educational standards of participants and have found the discussion of scenarios an effective way to achieve training goals.

The response to this training has been very positive, with staff being pleased that people from 'Head Office' were taking an interest in them and the work that they do. Fraud Prevention staff believe it has been important that people see them face-to-face and have experienced an increase in corruption related enquiries since the training.

The SRA has found that this increased awareness of corruption prevention issues has; made staff more comfortable about approaching the Fraud Prevention Unit for advice, given people increased confidence in dealing with suspected corrupt conduct and made staff less resistant to being accountable for decisions and actions. The Fraud Prevention Unit Manager believes that instances of corruption are now identified more quickly and systems failures are fixed almost straight away.

The Fraud Prevention Unit is now a part of the SRA's policy development structure and has the opportunity to comment on policies from a corruption prevention perspective before they are approved. The unit can also put items for discussion on the agenda for weekly senior manager meetings.

The SRA estimates that each year millions of dollars are saved because corruption has been prevented from occurring as a result of the work of the Fraud Prevention Unit.

The Unit has also played an important role in promoting corruption prevention in the wider public sector. A significant contribution in terms of staff time and other resources has been made to the NSW Public Sector Corruption Prevention Forum Committee. In fact, Unit staff were instrumental in its establishment in 1994.

Some corruption prevention 'tips' from staff at the unit are:
- do things before you have to
- spend one dollar to save two
- network so you don't reinvent the wheel.

GUIDELINES FOR DEVELOPING A CORRUPTION PREVENTION PLAN

Although corruption prevention plans will obviously vary from organisation to organisation to meet particular needs and circumstances, there are some key aspects that should form part of every corruption prevention plan. The following guidelines, based on the strategic model developed by the Audit Office, explain these key aspects. They provide a framework to help organisations analyse, plan and implement their corruption prevention strategies.

1. Organisations should develop and distribute a comprehensive and integrated policy on corruption prevention.

The policy should explain the organisation's position on corruption, set aims and objectives, draw together existing policies and procedures that relate to corruption prevention and outline where further work needs to be done to minimise corruption risks. It is important that you take a strategic approach and don't focus on specific areas of known risk too quickly, or at the expense of other areas.

The policy is an important way of raising staff awareness and commitment and can also be used to measure achievements. Some organisations have a single centralised policy document detailing all aspects of their corruption prevention work, while others find it more useful to have a brief strategy outline with more detailed policies produced by different sections or areas of the organisation.

Consulting staff from different areas of the organisation when you are developing the policy can help to make sure that the document and its proposed strategies are realistic and effective. Staff involved in the day-to-day operation of an organisation are in a good position to identify where corruption opportunities exist and how they can be minimised.

2. The policy must clearly define who is responsible for preventing and detecting corruption in the organisation and for implementing different aspects of the corruption prevention plan.

The organisation's internal audit or fraud prevention units have a significant role to play, but this does not reduce the responsibilities of other managers and staff.

Managers must realise that corruption does exist and may occur within their areas of responsibility. Despite evidence to the contrary, many managers still believe that there is no corruption in their organisation or that what they are doing to prevent it is enough. It is important that managers appreciate the benefits of corruption prevention strategies and see their implementation as a way of improving organisational performance.

The specific responsibilities of managers need to be detailed and included in their job descriptions and performance agreements. If roles are unclear, vital aspects of corruption prevention may be neglected.

Managers also have a responsibility, through their words and actions, to set ethical standards in their work area and provide their staff with guidance and support. If that support is not evident it could severely affect the implementation and effectiveness of any corruption prevention strategy.

A Corruption Prevention or Fraud Control Committee, made up of key personnel from different areas of the organisation, can play a useful role in developing and implementing policy. It could be responsible for setting priorities, providing advice when ethical issues arise, coordinating corruption prevention strategies and communicating the policy to all levels of management and staff. The corruption prevention policy should state who is on the committee and detail its scope and purpose.

Some organisations appoint a Corruption Prevention Manager to implement and coordinate ongoing corruption prevention activity at operational level. This depends on the size of the perceived problem and need not necessarily be an additional job in the organisation, but could be a role that is assigned to an existing position. The position needs to have an appropriate level of authority within the organisation and a clear mandate to ensure the required reforms are implemented.

Some of the tasks undertaken by this person should be to:

- keep informed of current developments and issues in corruption prevention and disseminate relevant best practice information throughout the organisation
- co-ordinate action in response to corruption risk assessments
- establish a timetable for implementing corruption prevention strategies and monitor progress
- make sure all corruption prevention initiatives are integrated within the organisation
- review reports and investigations of suspected corrupt conduct
- recommend disciplinary action
- ensure staff are trained to fulfil their corruption prevention responsibilities.

3. Organisations should review all their functions and operations and assess the nature and level of corruption risks in each area.

Before you can make properly informed decisions about corruption prevention strategies, you must have relevant and up-to-date information about the corruption risks your organisation faces.

Risk assessment is an important management tool in the prevention and detection of corruption. The module on *Corruption Risk Assessment and Management* gives a detailed outline of how to do a risk assessment.

You should identify the major functional areas of the organisation, assess and rank the nature and extent of risk in each area and then assess the probability of

corruption actually occurring. You then need to decide whether the organisation's existing procedures, systems and controls are good enough to counter the corruption risks identified.

Involving managers in the risk assessment process is a good way to raise their awareness of the opportunities for corruption in the areas they control, and set them thinking about possible corruption prevention strategies.

For example, some of the questions you might ask are:

- Do any staff under your control work in areas remote from you?
- What procedures do you follow to make sure that staff timesheets are completed accurately?
- What effect could the misuse of information held in your area have on the organisation?
- How portable are the assets held within your section?
- What measures could you implement to improve asset security?

An additional way to assess the potential corruption risks in your organisation is to review the modules in this Guide. For example: are travel payments or purchasing procedures a problem for your organisation, do some sections of your organisation hold a lot of confidential information, or have you just started to become involved in sponsorship programs?

You need to make a list of your organisation's weaknesses and gaps in relation to corruption prevention, put them in priority order and then decide the best way to tackle them.

4. Organisations should develop and implement integrated corruption prevention strategies to meet identified risks.

You need to decide what additions or modifications you need to make to existing operational practices, procedures, systems or controls to effectively prevent corrupt conduct occurring.

You should review policies to make sure that they include corruption prevention principles and, if necessary, develop some new policies such as an internal reporting policy which gives staff full protection under the *Protected Disclosures Act 1994*.

Corruption prevention strategies should not just be control-based. Introducing additional rules, improving administrative systems or tightening security arrangements are valid strategies, but they should not be your only responses. It is also important to look at the culture of the organisation and the behaviour and attitudes of the people who make up the organisation. For example, an additional strategy might be to incorporate corruption prevention messages into all staff training sessions and include segments on the importance of information security and the use of passwords in computer training courses.

As an organisation manager, you must develop strategies that are tailored to your organisation's own internal and external environment, the business you are in and the level, nature and forms of corruption risk you may be exposed to. The strategies must be needs-based, cost effective and integrated into a comprehensive organisation-wide policy.

Look at the big picture first and then try to fill in the gaps. For example your organisation may have sound policies and procedures, but staff do not report suspected corrupt conduct because they are not sure of the proper procedures, they fear reprisals, or they don't feel confident that any action will be taken.

You may decide to set key corruption prevention objectives for the organisation as a whole and then involve managers in developing individual action plans for strategies at a business unit level. The important thing to check is that all the policies, actions and measures developed work together in an effective and constructive manner and that no important issues have been overlooked.

5. **Organisations must set a timetable for developing and implementing their corruption prevention strategies.**

The time frame for implementation will vary depending on the size and nature of the organisation, the available resources and the status of current corruption prevention measures.

Implementation is not a one-off event. Organisations need to review their corruption prevention strategies continually to make sure they are effective and introduce further initiatives to meet the changing needs of the organisation.

6. **Organisations need to have an awareness-raising program to make sure that staff understand the organisation's focus on, and commitment to, corruption prevention.**

All staff should know the standard of behaviour expected of them, the consequences if they do not comply with these standards, their responsibilities to report corrupt conduct and the procedures for doing this.

When you are developing your corruption prevention strategies, you need to take into account what your staff think and feel about corruption. Staff know better than anyone else where there are gaps, weaknesses and failings in the organisation's systems–they know what 'goes on'. Without their cooperation, most corruption will never be prevented or detected. To achieve effective corruption prevention, staff at all levels need to play a part in continually trying to improve the organisation's practices, procedures and systems and in promoting an ethical workplace culture.

Initiatives such as training, best practice guides, awareness raising campaigns and staff newsletters are effective ways of promoting the organisation's commitment to corruption prevention. Focusing on the potential harmfulness and other consequences of corrupt behaviour is also a useful strategy.

Training for managers is particularly important. You might, for example, use a scenario such as:

> You are responsible for managing your organisation's central store. Many items in the store are very portable and of high commercial value. A large number of people currently have access to the store. There is a high risk that items could be stolen and you suspect that this is in fact occurring.

> How would you detect whether items were being borrowed or stolen from the store?

What controls could you implement that would protect assets in the store and establish who might be stealing or using them improperly?

How could you, as a manager, promote a more ethical approach to the use of the organisation's resources and make staff realise the consequences of corrupt conduct for them and for the organisation?

The most appropriate mechanisms for your organisation will depend on the different types of staff and corporate cultures within the organisation. The module in this guide on *Cultural Change* will give you some useful ideas and strategies.

7. Organisations need to promote an awareness in the community that corruption within the organisation is not acceptable and complaints will be dealt with.

Annual Reports should include a clear statement from the CEO about the organisation's stance on corruption and provide an outline of its corruption prevention strategies. This shows that the organisation has an honest, ethical and businesslike approach to its work, and is active and serious about preventing corruption.

It is also important to explain to staff and the public, the economies and improvements to performance and service that have been achieved as a result of the organisation's work on corruption prevention.

Documents such as Guarantees of Service provide a good opportunity to integrate both performance and conduct standards and communicate them to both staff and the community. Customers should know that their complaints about the organisation, its staff or its service provision will be taken seriously and that those involved in corrupt activities will be dealt with appropriately.

8. Organisations must have an effective internal reporting system that encourages staff to come forward when they suspect corrupt conduct, maladministration or substantial waste.

In a 1994 ICAC survey of NSW public sector employees' attitudes to corruption, nearly 75 percent of the respondents agreed that people who report corruption are likely to suffer for it, but fewer than 5 percent thought that people who report corruption are just troublemakers.

Your staff may believe in the value of reporting corruption, but may be reluctant to do so because either they don't know the proper procedures or they fear they will be victimised.

If your organisation does not have an internal reporting system, the corruption prevention plan needs to indicate how and when one will be developed. If a reporting system is already in place, the plan could include monitoring and review strategies to make sure that the system is working effectively and gives staff full protection under the Protected Disclosures Act.

You will find more details about setting up an effective system in the module on *Internal Reporting Systems* in this guide.

Make sure you prepare a concise, accurate and readable summary of corruption reporting procedures and regularly publicise it throughout the organisation.

9. **Organisations must have a clear policy and detailed procedures for reporting corrupt conduct to external authorities such as the ICAC and the Police.**

Your corruption prevention plan should include strategies for ensuring that staff and management are aware of the need to comply with legislative requirements and report corrupt conduct to the relevant external authorities.

The module in this guide titled *Reporting to the ICAC* looks at what is involved with external notification and the procedures that need to be developed.

10. **Organisations should develop expertise and appropriate policies and procedures for handling and investigating suspected corruption.**

As your organisation develops comprehensive corruption prevention strategies you are more likely to detect corruption, but you also need to make sure that reports of suspected corrupt conduct are handled and investigated competently. It is important to have good investigative procedures at the preliminary stages so that you don't lose or destroy evidence or prejudice further investigations.

Investigating corruption is not a simple matter, but some organisations still approach it in a casual manner using outdated methods that may no longer be appropriate to deal with the growing complexities of corruption in the 1990s.

Your corruption prevention plan may need to include strategies for developing or improving the investigative capacity of the organisation and the skills of the staff who have to conduct the investigations. Issues such as 'the need to know' and access to personal information must be considered so that the rights of individuals are not unnecessarily breached.

Full and complete records should be kept of all reports received and investigations initiated. Management should regularly monitor the progress and outcomes of every investigation.

Some organisations establish a secure database to store corruption reports and statistics. The database also allows them to review incidents of corrupt conduct and identify patterns which could indicate system weaknesses.

11. **Organisations must establish policies, standards and procedures on conduct and discipline which support the corruption prevention strategies.**

There is little point in having an internal reporting system and the capacity to investigate if there are no consequences for staff who are found to have behaved corruptly.

Your corruption prevention plan needs to ensure that thorough and consistent disciplinary procedures exist and that it is clear to staff and the community that those who engage in corrupt conduct will suffer the consequences.

A code of conduct is a necessary initial step in the process of setting the ethical and behavioural standards of an organisation, but you also need to clearly define the procedures that will be followed if these standards are breached and the range of penalties that may be applied.

None of this information should be assumed. All procedures need to be clearly set out and effectively communicated to every member of staff.

12. Organisations must formalise and document a corruption prevention plan and explicitly link it to other organisational plans.

The plan should include details such as:

- the organisation's policy on corruption prevention

- the methods used to assess the risks of corruption within the organisation

- the findings of the risk assessment

- the corruption prevention strategies to be used to reduce and control the identified risks

- the responsibilities that various members of staff have in the implementation of these strategies

- the policies that need to be developed or amended

- timeframes and resources needed

- reporting requirements

- training and awareness raising programs to be provided for staff

- monitoring and evaluation strategies.

The corruption prevention plan must be supported and endorsed by the CEO and senior management.

13. Organisations must regularly review and evaluate their corruption prevention plans and strategies and make any necessary improvements or amendments.

Policies and procedures should be regularly reviewed and updated to ensure that they are clear, include adequate accountability mechanisms and are sufficiently corruption resistant.

You also need to make sure that the organisation's corruption prevention strategies are operating in an integrated and cohesive way and there are no conflicts or contradictions. For example, are the training and awareness raising sessions having an effect on the ethical culture of the organisation? Is the code of conduct referred to by staff to help them solve ethical dilemmas in the workplace?

Published reports by the ICAC will give you information about problems that have occurred in other public sector organisations and may be useful in reviewing your organisation's corruption prevention strategies.

■ ■ ■ ■ ■ ■ ■   CHECKLIST

❑   Does your organisation have a comprehensive and integrated policy on corruption prevention?

❑   Does the policy clearly define the level at which each staff member is responsible for corruption prevention?

❑   Have you involved executive and operational managers in the development of the corruption prevention policy?

❑   Has a corruption risk assessment been done? Are results current?

❑   Has a range of appropriate corruption prevention strategies been developed and implemented in response to identified needs?

❑   Has the organisation implemented a corruption awareness and cultural change program?

❑   Have you assessed the effectiveness and impact of this program?

❑   Does the organisation have a documented corruption prevention plan which has been approved and supported by senior management?

❑   Does the organisation have an effective internal reporting system which staff understand and use?

❑   Do you have clear procedures for reporting corrupt conduct to external authorities?

❑   Are there policies and procedures for handling the initial investigation of suspected corruption?

❑   Do the organisation's policies and standards on discipline complement and support the corruption prevention policy?

❑   Does the organisation have a secure database for corruption reports?

❑   Do you include information about corruption prevention in the organisation's annual report?

❑   Are all corruption prevention strategies regularly reviewed and evaluated and any necessary improvements or amendments made?

1. *Fraud Control: Developing an Effective Strategy, Volumes 1, 2 & 3*, Audit Office of New South Wales,1994–Available from Premier's Department.

This guide was written for public sector executives, line managers and audit and fraud control professionals. It presents and advocates a strategic model for fraud control which encourages managers to look at the big picture and then develop strategies that are needs-based and cost-effective. The model includes ten attributes of effective fraud control strategies.

2. *Unravelling Corruption–A public sector perspective Summary Report,* ICAC, April 1994

This report provides a summary of a survey of NSW public sector employees' understanding of corruption and their willingness to take action.

3. *Community Attitudes to Corruption and the ICAC*, ICAC, Research Unit, May 1995

This survey assessed public perceptions of corruption and the work of the ICAC. A random sample of 402 NSW adults were asked a number of open-ended questions about what corruption is and how it affects them.

2 CORRUPTION RISK ASSESSMENT AND MANAGEMENT

INTRODUCTION

Risk assessment is an essential part of an organisation's corruption prevention management plan. Risk assessment looks at:

- what may go wrong

- the areas in the organisation that may be most vulnerable to corruption

- the likelihood of corruption occurring and the possible impact if it does.

Risk management then looks at what could or should be done about these corruption risks.

Every organisation has to decide how it wishes to manage the risks it faces. To make properly informed decisions about these risks, you need well organised and up-to-date information about the areas where corruption might occur in your organisation, the likelihood of it happening and the potential effects if it does. As well as financial risks, you also need to consider the public embarrassment and waste of time and resources that may result from corrupt conduct.

Risk assessment is an important management tool. Current changes in the public sector, such as the increase in contracting out for goods and services, private sector involvement in developing and running public sector infrastructure, and the devolution of management control and authority, have increased the decision making powers of many staff who may not have had such responsibilities before.

"I have a lot of experience in banks."

Computer technology has also provided public sector staff with much greater potential access to confidential information.

Unfortunately, at times not enough attention has been given to developing and documenting policies and procedures to match these changes and this has created an environment with potentially greater risks of corruption. As well as identifying these risks, the risk assessment process helps you understand your systems and how your organisation works. It also raises staff awareness of corruption issues and reinforces the important role staff have in preventing and reporting corrupt conduct.

It is important to remember that simple, well designed systems are often more efficient than poorly designed ones, as well as providing less opportunity for corrupt conduct to occur.

Once you have completed a risk assessment, you have to decide what to do about the risks. For example, what additional procedures, policies or internal controls do you need to deal with the corruption risks you face. It is important to remember that risk assessment is primarily controls oriented, and is just one tool to use in developing your organisation's corruption prevention strategy. An overall strategy also needs to deal with wider corporate issues such as developing an appropriate culture and ethical working environment and communicating information to staff about how to prevent and detect corruption.

You also need to make sure that managers regularly reassess the risks in the areas they control. Once the initial corruption risk assessment has been done, a review will probably be needed every 3-5 years. If there have been major changes in the functions of the organisation, a review will be needed more frequently since controls have to be adapted to accommodate the change.

EXAMPLES OF POTENTIAL RISK AREAS

The following examples show some of the areas within an organisation where there could be a risk of corruption.

1. Personnel

If you have proper recruitment and selection practices and the credentials of job applicants are fully checked, there is less risk of favouritism, discrimination and nepotism occurring when staff are being selected from both within and outside the organisation. Staff on selection panels must be made aware of what a conflict of interest is and what they should do about it. The conflict of interest module provides practical assistance on this issue.

Poor management controls and supervision practices can reduce the ethical tone of the organisation and support the feeling among staff that certain corrupt practices are okay because no-one is going to find out or do anything about it. Staff may claim excessive overtime and expenses, abuse flexitime provisions, or unnecessary numbers of staff may attend callouts.

Poorly maintained attendance records and lack of supervisory review could give a payroll clerk the opportunity to prepare and enter fraudulent timesheets and

unauthorised increments, to create payroll ghosts, or not to record leave taken by staff.

2. Information Systems

Computer data may be destroyed or corrupted. Staff may have unauthorised access to confidential information which they then release or sell to people outside the organisation.

There may be opportunities for staff to make fraudulent entries or changes to customer/client records on the data base. For example, staff who are able to make 'on-line' entries could grant a pension rebate to an ineligible person, alter a property valuation or credit an amount to a customer's account. These alterations are often difficult to trace, especially if staff share IDs and passwords and don't log off after using a terminal.

3. Tenders, contracts and the purchase and disposal of assets

Risks of corruption occur if your organisation has inadequate procedures for advertising or assessing tenders or awarding contracts. Certain suppliers may be given preferential treatment or orders split to avoid going to tender. It is important that policies in these areas comply with legislative and regulatory requirements.

Conflicts of interest may exist if staff accept gifts, benefits or hospitality from potential contractors, or they have interests in outside organisations bidding for tenders and contracts. This potential for collusion between employees and contractors can have a range of effects; from deciding to keep current suppliers rather than testing the market, to preparing and certifying false dockets and invoices.

4. Licensing and Regulating

In local government, a risk of corruption exists if councillors or council staff have personal or business relationships with developers, or if staff who regulate, inspect or issue licences for a particular industry have private connections or a second job with that industry.

Organisations especially at risk are those that have no effective code of conduct or policy in place which outlines the ethical standards of the organisation, that do not record the pecuniary interests of staff, or do not have a secondary employment policy.

5. Financial systems and procedures

Financial risk areas in your organisation may include; the misuse of petty cash or corporate cards for private purchases, payments for goods and services not supplied or the theft of cash.

For example, if three or four people know the combination of the safe, an opportunity exists for cash to be stolen without your being able to assign responsibility for the loss. Restricting access increases individual accountability. Similarly, if your organisation has poor cashiering and reconciliation procedures,

or large cash amounts are kept on hand, there is a high risk that financial losses will occur.

Travel payments often involve a high volume of individual transactions and this increases the risk of corruption and misuse. There may be excessive claims for domestic or overseas travel, false or unnecessary claims for the use of a private motor vehicle or overnight accommodation, or duplicate claims made by several staff members when only one person actually incurred the expenses.

Problems can also arise if your organisation receives cash donations or sponsorship from the private sector, participates in joint infrastructure projects or is responsible for administering grants to other organisations.

6. Use of the organisation's equipment and resources by staff for personal purposes

The corruption risks in this area range from staff taking office stationery, improperly using computer equipment for private purposes, or making excessive private telephone calls at work, to staff operating their own business in work time, using the organisation's vehicles, equipment and materials.

A culture has evolved in some work areas which promotes the 'ownership' of motor vehicles by staff and, if weekly running sheet details are not checked against the duties of vehicle users, the opportunity may exist for staff to buy fuel and use the organisation's motor vehicles for private purposes.

Organisations should develop guidelines on the use of equipment for private purposes.

GUIDELINES FOR CORRUPTION RISK ASSESSMENT AND RISK MANAGEMENT

These are the major elements or steps you need to follow when undertaking a corruption risk assessment and developing a risk management plan.

You may decide to carry out the assessment in-house or use a consultant. For example, when the Water Board (now Sydney Water) started to look at how to manage the risk of fraud, waste and mismanagement, they had assistance from a consultant to conduct investigations and provide specialist advice, an internal steering committee with members from a range of Water Board activities and an officer from the ICAC. You need to consider what needs to be done, what you can do yourself, what external help is available and ultimately what represents value for money for the organisation.

1. Identify the major functional areas of the organisation.

You might start with an organisational chart or telephone list and then classify the organisation's main business areas in terms of, for example, its product and service outputs, operational areas and locations, revenue generation or collection, asset utilisation and so on. The corruption risks will differ depending on the functions performed in any particular area of the organisation.

2. Identify the risks for each functional area and assess the extent of these risks.

The aim is to generate a comprehensive list of all the relevant risks in the organisation and document what each one involves.

You could use a risk checklist or risk assessment score sheet for staff to rate the exposures and risk factors relevant to the systems, functions and operations in their area. Check what other organisations with similar functions have done and use these different examples to help you develop your own list.

For example, some organisations classify risks as either generic or specific. Generic exposures are common to a number of areas within the organisation such as stores, computer and data security and petty cash, while specific exposures relate to particular organisational units such as investments, inspection services or workers compensation.

Another approach is to look at a particular area of exposure such as physical security and ask questions such as:

- What could go wrong?
- Why could it go wrong?
- What consequences could there be if it went wrong?
- Which business areas may be vulnerable?

Brainstorming workshops involving a range of staff may also help you develop initial checklists, especially for new areas with unusual risks. Audit reports also highlight potential high risk areas.

3. Identify the significant risks and assess the probability of those risks occurring.

It is not cost effective to attempt to cover every possible risk of corruption, so you have to work out the likelihood of the risk arising and its potential consequences. For example, petty cash fraud may be a high risk area but because the amounts of money involved are fairly small you may decide that it is not a high priority.

Your assessment might involve simple scales of 1—5, from 'highly unlikely to happen' to 'almost certain to happen' and 'negligible impact' to 'extreme impact', or more complex numerical assessments of probability and impact.

You may decide to have specific rating systems for each functional area. For example, for the area of information the rating scale might be:

1. no sensitive data held
2. data is sensitive but not confidential
3. data is confidential on commercial or privacy grounds
4. data is moderately politically sensitive
5. access to data restricted—highly politically sensitive.

When assessing potential consequences in various areas you need to consider factors such as:

- the amount of money involved
- non-monetary risks such as time, information, and threat to public safety

- the impact of computerisation
- any previous history of corruption in the organisation
- the ethical environment
- the complexity of the system
- the existing internal controls that exist
- public attitudes to the organisation
- legal liabilities.

Major risks are those risks that have both a high likelihood of occurring and a large impact. Moderate risks are either likely to occur or to have a large impact, but not both. You need to develop suitable strategies for major and moderate risks. Minor risks are both unlikely to occur and have a low impact and are usually accepted or ignored.

A risk ranking matrix can be a useful way of presenting a summary of your analysis of risk factors.

4. Identify responses to risk areas.

Having assessed the risks of corruption in your organisation, you now need to decide what to do. How can you improve operational practices, procedures, systems and controls to minimise the potential for corruption?

There are three broad strategies for dealing with risks and their consequences.

- Risk prevention and detection tries to eliminate sources of risk or reduce the likelihood of loss.

For example, you might decide to introduce regular audits and checks, implement quality control procedures, or automate clerical tasks which are prone to human error.

- Impact mitigation aims to minimise the consequences of risks.

Some risks cannot be avoided so you may have to develop strategies or recovery programs to cope with their impact. For example, you might set up a system for reporting, investigating and managing cases of suspected corrupt conduct and explain and promote the system to all staff in the organisation.

You may decide to transfer some of the risk or share liability with another organisation.

For example, coin-operated vending machines can be a high risk area so you may decide to contract this service out to the private sector. The risk of theft and fraud in your organisation can be reduced if staff wages are paid directly into a bank account or all wages transactions are dealt with by an outside agency.

- Risk acceptance is when the organisation has to accept the risk either because it cannot be avoided or the costs of doing so would not be worthwhile.

You may decide to have impact mitigation measures and regularly monitor the situation to check that risk acceptance is still the most appropriate strategy.

5. Select the best response.

You now need to consider the relative effectiveness and costs of different options for managing specific risk areas. There may have to be a trade-off between the potential benefits of implementing a particular response and the actual costs or effects of doing so.

For example if the use of fuel by staff for private purposes is a risk for your organisation, you might decide to review vehicle running sheets and fuel invoices more carefully and regularly, but decide against restricting access to fuel supplies because it would waste too much staff time and cause operational problems.

6. Develop risk management measures.

You need to develop risk action schedules for each class or area of risk. These schedules should specify who is responsible for implementing and monitoring the changes or improvements and the timeframe to be followed. Make sure you consult the managers involved to confirm that what you plan to do is feasible in practice and cost effective.

For example, if there is a risk that there might be unauthorised disclosures of sensitive information, you might decide to establish clear guidelines for classifying documents according to their sensitivity and make sure that staff understand that reports containing sensitive information must be locked away when not in use.

7. Formalise and document a Risk Management Plan.

This plan should be clearly documented and include details about:

- the risk management process
- the methods used to conduct the risk assessment
- the strategies to be used to reduce and control risks, and how these strategies are tobe implemented
- timeframes
- reporting requirements
- training programs to be provided for staff
- how the organisation intends to publicise its corruption prevention initiatives.

The risk management plan should be formally presented to the Chief Executive Officer or Board of Directors and should be explicitly linked to other organisational plans such as the corporate plan, individual program unit business plans, the internal audit plan and the EEO management plan.

8. Implement the Risk Management Plan.

You will need to consider the resources required to implement the plan, management responsibilities and the timing of tasks.

All staff should be encouraged to become involved in the risk management process and the plan should be clearly explained and promoted to staff, contractors and suppliers. This will help to give everyone involved with the organisation a clear message that management is taking the problem of corruption seriously.

You should also set up an internal reporting system which encourages staff to report instances of corrupt conduct and provides a database to store corruption reports and statistics.

9. Review and evaluate the risk management plan and its implementation.

You must regularly review your organisation's risks and monitor the effectiveness of your risk management strategies to make sure that the management plan is still effective and relevant.

Organisations change over time and different types of risks will arise which may need to be managed in different ways.

It is important to clearly state who is responsible for monitoring the plan, how often and why they should do a review, and to whom they report their findings.

CHECKLIST

- ❑ Is there up-to-date information about the risks of corruption in each area of your organisation?

- ❑ Have the risks in each area been assessed and ranked for example, as major, moderate or minor risks?

- ❑ Have you evaluated existing system controls?

- ❑ Have you considered the relative effectiveness and cost of different options for managing specific risk areas?

- ❑ Have you developed risk action schedules to manage priority risks?

- ❑ Is there a clearly documented risk management plan?

- ❑ Does the plan include details of how the risk assessment was done and the strategies to be used to reduce and control corruption risks in the organisation?

- ❑ Are all members of staff and contractors/suppliers aware of the objectives and content of the risk management plan?

- ❑ Has the risk management plan been presented to and endorsed by senior management?

- ❑ Has your organisation established a database to store corruption reports and statistics?

- ❑ Are resources available to implement fully the risk management plan?

- ❑ Is the effectiveness of the risk management strategies regularly monitored?

- ❑ Are risk assessments reviewed every 3—5 years?

FURTHER INFORMATION

1. *Risk Management Guidelines*, NSW Public Works Department, Policy Division, November 1993

These guidelines explain the application of the risk management process to capital projects in the public sector. They include several case studies and examples of risk action schedules.

2. *Review of Systems for Dealing with Fraud on the Commonwealth*, Commonwealth of Australia, May 1987

3. *Fraud Control—Developing an Effective Strategy, Volume 2 Attribute 3*, NSW Premier's Department, Office of Public Management & Auditor-General's Office, 1994

This document provides a plan for developing and implementing a comprehensive corruption prevention strategy. Risk assessment is an element of this strategy.

3   CODE OF CONDUCT

INTRODUCTION

A code of conduct is an important management tool which can positively shape the culture of an organisation. Many organisations have found that adopting a clearly defined approach to ethical issues improves the organisation's reputation, helps to develop pride among staff and is good for business.

Staff in any organisation need to behave in a way which promotes public confidence and trust in the organisation. Public sector staff in particular are expected to do their work with efficiency, fairness, impartiality and integrity. There is a community expectation that the modern public sector will use taxation dollars in an increasingly open and accountable way.

A code of conduct sets out the standards of behaviour expected of staff in an organisation and should help them to solve ethical dilemmas they face at work. While there is no set of rules capable of providing answers to all the ethical issues which could arise in an organisation, a code of conduct provides a framework within which staff agree to work. It can also help to prevent corruption by alerting staff to behaviour that could potentially be corrupt or may appear as corrupt to others. For example, the code might include guidance about dealing with conflicts of interest, how to respond to offers of gifts or benefits and what to do if you think corruption has occurred. Although the emphasis should be on encouraging good ethical conduct, staff also need to be given clear information about what may or will happen if they breach the code.

"Here we are, Volume 27, Section 21C. The scratching of the left side of the body shall be the exclusive domain of the left hand."

To be effective, a code must contain more than vague principles. If it is really going to help staff in the conduct of their day-to-day activities, it must include clearly stated principles and examples that are relevant to the particular functions of the organisation. It should also refer staff to other documents in the organisation, such as guidelines, policies and regulations and other mechanisms, such as talking to a colleague or supervisor, which may help them to resolve issues not directly covered by the code. A good code of conduct is an active document to which all staff in the organisation refer–not a document that sits on a shelf in a senior manager's office gathering dust.

In July 1991 the Premier of NSW issued an instruction that all State government organisations had to develop a code of conduct and include it in their 1992 Annual Report. The *Local Government Act 1993* imposed a similar obligation on local government organisations in NSW. By 30 June 1994, every council had to prepare and adopt a code of conduct to be followed by all councillors, members of staff, delegates and contractors.

The NSW Public Sector Model Code of Conduct, produced by the Public Employment Office in 1996, is the minimum standard for all public sector staff in NSW. It provides the basis for organisations to develop their own individual codes.

As an organisation you have to decide:

- what topics you need to include in your code of conduct

- how much information you need on each topic

- how you are going to involve all staff in implementing and abiding by the code

- how often you will need to review the code.

The following case study outlines how the ICAC developed and reviewed its own code of conduct and some of the issues that came out of the process.

CASE STUDY

ICAC Code of Conduct

The ICAC code of conduct was developed over a three month period in 1990 and issued to ICAC staff in September of that year. The development phase involved progressive consultation with senior management, middle management and all other staff.

Since then the code has been included in information packages sent with offers of employment and when new staff join the ICAC they are required to sign a statement confirming they have read and accept the code.

In late 1991 the ICAC decided to review its code of conduct to see how useful it was in helping staff resolve ethical dilemmas at work. The review process was also seen as an opportunity to:

- raise staff awareness of, and familiarity with, the content and role of the code

- collect information about how the code could be improved

- identify strategies for making the code a more active document.

All ICAC staff were given the opportunity to respond, on a voluntary basis, to a three part questionnaire. The first part asked staff to rate how helpful the code was in helping them to solve some hypothetical ethical dilemmas such as:

• You have participated in a conference on the ICAC's behalf and the organisers thank you with an expensive bottle of champagne. What should you do with it?

• You have witnessed unjust or discriminatory behaviour by a colleague during working hours. You feel loyal to your colleague but wonder if you have an obligation to report the behaviour.

Each dilemma matched a specific section of the code. If staff did not find the particular section of the code helpful in solving the dilemma, they were asked to make some suggestions for how this section could be improved.

The second part of the questionnaire assessed when and why staff consulted the code. The third part asked staff to rate the extent to which they agreed or disagreed with a series of statements about the code such as:

• The code is a clear, well-written document.

• There is generally a match between my views and the document's views on ethical conduct.

• There is a conflict between the code and other requirements by which I am bound.

The review questions were designed to assess the quality of the code, not the ethics of the staff using it.

Once the review had been completed, a seminar was held with staff to explain the findings and discuss possible strategies for making the code a more effective and active document.

The main findings of the review were that:

1. The majority of staff found most sections of the code helpful in resolving the ethical dilemmas, but felt they also needed to do something more, such as talk to a colleague, before they decided what to do about an ethical issue they were facing.

2. One section, on security, was considered unhelpful by a significant majority of respondents and needed to be changed. The comments from staff suggested that the section was too vague, needed examples and should refer to written ICAC security policies and procedures.

3. The review process made staff more familiar with the code and therefore more likely to consult it in the future.

4. Giving staff the opportunity to make suggestions for improving the code helped to make it a more active and useable document.

Some of the revisions made were:

- the language was updated
- examples were added
- more explanation was given.

> The ICAC is now looking at how the code might be more effectively packaged to increase its visibility within the organisation and to encourage staff to refer to it for guidance.
>
> If organisations do not make active attempts to discuss ethical issues, a code of conduct can quickly become warehoused and forgotten. The review helped the ICAC to improve its code and identify several strategies for promoting discussion about ethical issues.

GUIDELINES FOR DEVELOPING AND IMPLEMENTING A CODE OF CONDUCT

1. All public sector organisations should develop a code of conduct which provides an ethical framework for the day-to-day work of all staff in the organisation.

If a code is to have real meaning, it cannot be a set of rules imposed from above. It must be developed by each organisation and its staff to meet their specific needs and should promote an ethical culture within the organisation.

Codes should be developed through a consultative process which enables all staff in all locations, not just senior managers at head office, to comment on the issues to be included. Make sure you ask staff to contribute in the early stages of development not just to comment on a final draft.

To help you develop the code, you could:

- seek input from staff of various classifications
- ask branch managers to identify the most common ethical problem areas faced by their staff
- discuss the issues with existing groups such as an employee consultative committee.

You might also want to get input from other public sector organisations that have already developed their own codes, or from external agencies doing business with your organisation. Look at as many relevant codes as you can and decide which parts you find or do not find useful and what issues are relevant to the staff in your organisation.

2. All public sector codes of conduct should include the standard topics outlined in the Public Employment Office Model Code and additional topics which reflect the specific needs of the organisation. Local councils should refer to the Department of Local Government Model Code.

A review of existing codes based on the 1991 NSW Model Code of Conduct completed jointly by Premier's Department and ICAC in 1994, showed that all agencies included in their code of conduct information on organisational values and principles, standards of behaviour, conflicts of interest, gifts and benefits and use of official property, facilities and equipment.

The great majority included sections on:
- how to seek further help or information
- the rights of the public
- discrimination and harassment
- duties that conflict with personal views/beliefs
- decision-making
- public comment
- use of official information
- work outside the public sector
- political work or interests.

The majority included topics such as:
- the rights of the NSW government
- employee rights–relevant legislation
- if you leave the public service.

The review also suggested the need for organisations to consider including information on issues such as:
- ICAC reporting requirements and their effects on staff
- internal reporting systems and protecting employee confidentiality
- occupational health and safety
- customer service
- contact with former employees
- references to other codes of ethics or professional codes of conduct.

3. A code of conduct will include information relevant to almost all public sector organisations but should also include examples that reflect the particular charter, structures or functions of your organisation.

A code should function as an active guide to decision making and provide examples to illustrate the ethical problems that staff might encounter and strategies for dealing with them. Areas of specific concern or risk to your organisation should be carefully considered and included in the code.

For example, a section on Conflicts of Interest could include information about how to recognise a conflict of interest, such as a purchasing officer who gets three quotes for a piece of equipment, one of which is from a relative or friend. It could also include practical information on managing a conflict if it occurs, such as a councillor withdrawing from a debate on a development application in which he or she has a financial interest.

A section on confidential information could:

- Explain that confidential information may be written, stored on a computer, or might be something that you overhear or are told at work.

- Give examples of the improper use of confidential information such as swapping information with staff of other organisations or speculating in property or shares based on information about government decisions.

You might also want to clarify what is and what is not acceptable behaviour in terms of, for example, the use of the organisation's resources. You could include points such as:

- You may use the phone for private calls if they are short, infrequent and don't interfere with your work.
- You may, with a supervisor's permission, use organisational resources such as computer equipment for approved personal purposes.
- If you use organisational equipment for authorised personal purposes, you must make sure that you use it only in your own time, that the equipment is secure and properly cared for, you provide consumables such as paper, and your use does not prevent you or your colleagues from doing the organisation's work.

Staff need general guiding principles but they also need practical help in deciding what to do in a range of situations.

For example, in a section on gifts and benefits different organisations might give specific advice such as:

- You may accept a modest lunch which is offered to a working group, but you should pay for your own lunch if you are the only person who is offered a meal.
- Hospital staff may accept a token gift, such as a box of chocolates or flowers from a grateful patient, but may not accept a gift if it is intended to influence decisions about how work is done or goods are purchased.

The code should also include information about relevant policies, procedures and regulations and how staff can access them if they need more information about a particular area. For example, in a section on Reporting Corrupt Conduct you could put something like: "You will find more information about what should be reported, who to report to and what will happen with the information you provide in the organisation's Internal Reporting Policy document which is in the policy manual."

As a code can never have the answers to every problem of ethics or conduct, some organisations also encourage staff, by writing it in the actual code, to discuss any issues they are concerned about with experienced colleagues and/or supervisors.

4. Codes of conduct must be clearly written in a personal and positive style.

The emphasis of the code should be on positively shaping the ethical climate of the organisation rather than on compliance and discipline.

Guidelines defined mainly in negative terms, such as 'Partiality and discrimination will not be tolerated', tend to take the form of statements about what staff must not do. Although you need to make it clear to staff who breach the code that they may face disciplinary action or other consequences, you also need to stress that staff who act honestly and follow the code can expect the full support of the organisation against unfair allegations of corrupt conduct.

A code that is written in an overly bureaucratic or legalistic style of language is not an effective document because it will not be read or referred to by most staff.

Using a personal tone and pronouns such as 'you' and 'we', helps to focus responsibility and encourages staff to see the code as a document that is relevant to them and the work that they do. For example, a local council could add the following introduction to their code of conduct to promote ownership of the code by all staff.

- Our code of conduct applies equally to everyone in council. It is designed to help us maintain our reputation for integrity and fair dealing and give us a basis for making day-to-day decisions.

5. A code of conduct needs to be actively supported by senior management and the content of the code clearly promoted to all staff in the organisation.

Some organisations ask staff to sign a statement saying that they understand the content of the code and undertake to follow it, while others just ask staff to acknowledge in writing that they have received a copy of the code.

There is, however, no point in establishing a code if you do not back it up with regular training, awareness raising or information sessions. Too often new staff are asked to read and sign a code that is never mentioned again once they start working for the organisation.

In some organisations, you may need to extend this communication role to include elected officials, contractors and organisations that you do business with.

Senior managers need to advocate the core values of the code and guide by example. It is important that managers are seen to abide by the same standard of behaviour that is expected of staff. You may need to provide training so that dealing with ethical questions and discussing them with staff becomes a regular and comfortable part of a manager's job. Managers also need to be aware of the range of sanctions, from counselling through to dismissal or prosecution, that may be applied if staff breach the code of conduct, depending on how serious the breaches are.

6. Organisations need to develop effective methods of promoting their code of conduct.

Codes of conduct need to be active policy documents which make a continuing contribution to the ethical culture of the organisation and the decisions that staff make.

Some possible promotion strategies are:

- attaching a copy of the code to the letter of offer to new employees

- regularly including segments from the code in staff circulars and newsletters

- discussing the code on a regular basis at branch/team meetings

- preparing a video presentation on the code, including some scenarios of possible ethical dilemmas

- putting a copy of the code in the organisation's induction manual and in the staff library

- where appropriate, translating the code into major community languages
- providing staff with access to the code through the computer network
- preparing posters about the code to be displayed in workplaces throughout the organisation
- including a session on the code of conduct as a regular part of staff training courses
- issuing the code to contractors and asking that they conduct business with staff of the organisation in accordance with its content
- informing clients of the ethical standards of the organisation and how they can make a complaint if these have been breached
- publishing the code in the annual report.

Including features of the code in the corporate plan, in enterprise agreements or in employee performance agreements can help to integrate the code's ethical objectives into the mainstream work of the organisation.

7. Codes of conduct must be regularly reviewed and updated when necessary.

You need to monitor and evaluate whether the code remains relevant and how well it is understood and followed by staff. The extent to which it has influenced the ethical culture of the organisation should also be monitored.

When reviewing the code, you should try to involve as wide a range of staff as possible, but stress to them that your focus in the review is on the quality and usefulness of the code, not their personal conduct or ethics.

The information you get from your review should help you improve the actual code and develop better strategies for increasing awareness and use of the code in all functional areas of the organisation.

CHECKLIST

❑ Do you have a code of conduct?

❑ Was your organisation's code of conduct developed in consultation with a range of staff from various areas of the organisation?

❑ Does your code include the standard topics from the Public Employment Office Model Code?

❑ Have you included additional topics to meet the particular needs of your organisation?

❑ Does the code provide a range of practical examples and guidance for dealing with ethical issues?

❑ Is the code written in clear straightforward language?

❑ Does the code have a personal and positive tone rather than a focus on compliance and discipline?

❑ Do you clearly communicate the content of the code to all staff and stakeholders on a regular basis?

❑ Do senior managers actively promote the code and lead by example with regard to ethical conduct?

❑ Is the code actively reinforced throughout the organisation using promotional strategies?

❑ Are new provisions included in the code as the need arises?

❑ What methods do you use to assess the use staff make of the code and how has it affected the ethical culture of the organisation?

❑ Do you regularly review your code of conduct and update it when necessary?

1. *Code of Conduct: Policy and Guidelines*, Public Employment Office, 1996

These guidelines provide a basic framework for organisations to use to develop their own specific codes of conduct.

2. *Review of ICAC Code of Conduct, Corruption Prevention Project*, ICAC, May 1993

The ICAC used a specially designed questionnaire to review its code of conduct and see how useful it was in helping staff resolve ethical dilemmas at work. The review also provided an opportunity to raise staff awareness of, and familiarity with, the code and to identify strategies for making it a more active document.

The findings of the review are relevant to other public sector organisations who should be able to adapt the methods used to meet their own needs.

3. *NSW Code of Conduct Review*, Public Employment Office, 1996

This review was a joint project between the ICAC and the Premier's Department. It looked at the content of a sample of codes from public sector organisations in NSW, how the codes were developed and implemented, and how effective they were in developing an ethical framework for public employment.

4. *Guidelines on Official Conduct of Commonwealth Public Servants*, Public Service Commission, 1987 (Reprinted in 1992)

These guidelines were prepared by the Public Service Commission to promote awareness of ethical issues and to help ensure that public confidence is maintained in the Australian Public Service.

Topics covered include relationships between politicians and public servants, use of official information, participation in public interest groups and financial and private interests.

5. Bosch H, *Corporate Practices and Conduct*, 2nd edition, Information Australia, 1991

This booklet was developed by a range of Australian business community organisations and aims to spread and reinforce high standards of corporate conduct.

The booklet suggests that if organisations accept and follow ethical principles, the need for new regulatory legislation will be reduced.

6. *Code of Conduct (Practice Note 6)*, Department of Local Government and Cooperatives, 1994

This is a model code of conduct that has been prepared for councils to use as a guide when developing their own code of conduct. Topics include: the purpose of a code of conduct, conflicts of interest, gifts and benefits and use of council resources and information.

4   CULTURAL CHANGE: UNDERSTANDING AND INFLUENCING ATTITUDES AND VALUES

INTRODUCTION

The cultural values of an organisation have a strong influence on the behaviour of staff within the organisation. These values affect everything the organisation does and may help or obstruct the implementation of new policies and procedures. Although systems, controls and regulations have an important part to play in a corruption prevention program, corrupt conduct may still not be detected or prevented unless staff understand the need for the corruption prevention program, its aims, support its implementation, and believe that reporting and dealing with corruption is the right thing to do.

The ethical culture of an organisation includes the shared assumptions, beliefs, values and attitudes held by its staff. These attitudes and values operate on a variety of levels and are used by individuals or groups to make decisions, to justify these decisions and to evaluate outcomes. Culture also operates on a subconscious level as a set of assumptions that are taken for granted.
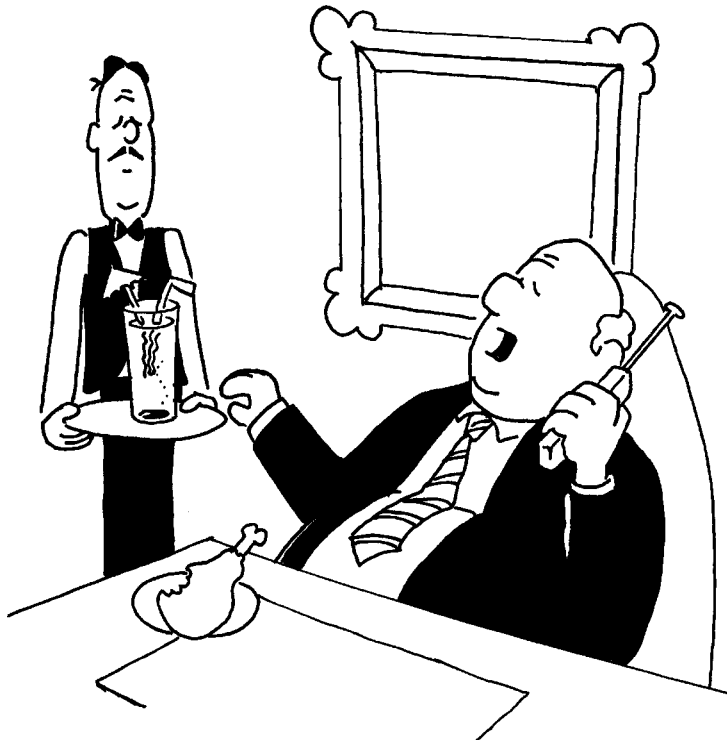
"The staff have no understanding of the enormous cost of wasted paper clips in this office."

Some of the cultural attitudes and values you may find in your organisation are:

- receiving gifts, entertainment or favours is acceptable because it has always been done

- there is no point reporting corruption because nothing will happen and you'll be labelled as a troublemaker

- I would not do that, but it's not my place to report it if someone else does it

- management have treated her really unfairly so you cannot blame her for what she's doing

- you should never dob in your workmates

- it's OK to rip off large government departments

- passing on confidential information doesn't really hurt anyone

- the managers take home their work cars so why shouldn't I take my truck home sometimes

- it is acceptable to employ delaying tactics or to withhold information.

Most people have little trouble identifying black and white examples of corrupt conduct. The staff member who steals large amounts of money or property, falsifies documents or takes a bribe is clearly acting in an unethical and usually criminal way. The more difficult corruption issues are those that fall into the grey area between right and wrong—the situations that seem wrong but appear to be accepted by others. For example, the maintenance supervisor who repairs furniture from home in the organisation's workshop in his lunch break or the manager who was a member of a recruitment panel and finds out, by accident, after the final selection decision has been made that the successful applicant is a close friend of the convenor of the panel.

The perceptions staff have of these situations and the decisions they make, can be influenced by the culture prevailing in the particular organisation or work area.

If your organisation wants to promote an ethical working environment which supports non-corrupt behaviour, you need to understand the organisational culture and why it has developed. You may find multiple cultures, with the cultural assumptions at one level of the organisation being very different to those in the rest of the organisation. You need to be able to 'manage' this culture if you want to implement any changes to work practices and also make sure that new policies are effectively communicated to staff, understood and accepted by them. Part of this 'cultural management' may include changing the attitudes and behaviour of certain groups, articulating and promoting existing values which support ethical behaviour, or helping staff develop strategies for making ethically sound decisions.

CASE STUDY

Roads and Traffic Authority

An ICAC investigation into driver licensing found that corruption was endemic at a number of motor registries in the Sydney metropolitan area. For example, bribes

were being accepted by driver examiners and clerical staff to make sure certain individuals passed their practical driving tests and knowledge tests. Knowledge test papers and answers were being sold and licences were being supplied in false names.

Although many RTA staff were aware that corruption was occurring, they tended to turn a deaf ear to it and say "It's none of my business" or "It doesn't really exist". The limited action taken to combat the problem had been ineffective mainly because it focused on reacting to specific instances of corruption rather than introducing preventative measures.

The ICAC report on the investigation suggested that for any real changes to occur, the RTA had to not only improve their systems but also look at the institutional culture and make sure that RTA management and staff adopted proper attitudes towards corrupt conduct.

Senior management in the RTA recognised the need to tackle these problems and set up a Fraud Prevention Unit. The unit developed a fraud control plan which included; assessing exposures to fraud and corruption, structural changes to decrease the potential for unethical activities and a program to enhance the ethical culture of the organisation.

Discussion groups held with a range of RTA staff, from senior managers to gangs of road workers, showed that the vast majority of staff did not approve of corruption and wanted to see it eliminated from the RTA. Because of this, the organisation decided to implement an Ethics Campaign: 'Support Your Values' and stress that this was more a response to the wishes of staff than a management edict.

As part of this campaign the RTA also:

- produced a code of conduct and ethics to articulate and strengthen positive values in the organisation formally

- issued a policy on corrupt conduct which stressed the commitment of senior management to reducing corruption. It included points such as:
    - all cases of suspected corruption must be reported
    - the identities of people reporting corruption will be protected
    - no-one will be disadvantaged because they have reported corrupt conduct

- held discussion groups for staff to explain the code of conduct and policy and the RTA's position on ethical issues

    Many RTA staff had a cultural antipathy to 'dobbing in' their workmates, so questions such as those below were often posed to members of discussion groups:
    - are you prepared to put public safety on the line to protect corrupt individuals?
    - are you prepared to have your reputations and the reputation of the RTA tarnished for the sake of a few corrupt people?
    - how can we eliminate corruption if everyone keeps quiet about it?
    - do you think silence means tacit support for corruption?

- established new procedures for reporting and investigating suspected corruption

- designed posters which encouraged staff to report corruption and explained the procedures they should follow. These posters were displayed inside all RTA offices

- produced several videos, such as one for licensing staff explaining what you should do if you are offered a bribe. One of the important messages in this video is that if staff follow correct procedures and report all instances of offers of bribes then fewer bribes will be offered.

- attempted to change external influences on staff by putting up posters in all motor registries warning the public that bribery is an offence. A clear message that bribery is both unnecessary and illegal was also included in the Motor Traffic Handbook.

  The objective was also to demonstrate clearly to staff that the organisation understood their position and was taking action to reduce the pressures on them.

  The RTA has evaluated the effectiveness of its Fraud Prevention Campaign and has found that staff are now more willing to speak up about and report suspected corruption, and there is an increased awareness and understanding of ethical issues within the organisation. A majority of staff believe that the RTA is serious about trying to prevent fraud and that management will support them if they report suspected instances of corrupt conduct.

  However, a recent survey also showed that the reach and effectiveness of the campaign has varied across the RTA's workforce. Most Customer Service Officers in Motor Registries are now likely to hold appropriate anti-corruption attitudes but the campaign has not been successful in reaching contractors and field and trades staff, especially in country areas. Also, although 95 per cent of staff interviewed were aware that the code of conduct and ethics existed, only 74 per cent of staff had actually read it.

  The RTA now plans to; develop a new positive anti-fraud message of 'success so far', make its code of conduct more user-friendly, give special attention to targeting at-risk groups of staff, and refresh and reinforce all staff's knowledge of RTA policies in key areas such as privacy of information.

GUIDELINES FOR MANAGING CULTURAL CHANGE

1. Understand the culture of your organisation

You first have to assess the nature of the culture before you can hope to influence or change it. You need to do a 'cultural audit' and try to find out what values and attitudes make up your organisation's ethical culture and what your staff's beliefs are about the way business is done or should be done in this organisation.

These cultural values can be difficult to assess as they are affected by a range of complex and often inter-linked factors.

You will need to consider issues such as:

- how do staff perceive the problem of fraud and unethical behaviour?
- are staff willing to participate in 'minor' corruption?
- would they tolerate or ignore corrupt conduct by fellow workers?
- do staff understand/accept existing policies for dealing with corrupt practices?
- would staff report someone for corrupt conduct even if they were a friend or supervisor?
- do staff feel they are treated fairly by the organisation?
- do they believe that something should be done about corruption or do they accept it as normal/inevitable?
- do staff see any benefits from working in an ethical environment?
- where would they 'draw the line' between acceptable and unacceptable behaviour?
- do staff take ethical considerations into account when they make decisions?

Some of the methods you could use to find out about the culture of your organisation are:

- Review the documents produced by the organisation such as; Annual Reports, newsletters, policies, procedures and management plans.

  For example, a management plan might include; a mission statement, information about the role of the organisation, a list of the organisation's principal activities and objectives, and how the performance of these objectives is assessed.

- Look at statements, records of interview, correspondence and other documents related to any previous investigations into fraud and corruption.

- Hold discussion or form focus groups with a range of staff.

  These groups should give staff the opportunity to raise and discuss the corruption issues that concern them. You may find that different groups in the organisation have very different concerns about, and attitudes to, corruption and how it should be dealt with. Short case studies of potentially corrupt situations relevant to the participants' work area can help to generate discussion.

  For example, the ICAC used 12 brief scenarios in a 1994 survey of NSW Public Sector Employees called ' Unravelling Corruption - A Public Sector Perspective'. Although this was not a discussion group, one of its aims was to find out the attitudes of staff to potentially corrupt conduct and what their individual definitions of corruption were. These 'social' definitions of corruption, based on individual beliefs or community attitudes, are often quite different to the more formal definition of corruption found in the ICAC Act.

  People were asked to rate on a 6 point scale how desirable they thought the behaviour in each scenario was, how harmful it was and how justified they thought it was. They were also asked to judge whether the conduct was corrupt or not and what they would do about it.

Some examples of scenarios used in ICAC survey are:

- – a government employee is offered $300 from a company to accept a tender which is before him. He takes the money to put towards a new stereo system
- – a government employee uses her position to get a friend a public sector job
- – a government employee occasionally takes a box of note pads and pens from the office stores cupboard to donate to the local community centre.

- Use written or telephone surveys and questionnaires.

For example, the ICAC included 12 attitude statements in its survey to try to find out about general attitudes to corruption in the public sector. Three statements were about definitions of corruption, three about the range of behaviours that may be considered acceptable, and six about reporting corruption. Staff were asked whether they strongly disagreed, disagreed, agreed or strongly agreed with each of the statements.

Example of attitude statements used:

- – you cannot call something corrupt if everyone does it
- – the government can afford to sustain minor theft without worrying about it
- – there is no point in reporting corruption because nothing useful will be done about it
- – people who report corruption are likely to suffer for it.

You could also ask staff to rate values such as honesty, fairness, efficiency, respect for people and customer service on two scales. The first scale could be the extent to which they would like to see the value present in their department and the second scale their estimate of the value's actual presence in their department. You might also like to ask them to suggest concrete things that need to happen to move the actual level of the value closer to the ideal.

2. Analyse the culture of the organisation

Once you have identified the prevailing ethical culture of the organisation, you need to decide whether the majority of attitudes and values support the organisational goals you are trying to achieve.

If they do, your strategies will be aimed at articulating and reinforcing these values so they become stronger. For example, the RTA found that the vast majority of its employees did not approve of corruption and wanted to see it eliminated from the RTA.

If existing attitudes and values don't support your corruption prevention strategies, you will need to look at a range of approaches to change them.

It is unlikely that a large organisation will have a uniform culture. You may identify a range of subcultures among staff of different ages or genders or from different levels, regions or functional areas and have to assess how much their

ethical perspectives differ from each other. Separate strategies or approaches may be needed for each subculture.

3. Decide on broad objectives

Setting clear objectives provides a framework and direction for cultural change within the organisation. You must decide what you want to happen and the goals that you want individuals, departments and the organisation as a whole to achieve.

Some of your objectives might be to:

- help staff understand what is meant by corrupt behaviour

- develop ways to articulate and encourage attitudes and values which support ethical behaviour

- help staff understand the issues involved in making ethical judgements

- explain to all staff who is responsible for the ethical standards of the organisation

- make staff aware of the implications of unethical behaviour and its impact on individuals, workplace and professional relationships, the organisation and the public.

It is important to concentrate and build on positive values and stress to staff that they all have a responsibility to and an ability to maintain and raise the ethical standards in their workplace.

Managers and supervisors are accountable for the ethical standards in their areas and will need to develop strategies to ensure that these standards are met. If senior managers do not make a demonstrable commitment to maintaining an ethical tone, if they don't lead by example, a gap between rhetoric and reality will emerge and this will undermine the commitment of staff at lower levels. A manager who displays a high degree of integrity and impartiality, is open and honest and follows and 'models' an ethical code in work related matters will find it much easier to develop these characteristics in his or her staff. However, if staff witness or perceive that managers take advantage of situations or treat staff unfairly, they are less likely to 'play fair' at work themselves.

A strong ethical culture can only be achieved over time, so you need to set a realistic timetable for achieving your objectives. There are no easy answers or quick fix solutions.

4. Decide on Key Messages

You need to decide the best way to achieve your objectives—what you want to say to staff in the organisation and the best way to get this message across. Your main message may be that ethical behaviour is not negotiable—that corrupt or dishonest conduct cannot be tolerated in the organisation. You may want to make clear distinctions between ethical and unethical behaviour and try to reduce the number of grey areas.

Another message might be 'support your values', based on the assumption that most staff in the organisation will play fair if they know what the rules are and

why they exist. This message was used by the RTA as a slogan for a promotion campaign. Or you may decide to focus on corruption as a wider social and community problem. Some organisations have set up an Ethics Committee with a community representative, thus opening up the whole issue of ethical behaviour to external scrutiny.

It is also important to tailor your key messages to meet the needs of different groups.

5.   Decide on the most effective way or ways to deliver the messages

Encouraging staff to behave in an ethical way is more likely to be effective if there is an infrastructure in place to support the behaviour. Similarly systems, policies and procedures will only be understood and complied with if you inform staff about them and promote the desired behaviour. For example, if you encourage staff to report corruption but don't have effective systems and procedures in place to manage the information, then staff are likely to feel there is no point in reporting as nothing will come of it.

If you introduce new policies you need to think how you can tell staff about the policy, help them understand its importance and encourage them to comply with, implement and support it.

A code of ethical conduct is one way of giving a clear message to staff about the standards of behaviour required in the organisation. It should also help staff to decide what the 'right thing to do' is in different situations. The code could include sections on acceptance of gifts, conflicts of interest, security of information and personal and professional behaviour as well as providing guidance on reporting corrupt conduct. The information in the code needs to be presented in an attractive and meaningful way so that staff actually read it and take notice of it.

Think about the audience for your message and what will be most effective way to ensure the message reaches them. For example, there is no point putting an article about the new policy or procedure in an internal newsletter if most of your target group never read the newsletter.

Some possible ways to deliver the messages are:

• posters

  Posters can be a useful way to get key visual messages and slogans across to a fairly wide audience.

  These may be put up to decorate workshops, offices or tea rooms.

• brochures

  To be effective, brochures must be well designed and contain clear, straightforward information. They work best when they are targeted for specific groups of staff.

  You may also need to consider providing information in different community languages.

• audio visual

Videos are expensive to produce but can be very effective if done well. They can also be useful to trigger discussion in a workshop or focus group.

You need to provide the time and equipment for staff to watch the video in the workplace. Videos may also be borrowed by staff and watched at home.

• internal publications

You can use internal publications such as newsletters and information leaflets to explore more complex issues and reinforce the messages on posters or in brochures.

Internal public relations are very important and you may have to make a sustained effort to establish and maintain effective two-way communication between senior managers and staff in the organisation. Staff must feel able to approach supervisors and managers for advice, because communication and disclosure are key elements of any corruption prevention strategy. Managers should be encouraged to see the implementation of cultural change strategies as a positive factor in helping them achieve their management objectives. Putting ethical issues on the agenda for staff or team meetings and encouraging staff to discuss their concerns, is a very cost effective way of promoting the organisation's corruption prevention messages.

6. Plan appropriate training strategies

Education and awareness raising are very important and you may need to design workshops or training sessions to meet the needs of different groups in the organisation. These sessions may be formal or informal and take place on or off-the-job.

These training sessions may be tailored for individual groups of staff such as supervisors or staff with financial delegations, or form part of a more general program such as induction.

Role playing and case study discussion are effective ways to get staff to consider corruption issues.

Staff need the time and opportunity to think through the situations that are potentially corrupt with which they may be confronted with at work. Being able to come to an ethically sound decision based on informed thought is often a better option than referring to an administrative circular for the latest ruling. It is impossible for any organisation to predict all the circumstances where unethical or corrupt conduct could occur, so it is essential that staff have the skills to deal with these situations and make decisions that fit in with the ethical culture of the organisation.

Some of the topics you might want to include in a training session are:

• discussions about the impact of unethical behaviour on individuals, organisations and the community. For example staff morale is affected because no-one likes to work in a department that is seen as corrupt, the organisation loses some of its respectability and the community may react with hostility to all employees of the organisation.

• information about reporting procedures—what staff should do if they

discover or suspect unethical or corrupt behaviour in their work area and the implications for them and others if they turn a blind eye.

- practice in identifying examples of ethical and unethical behaviour and deciding the appropriate course of action. For example, you could ask staff to consider what they would or should do in these situations. Scenarios which can be used to promote discussion in training sessions.

  - An employee who purchases office materials for a public sector organisation has just been appointed Acting Stores Supervisor while her boss is away on leave. After a couple of weeks, she discovers that an employee from the Administration Department is taking typing paper. She confronts him and he says he needs the paper for a part-time job he has had to take because his current salary is not enough to pay his family's bills. The Acting Stores Supervisor sympathises with his difficulties and is not sure whether to report the matter or just hope it doesn't happen again.

  - A water authority employee has been working on plans for the next five year program for sewerage for outlying areas. The authority publicly announces its five year sewerage program but does not give specific details of areas or the dates work will start.

    The employee has a friend who lives in an area that is to be serviced in the short term, although this is not public information. In casual conversation, the friend mentions that he is about to sell his property and move closer to the city. The employee considers suggesting to his friend that perhaps he should postpone the sale of his property for a few months.

    The employee is unsure what he should do so he asks a couple of colleagues at work what they think. Their response is—you should tell him because he's a mate, but if you took money for the information that would be wrong. The employee is still unsure what he should do.

- some strategies for staff to use when faced with an ethical dilemma, that is, a situation where it is not immediately clear which is the correct and ethical thing to do.

  You could pose questions such as:

  - what would be impartial to everyone concerned?
  - would you feel obliged in any way because of your action or decision?
  - how would others see what you have done?
  - if your action was reported on the front page of the daily newspaper, would it be seen as the correct thing to do or a public service rort?
  - how would you feel if you were the organisation's spokesperson defending the situation on a TV current affairs show?

Try to encourage staff to express ethical values in behavioural terms, for example what would you do and what would the consequences be for other people.

Make sure any ethical dilemmas or scenarios you use are relevant to and customised for the particular groups of staff involved. Some groups may like to

think up their own ethical dilemmas and analyse and discuss these during the training session.

Sydney Water uses the following hypothetical in some of its fraud awareness training sessions. It found that a lot of discussion was generated and by the end of the exercise participants have raised most of the important ethical principles that would help an employee make his or her decision. It is a good example of 'Where do you draw the line?'.

CASE STUDY

> **Hypothetical Case Study Used by Sydney Water**
>
> A Sydney Water Manager called Bob is offered a small diary at Christmas time by an outside company. Bob is not engaged in any tendering process with this company at the moment, but the company may be a potential supplier in the future.
>
> Do you see any problems with Bob accepting the diary?
>
> The company then contacts Bob and invites him to attend a half day seminar on the latest developments in their technology. Bob believes that the course would benefit him in his work and it is related to his area of expertise. The course costs nothing, includes morning tea and is held in Sydney.
>
> Should Bob be allowed to go?
>
> Now the course is a full day course which includes lunch. It still costs Bob nothing and is related to work.
>
> What are the pros and cons about whether Bob should go?
>
> The people running the course actually cannot make it down to Sydney, but they are running the same course in Brisbane. The company realise Bob has set aside the day in his diary, so they offer to fly Bob up to Brisbane to attend the seminar, give him lunch and afternoon tea and fly him back the same day. It won't cost Sydney Water anything.
>
> Do you see any problem with Bob attending?
>
> The seminar is now a two day seminar in Brisbane and the company has offered to fly Bob up, put him up overnight, provide him with meals, and then fly him back. The content of the seminar is related to Bob's work and it would be useful for him to attend.
>
> Should Bob attend the seminar?
>
> The seminar is run by the same company only now it is being held in San Francisco. The company has offered to fly Bob over for the one week seminar, provide accommodation, meals and expenses and fly him back to Sydney.
>
> Are there any problems with Bob attending?
>
> Now the company has offered to also give Bob tickets to Disneyland and a week in Florida staying at the Busy Palms Motor Inn after the seminar is over. All costs will be met and then the company will fly Bob home again.

> Most of the group usually don't object to Bob accepting the diary but by the end of the story most people say that it is not acceptable for Bob to go to Disneyland and stay in Florida.
>
> Some of the issues raised are:
>
> - obligations and expectations
> - the perceptions of others
> - you don't get something for nothing
> - you can offer me any freebie and it won't corrupt me
> - why not take the course if it is free
> - if the seminar is so worthwhile, would Sydney Water be willing to pay for it?

7. Implement Your Plan and Monitor and Evaluate Its Effectiveness

You will need to decide who will administer the plan and where the funds will come from. Some organisations have a Fraud and Corruption Awareness campaign managed by the Audit Branch, while others set up a special unit to develop and implement corruption prevention strategies.

If you decide to prepare a code of ethical conduct or set up an ethics committee, who should be involved?

You must also monitor the effectiveness of the strategies you decide to use in reinforcing or changing attitudes and behaviour within the organisation. Are the messages you are sending out about ethical behaviour being received and/or accepted?

For example:

- how many staff have read the code of conduct or seen the promotional video?
- what short term and long term impact is training having on staff attitudes to, and awareness of, corruption?
- what areas need further improvement?
- are new employees aware of the issues?
- are there certain groups in the organisation such as contract staff that have not been exposed to important anti-corruption messages?
- does practical advice on what to do if you suspect corrupt conduct need to be more readily available?
- how far have you succeeded in establishing and building a culture committed to the prevention of fraud and corruption?

You may need to check that the tighter procedures aimed at preventing corruption have not become too bureaucratic and lead staff to believe that they sometimes have to avoid procedures and cut corners to get the job done.

You also need to make sure that by highlighting corruption you don't unintentionally imply that the workforce is generally less than honest and create a situation where staff 'live down' to a poor reputation.

It may be hard to keep the initial momentum going, but focusing on results should help you plan your ongoing strategies. With the ever present changes in the public sector, there will always be new ethical issues for staff in your organisation to deal with.

- ❑ What do you know about the ethical culture of your organisation?

- ❑ What values and attitudes do staff in the organisation have?

- ❑ Are there different subcultures in the organisation with different ideas about ethical behaviour?

- ❑ Does the culture of the organisation support the corruption prevention goals you are trying to achieve?

- ❑ Have you reviewed all existing policies which may have an impact on fraud and ethical behaviour?

- ❑ Does your organisation have a Code of Ethical Conduct?

- ❑ Have you documented your objectives for cultural change?

- ❑ Have you thought how these objectives apply to various groups within the organisation?

- ❑ What strategies are you going to use to achieve these objectives?

- ❑ What different methods do you plan to use to get your key messages across?

- ❑ Have you developed any training sessions or held any discussion groups?

- ❑ Have you evaluated how effective your strategies have been in developing and promoting an ethical culture?

1. *Unravelling Corruption: A Public Sector Perspective Research Report No. 1,* ICAC, April 1994

This study surveyed NSW public sector employees' understanding of corruption and their attitudes to taking action about potentially corrupt activities they may see in their workplaces.

The report provides an insight into some of the personal or social factors which may have an impact on the effectiveness of systems put in place to combat corruption.

2. *Ethics & Accountability in NSW Health, A Workshop for Managers and Supervisors*, NSW Department of Health, 1994

3. *Enhancing the Ethical Culture: The Approach Adopted by the Roads and Traffic Authority of New South Wales*, Australian Journal of Public Administration, Vol 52, No. 4, December 1993, Davidow B & Williams J,

5 RELEASE OF CONFIDENTIAL INFORMATION

INTRODUCTION

Public sector organisations in NSW hold increasing amounts of information about private citizens and business enterprises. A great deal of this information is either personal, politically sensitive, or has commercial value.

Developments in information technology mean that confidential information about private individuals may be just a keystroke away from thousands of people working at different levels in government and private organisations. Computer linking and data matching techniques enable complete profiles to be created in moments from isolated pieces of information. The individual whose 'information privacy' is invaded may have no control over how or to whom the information is released or what it is used for.

An ICAC report in 1992 on the *Unauthorised Release of Government Information* found that confidential information from a variety of State and Commonwealth government departments had been sold and exchanged on a regular basis for many years. Public sector employees had earned large amounts from selling information and for some the untaxed proceeds of this illicit trade exceeded their legitimate income. For example, an RTA officer earned over $2000 a month from selling information to a private inquiry agent and a police officer admitted that he could earn more than $500 by sitting at a police computer terminal for an hour and a half extracting information for his private investigator clients.

The most commonly sought information in the state public sector are drivers' licence and motor vehicle registration particulars, police records and the records of electricity suppliers. The information sold or inappropriately released is often an address to be used to recover a debt, serve a summons or repossess a motor vehicle. Sometimes it is a person's criminal history or details of their movements into and out of the country that is sought.

Insurance companies, banks and other financial institutions have created a ready market for this information and private inquiry and commercial agents have provided the necessary link between the buyers and providers. These groups often try to justify their illegal trade by saying, for example, that it is in the public interest to locate absconding debtors. This 'end justifies the means' argument overlooks the fact that the personal details obtained often relate not to the debtor but to family members, that the information is sometimes used for other and more sinister purposes and also ignores the corrupting effect the trade has on public sector staff and their organisations.

If this corrupt trade in government information is to be eliminated, organisations need to:

- draw a clear line between information that is available to the public and information that is confidential

- make public information available readily, quickly and cheaply

- make sure that confidential information is properly protected.

The public who deal with your organisation have the right to expect that the personal information they provide will be treated confidentially and their privacy will be respected. This expectation includes inadvertent or unintentional releases of confidential information.

The following case studies show some of the problems that may occur when the security of confidential information is not properly managed.

CASE STUDIES

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1. NSW Police Service

In 1993 a confidential police document, the Major Active Criminals List (MAC), was found during a search of premises occupied by people suspected of drug offences. Five days earlier, a known criminal had given a police officer a copy of the same document.

The MAC list included details of known criminals and their associations, the type of activity for which they were known or suspected, and information on police intelligence. The document provided the reader with a summary of what police knew (and therefore by implication did not know) or suspected about people on the list and some of the methods police had used in the past against identified criminals. It was crucial that this type of information be kept confidential and not found in general circulation.

The MAC list was generated and stored as a word processing file on a computer network within the State Intelligence Group. The document was held in a common

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mailing file which meant that over one hundred police officers had access to it. The system did require the user to enter a password to log in, but there was no way of auditing use of the system and finding out who had accessed or printed out a particular file.

The computer system had the capacity to restrict or control access, but the MAC list was placed on a general non-restricted area of the system. Little thought had been given to who should or should not have access to the list so therefore, almost by default, everyone did.

The unauthorised release of the MAC list is a good example of how a lack of procedures for classifying and handling important and sensitive information and a poor understanding by senior staff of the need for such procedures, can create an environment which allows corrupt conduct to occur.

The Police Service has since developed a Code Of Best Practice and Guidelines for the Management of Information and Information Systems which include privacy and security guidelines for all police information systems. They have also prepared a video on issues related to privacy, confidentiality and the security of information and all staff now have to sign a 'Statement of Responsibility' for these issues.

2. ICAC Investigation - Unauthorised Release of Confidential Information

The ICAC report on the *Unauthorised Release of Government Information* also dealt with a former police officer who was operating a private investigation agency. The officer had resigned from the force in 1987 but still kept in contact with his former colleagues who often gave him information he needed for his debt collection work. When questioned, the police officers concerned did not believe what they were doing was wrong because the private investigator was a mate. The attitude was that police and private investigators were all working towards the same end.

The private investigator also had a contact who knew someone who worked in the Department of Motor Transport. The contact worked in another government department but regularly rang up the Department of Motor Transport and obtained licence information. The staff member in the Department of Motor Transport did not get paid for the information he released. He assumed it was one of the duties of his position as it was accepted practice when he started work in the department.

The information was subsequently sold to the private investigator who in turn sold it on to a finance company.

The unauthorised release of information can constitute corrupt conduct even if there is no payment or other benefit given in return. This case study shows how informal systems of information exchange develop. As the end user of the information, the finance company allowed and encouraged corrupt conduct to occur. They must have known, or should have known, that the information could not have been properly obtained but they still allowed the practice to continue. Their 'justification' was that they needed the information for supposedly legitimate purposes and they either could not get the information through the proper channels or the process was too slow or expensive.

GUIDELINES FOR DEVELOPING POLICIES AND PROCEDURES TO PREVENT THE UNAUTHORISED RELEASE OF CONFIDENTIAL INFORMATION

All organisations should develop and implement a policy for handling the information they collect and effectively communicate this policy to all staff. The policy should include details of how its objectives are to be met, resources needed and specific action timeframes. It should help staff understand what information is to be publicly available and what information is confidential and needs to be protected. Without such a policy, some staff may be genuinely unaware of what information they can properly disclose and to whom.

1. **All information held by the organisation must be classified according to its public availability or confidentiality on the basis of a consistent set of principles.**

The classification may be affected by the nature of the information, the basis on which it was obtained, for example, was it volunteered or demanded and why it was collected. A basic privacy principle to apply is that if information is needed and given for a specific purpose, it should only be used for that purpose and should only be disclosed to people who 'need to know it' for that same purpose.

Data classification schemes may help you decide on the different levels of protection needed for information of varying degrees of sensitivity. The organisation's policy on handling confidential information should be made available to the public.

2. **Information that is available to the public should be provided readily, quickly and cheaply.**

If there are delays in access to publicly available information, a parallel illicit trade may develop with speed as its selling point. For example, some inquiry agents may prefer to buy the information they need if they can get an immediate answer over the telephone rather than use proper channels and wait several days.

3. **Organisations should develop and implement procedures to protect all information classified as confidential.**

These procedures must be consistently applied throughout the organisation but may need to be adapted to meet the practical requirements of different sections. Access to certain areas may need to be restricted and records kept of any after hours access, even by authorised staff.

Some important controls to consider in computer based systems include; secured back ups, secure access to disk libraries, passwords and ensuring all information is deleted when systems are transferred.

Think about the risks in your organisation and the likelihood and extent to which information could be released or compromised by unauthorised additions, changes or deletions and the effects on the organisation and members of the public if this happened.

4. **Access to protected information should be strictly limited and rules for the use of passwords should be clearly communicated to all staff and strictly followed.**

All confidential information in the organisation must be protected from access by unauthorised people.

Staff handling confidential reports or other documents need to be aware that such documents should not be left lying around and should be stored in lockable containers.

Electronic data is usually protected by providing authorised staff with their own passwords. The security value of passwords is reduced if staff use well known nicknames that are easy for others to guess, openly tell others their password or allow them to use it, don't change their password regularly, or leave a program they have accessed with their password open for others to use. If staff are transferred, suspended or on extended leave, their passwords should not remain operative.

The attitudes of staff are often as much a factor in the security of information as the systems and procedures developed.

A good example of this is a police officer who did not change his password even after it had been used by someone else for an improper purpose. Changing the password was a simple procedure involving a few keystrokes and would only have taken a few minutes. He later found himself under investigation because his password had again been used by others to get information that had been sold to a private inquiry agent. This officer was not corrupt himself, but his failure to follow proper procedures gave someone else the opportunity to engage in corrupt conduct.

5. Computer systems which hold confidential information should provide full audit trails to identify who has accessed information.

One way to increase the accountability of security systems is to develop systems which show the time and date of access, the person making the inquiry, the type of inquiry made, and the actual record or document accessed. For example in the RTA all transactions which modify registration licensing data are fully logged.

These trails should be routinely monitored to check if unusual or suspiciously frequent inquiries are being made by any one person or of any particular record.

6. Organisations should have clearly defined guidelines for the authorised release of confidential information.

All department to department releases of confidential information should be made through designated officers and formal records should be kept of each release. Organisations requesting information should have to prove the legitimacy of their enquiry and provide proof of identity. If the request is urgent, this could be done by fax. There should be no unofficial arrangements for sharing or exchanging government information or instances where information that is carefully guarded by one organisation is freely released by another.

Your organisation will need to decide who is going to be allowed access to information about its clients, what level of access different groups will have, and what information will be made available and for what purposes.

For example, the RTA allow law enforcement and national security agencies access to all their data, but the Red Cross and the Sydney Eye Hospital only have access to organ donor records and insurers can only access Compulsory Third Party Insurance data. The RTA will only release information about driving licences and motor vehicle registrations to people such as solicitors who give a formal undertaking that the information will only be used for approved purposes.

Competing rights and interests have to be considered and balanced or weighed against each other when procedures are being developed.

For example, if the police are investigating a serious crime and need to locate a suspect or witness who is about to leave the country, most people would agree that disclosure of the address to the police by the government department would, in this case, be justified. However, the same information would not be released to any police officers who could not establish their need and right to know. Staff need clear criteria and protocols for dealing with these types of situations.

Access to information, even in emergencies, must be based on official policy and procedures and not be dependent on unofficial personal contacts or one-off decisions. A summary of the organisations's guidelines for the release of confidential information could be included in a publicly available document such as the annual report.

7. **The level and cost of security processes should be related to the value of the information, the harm that may be caused if it is released and the potential for corrupt conduct to occur.**

Although information systems can be made more secure, the monetary costs and the costs in terms of response times and inconvenience to the public must also be considered.

Think about the impact of an increased level of security on the smooth operation of the business of your organisation and weigh up the advantages and disadvantages. You may decide to introduce new security measures on a pilot basis and monitor their impact.

It is also important to consider intangible costs such as embarrassment to the organisation and the personal costs to members of the public if confidential information about them or their families is released.

8. **Information systems should be provided and used by organisations in ways that respect the rights and legitimate interests of others.**

Security measures should not create a barrier to the implementation of Freedom of Information, but should also not overlook principles of privacy.

Organisations should give all providers of personal data clear information about what data they must provide and what is optional, and give them the opportunity to correct the data on a regular basis if it is likely to change over time.

There must also be procedures for securely disposing of data when it is no longer needed by the organisation.

9. Senior staff must be accountable for the security and integrity of all documentary or electronic information accessible to staff under their control.

Explicit policy statements should be made about who is responsible for the security of data and what should be done if staff suspect that there has been an unauthorised use made of confidential information.

Most organisations have sections in their code of conduct covering disclosure and use of confidential information by staff.

The ICAC code of conduct includes examples of possible improper uses of information such as:

• speculation in property or shares based on information about government decisions or the affairs of a company

• swapping confidential information with staff of other organisations

• providing information from official records to anyone outside the Commission for reasons not directly related to the work of the organisation

Some organisations ask staff to periodically sign a 'Certificate of Compliance' in which they give a specific undertaking that they have understood and agree to comply with the organisation's guidelines for the release of information.

10. All staff must be aware of the importance of security in information systems and the need for ethical conduct in the use of these systems.

You can make information systems as secure as possible, but it is the users' attitudes and interactions with the system which will ultimately determine success in withstanding corruption. New policies and procedures will never be effective if staff do not understand their importance or support their implementation.

In some organisations, the practice of releasing confidential information may be part of an entrenched culture of 'helping your mates', with staff not necessarily being paid for the information or realising that there is anything wrong with what they are doing. You may need to work at changing this culture and make it clear to staff that they are custodians of confidential information and that it is unethical to access this information for any purpose other than that for which the data is provided and kept by the organisation.

11. The effectiveness of the security of information systems must be regularly reviewed to make sure that all confidential information is being appropriately protected.

If your organisation is restructured or its responsibilities are changed or expanded, information security provisions may also need to be reassessed. Other factors such as the introduction of new legislation, developments in technology, or staff turnover will also have an impact on security requirements.

Monitoring mechanisms should make sure that any breach of security is promptly identified, reported and rectified.

CHECKLIST

- ❑ Does your organisation classify the information it holds as either confidential or freely available to the public?

- ❑ Do the public have quick and easy access to information that they are entitled to have?

- ❑ Has your organisation developed and implemented policies and procedures for protecting confidential information?

- ❑ Is access to confidential information strictly limited?

- ❑ Is the level of security appropriate for the type of information being protected?

- ❑ Do staff understand and follow correct procedures for using passwords?

- ❑ Do your computer systems provide full audit trails?

- ❑ Does your organisation have clear guidelines for the authorised release of confidential information?

- ❑ Are all staff aware of the need for ethical conduct in the handling of personal and confidential information?

- ❑ Are senior staff held accountable for the security of all information that their staff have access to?

- ❑ How do you find out if confidentiality has been broken?

- ❑ Do you regularly review information security measures to make sure that all confidential information is appropriately protected?

1. *Report on Unauthorised Release of Government Information, Volume 1*, ICAC, August 1992

This report exposed a widespread corrupt trade in confidential government information and identified more than 40 NSW public officials who had received payment for the unauthorised release of information. It explains the circumstances within which this corrupt trade developed, including the readiness of ostensibly responsible and reputable members of the community to support and encourage it.

The report stresses the need for the increasing amount of confidential information held by government departments to be effectively managed, and recommends that unauthorised dealing in government information should be made a criminal offence.

2. *Just Trade, Proceedings of a seminar on the ICAC Report on the Unauthorised Release of Government Information*, ICAC, October 1992

The Just Trade seminar brought together senior managers of state government organisations which collect information, representatives of the banking, insurance and legal industry, and commentators on privacy and technological issues.

It provided a forum to discuss and promote the important issues raised in the 1992 ICAC Report, and gave organisations such as the RTA and the NSW Police the opportunity to show what they had done, or what they planned to do, to end the illicit trade in government information.

3. *Report on Investigation into Matters Relating to Police and Confidential Information,* ICAC, June 1994

This report investigated the conduct of police officers in accessing and releasing two confidential NSW Police documents.

It highlights key issues in the security of information such as restriction of access, computer security, adequate record keeping, the attitude of senior staff, and the importance of staff training in, and awareness of, security practices and procedures.

4. *Security of Information Systems, Management of Information Technology, Statement of Best Practice #6*, Office of Public Management, NSW Premier's Department, September 1994

This statement aims to raise public sector awareness of information security risks and the safeguards available to meet these risks. It also provides a framework to help organisations develop and implement practices and procedures for the security of information systems.

5. *"Information Protection"*, RTA Video, Roads and Traffic Authority (available from RTA Audit Section)

This video was developed to make staff more aware that organisations like the RTA, are entrusted by the public with certain information and that this trust should be respected. It also tries to increase the empathy of staff for the providers of personal and/or confidential information.

6. *Australian Privacy Charter*, Australian Privacy Charter, Council University of NSW, 1994

This document provides a definition of 'privacy' and details 18 principles in the form of general statements. They provide a benchmark against which the practices of business and government, and the adequacy of legislation and codes, may be measured.

6   SPONSORSHIP

INTRODUCTION

Sponsorship of the public sector is a way of buying government goodwill and is part of many private sector marketing programs. It can help raise the private sector organisation's corporate profile and is one way for them to market their products and increase sales. Being associated with a government organisation with a good reputation is good for business.

Organisations such as museums, art galleries and zoos have relied on sponsorship for many years, but increased pressures on public funding and the requirement for public sector organisations to raise some of their own funds, have led many other government organisations to turn to private sector sponsorship for support in delivering services or providing particular programs. This trend is likely to continue and it is important that the sponsorship process is well managed and opportunities for corruption do not develop.

Sponsorship of the public sector means a contribution in money or kind, generally by the corporate sector or private individuals, in support of a public sector activity. For example, a private sector organisation might supplement a government department's motor vehicle fleet or contribute towards heating a local council swimming pool.

Sponsorship does not include the selling of advertising space, joint ventures, consultancies or gifts or donations which receive a simple acknowledgment. However, if the donation comes with a requirement that the government organisation returns some benefit to the private sector organisation, then this is sponsorship.

This module deals with the sponsorship of public sector activities. Public sector organisations seeking sponsorship may need to develop a more commercial approach and place a higher value on the full range of benefits received by sponsors.

Sponsorship can involve benefits passing between the public and private sectors and is a subject that can create a lot of public discussion and controversy. For example, the controversy about fast food chains being associated with schools.

Before entering into a sponsorship agreement, you need to consider the relationship between your organisation and the sponsor. Decisions about sponsorship must be made on impartial and objective grounds. Government assets, such as an organisation's goodwill, must be sold for the best price under appropriate terms and conditions.

For example, hospitals are generally respected public organisations and enjoy public goodwill. If a drug company sponsors a hospital health program, there is an association with the hospital's good reputation. The hospital has therefore sold at least part of its goodwill for the price of the sponsorship.

If all public sector organisations have a sponsorship policy which protects their assets by clearly stating the conditions of any sponsorship arrangement, there is less risk of corruption and partiality or conflicts of interest arising or that the reputation and standing of the organisations will be damaged by the perceptions of such conduct being involved. The sponsorship policy should also have procedures which make sure that probity and integrity are built into the decision making process.

The following hypothetical case studies give examples of some of the issues faced by public sector organisations and show the benefits of having a clearly documented sponsorship policy.

CASE STUDIES

1. Hypothetical Example

A public agency responsible for monitoring pollution had for some time been sponsored by a large financial institution. The agency had a written agreement with the institution and a well established sponsorship policy. The policy stated that the agency was unable to accept sponsorship from an organisation which was likely to be subject to inspection or regulation by the agency. The financial institution was deemed a suitable sponsor and unlikely to fall into this category.

Twelve months after the sponsorship began, the financial institution became the major shareholder in a piggery located on the shores of a NSW river but did not inform the agency of its purchase. The agency had to inspect the piggery after receiving reports of waste material from the piggery being pumped directly into the river and causing pollution. When it heard of the investigation, the sponsoring institution contacted the agency to express its concerns that, as a major sponsor, it was being subject to such an inspection.

The agency referred the sponsor to the sponsorship agreement and its policy on sponsorship by organisations subject to its inspectorial and regulatory functions and the sponsorship agreement was subsequently terminated.

In this case, the agency's sponsorship policy clearly stated the conditions of sponsorship. The agreement with the institution included provisions for the termination of sponsorship if the agency's impartiality was compromised or could be seen to be compromised.

Case Study 2. Hypothetical Example

A government owned museum had been sponsored for some years by Fastcars, a leading manufacturer of cars. The museum was planning a major exhibition on 'The History of Transport' and was including a display of vehicles from Slowcars showing its manufacturing development over the past 80 years. Slowcars was chosen because of its expertise in developing a particular type of motor.

Fastcars, the museum's sponsor, was unhappy about the display of its competitor's products and asked that the Slowcars display be replaced with one showing its own vehicles. Fastcars' vehicles had not been included in the display because it was a relatively modern manufacturer and did not fit in with the theme.

Because the museum had a sponsorship policy, it was able to refer to the section which covered such a situation. Fastcars agreed that it did not have the right to demand the removal of the display, but asked that its own products be considered for inclusion in a future display. Museum staff told Fastcars that decisions on displays would be made on a case by case basis, independent of any sponsorship arrangement. All discussions between Fastcars and the museum staff were clearly documented.

GUIDELINES FOR DEVELOPING POLICIES AND PROCEDURES FOR MANAGING PRIVATE SECTOR SPONSORSHIP

Public sector organisations need to develop a specific sponsorship policy to cover all their current and future sponsorship agreements with the private sector.

This policy should anticipate problems that might arise because of your organisation's particular functions and provide strategies for resolving any potential sponsorship dilemmas.

The policy should include details such as:

- the aims and objectives of sponsorship for your organisation

- the ethical issues to be considered in a sponsorship relationship

- guidelines for deciding on appropriate and acceptable sponsors, assessing potential sponsorship projects, and negotiating a sponsorship agreement

- appropriate forms of acknowledgment for sponsorship and benefits for sponsors

- monitoring and reporting responsibilities

- accountability mechanisms to make sure that information about the full nature and extent of sponsorship agreements is available to the public

- evaluation methods for assessing the outcomes of a sponsorship project for both the sponsor and your organisation.

A good policy heightens awareness of probity issues within your organisation and protects your organisation and its staff from being compromised. It reduces the risk that corrupt conduct will occur and provides a useful starting point for potential commercial sponsors.

The following guidelines cover the range of issues you need to consider when developing sponsorship policies and procedures. Guidelines 1—6 deal with general ethical issues and guidelines 7—11 cover more practical considerations.

1. **Public sector organisations should not enter into a sponsorship arrangement that could limit the organisation's ability to impartially carry out its full range of functions.**

This principle needs to be fully understood by all sponsors. The sponsorship agreement should clearly state that your organisation must and will continue to carry out its public functions fully and impartially regardless of the sponsorship arrangement.

You should also explain the procedures that will be followed if the sponsorship relationship does affect the organisation's public responsibilities. For example, if an attempt is made by a sponsor to influence the organisation's functions, the sponsorship arrangement will be automatically reviewed and, if necessary, terminated.

2. **There should be no conflict between the objectives and mission of the sponsor and the sponsored organisation.**

For example, a local health authority should not accept sponsorship from a tobacco or alcohol company, and an educational institution should not accept sponsorship from an organisation whose products might detract from the quality of student learning.

You may also need to check, within practical limits, the objectives and activities of a sponsor's parent company or subsidiaries in case there is a conflict there, or else seek some kind of assurance from the sponsor.

Sponsorship agreements should be regularly monitored and include provisions for contingencies such as a change in the sponsor's corporate mission, objectives or functions.

3. **Public sector organisations should not seek or accept sponsorship from people or organisations whose businesses they may have to inspect or regulate.**

It must be made clear in all negotiations and documentation that a sponsorship relationship must not and will not affect how the sponsored organisation exercises its regulatory or inspectorial functions.

For example, a sporting team from a government department asks for donations from local businesses and acknowledges the sponsors on the team's shirts. Some of these local businesses are inspected by staff who play on the team and it may be difficult for these staff to treat their sponsor in an objective and impartial manner. It is easy to see how there could be a conflict of interest and that a lack of public confidence in the integrity of the organisation could develop.

Most organisations have little difficulty dealing with situations where an organisation might fall under their regulatory jurisdiction. The Environment Protection Authority, for example, would not accept sponsorship from a chemical company operating in the state.

However, local government is in a difficult situation because every local business could potentially lodge a building or development application or have their premises checked by a health inspector. Local councils therefore need to prepare policy guidelines to manage such contingencies and make sure that these guidelines and are clearly spelt out in all sponsorship agreements and readily available to the public.

To manage this situation the council could:

- cancel or suspend the sponsorship arrangement; and/or
- refer the development application to another council or private consultant for them to provide an independent assessment.

Whatever the procedure used to deal with such conflicts, it is important that the procedure is documented and clearly understood by both parties before a conflict arises. This can be done by the inclusion of appropriate provisions in the sponsorship agreement.

4. **Sponsorship of a public sector organisation or activity should not involve explicit endorsement of the sponsor or the sponsor's products.**

Although the association between a government organisation and a sponsor may imply that the government endorses the sponsoring organisation and its products, you need to make sure that your organisation maintains its impartiality and its responsibility to independently inspect and certify commercial organisations and their products.

Check that your sponsorship agreement sets out the range of ways that the sponsor can use the sponsorship relationship and allow you to review specific uses, such as advertisements or magazine articles, before they are released to the public.

5. **If sponsorship involves the provision of a sponsor's product, organisations should evaluate the product objectively against operational criteria to make sure that it meets their needs.**

Be careful not to accept and use a sponsor's products or service simply because they are offered free of charge. You must assess the product as if you were paying for it. The products may not be appropriate or suitable for your organisation and accepting them could mean that you are implicitly endorsing something that is sub-standard or inappropriate.

6. **Public sector staff must not ask for or receive any personal benefits from a sponsorship.**

You should include this principle in your organisation's code of conduct, and make sure that all staff responsible for making sponsorship arrangements are aware of the ethical issues involved and understand the importance of following the correct procedures. You may also need to give information about your sponsorship policy to all contractors and consultants who do work for the organisation.

If a benefit is provided by a sponsor on a corporate basis, such as paying for the food or accommodation at a conference, it is important to make sure that there is no personal benefit being given to a public official as an individual as this could be bribery.

7. **Sponsorship opportunities should be made as widely known as possible and organisations should not limit themselves to invited sponsors.**

Sponsorship opportunities are public assets with a monetary value and organisations should test the market and get the best return possible. It is also important that all businesses have an equal opportunity to have access to the goodwill and other potential benefits generated by a sponsorship agreement.

When and in what form you 'test the market' for sponsorship depends on the nature of the market. If there is a vigorous interest in sponsorship the process should be competitive, but if interest is restricted to potential sponsors with highly specialised characteristics you might use more direct methods. If your organisation decides not to offer sponsorship opportunities widely, you should clearly document your reasons for doing so.

It is often felt that tendering for sponsorship opportunities is an impractical method compared to direct negotiation with present or prospective sponsors. Finding sponsors can be difficult and there is often a need to respond quickly to potential sponsorship opportunities. An open tendering process, especially if it involves lots of submissions for small amounts, may cost a lot to administer and defeat the purpose of raising additional funds through sponsorship.

The 'red tape' argument may well be applicable to small projects, such as a bush fire brigade getting a new radio from a local company, but open tendering may be both appropriate and necessary for large projects.

Another alternative is to advertise your organisation's general willingness to accept sponsorship by calling for expressions of interest. This provides you with a wider field of potential sponsors and allows you to canvass a range of sponsorship ideas and proposals. You can then negotiate directly with selected organisations that have responded to the initial call.

8. **Sponsorship proposals should be assessed against predetermined and publicly available criteria.**

These criteria must be set and documented before you call for expressions of interest and should not be changed midstream, unless the circumstances change and all potential sponsors are given an equal opportunity to revise their proposals in the light of the changes.

For the process to be fair, the criteria must be circulated to all organisations which submit an expression of interest.

Staff assessing proposals must apply the criteria in a consistent and impartial manner and must fully document the assessment process, including any discussions with potential sponsors and reasons for all the decisions made.

The module on *Purchasing* in this guide also provides some useful corruption prevention guidelines on calling for and assessing proposals.

9. Sponsorship arrangements must be based on a written agreement between the sponsor and the sponsored organisation.

A sponsorship agreement is a contract and should be administered by staff with training in basic contract administration and experience in commercial dealings with the private sector.

A clear agreement is a good way of preventing future problems because it formally records the exact nature of the benefits to the sponsor and the sponsored organisation before the start of the sponsorship relationship. It also serves as an important accountability mechanism because it ensures that the full extent and nature of the sponsorship arrangements, including any exchange of benefits, is visible to the public.

The written agreement should clearly set out:

• the benefits, including economic benefits, available to the sponsored organisation and to the sponsor
• any benefits available to the sponsor's employees and their relatives
• the form or forms of sponsorship acknowledgment which will be available
• the acceptable ways the sponsor can use the sponsorship relationship
• the term of the sponsorship and any conditions affecting renewal
• the consequences of changes which may occur over time, such as a shift in the relationship, new policies, new corporate missions or objectives
• financial accountability requirements
• provisions for terminating or suspending the agreement
• any special conditions which may apply.

10. All sponsorship arrangements must be approved by the CEO or another designated senior officer and details of the arrangements included in the organisation's annual report.

The amount of information you include in the annual report will depend on the significance of the sponsorship and the level of funds involved.

If your organisation has offices or sections spread around the State, you must make sure that regional managers have appropriate delegations to deal with sponsorship on a local level, and that a reporting system is in place to enable you to collect the necessary data for the annual report.

Any boards or volunteer committees must be given the necessary training and support to enable them to effectively administer sponsorship arrangements.

11. Organisations must make sure that sufficient resources are available to enable the promised sponsor benefits to be delivered.

These benefits should be related to the level of sponsorship and be consistent with other public sector sponsorship arrangements.

You also need to provide the sponsors with enough information to enable them to evaluate the outcomes of the sponsorship arrangement for them, and have your own procedures for measuring the benefits your organisation has received from the sponsorship relationship.

CHECKLIST

- ❑ Does your organisation have a sponsorship policy which is readily available to all staff and potential sponsors?

- ❑ Do the sponsor's objectives and mission conflict with those of your organisation?

- ❑ Could the sponsorship arrangement limit your organisation's ability to carry out its functions impartially?

- ❑ Is the potential sponsor likely to be inspected or regulated by your organisation?

- ❑ Do you have a statement in the sponsorship agreement which allows for review or termination of the sponsorship if the sponsor affects on your organisation's functions or standing?

- ❑ Does the sponsorship involve explicit endorsement of the sponsor's products?

- ❑ Is anyone in your organisation likely to benefit personally from the sponsorship?

- ❑ Does your organisation make its interest in sponsorship as widely known as possible?

- ❑ Are there predetermined criteria?

- ❑ Have the criteria been made available to all potential sponsors?

- ❑ Are all sponsorship proposals assessed against the predetermined criteria made available to potential sponsors?

- ❑ Do you have a written agreement for each sponsorship which is signed by both parties?

- ❑ Are all sponsorship arrangements approved by your CEO or other designated officer?

- ❑ Do you, and the sponsor, evaluate the benefits of the sponsorship for your own organisation?

- ❑ Are staff aware of your organisation's sponsorship policy?

FURTHER INFORMATION

1. *And Now a Word from Our Sponsor...Review of the ICAC Sponsorship Principles, A Corruption Prevention Project*, ICAC, September 1995

This report summarises the evaluation of the ICAC sponsorship principles published in 1993 and includes a revised set of principles for managing sponsorship agreements.

2. *Sponsorship and the NSW Public Sector*, ICAC, September 1995

This brochure is designed for private sector organisations who may be thinking about entering into a sponsorship agreement with a NSW government department or local council.

3. *Sponsorship Principles - A Discussion Paper*, ICAC, August 1993

This paper explores the ways that different public sector organisations approach sponsorship. It looks at attitudes to getting and managing sponsorships, the problems managers have and the management strategies they adopt.

4. *Contracting for Services - The Probity Perspective*, ICAC, May 1995

This report gives guidance relevant to running a tender process. This process is similar to selecting the most suitable sponsorship proposal.

5. *Procurement and Disposal Guidelines*, NSW Premier's Department, 1995

A comprehensive resource to all who have responsibilities for purchasing in the public sector.

7   INTERNAL REPORTING SYSTEMS

INTRODUCTION

A significant proportion of the corruption identified is detected solely as a result of reports from staff within public sector. However, research shows that corruption in the public sector is significantly under-reported. There are a number of reasons for this, one of which is a widespread fear of reprisals among public sector employees.

Under the *Protected Disclosures Act 1994*, public officials who report corrupt conduct, maladministration or serious and substantial waste are protected from reprisals. For a person to be protected under the Act, the disclosure must be reported through a defined appropriate channel.

Expectations of what will be achieved by reporting corruption also influence the frequency of reporting. A study of public sector attitudes carried out by the ICAC in 1994, revealed a widespread belief that nothing useful would be achieved by reporting corruption.

A good internal reporting system is an important source of information. It will enable appropriate people within your organisation to receive and act upon reports of corruption, maladministration and serious and substantial waste and implement continuous organisational improvement. To be effective, the reporting system you set up must also address the attitudes which deter staff from reporting corrupt conduct. A workplace culture needs to be established in which integrity is encouraged and reports of corruption are acted upon. Effective reporting channels will be of little value if people do not believe there is any point in using them or fear reprisals if they do.

"The butler did it."

Some important issues you need to consider when setting up an internal reporting system in your organisation are:

- Are all staff aware of the alternative ways of reporting corruption?
- Will staff feel comfortable using the alternative channels?
- Are staff's fears of reprisals taken seriously?
- Are managers aware that they are responsible for making sure that staff who make disclosures are not victimised?
- Will confidentiality be adequately maintained?
- Are disclosures adequately followed up and systems put in place to prevent similar situations from arising in the future?
- Are there adequate disciplinary measures in place to deal with staff found to be or have been engaged in corrupt practices?

The following hypothetical case studies highlight the importance of having effective internal reporting systems within an organisation.

CASE STUDIES

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1. Hypothetical Example

This first case study describes what can happen when reports of corruption are not managed well. Those who wish to report suspected corrupt conduct face pressures which must be recognised and dealt with by those responsible for receiving and acting upon reports.

Bill Smith was a Project Manager with a large public sector organisation. He noticed that financial records showing fund payments were being inappropriately allocated in an apparent attempt to hide significant over-spending on one particular project. Funds were even transferred to projects for which Bill Smith was responsible. He suspected that the funds were being transferred by the person responsible for the over-budget project.

Mr Smith reported the inconsistencies to a senior manager. Nothing was heard by Mr Smith for several months, during which time the suspicious transfers continued. An investigation into the allegation was in fact completed by the organisation's auditors. It was found that poor accounting procedures had allowed incorrect transfers to be processed but that corrupt conduct had not occurred. Changes to the system were recommended but took a long time to be implemented.

Mr Smith however, believed there was a management cover-up and became quite distressed. He began to complain quite openly and sent letters to the CEO and other staff. He focused on his concerns about management rather than on his own work responsibilities.

Bill Smith's manager, who was aware of Mr Smith's disclosures noticed his reduced productivity and pressured him to perform better. Mr Smith interpreted this as harassment and became agitated, telling the manager to 'mind her own business'. The manager felt she could take no course of action except to initiate disciplinary proceedings for unsatisfactory performance of duties and failure to follow reasonable requests.

This was taken by Mr Smith to be further victimisation as a result of the earlier disclosure about contract funding. His work performance further deteriorated and he seemed to become obsessed with the idea that he was being harassed.

Later, he was sent for a psychological assessment to determine whether he was fit to continue duties. The results of the assessment were not given to Mr Smith, who believed this was because they showed he was quite normal. The tests did reveal that Mr Smith suffered severe stress. The report said that he would be fit to resume duties if the stress could be managed.

This scenario shows how quite simple matters with apparently straightforward solutions can become major disturbances within the organisation.

> Careful and sensible management of this situation may have averted the escalation of the problem. Providing the employee with broad details of investigation findings and giving an explanation of what had been done to prevent any corrupt conduct indicates a commitment to eliminating corruption. This action can provide assurance to those who make disclosures that they have been taken seriously.

> To be effective, an internal reporting policy should detail responsibilities and help ensure disclosures are handled effectively. It should help protect people who make legitimate disclosures and lead to organisational improvement.

2. Hypothetical Example

Bob works as a fitter in the engineering division of a large government department. He is a conscientious worker and his performance reports have always been above average.

The manager of the engineering division is a vintage car enthusiast and president of a car club. He often brings his vehicle parts to the workshop and has some of the fitters work on them.

Bob had no major objection to this for a time. However, his view began to change when the manager's *foreign order* jobs started to take priority over the real work of the section. When the manager began to approve overtime so that the fitters could finish work on his cars, Bob decided that something should be done.

Bob was afraid of what might happen to him if he reported the matter. He thought that the manager would give him the worst jobs and that life in general would be made difficult for him. As well as this, Bob knew that he would be ostracised if the other fitters found out that he had caused them to lose their overtime.

Bob carefully considered his options and decided to make a disclosure to the Director of Audit, in accordance with his organisation's internal reporting system. This way he would receive protection under the Protected Disclosures Act.

The Director of Audit listened to Bob's concerns and promptly informed the CEO of the organisation, but did not say who had made the disclosure. The CEO fulfilled her statutory duty by reporting to the ICAC and issued a directive that no foreign orders were to be done in the organisation's workshop. The engineering manager was disciplined for his actions.

1. Internal reporting systems should provide all staff with the full protection of the Protected Disclosures Act.

When an internal reporting system is set up it must clearly state that the procedures were established for reporting corruption, maladministration, and serious and substantial waste under the Protected Disclosures Act. This will ensure that the protection of the Act is available to staff in the organisation.

The Act provides protection by imposing penalties on a person who takes detrimental action against another person in reprisal for a protected disclosure.

For a disclosure to be protected under the Act, it must be made by a public official to either:

- the head of his or her organisation
- in accordance with established reporting procedures within the organisation
- direct to the ICAC, Ombudsman or Auditor-General or in certain circumstances to
- a journalist or Member of Parliament.

Disclosures made to a journalist or Member of Parliament are only protected if they have already been made to the appropriate authorities and these authorities have:

- decided not to investigate
- decided to investigate but not completed the investigation within six months of the original disclosure
- investigated but not recommended any action
- failed to notify the person making the disclosure, within six months, of whether the matter is to be investigated.

Also, the person making a disclosure to a journalist or Member of Parliament must have reasonable grounds for believing the disclosure to be substantially true. To receive protection, the disclosure must actually be substantially true.

In local government, individual council's internal reporting systems may authorise staff to make protected disclosures directly to councillors or authorise councillors to make disclosures to the Mayor or General Manager. Because of the limited jurisdiction of the Auditor-General over local government, disclosures concerning serious and substantial waste made directly to the Auditor-General may not be protected under the Protected Disclosures Act.

The protection of the Act does not cover disclosures that are frivolous or vexatious, that primarily question the merits of government policy or are made in an attempt to avoid dismissal or disciplinary action.

It is important that all staff in the organisation understand the provisions, requirements and obligations of the Act and the protection it provides.

2. The organisation's internal reporting policy must be clearly documented and communicated to all staff.

If your internal reporting system is to be effective, staff need to know how it operates, whom they should contact with information and what will be done with it. They also need to understand the accepted definitions of key concepts such as; corruption, maladministration and serious and substantial waste, and what constitutes a frivolous, vexatious or insubstantial disclosure.

The policy should stress the important role of all staff in reporting suspected corruption, identifying areas where it might occur and supporting those who make legitimate disclosures. It should provide supervisors and others responsible for handling disclosures with a reference source detailing their responsibilities, including the need to ensure information received leads to organisational improvement. When responsibilities are documented, accountability is increased.

The policy should explain that detrimental action taken against a person in reprisal for making a protected disclosure is a punishable offence and a breach of discipline for staff employed under the *Public Sector Management Act 1988*. It could also include information about rights of appeal to the Government and Related Employees Appeal Tribunal or the Department of Local Government.

Making people aware of the policy is very important. The document must be in plain English and distributed to all staff. Summary brochures and posters can also be used to advertise the commitment to protecting those who make legitimate disclosures. Sessions on the internal reporting system should be included in induction and management training.

In local government, documented information about internal reporting systems and procedures should be made available to all councillors as well as staff.

3. Information about the internal reporting system should be included in the organisation's code of conduct.

A code of conduct is a guide to ethical expectations and responsibilities in the workplace. It should refer to the internal reporting policy and cover an employee's responsibility to report corruption, how to make a report and where to get further information. The confidentiality accorded to disclosures should also be emphasised.

4. Organisations must provide at least one alternative channel for confidential internal reporting in case of a fear that the supervisor is corrupt or ignoring corruption by others.

The normal reporting channel is to the person's supervisor. The alternative channel may be direct to a designated unit within the organisation, to a nominated senior manager or to the chief executive.

Some organisations have disclosure coordinators who have similar responsibilities to supervisors and act as a clearing house for all disclosures.

Organisations that are spread over a wide geographical area may need different arrangements to a single-site agency. For example, an appropriate person within each regional office may be given responsibility for receiving and dealing with disclosures.

The model at the end of this module provides an example of common reporting channels.

5. Organisations must make sure that all levels of management understand and comply with the internal reporting policy.

Managers and supervisors who receive disclosures are responsible for either investigating or appropriately referring the disclosure and for making sure that follow up action is taken to ensure work systems are improved. Staff are more likely to report matters which concern them if they see improvements in the workplace as a result.

Managers are also responsible for making sure the person who made the disclosure is not disadvantaged and that no detrimental action such as unwarranted transfer, psychological tests or demotion is taken.

Chief executives and managers have an important role in positively influencing organisational culture and implementing reforms as the result of a disclosure. The principal officer (usually the CEO) has an obligation to report to an investigating authority, for example, the police or ICAC respectively if criminal or corrupt conduct is suspected.

6. Organisations must make sure that confidentiality is maintained unless it is unreasonable or impossible to do so.

Confidentiality helps to protect both those who make disclosures and the subjects of the disclosures. Staff are more likely to come forward with information if they know a genuine disclosure will be treated confidentially.

However, an assurance of complete confidentiality cannot be given. Sometimes, for example, it may be necessary to reveal the source of a disclosure to the person who is the subject of the disclosure in order to investigate the matter fully or for reasons of natural justice and it is important that staff understand this limitation.

Your policy on internal reporting should explain the responsibilities of staff handling complaints and include disciplinary provisions if there is an unnecessary breach of confidentiality.

7. Information about the internal reporting system should be included in training sessions for all staff.

Everyone in the organisation needs to know what they should report and the correct procedures to follow.

Induction training is the ideal time to explain the internal reporting system to new staff and segments on reporting system responsibilities should be incorporated into regular training programs for managers and supervisors.

8. Organisations should review the effectiveness of their internal reporting system on a regular basis.

You should probably carry out an initial review after the first six months and then subsequent reviews every two years. The review should make sure that reporting channels are effective and appropriate, complainants are not being disadvantaged and any problems have been or are being rectified.

You need to look at the total number of disclosures, how many were inconclusive or insubstantial and what action was taken in respect of each.

The review should include a survey of staff attitudes towards, and experiences with, the internal reporting system and how credible they feel the whole process is. You might also want to analyse the cost-effectiveness of the system—how efficient it is, what organisational improvements have resulted from the system, plus any detrimental effects it has had.

After the review has been done, any recommended improvements to the internal reporting system should be agreed upon and implemented.

Reporting system model for the Protected Disclosures Act
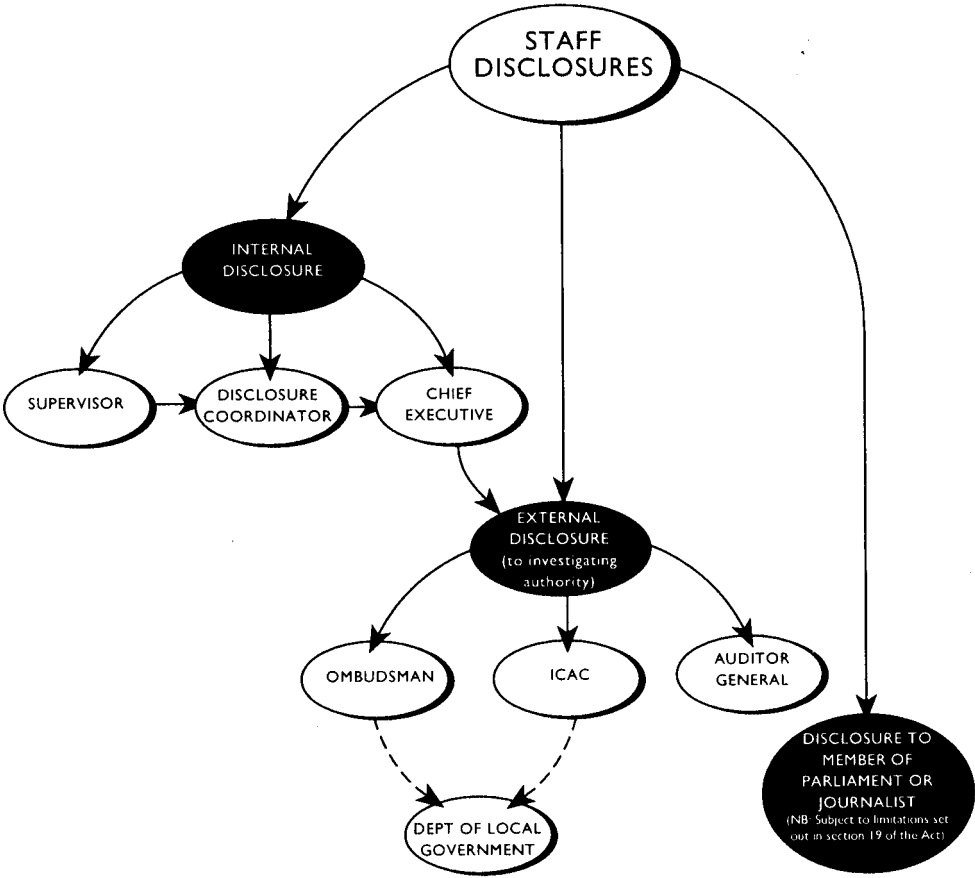
CHECKLIST

❑ Does your organisation have a policy on the internal reporting of corruption?

❑ Has this policy been clearly documented and communicated to all staff?

❑ Does your internal reporting system provide staff with the full protection of the *Protected Disclosures Act*?

❑ Is information about the internal reporting system included in your organisation's code of conduct?

❑ Do you have at least one alternative channel for confidential internal reporting?

❑ Do all staff understand their rights and responsibilities under the internal reporting system and the necessary steps to take when making a disclosure?

❑ Is there a commitment from management to make sure that those who make a disclosure do not suffer detrimental action?

❑ Do you have procedures to make sure that disclosures of corrupt conduct are acted upon and organisational improvements implemented?

❑ Does your internal reporting policy include provisions to discipline staff who unnecessarily breach the confidentiality of a disclosure?

❑ Do you include information on the internal reporting system in your induction program for new staff?

❑ Do all staff have access to relevant training on internal reporting procedures?

❑ Are there regular reviews of the effectiveness of your organisation's internal reporting system?

1. *Protected Disclosures Act (NSW) 1994*

2. *Internal Reporting Systems*, Auditor General, ICAC, NSW Ombudsman, 1995

This booklet addresses in more detail the same subject matter as this module.

3. *Complaints Management in Councils: Practice Note No. 9*, Department of Local Government and Co-operatives, 1994

This Practice Note has been prepared to assist local government in the management and handling of complaints. It has been designed for use by management and staff to plan, develop and implement practices and procedures to meet local circumstances.

4. *Grievance and Dispute Handling Procedures*, NSW Premier's Department, Public Employment Office, 1992

The organisation's internal reporting system should be developed with reference to grievance and dispute handling procedures. These guidelines were being revised at time of printing this document.

5. *Effective Complaint Handling Guidelines*, NSW Ombudsman, 1995

These guidelines provide a model approach to handling complaints from customers or clients.

6. *Management of Underperforming Officers*, Management Advisory Board, 1992

This report relates to Commonwealth employment and provides a framework for managing underperforming staff. It identifies the responsibilities of the individual, the supervisor and the executive in managing staff performance.

Available from Commonwealth Government bookshops

7. William De Maria, *Queensland Whistleblower Study 'Unshielding the Shadow Culture' and 'Wounded Workers'*, University of Queensland, 1994

These studies provide insights into the experiences of those who have reported wrongdoing in their organisation.

8 REPORTING TO THE ICAC

INTRODUCTION

The Independent Commission Against Corruption was set up under an Act of Parliament in 1988 to expose and minimise corruption in the NSW public sector. The ICAC charter covers all NSW State government departments, statutory authorities, local councils, members of Parliament and the judiciary and other public authorities and public officials.

Under Section 11 of the Act the Ombudsman, the Commissioner of Police and the principal officers of public authorities must report suspected corrupt conduct to the ICAC. This gives the ICAC information about possible corruption and system weaknesses in the NSW public sector and allows us to focus our work on exposing and minimising corruption. The information may also be used as the basis for conducting an investigation.

Both the ICAC and public sector organisations benefit when corrupt conduct is fully and properly reported. The ICAC is able to improve integrity in the NSW public sector and prevent corruption more effectively. Organisations become more aware of corruption issues and have the opportunity to receive help and advice from the ICAC and develop strategies to improve their performance.

Effective reporting to the ICAC depends on organisations having adequate internal reporting procedures and an emphasis on ethical behaviour in all the work that they do.

"A very nasty bit of corrosion indeed, sir, but this is the Independent Commission Against Corruption."

All the information the ICAC receives is assessed according to established criteria and then a decision is made as to the best way of dealing with it.

Only a small number of matters reported to the ICAC undergo full investigation, including a public hearing. Some form the basis of corruption prevention advice and project work aimed at improving public sector practices, while certain other matters are referred to more appropriate authorities. Some of the factors we consider are:

- how specific is the information?

- does it indicate systemic corruption or isolated instances of corrupt conduct?

- could the information be more appropriately handled by another agency?

Your organisation will be told, as soon as possible, of the ICAC's decision about any information your organisation provides under s11 of the ICAC Act. We take care to keep information confidential when that is appropriate, but cannot guarantee complete confidentiality in all circumstances. We may need to refer the information you provide to another agency or the matter may go to a public hearing.

Reporting to the ICAC is a statutory duty. If you are unsure about any aspect of this duty, including whether your organisation is covered by the Act, please contact the Assessments Section at the ICAC.

CASE STUDY

ICAC Investigation

The following case study highlights the importance of organisations promptly reporting suspected corrupt conduct to the ICAC.

In May 1990, the NSW Police Service passed on to the ICAC some documents which came from the office of Stephen James, a private inquiry agent. The documents suggested that Mr James had access to confidential information from records maintained by the Police and the Roads and Traffic Authority.

The report from the Police appeared, on the surface at least, to be a relatively simple and straightforward matter. In fact, two years later, the ICAC's investigation had exposed a widespread corrupt trade in confidential information worth more than $1 million and involving at least 250 people.

NSW public officials were found to have been heavily involved in selling and exchanging information for many years. There was evidence that the illegal trade extended beyond Police and RTA records to include confidential information from Commonwealth agencies such as the Department of Social Security, Telecom, Australia Post, the Department of Immigration, the Australian Taxation Office and Medicare.

This investigation made an important contribution to the protection of confidential information held by government. It also showed how important it is that suspected corrupt conduct is promptly reported to the ICAC. This one report, concerning a particular incident, led to an investigation which exposed serious, widespread, systematic corruption.

> Through such reporting, the Commission can develop a clearer view of opportunities for corrupt conduct and establish that what appeared to be an isolated occurrence was really 'the tip of the iceberg'.

GUIDELINES FOR DEVELOPING PROCEDURES FOR REPORTING TO THE ICAC

1. All reporting to the ICAC must be done by the principal officer of the public authority.

The principal officer is the head or chief executive of the organisation or the person who usually presides at its meetings. In local government the General Manager is the officer responsible for reporting to the ICAC.

The statutory duty to report corrupt conduct is imposed on the principal officer and cannot be delegated. If another person is acting as principal officer, for example, during periods of leave, the duty is imposed on that person.

You are obliged to report not only conduct by public officials but also anyone outside your organisation who improperly tries to influence how your staff carry out their duties.

The following are examples of the questions to ask when preparing a report to the ICAC. You may also include other information which you consider relevant.

- Does your report clearly state the nature of the suspected corrupt conduct and when it occurred?

- Does the report include details of the number of people involved or suspected of being involved in the conduct concerned?

- Does the information include the names, positions and location of those involved?

- Are there indicators that the problem may be systemic?

- Does your report include advice as to action taken or proposed to be taken in relation to this matter?

- In matters where it is possible that a criminal offence has taken place, has the NSW Police Service been advised?

- Does your report include a contact officer from your organisation and your reference number?

2. Any suspected corrupt conduct must be reported to the ICAC immediately.

You do not need absolute proof, but you do need sufficient evidence to establish whether or not there are 'reasonable grounds' for suspecting that corrupt conduct has occurred. This means that there is a real possibility that corrupt conduct is or may be involved.

Your report should be in writing and must be sent to the ICAC regardless of any duty of secrecy or other restriction on disclosure.

Under the ICAC Act, conduct does not amount to corrupt conduct unless it could constitute or involve a criminal offence, a disciplinary offence, or reasonable grounds for dismissing a public official.

The definition of corrupt conduct the ICAC works to is set out in the ICAC Act.

3. Organisations may arrange with the ICAC to report minor matters of corruption on a monthly or quarterly schedule.

You must have approval from the Assessments Section at the ICAC before you use a schedule format.

Minor matters suitable for this type of reporting are:

- matters normally dealt with by the internal audit function of the organisation which usually do not need to be referred to an external agency. This can include minor criminal offences, which should also be referred to the Police.

- matters of misconduct by public officials which are likely to result in a warning, transfer, demotion or counselling.

It is important to remember that reports of suspected corrupt conduct should be passed on to the ICAC as they come to your notice. When reporting minor matters by schedule, the ICAC must be notified on the next schedule after the corrupt conduct is suspected. Do not wait until after your organisation has completed a thorough investigation. The ICAC will not necessarily commence an investigation if others are already doing so, but we need to be informed of the matter and of the action being taken.

4. Organisations must have effective internal reporting systems to make sure that all corrupt conduct is reported to the principal officer.

The *Internal Reporting Systems* module in this guide provides more information about establishing an effective internal reporting system which complies with the Protected Disclosures Act.

5. All reports of suspected corrupt conduct should be handled confidentially.

Principal officers making reports to the ICAC should not make the content of the report public or advise the person or persons involved in the suspected corrupt conduct that a report is being made. The issuing of press releases in this regard is contrary to good practice.

Confidential handling of reports helps avoid prejudicing the investigation or causing unnecessary hurt or embarrassment to innocent people.

If the complaint comes from within the organisation, confidential advice to the complainant that the matter has been referred may be warranted.

If the complaint came from outside the organisation, the ICAC prefers that the complainant is not told of the referral until after the ICAC has advised of a decision on the matter. The Commission will normally advise the Principal Officer of a decision and may also contact the complainant directly.

6. Reports made under Section 11 of the ICAC Act are protected against defamation action.

Because you are performing a statutory duty, reports made to the ICAC in good faith are protected from defamation action even if the suspicion on which the report is based turns out to be groundless.

CHECKLIST

❑ Does your organisation have an effective internal reporting system?

❑ Is the principal officer of the organisation aware of his or her duty to report corrupt conduct to the ICAC?

❑ Is all suspected corrupt conduct reported to the ICAC, either immediately or in accordance with a pre-arranged schedule agreement?

❑ Do staff in your organisation understand what constitutes corrupt conduct?

❑ Do your staff know the procedures to follow (outlined in the internal reporting system policy) when reporting suspected corrupt conduct?

❑ Does the organisation have procedures to ensure information received can be used to improve the organisation's procedures?

❑ When the report to the ICAC is prepared, have you included advice as to any action taken or proposed?

❑ Has your organisation considered arranging with the ICAC to report minor matters of corruption on a monthly or quarterly schedule?

❑ Are there procedures in place to ensure that all reports of suspected corrupt conduct are handled confidentially?

❑ Have you made sure that all matters involving a criminal offence have also been reported to the Police?

1. *Guidelines for the Reporting of Corrupt Conduct*, ICAC, 1994

These guidelines explain the obligations that public sector organisations have under the ICAC Act and how these obligations should be met.

They stress the importance of organisations contacting the ICAC if they need any further information about, or help with, reporting corrupt conduct.

2. *Independent Commission Against Corruption Act 1988*

3. *What Happens to Your Information*, ICAC

This pamphlet answers important questions concerning the processing of information received at the ICAC. For example, the role of the ICAC, what constitutes corrupt conduct, how it is decided to investigate a matter and what feedback complainants receive.

4. *Internal Reporting Systems*, Auditor-General, ICAC and NSW Ombudsman, 1995.

This document provides assistance to organisations when setting up and reviewing systems for reporting corruption, maladministration and serious and substantial waste. It also provides a summary of the *Protected Disclosures Act* 1994.

5. *General Information Brochure*, ICAC, 1996.

9 CONFLICTS OF INTEREST

INTRODUCTION

The community has a right to expect that public sector staff and elected officials perform their duties in a fair and unbiased way and that the decisions they make are not affected by self interest or personal gain.

Conflicts of interest arise when public sector staff or officials are influenced, or appear to be influenced, by personal interests when doing their jobs. The perception of a conflict of interest can be as damaging as an actual conflict, because it undermines public confidence in the integrity of the organisation involved and its staff.

Conflicts of interest generally fall into two categories: pecuniary and non-pecuniary interests.

Pecuniary interests involve an actual or potential financial gain. They may result from a staff member, or a member of his or her family, owning property, holding shares or a position in a company bidding for government work, accepting gifts or hospitality, or receiving an income from a second job. Money does not have to change hands - the benefit could be an increase in the value of a property because of a favourable rezoning decision, or the selection of a particular tenderer for a contract.

For example, if a person with an application before council makes a donation to a company in which a councillor is a partner, there is a potential conflict of interest because the councillor might be influenced by the donation when considering the application. There is a risk that the councillor's personal interest in the company could conflict with his or her public duty to assess the application on its merits.
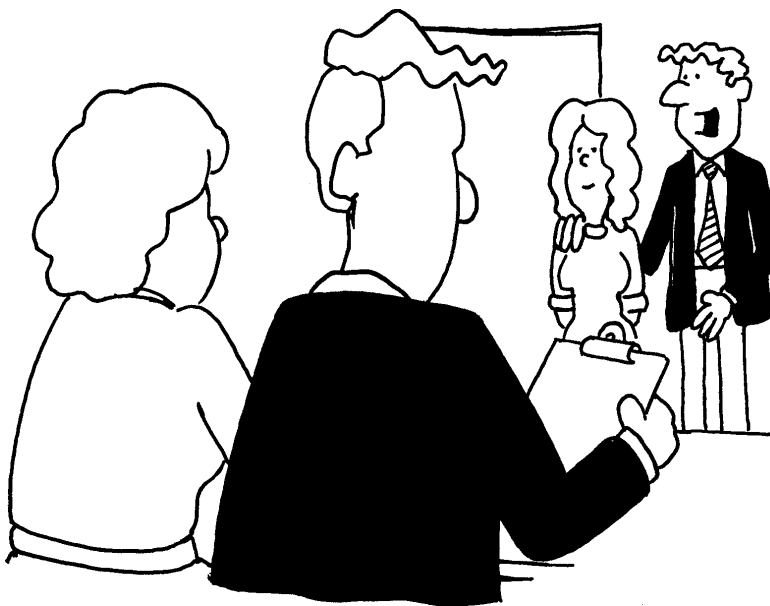
"Let me introduce the next applicant, Miss White–Please take a seat darling."

1

Non-pecuniary interests do not have a financial component. They may arise from personal or family relationships, or involvement in sporting, social or cultural activities. For example, if a council town planner, with a child at the local preschool, draws plans on a voluntary basis for some extensions to the preschool, she has a personal interest in the plans being approved and this could influence the impartial assessment of the application by her.

Similarly, if a government organisation that gives grants to sporting organisations has a senior staff member whose daughter is a star player in a group, which is applying for funds, the staff member has, or could be perceived to have, a personal interest in the outcome of the grant application.

It is not always easy to decide when personal interests and public duty are, or might be, in conflict with each other. The test is whether it is likely that the person could be influenced by the personal interest in carrying out his or her public duty, or that a fair and reasonable person may believe that he or she could be so influenced.

Everyone has interests that are personal to them or someone close to them, and for public sector staff it is inevitable that sometimes these interests may conflict with the decisions they make, or the actions they take, at work. Having these interests is not necessarily a problem - it is how they are dealt with that is important.

The integrity of the organisation and its staff will be protected and the risk of corruption occurring will be reduced if your organisation has policies and procedures for managing potential conflicts of interest. You should make sure that all staff know what they should do when faced with a conflict.

EXAMPLES OF POTENTIAL CONFLICTS OF INTEREST

The following examples show some of the areas within an organisation where conflicts of interest may occur. No solutions are provided here. Options to resolve conflicts of interest are provided in Guideline 6 later in this module.

1. Tendering and Purchasing

An organisation has advertised for a firm to supply and fit office equipment. A member of the panel assessing the tenders has shares in one of the firms which has submitted a bid.

This may affect, or it may reasonably be suspected that it could affect, his or her ability to make an unbiased decision.

2. Staff Recruitment

A member of a selection panel has a close relationship with one of the applicants for the job. This conflict of interest could bias, or could reasonably be expected to bias, the decision of the panel.

3. Secondary employment

Two police officers have second jobs as bouncers at a nightclub. Local residents have complained to the police several times about noise levels at the club and

problems with drunks and underage drinking, but no action appears to have been taken.

The impartiality of the police officers has been compromised as it may be perceived that they are using their influence to make sure the club is not investigated.

4. Dealing with former public officials

A senior employee of a government department awarded a particular firm several valuable contracts. Shortly after awarding the contracts, he resigned from his job and went to work for the firm.

It could appear that the offer of employment was a personal benefit, in return for favours given. Other competitors might be disadvantaged if staff at the agency were influenced by their previous colleague and continued to award contracts to his firm. This situation must be carefully managed to ensure favouritism or the perception of favouritism does not occur.

5. Gifts, benefits and hospitality

A regular supplier offered the purchasing officer of a government department a free weekend for two at a beach resort. The officer's impartiality when dealing with the supplier could be compromised if she accepted the offer.

6. Local Government Planning Approvals

A senior council planner often had to advise applicants on how to make their development applications comply with council's codes. He suggested to some applicants that they should use the services of a local architectural firm where his brother worked. Although the necessary work was mainly done by staff at the firm, the planner was sometimes paid to prepare the drawings himself.

The planner's job was to act in the public interest and to provide impartial advice about council's policies. By recommending his brother's firm, he put the private interests of his brother and himself before his public duty.

A similar conflict can occur when councils have a dual role as developer and regulator. Councils that decide to develop a piece of land they own may make decisions in their own commercial interest and unfairly disadvantage other developers. It may be difficult for councils to be impartial when they are effectively having to assess their own applications.

7. Licensing

A health inspector is friendly with the owner of a local butcher's shop and often gets given extra meat with his family's order. As part of his job, the inspector has to inspect the butcher's shop to check it complies with health regulations.

The personal relationship between the butcher and the inspector, and his acceptance of free meat, could reasonably be expected to influence his assessment of the health standards in the shop.

8. Elected officials

Many councillors have business and professional interests in the local government area they represent. Conflicts can arise if their public positions allow them access

to information and opportunities that could be used to advance their personal and business interests.

For example, a councillor may be tempted to influence an application to set up a new business in the town if his own business could lose custom as a result.

CASE STUDIES

1. The Maritime Services Board

In 1987 the then Maritime Services Board (MSB) called for tenders for the hire of a helicopter for waterways surveillance. A company called Exploration Transport Services was awarded the contract even though it had no experience with helicopters. The tender was poorly advertised, there were no specifications or assessment criteria prepared in advance, some of the tenders were opened prematurely and the credentials of the successful tenderer were not checked. The service provided by Exploration Transport Services was not satisfactory.

The next summer, no further tenders were called but most of the helicopter surveillance work was given to a new company called Blueridge Helicopters. Blueridge was in fact the new name for Exploration Transport Services, but they used a different helicopter and a different pilot.

The owner of both Exploration Transport Services and Blueridge Helicopters was an employee of the MSB. He had submitted two bids in different names to win the first tender and his companies were eventually paid over $250 000 for their services. His position at the MSB meant he was closely involved in the surveillance project, including the evaluation of tenders, but he did not disclose his personal interest. The employee claimed that he told his supervisor before tenders were called that he was thinking of throwing his hat in the ring for the contract, but no-one made any further inquiries.

This person should have been excluded from the decision making process because of his interest in the outcome.

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2. A Member of Parliament

A State MP was approached by a constituent who wanted to subdivide some land. The local council had approved the necessary rezoning, but there was no water supply. The Water Board had told the owner of the land that he had to either pay the cost of the work himself or wait for several years. He contacted his MP and asked him to exert whatever influence he could.

When the land owner became interested in buying another property for subdivision, the MP advised him to use a particular solicitor who was a relative of his and experienced in that type of work. He also said he was interested in buying a share in the property development.

The MP set out to help a constituent, but later also potentially obtained benefits for himself and a relative. At the time, the NSW Parliament did not have a Code Of Conduct and the MP appeared not to be aware that a conflict of interest existed.

Organisations can use a number of strategies to prevent conflicts of interest arising and help resolve any conflicts that do occur.

The first step is to recognise what situations could give rise to potential conflicts of interest. The second step is to make sure that staff disclose these conflicts. The third step is to decide how to resolve the conflicts or minimise their potential impact.

1. Organisations should identify areas of potential conflict of interest as part of their corruption risk assessment.

Before you can put procedures in place to manage conflicts of interest, you need to know where they are likely to arise and the effects on the organisation if they do.

There are some examples of potential risk areas on pages 2–5 of this module, but the level and type of risks will vary from one organisation to another depending on its structure and functions.

2. Organisations must develop a clear code of conduct and promote it to all staff.

The code should help staff to act ethically and with integrity in their day-to-day work. It should include topics such as personal and professional behaviour, the acceptance of gifts or benefits, other employment or businesses and how to deal with conflicts of interest.

The code needs to stress that it is the responsibility of individual members of staff to be aware of possible conflicts, to think about how others might view the situation and to notify senior staff if they think a conflict may exist. You might like to include some examples of where personal interests might conflict with public duties in your organisation.

The code should also explain what to do if a situation arises where there might be a conflict of interest. For example, a local government code of conduct might give the following guidance to staff and councillors:

- If staff believe that there could be a situation involving a conflict of interest, they must advise their supervisor or the General Manager in writing, stating the full facts, in order to protect both themselves and council.

- Councillors must disclose any interest in matters being considered by council. This disclosure must be made at the start of the council meeting. The onus is on the individual councillor to declare his or her interest.

You also need to make it clear that, as far as staff are concerned, a breach of the code may constitute grounds for disciplinary action and possible dismissal. Councillors may also be liable to disciplinary action.

Having staff and elected officials formally disclose their personal interests is an important corruption prevention strategy. Elected officials in local government are in fact required to comply with pecuniary interest provisions in the Local Government Act 1993. A public record of a person's interests is a significant disincentive to his or her acting corruptly, in their own self interest.

3. Organisations should develop policies and procedures for identifying and dealing with conflicts of interest.

The policy should explain what a conflict of interest is, who should be notified and what records should be kept and give some examples of how conflicts may be managed.

The purpose of the policy is to identify potential conflicts at the outset of a project, such as a purchasing contract, and then deal with them appropriately.

Meeting procedures and guidelines for selection panels should specify when staff and other public officials should declare a conflict and what action should be taken.

All policies and procedures should be periodically reviewed and updated to make sure that they remain relevant to the organisation's current situation.

4. Organisations must make sure that all staff and elected officials are aware of conflict of interest issues and know what their responsibilities are.

Your organisation may need to have an ongoing awareness program to remind everyone connected with the organisation of their obligations regarding conflicts of interest.

To do this you could:

- provide all new staff with a copy of the code of conduct and ask them to certify that they have read and understood it

- raise awareness of conflict of interest issues through articles in staff newsletters, posters and bulletins

- include information and discussions on conflicts of interest in induction and management training programs

  Staff attitudes and behaviour are often influenced by the examples set by senior management. Staff look to managers for guidance and support. It is important that all senior staff are good models of ethical behaviour, are able to identify potential conflicts of interest and know the appropriate action to take.

- inform current and potential suppliers and contractors of the need to disclose any conflicts of interest at the time they offer to provide goods or services

  Many public sector organisations now include a requirement that if conflicts of interest are not disclosed the contract can be terminated as part of the terms of contract.

- explain to all customers and outside organisations the importance of integrity in the public sector. Explain that it is unacceptable to try to influence public officials through the offer of gifts and benefits.

Some public sector organisations have a 'Statement of Business Ethics' which outlines the ethical responsibilities of public and private sector staff in their business dealings with each other.

No-one working for or connected with, the organisation should be able to claim that they didn't know what a conflict of interest was, didn't realise they had one, or didn't know they had to disclose it.

5. Organisations must clearly state who is responsible for receiving conflict of interest disclosures and fully documenting any disclosures made.

Clear, open and accountable procedures help to prevent confusion and uncertainty and encourage staff and other public officials to discuss and report possible conflicts. The message should be: if you are in doubt, talk to a senior member of staff.

Staff responsible for accepting disclosures must make sure that the details of the disclosure are recorded. A record must be kept of any action taken to resolve the conflict.

If a conflict of interest is disclosed at a meeting, the minutes of the meeting should record the disclosure and any action taken. It should also give details of who was entitled to vote and make decisions or recommendations on which issues.

6. Organisations should consider a range of options to resolve actual or potential conflicts of interest.

Often the immediate reaction when a conflict of interest is disclosed is to remove the person with the conflict from the situation altogether. However, there are other options available. The option you choose could depend on:

- the nature and extent of the conflict

- whether the interest is of a controversial nature

- the cost of the contract or action

- the damage the conflict might cause to the process

- public perceptions of the situation.

Some possible ways of managing conflicts of interest are:

- Take no action

If the conflict of interest is minor or the person concerned is not in a position to influence decisions, you may decide that no action is necessary apart from documenting that the conflict has been disclosed.

- Allow a limited involvement

  Depending on the nature of the conflict, the person may still be able to be involved in the process, for example, by providing technical advice on a tender, but not be part of any decisions made. It must be remembered however, that the provision of technical advice could heavily influence the decision and should be avoided or corroborated where possible.

  In a meeting, the person might be able to participate in the debate but not be allowed to vote or influence the decision.

- Remove the source of the conflict

The staff member or elected official may be prepared to dispose of the interest that has caused the conflict. This could involve, for example, selling their shares in, or resigning from a position with the company involved in a tender.

- Include an independent

  You may decide to ensure impartiality by having an independent person on, for example, a selection panel. For complex or controversial projects, it is a good idea to have a probity auditor who can review the process and provide advice about how to resolve issues which arise.

- Establish an ethics committee

  Some organisations have set up an internal ethics committee which adjudicates on conflicts of interest and helps to decide what action should be taken. The committee should include a cross-section of staff from different areas and no one person should be allowed to dominate the process.

CHECKLIST

❑ Has your organisation identified areas of possible conflicts of interest within the organisation as part of its corruption risk assessment?

❑ Does your organisation's code of conduct include clear information on conflicts of interest? Do all staff have a copy of the code?

❑ Has your organisation developed policies and procedures for managing conflicts of interest?

❑ Do these policies and procedures explain how to recognise and disclose a conflict of interest? Have they been clearly explained and promoted to all staff and elected officials?

❑ Have all staff, elected officials, suppliers and contractors been told of their obligation to disclose any actual or potential conflicts of interest?

❑ Is information on conflicts of interest regularly included in staff newsletters and training sessions to raise awareness of the issues involved?

❑ Are there open and accountable procedures in place to resolve conflicts of interest?

❑ Do your meeting procedures include details of how to deal with conflicts of interest that arise during a meeting?

❑ Are all conflicts of interest that are disclosed fully documented and records kept of any action taken?

❑ Do you consider a range of options for resolving conflicts of interest?

❑ Have you considered setting up an internal ethics committee, having a probity auditor for major or controversial projects, or preparing a statement of business ethics?

❑ Does your organisation periodically review and update its conflict of interest policies and procedures and make sure that they are relevant to the organisation's current needs?

1. *Report on Investigation into Local Government, Public Duties and Conflicting Interests*, ICAC, March 1992

This report looks at situations in a range of councils where problems have arisen because councillors have not declared their personal interests in matters that came before the council. The report also discusses issues such as ethics, education, pecuniary interest provisions and the need for a code of conduct.

2. *In Whose Interest? Corruption - 18 issues to consider, ICAC*, March 1992

This booklet identifies 18 key issues that have arisen from ICAC Investigation and Corruption Prevention Reports. It includes several examples of conflicts of interest.

3. *Conflicts of Interest and Local Government, A Discussion Paper*, ICAC, July 1991

This paper looks at a range of issues such as; what is a conflict of interest, what interests should be disclosed, and the consequences of non-disclosure.

4. *Report on Investigation into the Maritime Services Board and Helicopter Services*, ICAC, July 1991

This report discusses the lack of proper tendering practices at the MSB and the opportunities this created for corrupt conduct to occur. It also looks at the two internal investigations that were completed into the helicopter hire contract and service.

5. *Report on Investigation into Tendering for Vinyl Floor Products*, ICAC, July 1991

This report looks at the process for tendering for a major government contract and the issue of post separation employment. The individual who effectively controlled the tender process accepted gifts from the successful contractor and later accepted a job with the company concerned.

6. *Report on Investigation into the Planning and Building Department of South Sydney Council,* ICAC, December 1991

This investigation examined the conduct of officers of South Sydney Council, particularly in the Planning and Building Department, in the processing and preparation of development and building applications, doing work for private clients and making referrals to architects.

During the public hearings, several of the council's staff admitted to doing private work in the council area without the permission of their employer. This was in breach of s.96 of the Local Government Act and the council's code of conduct.

The report also found that one of the council's planning managers had referred work within the council to his brother's architectural and planning firm. At times the deputy manager was involved in the assessment of work done by his brother's firm, thus creating a conflict between his public duty and his private interest.

7. *Report on Investigation into the Silverwater Filling Operation,* ICAC, February 1990

In this investigation it was alleged that a contract was let to enable filling operations on land next to the Silverwater Prison Complex without calling tenders. There was a personal friendship between the general manager of the company

that got the rights and the then Minister for Corrective Services who was personally involved in the letting of the contract.

The report raises the issue of ministerial influence in the day-to-day administration of a public sector organisation. It looks at the respective roles minister and public officials should play. In this case, it was found that the wishes of the Minister were followed, which led to the matter being handled within the department in a less thorough manner than usual. The report was critical of the loose terms and poor enforcement of the contract, and the disappearance of the relevant file from the department.

8. *Code of Conduct: Policy and Guidelines,* NSW Premier's Department, Office of Public Management, July 1991

This document discusses the values underlying a public sector code of conduct and provides a framework for organisations developing a code to meet their own specific needs.

9. *New South Wales Code of Conduct Review*, NSW Premier's Department, Office of Public Management and the ICAC, 1996

The document looks at the methods used to develop and review NSW Public Sector Codes of Conduct and tries to assess the effectiveness of codes as a method of developing an ethical framework for public employment.

10. *Good Conduct and Administrative Practice Guidelines: Guidelines for public authorities and officials*, NSW Ombudsman, February 1995

These guidelines focus mainly on the administration and management of public authorities and the conduct of public officials. They are intended to assist public authorities and public officials by informing them about practices and procedures which the Ombudsman considers are reasonable and appropriate. It includes chapters on; administrative practices, conduct, complaint handling, publications and legislation, and other available resources.

11. *Legislation*

Some legislation, such as the Local Government Act 1993, include sections on the disclosure of pecuniary interests.

Chapter 14 of the Local Government Act 1993 is on honesty and disclosure of interests and states that:

- the pecuniary interests of councillors, council delegates and other persons involved in making decisions or giving advice on council matters must be publicly recorded
- councillors and staff must not take part in decisions on council matters in which they have a pecuniary interest.

The legislation explains what a pecuniary interest is, what disclosures must be made and when, and the procedure for managing a pecuniary interest complaint.

It also establishes a Local Government Pecuniary Interest Tribunal to conduct hearings into complaints and take any necessary disciplinary action.

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10   TRAVEL PAYMENTS

INTRODUCTION

Expenditure on travel is a significant cost in the NSW public sector, with state and local government organisations spending an average of 9.5 per cent of their annual operating budgets on travel and motor vehicle expenses. The actual amounts spent each year vary from a few hundred thousand to millions of dollars depending on the organisation concerned. The control of this expenditure is often difficult because of the large number of individual transactions involved, and the potential losses through fraud or misuse are high.

Media stories tend to focus on cases of deliberate abuse by one or two individuals, but a greater cause for concern is the risk of widespread or entrenched misuse of an organisation's travel payments system. There may be a belief in some organisations that certain practices, such as claiming a subsistence allowance for meals and accommodation even when you returned home every evening, are 'acceptable' because they are something staff have always done and the culture of the organisation seems to condone them. If organisations do not have or enforce a clear travel policy, it is easy for inappropriate practices to develop over time and opportunities for corrupt conduct to occur.

Opportunities for corruption and abuse of a travel payments system can arise at any stage in the process—before, during or after travel.

"It's a tough course, but I've learned a lot already."

For example:

- the need to travel may be unwarranted because the work could be done just as well by telephone, by correspondence or by staff based in the region
- staff may be travelling to conferences of little value to the organisation and using official resources, including time, for private activities
- itinerary changes or changes in personnel travelling can result in improper payments or overpayments that are never recovered.

A well-designed and properly managed travel payments system is an important part of an organisation's corruption prevention strategy. The system should be clear, with well-documented policies and procedures and be simple, practical and easy to monitor. The success of the system also depends on the ethical climate within the organisation and how well all staff understand their entitlements and responsibilities as users or administrators of the system.

This module focuses on travel requiring an overnight stay. The principles may be adapted to apply to day travel. Issues arising from the use of corporate credit cards and cabcharge vouchers must also be dealt with by the organisation.

The following case studies give examples of some of the problems with travel payment systems that have been reported to the ICAC.

CASE STUDIES

1. Travel Advances

When the internal audit section of an educational organisation evaluated its system for overseas travel, they found that nearly $1 million was unaccounted for in the organisation's Travel Services account.

Staff at the organisation are given cash advances of $2000-3000 for expenses on overseas business trips. Within 21 days of returning from their trip, staff are supposed to complete a travel claim form and produce receipts and other documentation to account for what they have spent. They then have to refund any amounts that they are not entitled to keep.

But the system was not operating properly, and the Travel Services account contained long outstanding balances which should have been refunded by staff. Although the organisation had a policy for recovering advances, there were no procedures for enforcing it and claimants tended to ignore the travel clerks when they asked them to acquit what they owed. The organisation was also concerned that allegations of corrupt conduct could be made against staff who failed to refund travel payment advances to which they were not entitled.

The organisation recognised that they needed to establish a method of both encouraging staff to account for their expenses and enforcing the acquittance of advances, and develop procedures to make sure that any outstanding amounts were effectively followed up and refunded.

They decided to make some improvements to their travel payments policy, such as including a statement stressing that it is the responsibility of the claimant to make

sure an acquittance form is received by the Expenditure Branch within 28 days of returning from a trip, and that any advances not acquitted by the due date would be deducted from the next travel claim.

They also established a data base to replace the original manual record system. The data base enables travel clerks to follow up acquittances more easily and make sure that no new travel claims are paid until outstanding advances have been refunded. Advances are now limited to two thirds of the expected total expenses which reduces the possibility of overpayments occurring. Employees fund the excess and are reimbursed upon return.

The organisation has found that the new procedures have reduced overdue acquittances and they are now planning further improvements to the system, such as providing supervisors with monthly reports of outstanding advances.

2. Cabcharge vouchers

Three council officers were found to have misused cabcharge vouchers by using them for travel to and from work, for inappropriate reasons such as staff outings and for private travel.

One of the officers had claimed morning taxi fares for a meeting held at night and another had claimed expenses for meetings for which there was no record of his attendance. Between them, the three officers had claimed nearly half of all the council's cabcharge trips for one financial year.

When the council investigated these problems, they found that many staff were not clear about when and how they should use cabcharge vouchers and what their responsibilities were.

The council realised the need to:

• establish criteria for the use of cabcharge vouchers and explain these to staff

• set up procedures for issuing cabcharge vouchers

• monitor the number of vouchers issued and double check for obvious discrepancies in claims.

GUIDELINES FOR DEVELOPING TRAVEL PAYMENTS POLICIES AND PROCEDURES

1. Organisations must have a clearly documented policy on travel payments which is effectively communicated to all staff and elected officials who operate and use the system.

The deliberate or unintended misuse of travel resources is often the result of policies which are unclear, ambiguous or not properly understood.

A policy should explain the objectives and requirements of the travel payments system, and include information on:

- relevant legislation
- awards and agreements
- official delegations
- responsibilities of approving officers
- rates of allowances
- rules for combining official and private journeys
- criteria for selecting mode of transport
- examples of the relevant forms and how to complete them.

Policy documents which are unnecessarily wordy, out-of-date, misinterpreted or rarely consulted, for whatever reasons, are of little value. Make sure your policy is a practical, plain English document which is easy for staff to use and understand. Merely quoting the terms of awards or legislation does not give staff enough information about how your organisation applies the relative entitlements in practice. All travel payment policies and procedures should be documented together in a format, such as a loose-leaf manual, which can be readily revised and updated.

You may need to develop induction and refresher training programs to promote staff awareness and understanding of the organisation's travel payment policies and procedures. Staff should also be encouraged to report any problems which might suggest that an existing policy or procedure needs to be revised.

2. Organisations need to establish a common system of entitlements whenever possible, and make sure that benefits are calculated in the same way.

A travel payment system must be fair and equitable and help to promote a shared ethical culture within the organisation. This may not seem to be the case if, for example, one group of staff get a fixed allowance for meals while others can claim the actual costs of their meals. A recent government policy, however, stipulates that state agency CES and SES officers be paid actual expenses rather than a daily rate. This policy does not apply to local government.

If there is a need for different systems of entitlement for staff with special responsibilities or special categories, you should explain the reasons for this in the travel payments policy.

APPROVING TRAVEL

3. All travel involving an overnight stay must be approved in writing in advance.

Staff who approve travel must have the appropriate financial delegation and access to sufficient budget information to enable them to make an informed decision. All delegations should be regularly reviewed to make sure that they are practical and reflect actual operational needs.

Emergencies may be dealt with by phone and/or fax with approval being provided by an appropriate delegate.

Members of staff should not be allowed to approve their own travel.

4. The responsibilities of staff who approve travel must be clearly defined and documented.

If more than one staff member is involved in the approval process, for example, a recommending officer who checks details and then an approving officer, make sure that each person's role in the process is clearly defined. If you do not, it is easy for one person to assume someone else is checking certain details and in the end no-one does.

5. Staff must make sure they have considered the key approval questions before approving any travel.

The key questions that you need to ask are:

- Is the trip necessary and in accordance with business plan objectives?
- Who should travel?
- What mode of transport is appropriate?
- Is an overnight stay necessary?
- How much will the trip cost?
- Are there sufficient funds available?

Thinking about these sorts of questions can help you make the most effective use of resources and limit misuse of public money. Approval guidelines can also help to make sure that the needs of the organisation are given priority, and opportunities for travel are fairly allocated among equally qualified members of staff.

DOCUMENTING APPROVAL

6. The 'authority to travel' document should be the master record for all travel arrangements and payments for a particular journey.

The 'authority to travel' document must be a clear, well designed form that is simple to process. It should provide approving officers with all the relevant details of the journey and enough information to enable them to make proper decisions. Carefully designed forms can help to make sure that the key approval questions are explicitly considered by the delegated approving officer.

Using one document to process all the travel arrangements for a trip, including transport bookings and advance payments, saves the need to create additional forms and reduces the risk of unauthorised or duplicate payments.

The basic details that an authority to travel needs to cover are:

- purpose of the journey
- name and address of officer travelling
- destination
- expected times of departure and return
- proposed mode of transport
- necessity for overnight stay
- accommodation arrangements (if applicable)
- anticipated costs
- amount of any advance payment of expenses sought.

Staff travelling should be given written confirmation of the authority to travel before they start their trip. This helps to avoid any misunderstandings about what has or has not been approved.

7. Advances should only be paid after travel has been approved.

Approval for the payment of an advance should be included on the authority to travel form. Poor control of advances increases the risk of overpayments, so you need to make sure that advances are fully acquitted at the end of the journey or refunded if the trip is cancelled.

Some organisations limit advances to a percentage of the expected total, to reduce the possibility of overpayments. You also need to have procedures for identifying advances that have not been acquitted and following up and recovering outstanding or overpaid amounts. A system may be established which prevents new advances being paid if previous advances have not been acquitted.

8. Any variations to an authority to travel which significantly affect the cost of the journey or change the personnel travelling should be approved in advance.

Often trips or itineraries have to be changed, so you need to have an established procedure for approving variations to the original authority to travel.

You may also want to have written guidelines to cover circumstances in which, for practical reasons, it is not feasible for staff to get changes approved in advance. Staff must, however, understand that they have a responsibility to report any alterations to their itinerary as soon as possible.

All significant variations should be recorded on, or at least cross-referenced to, the master record of authority to travel.

ACCOUNTING FOR TRAVEL

9. No payments, other than advances, should be made until the final details of the completed journey have been confirmed and approval for payment has been given.

You need to establish procedures to make sure that:

- The details of the journey are verified and in the case of payment for actual expenses, staff spent the amounts they are claiming.

  For example, you may want to see receipts for meals and accommodation and check dates and times of departure.

  If it is difficult to confirm certain aspects of the trip objectively, such as how many passengers in a car, you could ask staff to certify these aspects in writing. This helps to make sure that staff understand the terms of an allowance and reduces the risk that someone caught making false claims will plead ignorance.

- The claim is supported by an authority to travel, the relevant details correspond and any variations have been approved.
- The amount claimed is correct.
- The payment is approved by a delegated officer.

You also need to have procedures for reporting cancelled trips, and detecting and recovering any overpayments.

The final approving officer should, if possible, be the same person who approved the original authority to travel.

He or she must be sure that:

- the actual details of the journey have been confirmed

- the payment is supported by an authority to travel

- the travel complied with the purpose of the authority

- any variations to the original authority have been approved.

Finally, the master record of the authority to travel should be endorsed by the person responsible for approving payment to eliminate the possibility of duplicate payments being made.

MANAGING THE SYSTEM

10. Organisations should regularly monitor and evaluate the overall performance of their travel payments system.

You need to make sure that; the policies and procedures are still relevant and effective, the written procedures correspond with actual practices, rates paid remain equitable and staff are receiving enough information and training about the travel payment system.

It is especially important to monitor areas with a high risk of corruption and make sure appropriate measures are taken to deal with any problems that are identified.

Your organisation's internal auditors also have an important role to play in reviewing the travel payments process and ensuring the integrity of all systems and procedures.

CHECKLIST

❑ Does your organisation have a clearly documented travel policy?

❑ Have you taken positive steps to make sure that all staff understand and comply with this policy?

❑ Are all travel procedures up-to-date and easily accessible to staff?

❑ Is there a common method for calculating travel entitlements which applies to everyone in the organisation?

❑ Do you have procedures to ensure that all travel involving an overnight stay is approved in advance?

❑ Do staff know that they must receive written approval for their journey?

❑ Are the responsibilities of staff who approve travel clearly defined and documented?

❑ Is the 'authority to travel' form used as the master record for all travel arrangements and payments?

❑ Is the form clear and well designed, and does it provide enough information for approving officers to be able to answer the key approval questions?

❑ Are advances paid only after travel has been approved and refunded if journeys are varied or cancelled?

❑ Do you have procedures for approving and documenting any significant variations to the original authority to travel?

❑ Do you make sure that details of journeys are verified before payments are approved?

❑ Are there regular management reviews and internal audits of the travel payment system?

FURTHER INFORMATION

Each travel payment system is subject to specific legislation and regulations. Different requirements, therefore, apply to each system. Various Industrial Awards, Determinations and policy documents, including Premier's Department memorandums, all contain clauses relating to travel allowances.

1. *Trips and Traps—Travel in the NSW Public Sector, Corruption Prevention Project*, ICAC, February 1994

This report examines the administration of travel payments to public servants in both state and local government. Travel policy and procedure documents were collected from a sample of public sector organisations. The information was analysed to identify the essential features of a travel payment system, the opportunities for abuse, areas of greatest risk and practical measures to overcome them. This analysis was then used to formulate key principles and recommendations.

2. *Good Conduct and Administrative Practice, Special Report,* NSW Ombudsman, January 1995

Section 2.3 provides guidelines on travelling and accommodation expenses for local government.

11   CASH HANDLING

INTRODUCTION

Many public sector organisations collect cash for services that are not part of their primary functions. For example, hospitals may hire or sell baby capsules and aids such as crutches and walking frames, or run exercise and ante-natal classes. Schools and child care centres may collect money for book clubs or the sale of uniforms, and libraries may provide photocopy and fax services or sell library bags. Many organisations also provide services such as cafeterias, coin-operated telephones, vending machines and car parking facilities, or hire out sports grounds or meeting rooms.

Although the amount of cash collected for these direct services may be a relatively small proportion of the organisation's total budget, it is still usually a substantial amount of money. For example, the cash collected in one year at a large Sydney hospital was only about 2 per cent of the total operating payments, but amounted to nearly $4 million. It is important that the principles of probity and accountability apply to all cash collected within an organisation.

Current trends in the public sector, such as an increased emphasis on commercial activities and the user-pays principle, mean that the number of services requiring staff to handle cash is increasing. Many organisations are deciding to introduce new services or fees to generate income and help them meet budgetary constraints. Payments for many of these services are collected and receipted at a number of different locations in the organisation by staff who may have no specific training in, or understanding of, cash handling procedures.

For example, a physiotherapist recommends a particular therapeutic aid to a patient and tells the patient that it can be bought at the physiotherapy department of the hospital. The clerical officer/receptionist (or the physiotherapist if the clerical officer is at lunch) collects the cash payment for the aid and issues a receipt. The funds collected at the physiotherapy department are later transferred to the central cashier.

Cash takings make both the temptation and the ability to carry out a fraud more likely, and there is no one system or set of procedures which can offer one hundred per cent protection against corruption. Public sector managers have an ongoing task to review their organisation's cash handling practices, anticipate opportunities for fraud, and introduce preventative measures and monitor their effectiveness. If you have a clear idea of how much cash is collected and an effective cash handling system with proper procedures for receipting and depositing funds, you can reduce the risk that much-needed funds will be misappropriated and lost to your organisation.

The following case study gives some examples of the corruption risks that may occur in cash handling in the public sector.

For more information, please see the resources section at the end of this module.

CASE STUDY

Cash handling in NSW Public Hospitals

In 1990 the ICAC received a report about the misappropriation of substantial amounts of cash by clerical staff at two large public hospitals. In one case, $110,000 had been taken from coin-operated telephones provided by the hospital, and in the second case a total of $23,500 had been fraudulently taken from seven different service areas including child care, patient education, occupational therapy and the staff cafeteria. The fraud had been identified by internal auditors and staff concerned had been prosecuted and their employment terminated.

Although the corrupt conduct of these two staff had been stopped, the ICAC felt that there still existed opportunities in the hospitals concerned for people with a corrupt intent to misappropriate cash.

Some of the problems found included:

- A widespread lack of knowledge by managers about the services the hospital provided for cash. Where and how the cash was collected and the amounts of money involved.

- A range of different procedures for collecting, receipting and banking cash. At one hospital, seven different procedures were in use at the central cashier's office. The system was so complex that it was difficult for cashiers to do their work accurately and efficiently, for new and relief staff to learn the correct procedures and for supervisors to check the process.

- Receipt books were being used which had not been issued by the hospital administration and could be bought at any stationery store.

- Many staff were inexperienced in cash handling and had not received any training.

- There was no regular reconciliation of the funds collected from telephones with the matching telephone accounts.

As a result of the ICAC report, one of the hospitals concerned decided to appoint a special project officer who registered all cash handling outposts, identified common features in the various cash handling systems and introduced more standardised procedures. Staff have been trained in the new procedures and are now more aware of the need for cash handling controls and the benefits for everyone of better accountability. They also feel safer because of improved methods of transporting cash from cash collection points to the cashier.

GUIDELINES FOR DEVELOPING CASH HANDLING POLICIES AND PROCEDURES

1. Organisations should develop a policy and guidelines for the introduction of commercial services which involve cash handling.

You need to decide which services the organisation should provide and then whether to provide them directly or contract them out. Before introducing new cash services or fees for existing services, make sure you evaluate the proposed service; in terms of the organisation's functions and goals, the commercial viability of the service, the management infrastructure you will need to control and audit it, and the possible risks of corruption.

For example, some of the cost factors you need to consider if you decide to install coin-operated telephones in your organisation are rental and service fees, wages for staff involved in clearing, counting, banking and accounting for coin collections, the cost of reconciling cash collections with telephone accounts and an estimate of the likely losses from fraud or theft.

You may decide to contract out services such as coin-operated telephones and vending machines which present a major risk of cash fraud. The controls adopted by contractors must be carefully assessed and found to be appropriate before awarding of contracts.

2. Organisations should establish and maintain a comprehensive register of all locations in the organisation where staff provide services which may require them to handle cash.

This register should list the cash services provided at each point and the positions and grading of staff needed to handle the cash.

It is very difficult to control a system if aspects of it are unknown. Many managers find that the number of cash services and the amounts collected in their organisation are more than they expect. You need to know approximately how much cash is collected at each outpost or collection point, when it is collected and how often funds are deposited with the cashier. Central cashiers should notify their supervisors if the usual amounts of cash from outposts are not deposited within the expected timeframe.

Make sure that the entire system is documented; including sources, procedures, transfers and reconciliations.

3. **Staff with appropriate financial training or experience should be recruited for positions that involve substantial cash handling. All staff who have to handle cash, or who supervise staff who handle cash, should be given a statement of duties and training in basic cash handling procedures.**

Staff must know what is expected of them and who to contact if they need help. Sometimes lines of responsibility become confused and supervision is not effective. For example, a member of staff responsible for cash handling in a hospital cafeteria may be supervised by a manager whose expertise is in catering and who may feel that he or she should not have to supervise cash procedures.

There are several advantages if staff whose working time is substantially involved in handling cash are supervised by a single department, such as the cashier's department. You have more control over recruitment and training, you can provide adequate relief staff and you can manage workloads more efficiently.

Under conditions of high workloads and lack of relief, staff may short cut procedures and therefore undermine accounting controls. Job rotation can help prevent organisations becoming dependent on one person for a particular function and make it easier to identify and correct procedural weaknesses and breaches. Those responsible for collecting and accounting for cash should be required to take at least two consecutive weeks of annual leave per year to reduce the possibility of thefts remaining undetected.

4. **The number of cash collection points and the number of staff handling cash should be limited to the minimum needed to provide reasonable access for service users and effective management control.**

Make sure that each cash collection point has:

- an identity code which shows where the cash was collected

- a clerical officer whose statement of duties includes and describes the tasks associated with cash handling

- a nominated supervisor whose responsibilities include overseeing all cash handling functions and records

- documented procedures for collecting, receipting, securing, banking and accounting for cash collected and a clear statement about the documentation required

- the minimum possible number of official, accountable receipt books needed for the amounts of cash handled. If staff use receipts or tickets not issued by the organisation, an important accounting control is lost and opportunities for corruption are introduced

- a cash float, if required, which is secured and maintained in the necessary cash denominations by the staff member responsible for handling cash

- the means for securing cash both during the hours the service operates and after hours.

5. Procedures for receipting, securing and transferring cash for similar services should be standardised and all procedures should be documented and clearly communicated to staff.

Any discrepancies between the amount of money collected and the total of receipts issued must be able to be traced to the person responsible for collecting, receipting and securing the funds. If different staff collect and receipt cash from a single counter, or use the same cash register, they each need to keep separate records.

You need to have a receipting system which incorporates an effective audit trail and links deposits to the cashier with receipts issued at cash collection points. It is hard to audit the system if the cashier issues a covering receipt which does not record the numbers of the original receipts issued at the cash collection point, or the period of time over which the funds were collected.

Most organisations are large enough to enable responsibilities to be separated so that the person receiving the funds is not the person responsible for banking them.

Make sure that you review all procedures regularly and check with staff to ensure any new procedures are workable and do not create any additional problems.

6. All cash should be processed through a centralised unit such as a cashier's office. If this is not possible, staff should be informed of, and given training in, proper banking procedures.

If staff bypass the centralised banking system and deposit money directly into an account outside the organisation, there is an opportunity for corruption to occur or for others, such as members of the public, to think that the staff involved are, or might be corrupt.

You also need to monitor and safeguard the movement of funds to the central cashier and the bank.

Sometimes staff are not aware of the security and corruption risks involved and deposit money into other accounts so that their section has ready access to the funds if they need to make urgent purchases. You may need to discuss the risks with them and/or try to speed up your purchasing procedures so there is no need for this to happen.

7. Accommodation for central cashiers must be secure and accessible only to authorised staff.

This is important for the safety of the staff and the funds. Cashiers must have work stations and equipment which enable them to isolate and secure the funds they are responsible for. For example, one lockable cash drawer for collections, one for disbursements and one for relief staff. For the system to be accountable, you need to be able to trace who handled which amounts of cash .

Sometimes staff in smaller organisations or regional centres have to handle cash or act as a cashier in addition to other unrelated duties. If possible, their cash handling duties should be segregated from their other tasks and the cash stored

in a separate office. If this is not possible, the cash storage facilities should be secure and only accessible to the staff member responsible for handling the cash.

It is a good idea to have a safe with a dual locking system or with internal compartments, or cash boxes which have separate keys. You can reduce the risk of corruption if you always have two people, such as a supervisor and staff member, present when funds are lodged in or removed from the safe. Each safe should have a register which records the time of access, the source and amount of cash lodged or removed and the signatures of the two staff present.

8. **Organisations that conduct fundraising activities should make sure that guidelines and procedures are in place for authorising and conducting fundraising ventures, and that these are communicated to staff.**

Fundraising activities may involve staff in collecting and/or handling funds outside the organisation's financial systems. If there is no fundraising policy, the only safeguard is the trustworthiness of the staff involved. This places the funds at risk, as well as the reputations of the staff and the credibility of the organisation.

Staff need to obtain authorisation for any fundraising activity, follow proper procedures for handling the funds and have the records of the activity audited. Opportunities for fraud exist if staff sell unnumbered tickets, spend funds without banking, or do not issue receipts.

9. **Procedures for reporting and investigating individual cash losses should be established and effectively communicated to staff.**

You need to have procedures for reporting thefts and guidelines which state who is responsible for investigations, how long the investigation should take and what the expected outcomes are. These outcomes will depend on your organisation's policies, code of conduct and disciplinary procedures.

The procedures also provide an important mechanism for identifying and correcting weaknesses or breakdowns in the system.

10. **Internal Audit and Review**

You should regularly review existing procedures to check that they provide the best and most efficient way to collect and process cash. You must balance the risk of fraud or loss against the staff resources needed to manage and operate the cash collection system. Cash collection systems should not hinder or conflict with the organisation's main service objectives.

❑ Does your organisation have a policy for the introduction of services which involve cash handling?

❑ Is there an up-to-date register of all cash collection points in the organisation and is there a member of staff responsible for maintaining it?

❑ Do staff who handle cash have the appropriate financial training or experience?

❑ Are there clearly documented procedures for receipting, securing and banking all cash collected?

❑ Is all cash collected in the organisation processed through a centralised unit such as a cashier's office?

   If not, are there adequate controls for safely collecting and storing cash?

❑ Do receipting procedures provide an effective audit trail?

❑ Are there suitable secure storage facilities at all cash collection points and at the central cashier's office?

❑ Are there safe procedures, and secure containers, for transporting cash from one location to another, especially after hours?

❑ Are there procedures specified for fundraising activities?

❑ Do staff involved in fundraising activities follow proper procedures for handling the money raised?

❑ Is the cash handling system regularly reviewed to make sure that corruption risks are minimised?

FURTHER INFORMATION

1. *Cash Handling in Public Hospitals*, Corruption Prevention Project, ICAC, July 1992

This project examined the system of collecting, receipting, securing and banking funds for cash services in four hospitals. It looked at services which are not part of the hospitals' primary functions but which involve hospital staff directly in handling cash.

The report's recommendations are relevant to other public sector organisations and provide a framework for managing cash collected at different locations. They can be used as a guide to help managers develop procedures which suit local conditions.

2. *Monitoring Cash Handling in Public Hospitals*, Corruption Prevention Project, ICAC, August 1994

The aim of this project was to check if management action to improve cash handling systems had been effective. The ICAC project team visited two large hospitals and analysed the results of a questionnaire sent to 33 other large and small hospitals around NSW.

They found that implementation of the 46 cash handling recommendations was most effective in hospitals where senior management provided strong leadership, delegated key tasks appropriately and centralised coordination of the system.

3. *Service Competition Policy* - NSW Premier's Department, 1995

This policy involves identifying and market testing suitable activities currently performed in-house and, where there are clear benefits in doing so, contracting with other parties to provide the services.

4. *Cash Handling - Occasional Paper Number 3*, TAFE, March 1995.

This paper provides 35 recommendations as to how staff with responsibility for cash collection can improve their system. Available from TAFE, Comprehensive Audit Unit.

5. Statutory Provisions

Your organisation's statutory accountability framework may not include procedures for handling cash collected for non-primary functions.

NSW public sector organisations that are subject to the *Public Finance and Audit Act* 1983 must comply with the reporting and control provisions of this Act.

6. Internal accounting procedures

Every organisation has an accounting system with its own specific policies and procedures. You should refer to these for information about how to collect, acquit and bank funds collected as part of the organisation's primary functions. Internal auditors have an important role in helping managers to establish and evaluate internal controls to ensure accountability and prevent fraud.

12 PURCHASING

INTRODUCTION

State government departments and local councils do a lot of business with the private sector in the course of providing a wide range of services to the community. They are the largest purchaser of goods and services in New South Wales. Some contracts involve a lengthy and complex tender process and multi-million dollar bids, while others are organised with telephone quotes and concern only a few dollars.

As they all involve public money being spent, the same principles of probity and accountability apply whatever the size of the purchase. These principles will be applied differently depending on the size and nature of the purchase.

Since the ICAC was set up in 1989, almost half of the Commission's investigative work and much of its corruption prevention advice, has been in the areas of purchasing and tendering. If organisations set and follow proper procedures, the risk of corruption is reduced, value for money is maximised, less time and public money is wasted, and the performance and reputation of the organisation is enhanced. A purchasing system with clear rules for everyone, which goes fairly to the market and gets the best it has to offer, leaves little room for corruption and unfair advantage.

"I just opened your tender and I think we can do business."

This module looks firstly at some general principles which apply to the purchasing and disposal of goods and services, and then gives some corruption prevention guidelines for developing purchasing policies and procedures. Another module considers similar issues but in relation to the disposal and sale of government assets.

If you need more detailed information about purchasing procedures you should consult the NSW Government's *Procurement and Disposal Guidelines* produced in 1995 by the Premier's Department. You will find more details about this and other useful publications in the resources section at the end of this module.

SOME GENERAL PRINCIPLES FOR PURCHASING GOODS AND SERVICES

There are two main principles which apply to the purchase of goods and services and the disposal of assets by public sector organisations. Firstly, there is the economy principle—the need to get the best possible value for public money—and secondly, the equity principle—the need for fairness and impartiality at all stages of the process.

Some important issues that organisations should consider at all stages of the purchasing and disposal process are:

- obtaining best value for money
- ensuring accountability
- promoting fairness and impartiality
- handling gifts and benefits
- avoiding conflicts of interest.

Obtaining best value for money

Getting best value for money means considering factors relevant to a particular purchase. While price is important, you should also consider whole-of-life costs and non-price factors such as; quality, reliability, delivery time, ongoing service and support. When contracting for services, other factors such as; experience, qualifications of personnel, knowledge of the organisation's needs and previous work performance are also important.

Clear, comprehensive specifications and selection criteria, allow potential suppliers to formulate their bids properly and help organisations to effectively assess what is offered.

Fair and open competition and regular market testing are important stepping stones to achieving value for money.

Organisations will usually get the best value when all those who are capable of supplying the required goods and services have the opportunity to bid for the work.

You need to consider the best possible value not only when spending public money, but also when trading government assets. The following case study gives an example of this.

> ### Case Study 1. Hypothetical Example
>
> A firm specialising in promotions and public relations, Canvass P/L, had a successful contract with a government agency. Part of the contract was to design and mount a major exhibition at a trade show.
>
> Canvass decided to approach another government agency which had similar functions to their existing client. They put together an imaginative package for the second agency, and said that they would be able to get sponsors to cover the costs of the promotional program.
>
> The second agency was very happy with the package, especially since it would cost them nothing, and planned to enter into a contract with Canvass immediately.
>
> The ICAC recommended to the agency that they should first think about whether they needed a promotional program at all, and then, if they did, get competitive offers from other firms. If one supplier was offering a good deal, it was likely that others would make as good, or better offers. An association with the agency was obviously a valuable commodity for sponsors, so the agency should get the best return or value for money possible.

Ensuring Accountability

The public sector is accountable for its purchasing and disposal practices and decisions to both the government and the community. The community has the right to expect public money to be properly used as it ultimately bears the cost, which is likely to be higher if corruption occurs.

Public sector organisations are sometimes criticised for imposing accountability standards that are impractical and too costly in the "real world" of the private sector. But focusing on accountability and probity need not be at the expense of initiative, efficiency and effective outcomes. Appropriate accountability mechanisms can reduce opportunities for corruption and can save time, money and resources in the long term.

Detailed records should be kept throughout the purchasing process and any departure from established procedures should be approved by senior staff not directly involved in the process.

If only one person is responsible for assessing and managing purchasing proposals, the potential for maladministration or corrupt conduct increases.

> ### Case Study 2. Hypothetical Example
>
> A public authority employed a Human Resources manager who reported to the Director of Administration. Before accepting the HR position, the manager had been a director of a consultancy company used by the authority to provide training and development services.
>
> The HR manager had sole responsibility for awarding consultancy contracts. During her time with the authority, she engaged consultants, including directors and employees of her former consultancy company, to provide training programs for authority staff. Her decisions were never questioned by the Director of

Administration and all of her recommendations were accepted. She was accountable to no-one for her actions.

It was later found that the HR manager had awarded half the available consultancy work in the authority to her former company in which she still held a financial interest. Further investigations showed that the fees charged by the company's consultants were in excess of current market rates.

In addition, the HR manager had not prepared selection criteria before employing the consultants, had not developed any performance measures, and had not effectively monitored the consultants' work. Monitoring and evaluating performance are important ways of finding out whether value for money has been obtained from a contract.

Having clear, well-documented criteria and an open decision-making process minimises the opportunities for corruption. It also helps protect organisations and their staff from allegations that they have acted unfairly.

Case Study 3. Hypothetical Example

An allegation was made to the ICAC that a senior officer in a government department had 'an unhealthy relationship' with a firm of consultants. The consultants had been awarded contracts by the department to develop specifications for various information technology (IT) projects. It was alleged that the senior officer had influenced the awarding of these contracts and was continuing to influence a major current IT project in the department.

The ICAC obtained information about the department's selection processes for awarding IT contracts and found that the process was proceeding according to the department's Strategic Plan developed some years before.

The major project referred to in the allegations was also scrutinised. The project involved several stages, starting with a specification for the particular project and a Request for Information (RFI) being issued to the IT industry. The responses to the RFI had been evaluated and six consultants shortlisted.

Those shortlisted were issued with a Request for Tender (RFT) and invited to submit bids. Evaluation criteria had been developed and independent advice sought from relevant public sector organisations about the proposed methodology.

Under the structure adopted by the department, an evaluation team was to review the RFT responses and prepare a detailed report for the project steering committee. The committee was going to review this report and make a recommendation to the department and the State Contracts Control Board.

Another public sector agency had also been engaged by the department to provide an independent quality review of the tender process and a separate evaluation report to the steering committee.

The senior officer, about whom the allegations of corruption were made, was a member of the project steering committee but was not part of the evaluation team. He was therefore not in a position to influence the outcome of the process. Because

> the department had clearly documented the purchasing process, it was able to refute the allegations.

Promoting Fairness and Impartiality

Prospective suppliers of goods and services invest considerable time, effort and resources into preparing and submitting bids. In return, they are entitled to expect fair and impartial treatment at every stage of the process.

If suppliers do not consider the process to be fair and impartial they may be deterred from bidding—competition will be lessened and the best value for money may not be achieved. If your organisation establishes open processes, suppliers and the public can have confidence in the fairness of the outcome.

Selection criteria and tender specifications should be established and documented before calling for bids, and this information should be equally available to all prospective suppliers.

For a purchasing process to be fair and to be seen to be fair, criteria should generally not be changed midstream. If it is necessary to change criteria all bidders must be given the same information, an equal opportunity and reasonable time to revise their bids.

Case Study 4. Hypothetical Example

A government department called for tenders to provide innovative high technology solutions to a waste disposal problem. After it had shortlisted two tenderers, the department's needs changed because of various external factors. It had to eliminate the two shortlisted tenderers because the technology they used was unacceptable.

Several other tenderers had acceptable solutions but they had been eliminated on price. The department needed to resolve the matter quickly, so it decided to negotiate with one of the original tenderers whose technology seemed to meet the new environmental considerations.

Although the department got a quick result, what it did was unfair and was unlikely to achieve the best value for the organisation. The department was deciding on a substantially different project than the one that had gone to tender. The rules had been changed and tenderers were being eliminated for reasons not anticipated at the start of the process. The changes were so substantial that the department should have commenced the tender process again with new selection criteria.

Staff responsible for purchasing and disposal must make sure that they do not release any confidential information for the benefit of, or to the disadvantage of, particular parties. All interested parties must have equal access to the same information and records of what information is released and to whom, should be kept on file. If this doesn't happen, the integrity of the whole process may come under question.

Case Study 5. Hypothetical Example

A government department decided to remodel its office reception area. The property manager, Mr White, discussed the department's requirements with Ms

Green, a designer with a government agency providing architectural services on a fee-for-service basis.

Ms Green prepared her agency's quotation for the job, but resigned and left on the same day without sending it out. Some weeks later, Ms Green's replacement found the quote and sent it on to Mr White.

On the day she left the agency, Ms Green phoned Mr White and offered to quote for the project as a private consultant. Mr White did not obtain any other quotes and the contract was awarded to Ms Green.

Ms Green's former employer was later told they had not won the contract because they were slightly more expensive and had not provided certain information.

In this example, Ms Green had obtained an unfair advantage in securing a government contract. She only learned of the job through her employment and she used her knowledge of her agency's quote to undercut them.

Mr White should have advised Ms Green's former employer as soon as she approached him, because he knew how she had received the information. Once confidential information belonging to one party is known to others, the process is no longer fair.

Mr White should also have considered more carefully the procedure to follow to complete the remodelling. For work of this nature, open tenders would probably provide the best value for money as well as reducing the potential for corruption to occur.

Confidentiality of information and the ownership of intellectual property contained in proposals are issues often raised in relation to contracting for services. Organisations must safeguard any confidential information they receive during the purchasing process and respect ownership rights.

Handling Gifts and Benefits

It is not appropriate for a public official to solicit or accept a gift or benefit from clients, suppliers or potential suppliers. These benefits may include things such as meals, accommodation or tickets to sporting events. If gifts or benefits are accepted, subsequent dealings with the client or supplier may be affected and the staff member's impartiality may be, or may appear to be, compromised.

If you have not yet done so, your organisation should develop a policy on the acceptance of gifts and benefits and incorporate this into your code of conduct. Any unsolicited gifts or benefits should be disclosed and either returned or made the property of the organisation rather than of an individual. Their use or disposal then becomes the responsibility of the organisation, not the individual employee.

Incentives should not influence purchasing decisions or personally benefit public officials.

Case Study 6. Hypothetical Example

A local council insurance broker checked the services of all authorised insurance underwriters marketing comprehensive third party insurance so council could get the most competitive price for insuring its vehicle fleet.

The broker selected three insurers to provide bids for council to consider. All three bids included an offer of discounted third party insurance for private cars belonging to councillors and council staff.

Council chose one of the three bids because it offered the best value, but pointed out to the insurance broker that the discount offer conflicted with council's code of conduct. The broker was asked to bring this to the attention of the insurance underwriter.

The Council recognised that it would be inappropriate for councillors or council staff to receive personal benefits from the expenditure of public money. If the discounts had been accepted, there could have been a perception that Council's decision had been influenced by the incentives and was therefore not impartial.

Staff, contractors and suppliers should all be made aware of how the organisation treats gifts and benefits and offers of hospitality. For example, the RTA has a Statement of Business Ethics which describes the responsibilities of both RTA staff and its commercial contacts.

The following case study shows how opportunities for corruption can be minimised if an organisation has an ethical working environment and expectations are set from the top down.

Case Study 7. Hypothetical Example

The chief executive of a government agency contacted the ICAC because he was concerned that his purchasing manager had been placed in a potentially compromising position.

A company had called on the manager and his assistant to promote its computer products. The sales representative invited the purchasing manager to a 'social day' which included a celebrity football match and an expensive dinner.

The manager declined the invitation in front of his assistant, citing the agency's code of conduct that said staff must not favour any one supplier. The same company later tried to promote another product and extended the invitation again. The exasperated manager referred the invitation to the agency's CEO who told him not to attend.

By instructing the manager not to attend the function, the CEO sent a clear message to his managers about the high standard of behaviour he expected. The manager was familiar with the agency's code of conduct and affirmed it in front of his assistant who also got the same message about the organisation's ethical culture.

When the problem resurfaced, the open lines of communication within the agency meant that the CEO heard about his staff member's problem and was able to deal with it.

It should, however, be remembered that frequent working lunches where each pays their own costs may nonetheless be inappropriate if others are denied similar access to the public officials.

Conflicts of interest arise when public sector staff are influenced, or appear to be influenced, by personal interests when doing their jobs. Anyone who has a connection with any of the bidders, or may stand to gain personally from the outcome of a purchasing or disposal decision, should not be involved in the process or be able to affect the outcome.

A conflict of interest is easier to identify if a material benefit is involved. For example, if a staff member accepts gifts or hospitality from a potential supplier or owns shares in a company bidding for government business. But non-financial interests, such as relationships based on common sporting, social or cultural activities and personal and family relationships, can also sometimes constitute a conflict of interest.

If organisations do not have systems, policies and procedures to make sure that conflicts of interest are disclosed, opportunities for corruption can exist. Codes of conduct and a register of relevant interests can help to raise awareness of, and prevent, conflicts of interest occurring.

Organisations should have a policy that requires their staff to disclose any actual or potential conflicts of interest when they start work with the organisation, and if and when a conflict arises. For example, a member of a selection panel for a particular service should inform senior staff if a relative or close friend has submitted a tender for that service. The organisation then has to decide whether to remove the staff member from any involvement in the matter or deal with it in another way. The important factor is that the conflict of interest is made public before the purchasing or disposal process starts and can therefore be dealt with in an appropriate way.

Some organisations have established an ethics committee which reviews potential conflicts of interest, recommends appropriate action and documents all decisions made. An independent member on such a committee or on a selection panel can help ensure that impartial decisions are made.

Potential providers of goods or services also need to be made aware of the organisation's policy on conflicts of interest and should be required to disclose any potential conflicts. If they don't do this, the organisation may have grounds for terminating the contract.

The following case study shows why potential suppliers, with a vested interest in the outcome of a tender, should not be involved in any stage of the purchasing process. If they are involved, they are likely to have a conflict of interest.

See also *Conflicts of Interest* module.

Case Study 8. Hypothetical Example

A large government organisation decided to have a management review of its legal unit because it was considering contracting out some of the organisation's legal work. As the review would cost less than $20 000, the government's guidelines on hiring consultants did not require tenders to be called or quotes to be obtained. The organisation asked a reputable legal firm to do the review.

The ICAC identified two areas of concern with this approach. Firstly, it might be difficult for the consulting legal firm to be impartial in its recommendations about the work to be contracted out because it could have an interest in getting some of the contracted work for itself. Secondly, if there was a competitive process to decide who should get contracted legal work from the organisation, the consulting firm would have a strong advantage over others because of its intimate knowledge of the organisation's needs. If there was no competitive process, it would look even worse if the consulting firm, having recommended certain work be contracted out, then got the contract.

The ICAC suggested that the review contract should be decided by a competitive process and that a condition of the contract should be that the successful firm would not be eligible for contracted legal work from the organisation for a specified period.

GUIDELINES FOR DEVELOPING POLICIES AND PROCEDURES FOR PURCHASING GOODS AND SERVICES

When staff of public sector organisations invite, assess and select tenders or proposals for the purchase of goods and services, they must comply with legislation, the relevant policies and regulations of the NSW government, and with the policies and procedures of the organisation concerned.

Individual organisations, including local government, need to prepare policies and procedures which reflect the organisation's particular needs and circumstances, but they also need to make sure that probity issues and corruption prevention strategies are considered and included at each stage of the purchasing process. This should reduce the risk of favouritism and improper practices occurring, ensure best value for money and reduce the opportunities for corruption.

The purchasing process can be broken into seven steps. Depending on the size, cost and complexity of a project, it may not be necessary or cost effective for organisations to undertake each step for every purchase. For example, the level of market testing should be balanced against the financial value of the project. However, it is important that probity is an integral part of any purchasing process and not a last minute or neglected consideration.

The seven steps in the process are:
• establishing the need to contract for goods or services
• planning and supervising the process
• designing the project specifications
• market testing and inviting submissions
• assessing proposals
• managing the contract
• monitoring and evaluating performance.

1. Establishing the need to contract for goods or services

A purchase should only be initiated after the particular problem or need and the purpose of the purchase have been defined. Only those needs which can be funded should be taken to the market. Developing offers is expensive for industry and

the organisation calling for tenders, so tenders should not be called unless the organisation has a firm intention to proceed with the project.

The ICAC recommends regular market testing to enable new options to be considered, encourage existing contractors to stay competitive, and allow new suppliers the opportunity to bid for government business.

A staged approach may be used as a strategy to define needs and explore options better. If consultants or contractors are used to help define a problem or need in more detail, you should consider the possible effects this may have on the competitive process at later stages of the project. Consultants hired to prepare project specifications may skew the specifications to favour a bid they themselves wish to submit. It may therefore be inappropriate for those involved in developing contract specifications to be selected for the project.

You need to define the requirements of the project and the expected outcomes and prepare a statement of objectives. Estimate the cost of the project, prepare a budget and project plan, and obtain approval from senior management to approach the market.

Case Study 9. Hypothetical Example

An allegation was made that a public sector organisation regularly engaged a consultant without calling for tenders. The same opportunity to apply for work had not been extended to other consultants. It was also alleged that the consultant had a conflict of interest as she had access to organisational information and members of the selection panel which gave her an unfair advantage.

Nine projects the consultant had been involved in over a three year period were reviewed. Of those, only one had involved the calling of tenders. The rationale for the selection of the consultant for six of the projects was that each project cost less than $20 000.

Two other projects each cost more than $20 000. One was at a fixed cost of $92 000 and the consultant had been appointed because she was currently engaged on a related project, had unique experience in the area and because it was necessary to maintain a consistent approach. The eight projects not put to tender had resulted in payments of more than $500 000 to the consultant. Some projects were linked and the combined value of these exceeded the $20 000 threshold set in the Office of Public Management guidelines.

The remaining project had started three years previously and had cost $434 000 to date, but was still not completed. The original proposal had been that the consultant would be retained 2-3 days per week for a 2-3 month period at an agreed fee of $1 200 per day. This would have cost at most $48 000.

An internal audit report found that the organisation had employed the consultant on an ongoing basis without regular testing of the market, and had not properly anticipated the extent of the work to be done. The consultant's 'unique' experience and expertise had become the sole criterion for awarding work and this allowed the consultant effectively to charge what she wanted.

A relationship with a particular supplier had been allowed to develop into such an interdependence that other potential suppliers were not even invited to submit bids. Over time, the organisation had lost sight of the need to ensure value for money.

If well planned and managed, the use of external services can give the organisation access to a wider range of skills, provide objective advice, and save money. If the process is not well managed, documented from the start and monitored during the course of the service provision, it can result in unnecessary expense, wasted time and resources and concern in the relevant market and in the general public.

2. Planning and supervising the process

Your organisation needs to decide who will manage non-routine purchasing projects and who will be accountable for the results. You should set a timetable which includes reporting requirements and times for performance monitoring and evaluation.

Decide on the composition of the tender assessment panel. You need to include people who have the relevant skills and knowledge for the project and perhaps an independent member who has no immediate interest in the outcome of the process. For large, complex or controversial contracts some organisations appoint a probity auditor to provide external scrutiny and help ensure the integrity of the process.

Make sure you advise all panel members of the need to disclose any potential conflicts of interest that may affect their impartiality at the start of, and during, the assessment process. Previous relationships between bidders and members of an assessment panel may influence, or give the perception of influencing, the outcome of the process.

Accountability is a key principle in purchasing, so all processes and decisions should be well planned and clearly documented from the outset. Records should be kept and include details of the specifications, assessment criteria, weightings and all decisions made. These records must provide sufficient information for audit and independent review functions to be carried out. Any departure from established procedures should only occur for sound, well- documented reasons and must be approved by senior staff not directly involved in the process.

Bids, submissions, or expressions of interest should always be assessed by more than one person. The best way to find out who is in the market is to ask the market, not to rely on the opinion of one individual. The following case study gives an example of how a public sector organisation almost relied on one 'expert' opinion.

Case Study 10. Hypothetical Example

A government department decided to use outside consultants to provide its staff with training in computer software packages.

A selection committee was established made up of representatives from different functional areas of the department. The computer section representative said there

were only three companies capable of conducting the training and suggested that he should talk to each of them before they submitted a proposal. He had no particular interest in any of the companies.

One committee member thought there might be other suitable companies and did not think it was proper to ask potential suppliers in for a casual chat. She felt they should call for tenders or at least expressions of interest. The computer section representative again insisted he knew the market well and that there were no other reasonable contenders. The other committee members thought they needed independent help and asked the ICAC for advice.

The ICAC advised them to test the market and recommended that the committee should develop a specification for the organisation's training needs, decide how to evaluate responses to it, and then advertise for the consultancy service.

The committee accepted the ICAC's advice and received over twenty tenders in response to their advertisement. They eliminated the tenders which did not comply with the essential requirements and then assessed the remaining bids and rated them on a range of criteria, including price. Finally the choice came down to two or three which were close to equal when all the criteria were taken into account. To resolve the choice, these three were asked to provide a demonstration training session for the committee.

None of the firms originally nominated by the computer section representative as being the only ones in the running, were in the final three. Two had exceptionally high prices and one did not bother to tender at all.

3.   Designing the project specifications

The project brief for potential suppliers should include the documents to be used for expressions of interest and tenders and a copy of the draft contract. The specifications should focus on what the project is trying to achieve and should be broad enough to enable all acceptable solutions to be considered.

If specifications are so restrictive that only one organisation, product or process can fulfil them, the community and other competitors might reasonably assume that the specifications were deliberately drafted to favour one bidder.

Specifications that are too tightly drafted can also mean that innovative solutions may not be able to be considered.

Case Study 11. Hypothetical Example

A manufacturer demonstrated a new surface treatment for external walls to a council's engineering department. Council staff were impressed and advised the manufacturer to bring the product to the attention of a number of builders who were preparing bids for a council repair contract.

The manufacturer sent out detailed information on the product to the potential tenderers. One was very interested, but told the manufacturer that he probably couldn't use the product because the tender specified a different brand.

In the meantime, the council found out from its legal section that because a particular brand had been specified in the tender, any tender proposing to use a different brand would have to be disqualified as a non-conforming tender.

In circumstances like these, staff assessing the tenders are put in a difficult position. They want to select the best product or service, but if they choose a non-conforming solution there could be accusations of partiality, impropriety or corruption. When tender specifications are framed too tightly, acceptable solutions may have to be eliminated and the organisation is left with an extremely limited choice.

If this problem were discovered part way through the tender process, an addendum may be prepared and circulated to all potential tenderers. The tender specifications should either list all suitable brand names or state a brand name and include "or similar".

Organisations need to decide how they are going to deal with non-conforming bids. Tender documents should state whether non-conforming tenders will be considered and explain how they will be assessed. Possibilities include:

1   Not at all.

2   Only if a conforming tender is also provided.

3   Without a conforming tender.

The criteria for assessing proposals and the weighting to be given to each criteria must be decided before bids are called. These predetermined criteria must be equally available to all potential bidders and must also include details about performance measures. Everyone then has a fair opportunity to show how well they meet the criteria.

The documents you give out to bidders should help you get as much useful and relevant information as possible on the criteria you are going to use to assess the bids.

For service contracts you might want to include criteria such as demonstrated track record in the service area, financial stability, calibre of key people involved and total cost of the project. For items and materials, criteria could include post performance warranties, past performance and technical guarantees, ongoing running costs, delivery times and quality of the product.

Make sure the selection criteria are relevant and able to be assessed in practical terms. A criterion against which tenders can not be reliably measured or assessed may complicate the decision-making process and lead to an inappropriate decision being made.

Criteria should never be altered to advantage a particular party and should not be changed midstream unless all bidders are given the same information, an equal opportunity and reasonable time to revise their bids. Any extensions of time must be granted to all bidders.

If your organisation is not sure how to specify appropriate selection criteria or performance measures, you should try to get specialist assistance and provide training for your staff so that they can develop the necessary skills.

4. Market testing and inviting submissions

Your organisation needs to get the best possible value for money and the best way to do this is to test the market. Market testing techniques include calling for expressions of interest, quotations or tenders. Remember that before testing the market, the organisation should have a clear intention to proceed.

The process adopted will generally depend on the value of the goods or services concerned. A high value project would normally be subject to open tenders or selective invitations following publicly invited pre-registrations or expressions of interest. A project of lesser value would not require such a lengthy market testing process, but you would still need to focus on the most effective way to encourage competition. You need to get enough quotations or tenders to enable your organisation to make an informed market assessment.

A good advertisement is a key part of the purchasing process. The advertisement should be designed to attract the attention of bidders in the relevant industry or location, and be placed in appropriate newspapers or journals. The size and placement of the advertisement should match the value, importance and nature of the contract. It should focus attention on the organisation's needs and should clearly state the place, date and time for lodgement of bids and how to obtain the relevant documentation. It should also allow sufficient time for bidders to develop well-prepared bids.

You must make sure that all potential suppliers have access to the same basic information and that information about particular bids is kept confidential.

5. Assessing Proposals

All bids and other responses received should be recorded and treated confidentially. It is good practice for the recording and opening of tenders to be done by two or more staff members who are not involved in the assessment process. Information in the bids should only be available to staff in the organisation on a "need-to-know" basis.

Late bids should not be accepted unless it can be shown that there is no advantage to the bidder, lateness was beyond the control of the bidder and that the integrity of the process will not be compromised. Any change in procedures must be clearly documented.

Goods can usually be readily assessed in terms of quantity and quality; but objectively assessing consultants offering very similar services can be more difficult. Try to ask consultants for practical examples of their work, such as an outline for each session of a proposed training program and details of how they would customise the program to meet the needs of your staff, or for various samples of their written work or documents they have illustrated.

It is important that all bids be assessed consistently using the same predetermined criteria. The assessment should be completed promptly because the perceived integrity of the process may suffer if there are undue delays.

If the specifications say that the organisation may negotiate with a preferred tenderer, the negotiations should be done by more than one person and the purpose of the negotiation and the results achieved fully documented.

All the steps taken and decisions made in the assessment process should be documented in a central project file. You should include any credential or reference checks and record reasons for the final selection and the rejection of unsuccessful tenders. The documentation kept should enable a reader to understand clearly the reasons behind the rejection and selection of bids and should be detailed enough to satisfy any fair and reasonable information request about the decision. You need to be able to show that the outcome reflects both good value and impartiality.

Acceptance of the recommended proposal must be approved by a senior member of staff with appropriate delegated authority before the winning bidder is advised and/or any contractual arrangements are made.

Unsuccessful bidders should be advised of the outcome of the assessment process as soon as possible and given the name of the successful bidder. If the project is significant or is politically sensitive, you may want to debrief unsuccessful bidders and give them details about why their bid was not accepted. This debriefing should avoid comparison with the successful bid and rather focus on what would be an ideal bid.

6. Managing the contract

The project should be managed according to the reporting requirements and procedures set at the start of the purchasing process. Performance reviews should be done at the agreed times and stages of the project and organisations should make sure that they advise suppliers that the terms of the contract will be enforced.

All staff involved in administering the contract should be made aware of their responsibilities and encouraged to work with the contractor to make sure that the objectives of the project are achieved.

7. Monitoring and Evaluating Performance

Monitoring and evaluating the performance of contractors and products helps the organisation to make sure that it is continuing to get value for money. Early reporting of problems can avoid problems escalating. It should be done in a positive way and be based on the assumption that all parties will do their best to comply with the objectives and spirit of the contract.

For example, senior staff at a local council hold monthly meetings with the consultants who provide Council's legal services. These meetings give council staff the opportunity to monitor and discuss the progress of various projects and give the consultants the opportunity to raise any issues or problems that concern them.

Effective monitoring can encourage improved performance, help in the future design of specifications and contracts and make sure that the terms of the contract, including service quality and equity, are met. Effective evaluation of performance helps the organisation decide on the appropriateness of a particular supplier for future work and provides suppliers and contractors with useful information.

It is important that you specify objective and measurable performance criteria before the project starts. Suppliers should know from the outset what level of performance is expected and what methodology will be used to evaluate this performance.

The performance criteria you use will depend on the subject matter of the contract, but they should relate to the assessment criteria developed for the contract brief.

You may include factors such as:

- extent of compliance with the contract
- adherence to budget / price / time factors
- meeting predetermined quality standards.

Case Study 12. Hypothetical Example

A local council decided to take part in a land development in partnership with private sector interests. The council's in-house lawyer recommended that the council consulted an outside law firm as the project required specialist legal advice.

Council engaged a law firm to represent its interests and instructed the firm to prepare contracts between council and the private sector organisation. The council did not specifically check the firm's expertise in the area of work concerned and did not decide what methods it would use to evaluate the firm's performance. No performance monitoring or evaluation was done until problems arose.

It turned out that the law firm had limited experience in collaborative projects between the public and private sector. When a contractual dispute arose, the council found it was not as well protected as it would have liked and ended up losing a considerable sum of money from the deal.

In this case, the council's failure to define clearly its expectations and requirements was as much a problem as the law firm's inexperience in drafting the necessary agreements. The council should have satisfied itself at the outset that the firm selected was fully capable of providing the services, and established performance criteria to measure the effectiveness and quality of the advice provided. This may have included hiring a solicitor with specialist accreditation in this area of law and undertaking regular progress reviews of the work done, and advice provided, by the law firm.

Regular and systematic monitoring of performance must be done to check that the requirements of the contract are being met. Ideally this monitoring should be done by several members of staff at the end of each stage or milestone of the project or at any time when performance is questionable.

At the end of the project, staff responsible for managing the project should evaluate the service provided and report the results of this evaluation to senior management. The outcomes of the project should be measured against the stated objectives, and factors such as the complexity, quality, duration and final cost of the project should be taken into account.

An independent review may also be appropriate, especially if the project managers and the service provider have worked closely together and find it difficult to maintain objectivity.

❑ Does your organisation have policies and procedures for purchasing goods and services that ensure fairness and impartiality?

❑ Do all relevant staff have access to, and use, these procedures?

❑ Do you regularly test the market to obtain best value for money?

❑ Is a project plan developed in advance for major purchases and does the plan include the expected outcomes of the project, the assessment criteria and how the project will be monitored and evaluated?

❑ Are all stages in the purchasing process clearly documented from the outset and are centralised records kept of all decisions made?

❑ Do all staff involved in the process know they must disclose any potential conflicts of interest?

❑ Does the code of conduct discuss conflicts of interest and the receipt of gifts and benefits?

❑ When you set up a selection panel, do you include a staff member from another section, or an outside person, to provide independent input into the process?

❑ Do all potential suppliers have equal access to relevant project information such as specifications and assessment criteria?

❑ Are all bids and responses received by the organisation recorded and treated confidentially?

❑ Do you explain to potential suppliers how you deal with non-conforming tenders or late bids?

❑ Do you promptly advise all unsuccessful bidders of the outcome of the selection process?

❑ Do you regularly monitor the performance of contractors against predetermined performance criteria?

❑ At the end of the project, do you evaluate the products or service provided and report the results to senior management?

❑ Are systems in place to make sure that products or consultants that perform poorly are not purchased or used again?

1. *Pitfalls or Probity, Tendering & Purchasing Case Studies*, ICAC, June 1993

This booklet contains case studies about various aspects of the tendering and purchasing process. The commentary after each case study suggests ways of minimising both the opportunities for corruption and perceptions that corruption may have occurred.

The case studies cover topics such as order splitting, local supplier preference, in-house bids, linked tenderers, and conflicts of interest.

2. *Purchase and Sale of Local Government Vehicles, Corruption Prevention Project,* ICAC, December 1991

This project examined systems for the purchase and sale of motor vehicles in five local councils, and assessed how well the systems met their main objective, the replacement of council vehicles at the least cost to council.

The report's recommendations apply to all local councils and public sector organisations that purchase and sell their own vehicles, and raise issues that are relevant to more complex forms of purchasing.

3. *Local Government Speaks! A Corruption Prevention Monitoring Report*, ICAC, March 1993

This report monitored the responses of local councils to the recommendations made by the ICAC in 1991 about the purchase and sale of vehicles.

Informal meetings were held with council managers and a questionnaire was sent to 216 local councils and 40 State government agencies that buy and sell their own vehicles.

The report looks at key issues such as open and selective approaches to the market, local preference, sales to employees and elected officials, and post-tender negotiations.

4. *Contracting for Services - The Probity Perspective*, ICAC, May 1995

This report describes a probity process for agencies to follow when contracting for services.

5. *Report on investigation into road works in the Shire of Kyogle*, ICAC, January 1992

This report examines funding arrangements and the awarding of contracts for roadworks carried out by Kyogle Shire Council. It uncovered improper tender procedures, a conflict of interest between council staff and the contractor and the falsifying of timesheets. It also looks at the councils decision whether to call for tenders or obtain quotes.

6. NSW Government Guidelines, Policies, Codes, Manuals and Regulations

° *Procurement and Disposal Guidelines - A guide to inviting, assessing and selecting tenders and other offers*, NSW Premier's Department, 1995

These guidelines discuss the expectations placed on both the public and the private sectors in relation to purchasing and disposals, and outlines principles of best practice to help staff make impartial and fair decisions and ensure that their organisation gets value for money.

° *Service Competition Policy*, NSW Premier's Department, 1995

This policy involves identifying and market testing suitable activities currently performed in-house and, where there are clear benefits in doing so, contracting with other parties to provide the services.

° *Capital Project Procurement Manual*, NSW Construction Policy Steering Committee, 1993

This manual covers the NSW Government's requirements and procedures for procurement for capital projects.

° *Guidelines for the Engagement and Use of Consultants*, NSW Premier's Department, 1996

These guidelines explain how to prepare briefs, call for bids, and select consultants.

° *Competitive Tendering and Contracting Out Guidelines*, NSW Premier's Department, 1992

These guidelines encourage competitive tenders for services, provide information to assist in reviewing in-house activities, provide information for specifying needs and costing and also provide a framework for inviting and evaluating tenders and monitoring performance.

° *Total Assets Management Manual*, Public Works and Services Department, 1992

This manual outlines the government's asset management policies and suggests some standard practices for organisations to follow.

° *Public Sector Management (Stores and Services) Regulation 1988*

This regulation covers tendering and contracting for goods and services, and the disposal of surplus stores and equipment, by government agencies listed in the schedules.

13   DISPOSAL AND SALE OF ASSETS

INTRODUCTION

Public sector organisations, including local councils, have to dispose of various assets that they no longer need. These assets may include property, motor vehicles, office equipment and furniture and a range of other materials. Some items may be transferred to another government agency, recycled or destroyed, while other items with a disposal value are traded-in or sold by tender or at auction. Whatever the value of the items they were all bought with public money and organisations should make sure they achieve the best possible return on these assets.

As with the purchasing of goods and services, it is important that disposals are conducted with integrity and that opportunities for corruption are reduced to a minimum.

Issues such as; obtaining best value for money, ensuring accountability, promoting fairness and impartiality and avoiding conflicts of interest relate to both the purchasing and the disposal process. These issues are discussed in more detail in the module on Purchasing.
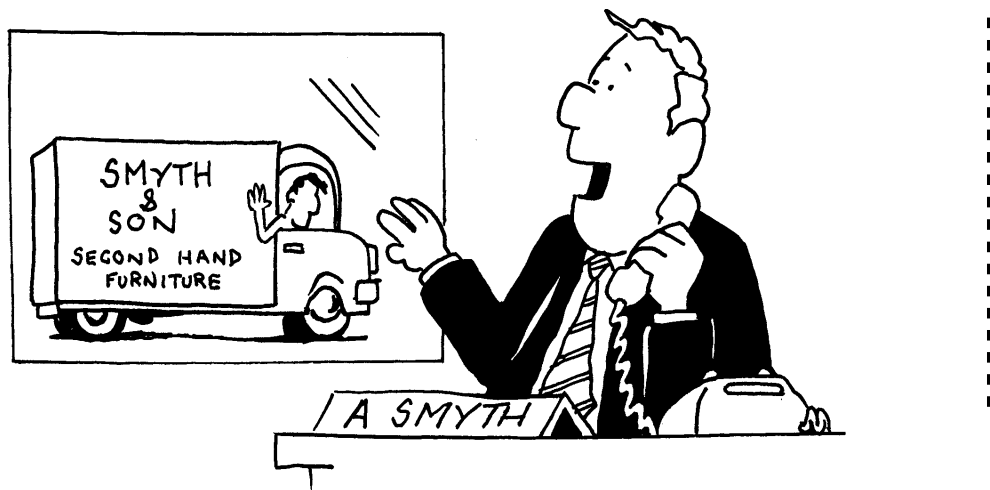
"We managed to off load the excess furniture for a good price...relatively."

The NSW Government's *Procurement and Disposal Guidelines* discuss similar issues and provide detailed information about disposal procedures. The guidelines emphasise that the sale of assets internally to staff may result in the organisation not getting the best value for money. Conflicts of interest can also lead to the premature disposal of serviceable or repairable items. Staff and other public officials connected with the organisation should normally only be able to purchase surplus items on the same basis as any member of the public.

Other government publications that cover the disposal process are listed in the further information section at the end of this module.

The following case studies give some practical examples of the issues your organisation needs to consider when disposing of any surplus assets.

CASE STUDIES

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1. Purchase and Sale of Local Government Vehicles

A complaint was made to the ICAC alleging that a motor vehicle had been purchased cheaply from a council by a council employee. It was found that the vehicle had been purchased in accordance with a long-standing council policy which allowed council staff or councillors to purchase council's used vehicles at the successful dealer's trade-in price plus 1.5 per cent.

The report recommended that:

- Councils should approach the market on an unrestricted basis and sell their vehicles by open tender or public auction. This increased competition would not only be fairer, but would be likely to give councils a better return on their assets.

- Council staff should only be allowed to purchase used vehicles on the same basis as any member of the public.

The report also suggested that organisations separate the purchase and sale components of vehicle replacement. Purchase and sale markets are different, and separating them enables you to get the best advantage from each market

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2. The RTA and Property Disposal

In 1994 the ICAC investigated dealings between an RTA sales administrator and a number of real estate agents retained by the RTA to sell surplus land. It was found that the RTA employee had solicited and received payments from a number of real estate agents in return for recommending that the RTA use their services and making sure that they received the best properties to sell.

As part of the investigation, the RTA worked with the ICAC to review its disposal systems and procedures and see if they provided opportunities for corrupt conduct to occur.

They found that the current RTA procedures did not include probity considerations and tended to focus on the required outcomes of the disposal process rather than detail how these outcomes were to be achieved.

The RTA uses the services of contract surveyors, valuers, solicitors and real estate agents when disposing of property and a lack of documented criteria and procedures for selecting these contractors provided clear opportunities for favouritism. There were also no objective indicators to monitor the work of these contractors and performance evaluation was based mainly on the opinion of the individual sales administrator responsible for the project. The real estate agents involved in the investigation also seemed to have a perception that bribing an RTA employee was the only way they could get the work.

To improve their property disposal system, the RTA agreed to:

- use a competitive tendering process to select all categories of contractors
- establish performance indicators to measure objectively the work which contractors, such as valuers and real estate agents, do
- integrate improved internal controls into their disposal procedures
- make staff in the property sales section aware of the probity risks in their work area
- use a 'business ethics' statement to advise contractors of the ethical standards expected by the RTA in its dealings with the private sector.

3. Local government—Hypothetical

A certain council sought tender for the sale of a site which it had acquired for car parking from a state government authority. The initial purchase was largely the result of strong lobbying from local business groups. Subsequently the council found that the site was not able to provide the amount of expected parking and that the costs associated with the car parking proposal were higher than expected. Council's solution was to dispose of the property.

During the sale process it was alleged, particularly by a lobby group which was disappointed by the loss of car parking, that council had not dealt with the proposed sale in a proper manner, was selling for less than market price and had given preferential treatment to the proposed purchaser. It was also alleged that the architect acting for the proposed purchaser had a pecuniary interest in the proposal via membership of a council town planning committee, acting as an advisory body to council.

Enquiry into the matter revealed that, even though the allegations appeared to have little substance, council had placed itself in a position conducive to such allegations. This position arose largely from council's interest in the property as both regulator and developer.

Council should have considered more carefully the sale of this site and taken steps to reduce perceptions of partiality. The use of an independent consultant to assess the need for disposal may have reduced perceptions that the architect had influenced council to sell the property to gain work from the purchaser.

To reduce still further the potential for the selection process being flawed, council must ensure that a tender evaluation panel is convened containing at least one independent member.

GUIDELINES FOR DEVELOPING POLICIES AND PROCEDURES FOR THE DISPOSAL OF ASSETS

Disposal policies and procedures must be designed to meet the needs of the individual organisation and to comply with public sector requirements for accountability and probity. There should be no special favours for particular groups in the marketplace or for those responsible for the disposal process.

Disposals are often part of an organisation's needs analysis and asset replacement program. You may also want to include disposals in the risk assessment your organisation conducts as part of its corruption prevention strategy.

The steps in the disposal process are similar to those in the process for purchasing goods and services. You may want to read the Guidelines section in the Purchasing module as well as the following more specific guidelines.

1. Decisions to dispose of assets must be fully documented, based on objective, economic criteria and should be approved by senior management.

You may want to ask questions such as:

- does the organisation really need to replace the items?

- could we upgrade or repair our current equipment?

- will the organisation change soon and create a need for the items?

- does any member of staff have a vested interest in the disposal of this asset?

The disposal process must be free of any private interests that may affect objective decision making. If you have any concerns about probity issues, make sure you contact your organisation's fraud prevention unit, or the ICAC, for advice early on in the process.

2. Organisations should use appropriate methods to determine the value of surplus assets.

You need to know what a fair price is for the assets you want to dispose of. How you find this out and the amount of time you spend, will depend on the type of asset and its expected value. You may want to get a valuation for some items, find out a trade in price for others, or decide to test the market.

3. Organisations should develop procedures which maximise the net return to the organisation.

The resources you expend to dispose of a surplus asset should be relative to the value of the asset. For example, for low value items you would want to keep disposal costs to a minimum and may decide to call for bids rather than go to auction.

Public Sector Management regulations, applicable to the state government, suggest that negotiated sales and verbal quotes are options for goods up to $1000 and auctions, written quotes and tenders apply to goods valued up to $100 000. High value property disposals in NSW by state sector agencies must be arranged through the Department of Public Works and Services, Commercial Business Division.

An unrestricted approach to the market should not only give you the best price for the asset, but will also promote fairness and impartiality.

4. Organisations should use competitive processes to make sure that all disposals are conducted with integrity.

Invitations to bid for the purchase of surplus stores or other assets should not be limited to staff or a particular group of people.

For example, an organisation replacing its personal computers and intending to sell the surplus items directly to staff should consider the ramifications of excluding the public from the sale of assets purchased with public money.

Uncompetitive processes can make staff responsible for disposals vulnerable to accusations of partiality and corruption. There should be no special privileges or rules for staff or elected officials. They should only be allowed to purchase items on the same basis as a member of the public.

One State government agency advised the ICAC that they had abandoned their policy of selling used vehicles to staff several years previously because it was 'not worth the trouble'. In addition to the problems of public perception, staff kept complaining about faults in the vehicles after purchase! The agency now sends their used vehicles to auctions which staff are free to attend.

5. Organisations that advertise surplus assets for public sale should make sure that the advertisements are appropriately placed to capture the anticipated market.

The placement of advertisements should not effectively exclude the public from bidding for any of the items.

For example, a government department wanted to sell some surplus equipment and decided to advertise the sale in the lift foyers and on tearoom notice boards in the office block it occupied. The ICAC advised the department to advertise more widely or it could be criticised for, in effect, favouring its own staff.

Regional and local newspapers provide an appropriate exposure for most disposals, whilst trade magazines and journals should also be considered when disposing of specialist assets.

6. Organisations should establish disposal criteria and make these available to all potential bidders.

Bidders should be given enough information to enable them to formulate a proper bid.

You might want to include specifications of the goods or property to be disposed of, a time and place for bidders to inspect the goods, the form of response required, the conditions of tender and any special conditions such as sale on an as-is basis or a requirement that the purchaser has to remove the goods by a certain date.

Sale conditions must apply equally to all bidders and any changes to the disposal arrangements must be clearly and quickly communicated to everyone involved in the process.

7. **Organisations should make sure that all staff involved in the disposal process disclose any actual or potential conflicts of interest.**

You might also want to ask tenderers to disclose any interest or link they may have with staff in the organisation or with another tenderer.

Organisations should make sure that they know who they are dealing with and how competitive the field really is. The extent of the checking you do will depend on the relative importance of the tender, the likelihood of corruption occurring and the potential impact on the organisation if it does.

8. **All staff involved in the disposal of assets should be made aware of, and have access to, the organisation's disposal policies and procedures and be given appropriate training if necessary.**

Senior managers are responsible for establishing controls, making sure the proceeds of sales are properly accounted for and providing staff with any necessary advice or information about the disposal process.

Staff who approve the acceptance of disposal offers must have the appropriate delegations and must make sure that the best offer is being accepted.

All decisions made should be fully documented and open to scrutiny. The clearer the processes are, the more likely it is that the environment will be corruption free.

Many larger agencies are appointing a special purchasing and disposal officer rather than just assigning these tasks to the relevant functional area. They have found that this helps to ensure that consistent and up-to-date practices are implemented across all the disposals and purchases carried out in the organisation.

9. **Organisations must periodically review the propriety and effectiveness of their disposal policies and procedures to make sure that they are fraud and corruption proof**.

The disposal process should be reviewed and a report made for senior management on a regular basis. The review should assess the effectiveness of the process and recommend improvements that need to be made.

CHECKLIST

❑ Does your organisation have well documented policies and procedures for objectively deciding when and how to dispose of unwanted assets?

❑ Are clear records kept in a central location of each stage of the disposal process and all decisions made?

❑ Do you work out the approximate value of surplus assets at the commencement of the disposal process?

❑ Do you use competitive disposal methods to protect the integrity of the organisation and maximise the return on government assets?

❑ Do you set disposal criteria and communicate these effectively to all potential bidders?

❑ Do you make sure that all staff and tenderers involved in the disposal process disclose any conflicts of interest?

❑ Are your disposal methods fair and equitable and do they give the public the opportunity to bid whenever appropriate?

❑ Are all relevant staff aware of the organisation's disposal policies and procedures and do they implement them effectively?

❑ Do you periodically review and report to senior management on the organisation's disposal practices and make any changes necessary to reduce opportunities for corrupt conduct to occur?

FURTHER INFORMATION

1. *Report on Investigation into the RTA and Property Disposal*, ICAC, February 1995

This investigation examined the methods the RTA used to dispose of land. The report includes an analysis of the findings of an RTA Audit Review which evaluated the adequacy and effectiveness of existing controls, and recommends a range of strategies for improving the disposal process.

2. *Purchase and Sale of Local Government Vehicles, Corruption Prevention Project*, ICAC, December 1991

This project examined systems for the purchase and sale of motor vehicles in five local councils, and assessed how well the systems met their main objective and the replacement of vehicles at the least cost to council.

The report's recommendations apply to all local councils and public sector organisations that purchase and sell their own vehicles.

3. *Local Government Speaks! A Corruption Prevention Monitoring Report,* ICAC, March 1993

This report monitored the responses of local councils to the recommendations made by the ICAC in 1991 about the purchase and sale of vehicles.

4. *Procurement and Disposal Guidelines*, NSW Premier's Department, 1995

These guidelines discuss the expectations placed on both the public and the private sector in relation to purchasing and disposals and outline principles of best practice.

5. *Property Asset Management Guidelines*, 2nd Edition, Property Services Group, May 1991

These guidelines aim to help organisations establish procedures for managing the disposal of surplus property that maximise the return to the taxpayer and take social and environmental factors into consideration.

14   PLANT HIRE

INTRODUCTION

Public sector organisations in NSW spend about $120 million a year on plant hire. The term 'plant' includes both large and small items of equipment from such items as; trucks, backhoes, excavators and dozers, to pumps and chainsaws. Hired plant is regularly used by the State's large construction authorities such as the Roads and Traffic Authority, the State Rail Authority and the Department of Public Works & Services. Almost all of the 177 local government councils in NSW hire plant for at least some of their road construction and maintenance work. Many of these organisations have annual tenders for hiring plant and the services of a skilled operator.

Complaints made to the ICAC and information from a number of investigations, show that systems failures and/or a lack of policies and procedures for plant hire provide opportunities for corrupt conduct.

Some of the issues you should consider with plant hire are; the criteria you use to select contractors, how you document selection decisions and the need for staff and contractors to declare potential conflicts of interest. You also need to make sure that different people are responsible and accountable for different stages of the process such as; approving the contractor, monitoring the work and paying the invoices, and that managers have enough information to effectively supervise the whole plant hire process.

"Did you speak to the new bloke in purchasing about plant hire?"

If your organisation establishes clear policies and procedures for plant hire and has formal, documented systems for assessing and approving contractors, you will be able to reduce the potential for corruption and ensure that the organisation gets the best possible value for the money it spends. You will also be able to maintain a professional and businesslike relationship with your contractors and show that you are accountable for the expenditure of public funds.

The following case studies give examples of plant hire practices and some of the problems that may occur in public sector organisations. Further reference material is listed at the end of this module.

CASE STUDIES

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1. State Rail Authority

An ICAC investigation into plant hire in the Northern Region of the SRA found that corrupt practices between 1989 and 1991 had cost the SRA more than $1 million. The losses were mainly from overcharging, with contractors presenting invoices supported by dockets which falsely showed that equipment had been hired or work done at SRA sites. A number of SRA staff had knowingly helped prepare and certify these false dockets.

For example, there were over 800 separate instances where one operator was recorded as operating two or more different machines at the same time on sites that were a considerable distance apart. About two-thirds of these duplicate dockets were matched to invoices paid by the SRA.

There were also over 300 cases where a repair docket suggested that a particular machine was out of action for all or part of a day, but a docket had been prepared, and signed by a SRA site engineer, claiming that the machine had worked for long periods on that day. Nearly all of these dockets were matched to invoices presented by contractors and paid by the SRA.

Corruption cannot happen unless the systems and culture of the organisation either encourage it or do little to discourage it. In this case, the corrupt behaviour was allowed to happen because there were no effective controls to make sure that contracts were awarded fairly or that work done by contractors was honestly and accurately certified. The delegation structure was also manipulated so that forms approving hire were often limited to the amounts within delegated authority to avoid the need for more senior approval. This type of splitting of contract amounts is not acceptable.

Also, a number of SRA staff did not seem to understand:

1. What a conflict of interest was, why it should be avoided or how it could be handled appropriately.

For example, by accepting gifts from a contractor, a key staff member compromised his ability to deal impartially with that contractor.

2. The difference between public information and confidential information, or the appropriate way to treat confidential information.

For example, an employee gave a contractor information about SRA budgets and geo-technical details about some of the sites which gave the contractor an advantage over other potential contractors.

The SRA took swift action to remedy the deficiencies that the ICAC report revealed and have since improved their internal audit arrangements, set up a Fraud Prevention Unit and developed new policies and procedures for the hire of plant and equipment.

2. Wyong Shire Council

Wyong Council has developed an effective plant hire system. Council advertises for plant hire every six months and has a schedule of prices from over 60 contractors.

Senior engineering staff prepare a list of contractors for each type of plant. The position of contractors on the list is based on the price they quote, an assessment of the operator's skill and the state of the plant. The number of contractors placed on each list depends on the amount of contract work that is likely to be available.

The staff who arrange day-to-day hire of plant are given the names of the approved contractors, listed in the order in which they are to be offered work. Work is therefore rotated between all contractors. The contractors do not submit invoices but are paid through council's personnel section on the basis of a time sheet.

Two staff in a 'plant pool' assign council-owned and hired plant to jobs and arrange delivery of materials to work sites. This keeps these tasks separate from the work of field staff who specify the type of plant needed and certify performance.

3. A Local Council

When work at a local government construction site was investigated, it was found that:

- council had been charged for the hire of plant actually left idle for part of the hire period
- council employees and an independent contractor were jointly operating a private business, in breach of council's code of conduct
- council equipment and vehicles had been used to remove and transport items for a private business.

The council concerned has since reviewed and modified its plant hire procedures. For example, the Plant Coordinator now keeps a daily record sheet of all plant hired and this is cross-referenced to the certifications of hire completed by the overseers. Equipment ordered is compared with work done and the register of plant requests and orders is checked against the accounts payable computer print outs. If overseers want equipment to be hired for an additional period of time, they have to re-order with the Plant Coordinator.

A Declaration of Interest is now included in council's plant and truck annual tenders which means that contractors must disclose any family relationship or business association they have with council staff.

THE SELECTION OF CONTRACTORS

1. Organisations should identify the categories of plant they expect to use and periodically call for prices for plant items within those categories.

Although you may not be able to give an exact description of each individual job, you should try to show what you expect the organisation's needs to be and accurately describe the type of plant required.

There should be a balance between providing regular opportunities for contractors to tender for work and imposing and incurring unreasonable costs in preparing and evaluating price schedules.

2. Advertisements for plant hire should be placed in a range of newspapers with at least regional coverage and give a reasonable time for potential contractors to respond.

Try to advertise the available work as widely as possible. If you only advertise in the local paper or just ask for tenders from current contractors, you will restrict your choice and may not get the best deal for your organisation.

3. The criteria used to assess and select contractors must be clearly documented and given to all potential contractors.

Fair competition is an important principle and no contractor should receive preferential treatment. You must assess all potential contractors according to the same criteria and make sure they know what these criteria or special requirements are before they put in their tender.

For example, some organisations have a local preference policy or want contractors who not only supply equipment but can repair or replace it if it breaks down, or provide alternative operators or plant at short notice.

Price is a central criterion used for assessing offers of plant for hire and deciding on other selection criteria is not always easy. Some organisations apply weighting factors to the prices submitted by contractors according to an assessment of the condition, capability and attributes of the plant and operator.

It is often difficult to describe the difference between acceptable performance and good performance, but you need to be able to objectively explain how you assess a contractor's ability to do the work and keep a record of these decisions.

For example, if an operator needs to be able to work in a confined space or produce a level or sloping section of road, both you and the contractor need to know what is required and how the work will be assessed. You cannot just say "I know X does, or will do, a better job than Y"!

4. All organisations that hire plant should check the credentials of contractors.

You must decide what you need to know about the contractors you plan to use and then collect this information in a thorough and consistent way.

It is important to check that contractors actually are the individuals or companies they claim to be, that they have the appropriate licences, insurances and Workcover certificates of competency and that the plant to be hired exists and meets the specifications you have set. Information about potential conflicts of interest could also be part of the basic information you collect.

The extent of the checks you do will depend on the cost of the contract work and how easy it would be to replace the contractor.

MANAGING THE HIRE

5. If there is an extension to the period of plant hire, there should be an opportunity to negotiate new hire rates.

If the period of hire changes or you need to hire a plant item which is not on the current schedule, you should either get three or four specific quotes or readvertise for a supplementary schedule covering the additional plant. If you need one or two extra items you would probably just get quotes for each item, but if there is a significant amount of additional work you should readvertise.

6. There should be a nominated officer in the organisation for contractors to contact if they have concerns about the hiring process.

This nominated officer must not be involved in the day-to-day hiring decisions and must have the power to review the process if necessary. He or she must document the review and give reasons for findings.

The existence of this contact officer encourages accountable decision making and helps prevent corruption, because staff know that their decisions may be subject to scrutiny.

7. Different members of staff should be responsible for specifying the plant needed for a job, approving the contractor to be used, and organising payment. No one member of staff should control the whole process.

If staff are allowed a high degree of discretion in their decision making, they may also have opportunities for corruption, such as giving most work to particular favoured contractors.

Opportunities for the abuse of power can be minimised if staff are held accountable for their decisions. They ought to keep a written record of the contractors they approach, any additional prices they obtain by telephone and the reasons for selecting a particular contractor. They should also have to give regular reports to management about the hire of plant and provide a mechanism for handling queries or disputes.

Financial delegations should always match the level of responsibility within the organisation. However, in some organisations relatively junior staff, with no formal delegations, hire expensive equipment and by the time the order is approved by the supervisor the work has been completed. Also, delegations should not be undermined by splitting orders.

8. Organisations that hire plant should make sure that staff, elected or appointed officials and contractors all declare potential conflicts of interest that could arise through an association between the contractor and the organisation.

You need to be aware of any commercial or family relationships between members of staff, contractors and other plant hire firms.

Most public sector organisations now have a code of conduct which includes a section on conflicts of interest. You should check that your organisation's code of conduct requires elected or appointed officials and staff to declare potential conflicts of interest.

You could also include an obligation for contractors to advise of any known potential conflicts of interest as one of the conditions for plant hire.

MONITORING AND ASSESSING CONTRACTORS

9. A checklist of contractor performance should be prepared and used to monitor and assess contractors that are hired. Contractors should be told the outcome of these assessments and their relative ranking.

To be effective, assessments must be based on predetermined and publicly available criteria. The procedures must be fair and impartial and should be used to maintain a standard of service, make decisions about the future use of a contractor, or provide a ranked order of contractors.

You could include criteria such as the quality and reliability of the equipment, the operator's punctuality, competence, safety record and technical expertise and the contractor's back up response.

Assessments should preferably be done by the immediate supervising staff in the field. They need not always be done for very short or regular hires, where random spot checks should be performed.

ORDERING AND PAYING FOR WORK

10. Ordering and payment systems should be discrete but integrated so staff can check that the work being paid for has actually been ordered and completed.

Proper record keeping not only discourages fraud but also helps to minimise costs and avoid errors and disputes.

Except in emergencies, an order should always be prepared and approved before the plant is hired or the work done. The order should set out the payment rate and the approximate period of hire.

If the value of the invoice is significantly different from the order value, the order should be reviewed and any changes approved. The permitted percentage or size of variation will depend on the nature and cost of the hire. Make sure that too

large a variation does not create an opportunity for contractors to regularly charge more.

If your organisation has an accounts payable system which does not have provision for on-line order entries, you should have a register of orders. A record of the order is then created at the time the order is made.

CERTIFYING WORK

11. The certification process should guarantee that payment is made only for work that has been ordered and performed.

The member of staff who approves the contractor should not also certify the satisfactory completion of the work. This may be difficult for some small organisations where the overseer or ganger is involved in both functions. A possible solution might be to have a senior member of staff sign off on the decisions or have two staff members jointly responsible for ordering and certifying the work.

It is important that the certification of work performance or equipment hire is done by staff in the field who actually see the equipment used or the service provided.

The most common type of field-based certification is the use of a time sheet. The time sheet can be kept by the operator of the plant or by a ganger or overseer if the plant is hired without an operator. Having the overseer countersign the operator's time sheet provides a good way of checking that the work being charged for was actually done. However, some regular monitoring of the overseer should also be undertaken.

MANAGEMENT ACCOUNTABILITY

12. Organisations should develop and use integrated computer systems to record the selection, use and payment of contractors.

This helps staff to check details of the various stages of the plant hire process and provides managers with the information they need to supervise the process effectively.

Managers must set up internal controls to safeguard public funds and be able to provide an account for the decisions made in the areas under their control.

Inefficiencies and corrupt practices may develop if there are poor control systems and inadequate procedures to ensure that managers effectively supervise their staff. However, there needs to be a balance struck between providing the necessary checks and controls and creating cumbersome procedures which waste staff time and cost the organisation too much to implement. The resources used to control the process should match the potential risk.

What you need is a system; which produces relevant and useful reports on the plant hire process, makes checks that are independent of the staff involved in the transactions, provides periodic and exception reports, highlights anomalies and identifies matters which need to be followed up.

Managers also need to have regular expenditure reports showing details of progressive expenditure on plant by contractor, a comparison between the cost of hired and owned plant and the variation between estimated and actual utilisation of plant. Remember - managers cannot make good decisions if they don't have good information.

CHECKLIST

- ❑ Are tenders for plant hire called on a regular basis?

- ❑ Are tenders advertised as widely as possible and a reasonable time allowed for contractors to reply?

- ❑ Are the criteria used to select contractors clearly documented and available to all potential contractors?

- ❑ Is there a nominated officer in the organisation to handle disputes?

- ❑ Are different members of staff responsible for specifying the plant needed for a job, approving the contractor, and certifying that the job has been completed?

- ❑ Are contractors' credentials checked?

- ❑ Are both staff and contractors required to declare conflicts of interest?

- ❑ Have performance criteria for contractors been developed?

- ❑ Is the performance of contractors regularly monitored?

- ❑ Are all plant hire decisions fully documented and reasons given for the decisions?

- ❑ Are orders prepared and approved before the work is done?

- ❑ Is there a certification process to make sure that the organisation only pays for work that has been ordered and completed?

- ❑ Is information about the approval, use and payment of contractors recorded on an integrated computer system?

- ❑ Are financial delegations set at appropriate levels?

- ❑ Are managers given regular reports and do they have the information they need to effectively supervise the plant hire process?

1. *Plant Hire (Heavy Machinery) Report, Corruption Prevention Project*, ICAC, December 1992

This report examined the plant hire systems and practices in three different local government councils and two sections of the RTA. In each organisation the daily activities relating to plant hire were observed, staff were interviewed, procedures checked and documents reviewed. The findings are relevant to all public organisations involved in hiring plant for construction work.

2. *Corruption Prevention and Plant Hire, An Evaluation*, ICAC, October 1994

This evaluation report includes feedback from local councils on the relevance and usefulness of the recommendations in the plant hire report.

3. *Report on Investigation into Road Works in the Shire of Kyogle,* ICAC, January 1992

4. *Report on Investigation into the State Rail Authority -Trackfast Division*, ICAC, September 1992

This report looks at the process for contracting out small freight services by the Trackfast Division of the SRA. The lack of plant hire procedures provided opportunities for partiality towards a contractor including improper assistance securing contracts and negotiating changes in remuneration.

5. *Report on Investigation into the State Rail Authority -Northern Region*, ICAC, March 1993

This investigation examined the systems used by the SRA for engaging contractors for the hire of earth moving plant equipment and procedures for certifying work performed on sites. It also contains extracts from an Auditor Generals report and Coopers and Lybrand report reviewing the regions plant hire policies and procedures.

15 FUNDING PROGRAMS

INTRODUCTION

Governments in Australia rely increasingly on non-government organisations to provide public services. This reduced involvement in direct service provision means that millions of dollars of public money are given in the form of grants to a variety of organisations to provide services, ranging from Meals on Wheels and facilities for the aged to road maintenance and capital works projects.

Some funding programs are covered by legislation such as the *Local Government Act* or the *Community Welfare Act*, but the legislation does not usually specify what is required of organisations receiving grants or how the funding program should be administered. This sort of information may be found in funding guidelines and agreements, but the amount of detail these contain varies considerably between different organisations.

The ICAC has received complaints, reports and requests for assistance which suggest that inadequate planning and lack of accountability at key points in the funding cycle often lead to the ineffective use of grants, the desired outcomes of the funded program not being achieved and perceptions of unfairness. In some instances opportunities for corrupt conduct can be created.

The so-called 'sports rorts' affair shows how the subject of grants funding can become highly political and attract a large amount of media and community interest and criticism.

"I can assure you, madam, that the grant selection process is very thorough."

Organisations that provide funding are sometimes reluctant to get involved in the management of the individual projects that they fund and are unsure of their responsibilities if problems do occur. Many of the matters referred to the ICAC could have been resolved at an earlier stage if the funding organisation had had appropriate accountability mechanisms in place.

All public sector organisations that administer funding programs need to develop and implement practical mechanisms to increase accountability for these government grants. They should make sure that they, the funding body, as well as the funded organisation clearly understand; their respective roles and obligations, the desired outcomes of the program and how it will be monitored and evaluated. Such measures will also help to reduce the opportunities for corruption and increase public confidence in the organisations involved and the work that they do.

The following case studies are examples of some of the funding program areas about which organisations have contacted the ICAC and asked for help and advice.

CASE STUDIES

1. Hypothetical Example

A council has been providing a small pool of funds to various community organisations for a number of years. Other than the general aim of providing financial assistance to organisations which provide community services to local residents, the funding program does not have any specified objectives or guidelines.

Decisions about which organisations receive funding are made by the council, based on the recommendations of the Manager of the Community & Recreation Services Department. The same organisations tend to receive funding each year and there is no formal monitoring process or reporting requirements.

After the local government elections, a new councillor approaches the Manager of the Community & Recreation Services Department with the recommendation that a new community organisation for migrant women should receive a grant in this year's funding round. The councillor points out that in previous years sporting organisations have received the major share of funds and that the number of migrant women in the area has increased substantially over the last two years.

The Manager is unsure about how to change the priorities of the funding program to allow new organisations to receive grants without causing an outcry from those who support the current arrangements. He approaches the Corruption Prevention Section of the ICAC for assistance.

2. Hypothetical Example

A local employment service receives a grant to employ a consultant to do research into the needs of unemployed youth in the area.

The funding organisation receives a complaint that the grant has been spent on sending the chairperson of the service's management committee to a youth conference in Perth where she then stayed for another four weeks.

The funding organisation investigates the matter and finds that:

- the chairperson claims that her trip to Perth was part of the research project and was agreed to by the management committee

- there is no record of the chairperson's trip to Perth being approved

- documentation, including the original submission for funding, is vague about how the project would be done, the timeframe involved and the proposed outcome

- the letter from the funding organisation informing the management committee that it had been successful in obtaining the grant did not specify how the money should be spent, how the project would be evaluated or any other conditions attached to the grant. It simply said that the money should be spent within 12 months and a report provided to the funding body

- neither the chairperson nor the consultant has produced a written report even though the project was supposed to have been completed six months ago and production of a report was part of the funding agreement

The management committee of the funded organisation claims that it did not receive enough information, direction and support from the funding body. The funding body states that for such a small amount of money it could not use a disproportionate amount of resources to administer and monitor the grant.

The funding body approaches the ICAC's Corruption Prevention staff for assistance to make sure that this situation does not occur again.

In both these case studies, systems and procedures need to be implemented to ensure proper management of the overall funding program and proper accountability for the funded projects.

In the first case study, a framework and guidelines for administration of grants needs to be developed.

In the second case study, steps should have been taken earlier in the funding process to make sure that the funds were properly managed. If the funding organisation had specified the conditions of the grant and had monitoring and evaluation procedures in place, then the problems might not have occurred or may have been detected and dealt with at an earlier stage.

While the funded organisation does have a responsibility to make sure it follows the funding agreement and uses the grant in an appropriate and proper manner, the government organisation that provides the funds is publicly accountable for seeing that this happens.

GUIDELINES FOR DEVELOPING POLICIES AND PROCEDURES FOR MANAGING FUNDING PROGRAMS

The following guidelines are designed to help funding bodies in the management of their funding programs.

All government departments and public authorities have to publish details in their annual reports of the grants they give to non-government organisations.

The details must include; the name of the organisation receiving the grant, the amount of the grant, the nature and purpose of the project and the target groups the grant is intended to benefit. This is a simple and important accountability measure, but funding program managers also need to incorporate accountability mechanisms into each stage of the funding process—the application for and approval of grants, the administration of funded projects and their evaluation.

Any funding organisation needs to make sure that:

- applications for funding are assessed in a way that is fair, impartial and accountable

- decisions about how funds will be allocated are based on established criteria which are stated in advance of the applications being called for, assessed and decided upon

- the processing of grants should be through the organisation's normal accounting process

- the public service, benefit or project for which the grant was allocated is provided satisfactorily and meets its objectives

- the grant is spent as intended, according to the conditions specified

- no individual or organisation is improperly advantaged by the grant.

Different funding programs will inevitably give rise to different issues, but the following guidelines should help managers develop and implement practical accountability mechanisms that can be readily incorporated into program management.

Application and Approval

1. **All funding programs must have aims and objectives which clearly state the purpose and desired outcomes of the program.**

The objectives may vary with each funding period but should be specific enough to be useful without being too prescriptive. For example, 'this program aims to fund initiatives for young people' is too broad, but 'this program aims to fund projects that enable young people to improve their coordination skills through knitting' may be too specific.

Broadly defined objectives have the advantage that they allow for administrative and ministerial discretion and input from local groups and communities to enable the focus of the program to be redefined if necessary. However, they have the potential to cause problems. Organisations applying for funds may be unclear about the intended outcomes of the program and whether their proposal is appropriate. Very broad objectives may also mean that people making recommendations or decisions about who should get funds have to rely too much on subjective opinion and may leave themselves open to allegations of favouritism.

2. **Organisations must develop selection criteria for approving grants based on the aims and objectives of the funding program.**

The criteria specify the critical features that a proposal must have to receive funding. They should be used as a checklist to assess each application. The more specific and objective the criteria are, the more useful they are in helping staff make decisions and recommendations. The criteria can also be used to help develop performance indicators to measure the effectiveness of the funding program at a later stage.

If consistent eligibility criteria are applied by everyone involved in considering applications and if their reasons for making recommendations are documented, the final funding decision is much more accountable. If you do not have clear criteria set at the start of the program, there is the potential for applicants and others outside the organisation to challenge decisions as subjective or unfair.

3. **Potential applicants must be treated fairly and equally and given sufficient information about the funding program.**

The funding process should be as open and transparent as possible. This means that the same information should be given to all interested applicants. Providing a printed package can help to ensure that everyone has access to the same information. This reduces the risk of particular applicants getting special and individual help or information.

The information you give to potential applicants should include; the aims and objectives of the program, the criteria to be used to make funding decisions, a timetable for and details of the decision-making process including any appeal mechanisms, the general conditions of the grant and the consequences of breaching these conditions. The amount of information will depend on the complexity of the funding program, but it is important that the roles and responsibilities of all parties involved in the process are clear from the start. Those involved in funding decisions should declare any actual or potential conflicts of interest which may exist, and if they do not take part in the decision making process where possible.

4. **Funding organisations need to collect enough relevant information to assess each grant application adequately**.

Using a standard application format can help make sure you get the range of information you need such as; details of the proposed project and its feasibility, expected outcomes, costs to be incurred and the financial viability and management capability of the organisation applying for funding.

You should also have a systematic and cost efficient way of checking that the information provided by applicants is accurate.

5. **Grant applications should be assessed and decisions made about funding allocations according to pre-determined criteria and a publicly known timetable.**

Recommendations and approvals for funding should be made on the basis of established criteria, consistently applied by staff with no personal interest in the outcome. (*See Conflicts of Interest module.*)

There should be a distinct separation of duties between the appraisal of grant applications and the approval process. This may not always be feasible in small

organisations with limited resources, but all organisations need to build checks and balances into their systems so that one person does not have an undue amount of discretion or decision making power.

Unsuccessful applicants should be informed of the reasons for their lack of success. Larger funding programs may need to have an appeals mechanism to enable unsuccessful applicants to have funding decisions reviewed.

6. Funding recommendations and decisions should be fully documented and include details of the procedures followed and selection criteria used.

Too often those who make recommendations and decisions see them as self-explanatory and reasons are not included.

The Minister's role in the decision making process should be publicly disclosed. If ministerial discretion has been exercised in a way that departs from the policies and procedures of the funding organisation, it is particularly important that the decision is justified. The reasons for it clearly documented, and the documentation made available for external scrutiny if necessary.

Administration of Grant Funds

It is important that appropriate controls and accountability mechanisms are built into this stage of the process, as once an organisation has received funds it is difficult to withdraw them. You need to make sure that funds are being spent appropriately and that the project is going as planned.

7. Funding organisations must prepare a written funding agreement stating the conditions that apply to the grant. The agreement should be signed by both parties before any payments are made.

A funding agreement should clearly spell out the conditions of the grant and should ensure that both parties are clear about their respective roles and responsibilities and how the money is to be spent.

In some cases, a letter containing all the relevant information may be enough, but more complicated funding arrangements will need a separate and legally binding document. Even for small amounts of funding, a document signed by both parties that details key aspects of the funding relationship and accountability requirements should be an integral part of the sound management of the funding program.

The funding agreement should include details such as:

- the purpose of the grant
- anticipated outcomes
- details of the project including starting and finishing dates
- procedures for payment/receipt of funds
- reporting requirements
- monitoring/evaluation and audit requirements

- procedures for contracting out work
- the consequences of misappropriation/mismanagement of funds.

8. Ongoing payments should only be made if all aspects of the project are going as planned.

You need to make sure that the organisations or groups receiving grants are; doing work, providing a service or carrying out a project on schedule and to a satisfactory standard, are following proper accounting procedures, and have actually incurred their stated costs. You may want to get independently certified evidence of these costs before you make any further payments.

As well as monitoring costs, it is also important to monitor progress and results. How you do this will depend on the size and sensitivity of the grant, the nature of the project and the resources available. The continuing information you collect will also help you make the final assessment of the funded project as well as providing data for the assessment of further grants.

Progress reports from the funded organisation, an inspection by a member of staff from the funding organisation, or an assessment by an independent expert are all monitoring strategies that can improve accountability. You also need to make sure that you deal promptly with any problems identified—there is little point identifying them if they are never satisfactorily resolved.

To ensure quality control you may, in some cases, need to help staff or volunteers in funded organisations to develop the skills and expertise needed to manage projects effectively, and satisfactorily comply with the conditions of the grant.

Evaluation

9. Organisations need to establish a process for the continuing and final assessment of each funded project. The funding program outcomes also need to be assessed against identified performance indicators.

It may not be possible to assess each individual project comprehensively, but some level of assessment should be carried out of individual projects and the program as a whole to check that they have operated efficiently and effectively, have achieved their intended outcomes, and represent value for money.

The final evaluation of a project should not just rely on an audited statement or a voucher certifying that work has been completed. You may need to develop and use performance indicators or a checklist of factors to make sure that the aims, objectives and conditions of the funding program have been, and will continue to be, met and that appropriate procedures have been followed.

The development of performance indicators for the overall program provides an opportunity for your organisation to review the program objectives and outcomes and check that they are still appropriate, relevant and able to be achieved with available resources.

10. A substantial review of the funding program should be done every 3–5 years or when priorities change.

Funding programs need to be periodically reviewed because government priorities may change, the particular needs the funding program was designed to meet may no longer exist, or other strategies may now be more effective in achieving the desired outcomes.

An objective assessment is important, so it is better if the review is not done by those involved in the management or administration of the funding program. Involving internal audit in the review may help to make it more independent and objective.

❑ Does the funding program have aims and objectives which clearly state its purpose and desired outcomes?

❑ Does the funding program have clearly stated selection criteria against which applications for funding can be assessed?

❑ Are these criteria consistently applied by all staff involved in assessing applications?

❑ Are staff involved in administering the funding program aware of the need for impartiality and that they must declare conflicts of interest?

❑ Is there a mechanism in place to determine whether a particular officer should or should not take part in the decision making process?

❑ Is the decision making process for allocation of funds kept separate from the organisation's advisory role?

❑ Are all potential applicants for funding given the same clear information about the funding program?

❑ Do you have procedures for checking the accuracy of information provided by applicants?

❑ Are all funding recommendations and decisions fully documented and available for external scrutiny?

❑ Do you promptly notify unsuccessful applicants?

❑ Have you prepared a written funding agreement which is appropriate for each grant?

❑ Does your organisation systematically monitor the progress and costs of each funded project, especially before making further payments?

❑ Have you developed performance indicators and an evaluation system to review funded projects and assess their final outcomes?

❑ Is there a program of review for the funding program to make sure that it is still relevant and meeting its objectives?

❑ Are all evaluations and their outcomes documented and used to assist with strategic planning?

FURTHER INFORMATION

1. *Taken for Granted? Better Management of Government Grants A Corruption Prevention Project,* ICAC, March 1994

This project examined how three NSW funding bodies—the Roads & Traffic Authority, the Department of Sport, Recreation and Racing, and the Racecourse Development Committee—administered grants for capital works programs.

The aim of the project was to develop general principles which would reduce opportunities for corruption and increase accountability.

2. *Planning and Monitoring your Program—First Steps in Program Evaluation*, Office of Public Management, NSW Premier's Department, June 1992

This manual helps managers to develop clear objectives related to the major intended outcomes of a particular program. It stresses how developing these objectives is the first step in the process of evaluating a program.

3. *Best Practice Guide for the Administration of Grants,* Australian National Audit Office, Australian Government Publishing Service, 1994

The purpose of this report is to provide assistance to administrators in the design and implementation of grants programs, and to auditors in the conduct of performance audits into the administration of grants programs in the public sector.

4. *State Government Funding of Non-Government Organisations. A guide to funding policies and procedures,* NSW Treasury, October 1995 (Draft)- to be released early next year

The purpose of this report is to assist agencies in developing and implementing programs for funding services provided by non-government organisations. It outlines principles and practices including planning of the delivery of services by non-government organisations, selection processes, preparation of funding arrangements and program monitoring and evaluation.

16   SECONDARY EMPLOYMENT

INTRODUCTION

Secondary employment is when staff work for one organisation but also do paid part-time or casual work for another organisation. It includes operating a business and providing paid consultancy services to another person or organisation.

While it is not inherently wrong, secondary employment can and frequently does give rise to complaints. The ICAC has received complaints about several organisations where possible conflicts of interest and misuse of government resources have occurred when public sector staff have worked in second jobs. These complaints, whether they are verified or not, adversely affect the image of public sector staff and the integrity of the primary organisations for which they work. It is important that the public are confident that government employees always give priority to their public sector duties and do not use government time, resources or information to do work for another organisation.

Secondary employment can provide opportunities for corrupt conduct and the misuse of resources and information. It can also place staff members in difficult and stressful situations if an incident occurs and there is a conflict between their responsibility as a public sector employee and as an employee in their second job. In other cases, secondary employment has been used as a cover for more serious corrupt activities such as taking bribes and secret commissions.

"Hello Mrs Jones, I represent Acme Home Extensions."

What organisations need to do is manage secondary employment issues efficiently and effectively and minimise the opportunities for conflicts of interest and corruption to occur. A complete ban on secondary employment for public sector staff is an unrealistic option and would be impossible to implement.

Although most Acts of Parliament governing public sector employment require staff to apply for approval for secondary employment, many organisations do not have adequate policies or procedures to help managers make fair and consistent decisions. As a result, staff may work in second jobs without approval because they don't have any confidence in the fairness of the system or fear their application may be rejected or take too long to be processed.

Some of the important issues you should consider are:

• The need to develop clear policy guidelines on secondary employment that are available to all members of staff in the organisation.

• The need for any secondary employment to be separate from a staff member's normal duties. This applies especially where staff have a direct regulatory relationship with the industry where they are privately employed.

• The need to provide information and advice to new and existing staff about the issues involved in secondary employment and how to deal with potential conflicts of interest.

The following case studies give some examples of the types of problems that may occur in public sector organisations. For more information, please see the resources section.

CASE STUDIES

1. NSW Police Service

In 1990, the owners of a large city building received several bomb threats and contacted the NSW Police Service for help. Officers of the Special Branch visited the building and agreed, with the building manager, to test the effectiveness of the existing private security service by getting two officers to try to break into the building.

One evening two police officers, a Detective Senior Constable and a Constable, entered the building by forcing open the front doors. Soon afterwards, the owner of the security company responsible for patrolling the building complained to Police Internal Affairs that two police officers had wrongfully forced the front door of the building and that one of the officers tried to win the security contract for another private company in which the police officer had an interest.

An investigation by Internal Affairs confirmed that the forced entry had taken place and that, during discussions between the police officers and the building manager, the junior police officer had handed over a business card for a security company. The more senior police officer did nothing to stop this occurring and did not take any subsequent action.

It was later found that:

- the licence of the security company on the business card had been issued in the name of the Constable's wife and had expired

- the same company had been employing police officers who were unlicensed and did not have approval for secondary employment

- the senior officer had worked for the security company operated by the junior officer

- a local police sergeant coordinated the employment of police officers for the security company. He did not receive wages but was given the use of a company car and reimbursed for his telephone calls and associated costs

- the junior officer admitted that he carried a pager for his private company while he was on police duties and returned calls during work hours.

The officer whose wife owned the security company resigned from the Police Service before the inquiry was completed and disciplinary action was taken against the other officers.

This case highlights some important questions that you need to consider when developing a policy on secondary employment.

1. Are employees using their positions to solicit work for a private company?

2. Are public sector resources being misused to gain an unfair commercial advantage?

3. Is there a conflict of interest between a staff member's public sector employment and his or her work for a private employer?

4. Is there a threat to normal lines of supervision if a senior member of staff works in a second job for a company operated by a more junior staff member?

With help from the ICAC Corruption Prevention Section, the Police Service has introduced a new secondary employment policy which aims to ensure that the integrity of the service is maintained and no police officers are placed in a position where they are faced with a conflict of interest. The policy booklet includes guidelines for staff who have to assess applications for secondary employment and examples of the types of second jobs which may or may not be approved.

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2. Department of School Education

In 1993 a teacher at a country high school supplied $21 335 worth of computers to the school through his own company. The teacher did not have permission to operate a private business and the school did not have any record of competitive quotations for the supply of these computers.

In a similar case, a teacher sold computers and software to the school where he was the computer coordinator. Although the teacher had apparently donated a significant amount of software to the school, he did not have approval to operate a business and should not have been involved in supplying goods or services to the school where he worked.

In both these examples there were conflicts of interest between the teachers' official duties and their private business interests. In addition, the schools concerned had not followed correct purchasing procedures and therefore could not be sure that they were getting value for money.

The Department of School Education has a code of conduct which requires staff to get approval to engage in secondary employment, including operating a business, and to advise their supervisors of any potential conflicts between their personal interest and their official duties.

The Department reminded both teachers of their responsibilities under the code of conduct and required them to apply for approval to carry on a business and to stop trading with their own schools.

3. A Local Council

Secondary employment without permission can lead to a conflict of interest. For example, a local government building trades overseer directed council plumbing work to a company owned by himself and his wife. Although the work was done at a very competitive price, there was a conflict of interest because the overseer responsible for awarding contracts was also competing to secure the work and did not disclose that personal interest.

Under the 1993 *Local Government Act*, all council staff must notify the General Manager in writing of any secondary employment that relates to the business of council or might conflict with their council duties.

The council concerned now does a company search into all new firms who do work for council to make sure that no member of staff has any involvement as a principal of the company. They also check that no council employees are involved in secondary employment with those firms.

GUIDELINES FOR DEVELOPING SECONDARY EMPLOYMENT POLICIES AND PROCEDURES

1. All organisations should develop a policy on secondary employment which explains the issues involved, sets out the basis on which decisions are made, and states how often these decisions are reviewed.

The policy should provide clear guidelines for applicants and for staff who administer the policy. These guidelines must be readily available to all staff and must stress the importance of disclosing all relevant details of the second job. You could also include examples of the types of employment that may or may not be approved and the reasons why. For example, in the police service work as a waiter or waitress in a small licensed restaurant would generally be approved but work as a bouncer in a hotel where the police regularly attend disturbances might be rejected.

Many organisations review approvals for secondary employment on an annual basis. Approvals are valid for a year, but may cease if details on the application

change or the staff member is transferred to other duties or another work location within the organisation.

2. The secondary employment policy must be applied consistently and fairly to all staff in the organisation.

Staff must feel confident that their applications for approval for secondary employment will be processed fairly and efficiently. If the system does not operate smoothly staff may decide to work in second jobs without approval, especially if the work is offered at short notice.

The application forms should be clearly written and include questions about the duties to be done, hours to be worked, any current links with the prospective employer, for example contractual arrangements and any potential conflicts of interest.

You should keep records of all applications received and the reasons why they were approved or rejected. These records may be needed for future reference or for audit purposes.

There should also be an appeal mechanism for staff who want to have adverse decisions reviewed.

3. Approval for secondary employment should not be granted if the employment could affect the integrity of the organisation or could involve a conflict of interest.

The NSW Public Sector Code of Conduct suggests that if public sector staff are thinking about accepting a second job they should consider:

- Is the company or organisation in, or entering into, a contractual relationship with the government?

- Is its primary purpose to lobby Government organisations or members of Parliament?

- Is it in a regulatory relationship with their organisation?

For example, a police officer has a full time responsibility to uphold the law and the power to arrest people 24 hours a day. A potential conflict of interest exists if the police officer also works as a security guard for a private company and has to protect people and property on behalf of that private employer.

If a council planner works as a consultant for a development corporation, members of the public affected by a proposed development by that corporation may not feel confident that council would make an independent and impartial assessment of the development.

4. Organisations that have a regulatory or inspectorial role should not approve applications for secondary employment from staff involved in that area of work.

To prevent potential conflicts of interest occurring, there needs to be a separation between a staff member's normal duties and their second job. For example, if a highway patrol officer has a second job with a trucking firm, he or she might be

less rigorous with checks on drivers working for that firm. Similarly, a health inspector might give a favourable report on a take-away food shop where he or she works at the weekend, but issue a notice to another shop with similar conditions.

5. Staff may only undertake approved secondary employment in their own time.

You need to check on the likely times and duration of the secondary employment and whether it could adversely affect the efficient performance of the staff member's normal duties or their health and safety. Someone with a stressful night job is unlikely to be fit and alert at work next morning.

6. Staff must not use any official resources or information in the course of approved secondary employment or to help gain private employment.

In some organisations, staff have used departmental vehicles, materials and equipment to do part-time trade work in their off-duty hours.

Another possible area of corruption is the release or misuse of confidential information which is accessible to staff in the organisation but not to the general public.

For example, private security firms owned or operated by police officers or their families have an unfair advantage if they use confidential information or the name and reputation of the police service for private purposes.

7. Induction programs for staff should include a component on secondary employment and the potential problems which may occur.

New and existing staff in your organisation may benefit from training sessions which provide information on how to identify and resolve conflicts of interest and advice on the correct procedures to follow if such a situation arises. The discussion of a range of 'What would you do if' type scenarios is often a very effective way of explaining policy issues.

CHECKLIST

❑ Does your organisation have a secondary employment policy which is readily available to all staff?

❑ Does the policy include guidelines for managers and examples of the types of employment that may or may not be approved?

❑ Are all secondary employment applications processed fairly and speedily?

❑ Is there an appeal procedure for staff who are dissatisfied with the result of their applications?

❑ Are adequate records kept of all applications for secondary employment and the decisions made?

❑ Do managers review approvals for secondary employment on a regular basis to make sure that work performance has not been affected and there are no new conflicts of interest?

❑ Do staff know that they must not use any official resources or information in their second job?

❑ Does your organisation provide information sessions for new and existing staff about secondary employment issues and potential conflicts of interest?

1. *Secondary Employment of NSW Police Officers, Corruption Prevention Project*, ICAC, August 1992

This report looks at the major issues involved when police officers have second jobs, especially in the security and liquor industries, and the need to avoid conflicts of interest. It also looks at how the administration of the approval system could be improved in NSW and discusses the possibility of introducing a user pays scheme which would allow private organisations to hire uniformed police officers.

Although the report is specifically about police secondary employment, the methods used to examine issues, conflicts and solutions would be helpful for other public sector organisations who are developing a secondary employment policy.

2. *Secondary Employment Policy*, NSW Police Service

Available from: Professional Responsibility Command, NSW Police Service Headquarters, Tel: 02 339 0277

3. Acts of Parliament, such as the *Public Sector Management Act 1988*, the *Local Government Act 1993* and the *Police Services Act 1990*, usually contain clauses about secondary employment.

For example, Section 353 of the *Local Government Act 1993* states that:

You will need to check the relevant sections of the Acts that apply to your organisation.

4. Codes of Conduct

Most public sector organisations have codes of conduct which include information on secondary employment and potential conflicts of interest tailored to their particular needs.

For example, all staff at Campbelltown City Council are told in their code of conduct that:

"You must advise the General Manager in writing if you have or are intending to obtain a second job. Any second job or business must be done in your own time, not adversely affect your normal work, not lead to a conflict of interest, not lead a fair person to think that you have a conflict of interest, not involve the use of Council resources, and not involve the use of Council information."

ACKNOWLEDGMENTS

PRACTICAL GUIDE TO CORRUPTION PREVENTION

WHAT DO YOU THINK

We want to ensure this guide remains current and useful.

 Please help us by letting us know what you think.

1. **How useful is the 'Guide' in addressing the corruption prevention needs of your organisation?**

Very Useful	Somewhat Useful	Not Very Useful	Not Useful at all
❑	❑	❑	❑

2. **Could the 'Guide' be improved?**   **YES** ❑

    NO ❑

   If 'YES', how? _____

   _____

3. **What other topics would you like to see included?**

   (Eg: Investigations; post separation employment)

   a) _____

   b) _____

4. **Are you the most appropriate person to hold this guide?**

   YES ❑   NO ❑

5. **If no, please specify who might be more appropriate.**

   Name: _____ Position: _____

_____

Your Name:_____   ***Please fax this evaluation form to:***

Position:_____   Practical Guide Project Officer

Organisation:_____   ICAC

Phone:_____   FAX: 02 699 8067

17   INTERNAL INVESTIGATIONS

INTRODUCTION

The aim of this module is to help managers set up an internal investigation function within their organisation and develop policies and procedures for conducting and supervising investigations. It is especially targeted at those agencies that do not have an established internal investigation unit, but we hope it will also be useful for organisations who are reviewing their current investigative capacity.

Every public sector organisation is likely, at some time, to have to investigate reports of improper conduct. It is important to be prepared and have policies and procedures in place so that you can take prompt action when a problem arises. These procedures can be used to investigate a range of matters, from complaints about mismanagement to suspected corrupt conduct or fraud.

An effective investigation of any kind requires special skills and knowledge. Public sector organisations, especially smaller ones, may not have the necessary expertise or procedures to investigate matters properly. As a result, they may waste resources, damage evidence, create unnecessary pressures for staff, and jeopardise the outcome of the investigation.

Investigative authorities such as the Police, the ICAC and the Ombudsman are experienced in investigating allegations of improper conduct. However, because of limited resources or the need to focus on other priorities, matters reported to these authorities may be referred back to the organisation involved for them to investigate. Organisations may also need to conduct preliminary inquiries into a matter to see if it needs to become the subject of a more formal investigation, or whether it can be handled by more informal procedures, such as those outlined in the Ombudsman's publication entitled *Effective Complaint Handling Guidelines*. The Department of Local Government has provided similar advice in Practice Note No 9, *Complaints Management in Councils.*

"OK, hands up those interested in being an Internal Investigator."

1

The ICAC has also produced an *Internal Investigation Handbook* which covers more specific issues, such as the duties and responsibilities of an investigator, interview techniques, receiving information, and gathering and securing evidence. This handbook aims to provide public sector staff who have little or no investigator training, with practical advice and strategies for conducting internal investigations in a competent and efficient manner.

GUIDELINES FOR ESTABLISHING AN INVESTIGATION FUNCTION AND MANAGING INTERNAL INVESTIGATIONS

1. Evaluate options for conducting internal investigations and decide on the most appropriate approach to adopt.

2. Develop a policy for investigating information and reports of improper conduct.

3. Determine who should conduct internal investigations.

4. Plan appropriate training strategies for staff who have to conduct or manage investigations.

5. Clearly define the roles and responsibilities of all staff involved in an investigation.

6. Ensure that appropriate resources are available to conduct an internal investigation.

7. Establish effective mechanisms for receiving information and reports of improper conduct.

8. Develop a procedure for assessing all information and reports received.

9. Ensure that matters are reported to appropriate external agencies, as required.

10. Ensure that confidentiality is maintained throughout the investigation.

11. Clear, well-documented records must be kept at each stage of the investigation process.

12. Continually reassess the progress of an investigation and regularly evaluate operational decisions.

13. A report on the results of the investigation and recommended action must be prepared.

14. The authorising officer of the organisation must review the investigation report and decide on the appropriate course of action.

15. Decide how to communicate details of investigations and their outcomes to staff.

16. Monitor and review the investigation process and recommend any necessary modifications or improvements.

NB. **The term** authorising officer as referred to throughout this module is the person with the authority to initiate an internal investigation. This person is likely to be the Principal Officer or a member of senior management, however in some organisations this authority may be devolved.

1. Organisations need to evaluate options for conducting internal investigations and decide on the most appropriate approach to adopt.

To do this, you first have to determine the most appropriate way to deal with information and reports of improper conduct. Find out about the types of matters received by your organisation. How many have there been? Were any of these matters investigated internally? If so, who conducted them? Were they conducted properly? What were the outcomes?

Most organisations have three options. They can decide to contract out their investigation work, they can train a staff member such as an internal auditor to do the work as part of their existing job, or they can establish an internal investigation unit.

If, for example, your organisation only receives one report every five years, you may decide that contracting out the investigation work is more cost effective than training staff to do it. On the other hand, if your organisation receives a large volume of information, you may decide to set up your own investigation unit.

The nature of a matter may also require you to engage a contractor. You may need, for example, specialised legal or investigation skills that are not available within your organisation.

However you decide to conduct internal investigations, it is important that the method chosen suits the current needs of your organisation. Matters should be resolved by the best means available so that organisational improvement can occur.

2. Organisations should develop a policy for investigating information and reports of improper conduct.

Policies and procedures are important management tools that can help improve the performance and integrity of your organisation. Developing an internal investigation policy will show staff that management is committed to investigating and acting on reports of improper conduct to help provide an ethical working environment.

The policy needs to be well documented and should be an integral part of the organisation's corruption prevention plan. It should also be approved by the authorising officer of an organisation.

All staff should be made aware of the policy and understand that there is a formal avenue for reporting and examining information about improper conduct. You may decide to refer to the policy in your Code of Conduct or include information about it in induction sessions.

Some important issues that you need to consider when developing your internal investigation policy are:

- how will information be received and assessed?
- what types of matters will the policy deal with?
- what roles and responsibilities will different staff members have?

- who will conduct the investigations?
- what training will they need?
- what resources will be needed?

These issues will be discussed in more detail in the following guidelines.

3. Organisations need to decide who should conduct their internal investigations.

This decision will depend on the nature and type of information received and the level of specialist skills required.

If you decide to use an outside contractor, you need to make sure that the person chosen has the appropriate skills and experience. Good investigators can be hard to find. Some organisations have potential investigators complete a standard pro forma stating their specific skills, training and experience. Remember that hiring an investigator is like contracting for a service and this process is governed by government procurement guidelines.

One way for smaller organisations to make sure that there is always someone available in the organisation with investigation skills is to include these skills in an existing position description. You can then recruit someone who has an understanding and awareness of the investigation function. Their other duties might include tasks such as advising on security matters and management controls, and developing and implementing corruption prevention strategies. This person may also be made available to conduct investigations in other divisions or regional branches of your organisation.

Ideally, it would be an advantage if the person you employed had investigation experience or knowledge of investigation techniques. If you are unable to find someone with these specialised skills, there are other personal attributes and skills you could look for that, combined with appropriate training, would help make a good investigator.

These include:
- someone who is persistent, thorough, ethical and honest
- excellent interpersonal and communication skills
- well developed analytical skills
- an ability to understand a wide variety of systems and procedures.

Remember that if an investigation results in legal proceedings, the person you employ to conduct investigations must also be prepared to appear in court to give evidence as required.

If you are interviewing staff for an investigation position, try to make sure that at least one member of the selection panel has investigation skills and experience themselves.

4. Organisations need to plan appropriate training strategies for staff who have to conduct or manage investigations.

It is important for staff to develop the necessary skills for the level of investigation they are expected to carry out. These skills can be acquired in a variety of ways including on-the-job training, by attending courses or by working through instructional manuals. There are a range of basic investigation courses currently available. You can find details of some of these in the Further Information section at the end of this module.

Working with an experienced investigator can be one of the best ways for a person to develop good practical investigation skills. Smaller organisations might be able to send a staff member for on-the-job training with a larger organisation that has its own internal investigation unit.

As well as knowledge of investigation procedures, it is beneficial if staff responsible for conducting internal investigations are able to gain a working knowledge of their organisation's policies and procedures, and an understanding of the culture of the workplace.

5. Organisations need to clearly define the roles and responsibilities of all staff involved in an investigation.

It is important that investigators, managers and the authorising officers of organisations all understand their respective roles and reporting responsibilities. Identifying roles helps to make sure that duties are carried out according to established policies and procedures, and reduces the opportunities for corrupt or improper conduct to occur.

The investigator's role is to:

- investigate the facts in issue and gather together all relevant evidence and information
- prepare a report on the results of the investigation and recommended action (see guideline 13).

The Authorising Officer's role is to:

- request/appoint someone to investigate a matter
- make sure that the investigator understands his or her role and is provided with the resources necessary to conduct an investigation
- review the final report and decide on the appropriate course of action
- follow up any final recommendations or decisions to a satisfactory conclusion.

It is important that all staff involved in the investigation disclose any conflicts of interest they may have. A conflict of interest arises if a staff member's work is influenced, or could be seen to be influenced, by any personal interest they may have in the investigation or its outcome. Any potential conflicts of interest need to be disclosed so that they can be properly managed. It may be a good idea to get investigators to sign a declaration at the outset of an enquiry, stating that they have no conflicts of interest in relation to the matter under investigation.

Please refer to the *Conflicts of Interest* module for more information in this area.

The organisation's internal investigation policy should have accompanying guidelines on the responsibilities of all staff involved in investigations and how their roles relate to each other. They should also include details about the rights of staff who report instances of improper conduct, alleged offenders, witnesses, and the feedback they are entitled to receive on the progress of an investigation.

6. Organisations must make sure that appropriate resources are available to conduct an internal investigation.

To ensure that your organisation is able to complete a successful investigation, you need to consider accommodation, equipment, travel, financial and human resource requirements.

For example, you will need a secure work area and storage cupboards for confidential documents. This includes a secure work area on your organisation's computer network. Equipment you may require includes tape recorders, a laptop computer and printer, secure luggage, telephones, official notebooks or diaries. You may also need a private area to conduct interviews.

If additional skills or expertise are required, you may need to seek external advice. This can include advice on financial systems, legal issues or specialist investigation techniques.

It is also a good idea to provide access to reference material such as the relevant Acts and statutes that apply to your organisation and its functions.

7. Organisations need to establish effective mechanisms for receiving information and reports of improper conduct.

All public sector organisations must have clear, well-documented procedures for receiving information and allegations of improper conduct. This will help ensure that staff know who to contact if they want to report a matter and are aware that all matters reported will be assessed and appropriate action taken.

It is important that a procedure for receiving information include appropriate mechanisms for providing feedback to those who report it. Staff who report instances of improper conduct need to be confident that their matters have been taken seriously and be satisfied that the organisation has responded in an appropriate manner. Issues to consider in dealing with information providers include making sure they don't have unrealistic expectations, ensuring confidentiality, and providing feedback on the progress and outcome of the investigation into their matter. In some cases it may be necessary to restrict the level of feedback given during the course of the inquiry. Examples of this might include where the covert nature of the inquiry requires it, or where the motive in reporting the information is in doubt.

A good procedure for receiving reports of improper conduct will also provide an important source of information. It will enable appropriate people within your organisation to act upon reports of misconduct and help improve the ethical standards of your organisation.

Under the *Protected Disclosures Act 1994* organisations are required to establish an internal procedure for the reporting of protected disclosures. It would be a good idea to incorporate your information and report handling procedure into your organisation's internal reporting system.

Please read the *Internal Reporting Systems* module in this guide for more information.

8. Organisations need to develop a procedure for assessing all information and reports received.

Once a matter has been received, it has to be assessed so that you can decide on the most appropriate way of dealing with it. There needs to be one person, or a small group of people, responsible for assessing and reviewing all matters the organisation receives.

Some organisations have an assessment panel made up of senior managers. For example, the panel might include the authorising officer, the Personnel Manager, and the Internal Audit Manager. Make sure that there are not too many people on the panel as this can increase the risk of confidentiality being breached. You should also nominate an alternative assessment officer in case those involved in the assessment process are the subject of a report.

The role of the assessment panel or officer is to decide whether the matter needs to be investigated, if it should be reported to an external agency for investigation and/or recommend an internal investigation. They need to focus on assessing the matter, not on conducting a preliminary inquiry.

Some questions you should ask when deciding whether to investigate a matter are:

- how serious is the matter?

  The 'seriousness' of a matter can depend on the type of conduct, the possible risks to the organisation, the amounts of money or other benefits involved, the frequency of reports and their connections with other matters.

- would the enquiry be handled more appropriately by another agency?

- is there enough specific information on the matter?

- is the matter too trivial to justify an investigation?

- is it a vexatious or frivolous complaint?

- how old is the information?

  The age of a matter does not necessarily mean that it can not be investigated. There may, for example, be enough reliable evidence available to warrant an initial enquiry.

- are there any time considerations or competing priorities?

- do you have sufficient resources to conduct the investigation internally or do you need outside expertise?

- can the matter be dealt with informally in accordance with the *Effective Complaint Handling Guidelines*?

All decisions made during the assessment process must be fully documented and the reasons for the decisions clearly stated. It is a good idea to set up a register as part of the documentation to help ensure that matters are dealt with consistently.

Those staff involved in assessing matters need to make sure that the information disclosed by staff or members of the public is handled in a sensitive manner, and that confidentiality is maintained.

9. Organisations must, when required, report matters to the appropriate external agencies.

A matter may need to be reported to the Police, the ICAC, the Ombudsman or the Audit Office. Each of these agencies has a different role, so your decisions about where to report a matter will depend on the type of improper conduct suspected. You may also need to report a matter to more than one investigative agency. For example, some matters may need to be reported to both the Police and the ICAC.

The following table is a guide to when and where you need to report matters. If you need any further information or advice, please contact the relevant agency.

When you suspect... (type of conduct)	Who to report to... (investigative agency)
Corrupt conduct	**ICAC**
Corrupt conduct is the conduct of any person that could adversely affect the honest and impartial exercise of official functions by a public official. A key notion is the misuse of public office. Examples include bribery, fraud, theft and blackmail. A full definition appears in the ICAC Act.	
Under Section 11 of the ICAC Act, the Principal Officer of an organisation must report all suspected instances of corrupt conduct to the ICAC. This does not prevent any individual in the organisation (or anyone else) providing information direct to the ICAC about the same matter.	
Criminal offence	**NSW Police Service**
You should report a matter to the Police if it involves, or you suspect it involves, a criminal offence. In some circumstances it may be an offence not to report a serious criminal offence to the Police (see section 318 of the *NSW Crimes Act 1900*).	
Administrative conduct	**NSW Ombudsman**
The role of the Ombudsman is to promote fairness and integrity in public administration in NSW. The Ombudsman is an independent organisation who investigates conduct that may be:	

- illegal;
- unreasonable, unjust or oppressive;
- improperly discriminatory;
- based on improper motives or irrelevant grounds;
- based on a mistake of law or fact.

The Ombudsman gives priority to complaints raising systemic and procedural deficiencies in public administration or serious abuse of power. The focus of the Office is to identify problems and mistakes to ensure that they are resolved or rectified.

Where possible, the Ombudsman prefers that public sector agencies first attempt to resolve matters internally. This could include attempting conciliation as an alternative to investigation.

Serious and substantial waste   **The Audit Office**

Serious and substantial waste is any uneconomical, inefficient or ineffective use of resources which results in a significant loss or wastage of public funds. The conduct that led to the waste may be authorised or unauthorised.

It includes expenditure that should not have been incurred, that exceeded what was required or had no benefit for the organisation.

The Audit Office has no authority to investigate serious and substantial waste in local government. If the waste is a result of corruption or maladministration, the matter can be reported to the ICAC or the Ombudsman. If not, Councils should contact the investigations unit at the Department of Local Government for advice.

Matters may need to be reported to these external agencies at the assessment stage or during the course of the investigation. It is important that reporting takes place as soon as there are reasonable grounds to suspect corruption or a criminal offence has occurred or is about to occur.

It is a good idea for organisations to establish contact or liaison officers in investigative agencies. This is one way to make sure that you understand whether or not the external agency expects you to proceed with an investigation. You may also find it useful to discuss a matter with the police in the early stages without, at the time, asking them to investigate. This opens up the communication channels and gives you an immediate reference point if you need further advice. The police often do not have the time or resources to investigate minor fraud or corruption. You may need to take the investigation to a point, such as just before the suspect is interviewed, where the police can take over.

You also need to be aware of other organisations that you could ask for advice. For example, local councils may seek assistance from the Department of Local Government. If a matter relates to a health issue, you may decide to report it to the Health Care Complaints Commission.

10. Organisations must make sure that confidentiality is maintained throughout the investigation.

All information related to the investigation must be kept confidential and disclosed only to those who 'need to know'. The unauthorised release of information can cause unnecessary harm to staff, jeopardise the outcome of the investigation, or lead to the information being used for improper or potentially harmful purposes. It can also reduce staff confidence in the organisation's ability to conduct investigations and may prevent legitimate reports being made in the future.

Investigators and staff who receive and assess reports of improper conduct must be made aware of what information is confidential and to whom they can disclose it. They must also understand and comply with the organisation's policy and procedures on security of information, such as the use of passwords and secure storage areas.

There may be some situations where it is not possible to maintain complete confidentiality. For example, natural justice or Freedom Of Information requirements may mean that the person being investigated is entitled to request access to information about the progress of the investigation. Sometimes publicity may be useful. For example, if a theft has occurred and the offender is unknown, 'advertising' the theft may help find out who did it.

Ideally, an investigator should tell those who report improper conduct and any witnesses that if a matter proceeds to court or disciplinary action, then their identity and statements may be revealed to the alleged offender.

Maintaining confidentiality is also a requirement of the *Protected Disclosures Act 1994*. Section 22 of the Act states that an investigator, public authority and an officer to whom a protected disclosure is referred, can not disclose any information that might identify or tend to identify the person making the disclosure. The only exceptions are:

- when the person making the disclosure consents in writing, or

- natural justice requires that the identifying information be disclosed to a person who is the subject of an inquiry, or

- the investigating officer believes that disclosure is necessary to investigate the matter effectively or it is in the public interest to do so.

If an investigator believes that disclosure is necessary he/she should first consult the authorising officer before disclosing the identifying information.

11. Clear, well-documented records must be kept at each stage of the investigation process.

One of the first things to do is to set up a file on the piece of information received. It is recommended that the material on the file be put in chronological order with a dated index of progress showing all the decisions made.

Make sure you write everything down, including details of phone conversations and notes of interviews and meetings.

Good record keeping helps to increase accountability by making the investigation process more transparent. It also provides support for the final recommendations and makes investigators and managers accountable for their actions.

Investigators must be aware that the documents they obtain or the conversations they have may become evidence in subsequent legal proceedings. It is therefore important that files containing this material are properly secured.

Consideration also needs to be given to finding a secure environment to store files when an investigation is complete. It is important that they are not easily accessible by someone who may have an interest in the matter.

12. Organisations must continually reassess the progress of an investigation and regularly evaluate operational decisions.

Throughout the investigation process, you need to check the direction of the investigation and consider any possible implications for the organisation. This review is usually undertaken by the investigator or authorising officer of the organisation.

Regular assessment allows you to decide where you want to go with the investigation—do you want to take it to court or just issue a disciplinary warning? Do you need to bring in outside expertise? Does the matter now need to be reported to an external agency? You may also need to look at the resources currently committed to the investigation and assess future resource needs.

13. A report on the results of the investigation and recommended action must be prepared.

This report should be clearly set out and contain all the relevant information that the authorising officer will need to make a decision on the appropriate action to take. The report should be objective and contain facts only, not assumptions and personal opinions. It is important that the report remain confidential and is not seen by anyone other than the authorising officer or the investigator.

Remember, if it is intended to commence disciplinary action and the employee has not already been given an opportunity to answer the allegation, he or she must be given the opportunity to do so and to comment on the available evidence.

The report should consist of two sections.

(1) The first section should cover the facts relating to the investigation and should be completed by the officer who has conducted the investigation.

A suggested structure is:

• covering memo/executive summary

• background (nature of allegation, terms of reference, sources of information, methodology)

• results of inquiries

• conclusion

• recommendations (for example, disciplinary action).

(2) The second section should cover general issues raised by the investigation and may be completed by someone other than the investigator.

For example:

• comments on any adverse repercussions

• if and why correct procedures were not followed

• the need for new procedures or controls to prevent future problems

• recommendations for systems improvement.

The finished report should then be sent to the authorising officer of the organisation.

14. The authorising officer of the organisation must review the investigation report and decide on the appropriate course of action.

It is important that the authorising officer does not delegate this task. Decisions about the course of action to take must be objective and made at the appropriate level of the organisation.

At this stage, investigations usually have one or more possible outcomes.

(1) There is no evidence to support the allegation, so it is unsubstantiated and no further action is taken.

(2) There is sufficient evidence to take disciplinary action.

(3) The investigation has been or is to be referred to an external agency which is to continue with the investigation.

(4) The rectification of organisational deficiency identified in the investigation report.

The most common outcome of an adverse finding in an internal investigation is disciplinary action. The *Public Sector Management Act 1988*, which covers many public officials in NSW, sets out what constitutes a breach of discipline and the types of disciplinary action that should be taken. Disciplinary provisions applying to other public officials may be included in specific legislation relevant to their organisation.

If organisations covered by the Public Sector Management Act decide to take disciplinary action against an employee, they must first refer to the Public Sector Management Act and Regulations and the Discipline Guidelines published by the (former) NSW Department of Industrial Relations and Employment (see Further Information section).

A disciplinary inquiry is a separate process to the initial investigation and organisations must comply with the discipline guidelines. These guidelines are quite specific and must be strictly followed to avoid potential procedural repercussions. For example, there have been cases where the end result of an investigation has been that action was taken against the organisation seeking disciplinary action rather than the employee, because the guidelines were not followed correctly in the first place.

In local government, councils should refer to Clause 27 of the Local Government (State) Award 1995 on Disciplinary Procedures as well as any internal policies on breaches of discipline. Please note that some councils may operate under their own award.

A disciplinary inquiry can result in a range of actions, from a caution or reprimand, to a reduction in salary or a direction that the officer concerned be dismissed.

Organisations must adopt a consistent approach to administering disciplinary action and make sure that the action taken is appropriate for the offence. Most

disciplinary guidelines will provide a list of mitigating factors that you may need to consider when deciding on the type and level of disciplinary action to take.

Some of these factors may include:

- the degree of participation by the officer concerned

- any external pressures on the officer

- any previous disciplinary action taken

- whether the officer's action was misguided but well-meaning

- if the improper behaviour is due to a communication problem, for example the officer could not or did not understand the correct procedures.

If, at the end of an investigation, you decide to take no further action it is important that no record of the investigation is kept on the employee's personnel file.

15. Organisations need to decide how to communicate details of investigations and their outcomes to staff.

Information about investigations will often travel around 'on the grapevine', so you need to decide if, when and how you will officially communicate this information to staff within your organisation.

Informing staff in circulars or memos of the outcomes of internal investigations can show that management is committed to discovering the truth, and will help to promote values which support ethical behaviour. Some organisations list or summarise offences in their annual report or use them as case studies to increase staff awareness. If you decide to do this, you must take into account the nature of the offence and the effect it may have on the staff member involved.

Accordingly, you will need to consider how effective these strategies are in creating an ethical environment, and whether they will actually increase or decrease staff morale and productivity. The repercussions of an internal investigation can be very costly. Remaining staff can feel a sense of loss and may need counselling. Supervisors may feel let down by their staff and may start to wonder what they did wrong and whether their job is under threat too. It is important for management to focus on the positive outcomes of an investigation, to stress that they support ethical conduct, and promote the assumption that most staff are trying to do the right thing.

Any deficiencies uncovered by the investigation must be dealt with promptly and any necessary organisational and staffing changes implemented as soon as possible.

16. Organisations should monitor and review the investigation process and recommend any necessary modifications or improvements.

At the end of an investigation, you need to review the complete investigation process. Were the objectives achieved? How were staff affected? What could have been done better or more efficiently?

Organisations should also regularly review their internal investigation policy and procedures to make sure that they still meet the needs of the organisation.

In this review process you should look at:

- How many investigations have been conducted?
- Did reporting mechanisms work effectively?
- What were the factors that hindered the investigation?
- How long did the investigations take and what resources were used?
- Were there any repercussions and how were they addressed?
- Was information about the investigation communicated successfully and appropriately to all staff involved?
- Does the internal investigation policy need to be revised?
- Is further staff training required?

After the review, any recommendations for improving the internal investigation policy or process should be implemented in consultation with staff and investigators.

CHECKLIST

❑ Have you evaluated the options available for conducting an internal investigation?

❑ Does your organisation have a policy for investigating information and reports of improper conduct?

❑ Do you have staff with the necessary skills and experience to conduct an effective internal investigation?

❑ Do you provide appropriate training for investigators and their supervisors?

❑ Have you prepared guidelines on the roles and responsibilities of all staff involved in an investigation?

❑ Are all staff aware of the organisation's policy on internal investigations?

❑ Does the organisation have the accommodation, equipment and other resources needed to carry out an investigation?

❑ Have you developed procedures for receiving and assessing information and reports of improper conduct?

❑ Do you have clear guidelines for when and how to report matters to external agencies?

❑ Have you made contact with liaison officers in external agencies such as the Police?

❑ Are all details of an investigation kept confidential?

❑ Are thorough records kept at each stage of the investigation process?

❑ Have you read the relevant discipline guidelines before commencing a disciplinary enquiry?

❑ Do you continually reassess the progress of an investigation and evaluate possible outcomes?

❑ Have you considered the repercussions that an investigation might have on staff in the organisation and developed positive strategies for promoting ethical behaviour?

❑ Are the recommendations of investigation reports for improving internal procedures and controls implemented as soon as possible?

The following hypothetical case studies highlight some of the issues and decisions faced by organisations when they have to plan and conduct an internal investigation.

Case studies one and two show the different level/type of investigation required for what initially appears to be a similar offence.

Case Study 1

Two members of a large public sector organisation maintenance crew were reported to be soliciting private construction work and using the organisation's equipment and materials to lay concrete paths and driveways in work time. It was alleged that the two men had accepted payments for this private work over a period of 6–9 months.

The Principal Officer suspected that the matter involved corrupt conduct and reported it to the ICAC who later referred it back to them for investigation. The Principal Officer then handed the matter to the organisation's investigation unit to conduct enquiries.

An investigation into the allegations revealed that the two employees were accepting payments for completing private jobs. A performance review of the work undertaken by the crew under investigation also showed that they had failed to complete their allocated tasks over recent months.

The investigator conducting the enquiry presented the evidence to the employees at separate interviews. When the employees saw the evidence against them, they admitted the offences and were eventually dismissed from the organisation.

A case study of the investigation was reported in a special edition of the staff newsletter on ethical behaviour. Stricter procedures were also introduced for monitoring the work of maintenance crews.

Case Study 2

A local resident approached a Councillor with information about his neighbour, a Council employee. He reported that the previous weekend he had seen Council equipment being used to dig up his neighbour's driveway.

The Councillor reported the matter to the General Manager. He discussed the matter with one of the Council's internal auditors who had been trained in basic investigation skills. The auditor decided to interview the employee who had worked for Council for 20 years and had an excellent work record. At the interview the employee admitted that he had used the equipment the previous weekend. He said he didn't realise it was wrong to do this as he was only 'borrowing' the equipment to do work on his own property. He did the work in his own time and not as a second job for which he got paid.

The auditor reported back to the General Manager and, as this was a one-off offence, recommended that no formal disciplinary action be taken. The General Manager counselled the employee on the use of Council resources and gave him a copy of their Code of Conduct.

The Council also decided that it was time to update their Code of Conduct and later ran a series of awareness-raising sessions for outdoor staff.

The following case study shows a process used to investigate suspected fraud.

Case Study 3

A Finance Officer in a public sector agency found an anomaly during a routine check of petty cash reconciliation. She noticed that several petty cash claims made by the same employee were not supported by receipts and the employee also had a number of unacquitted advances.

She reported the matter to her supervisor, the Finance Manager, who contacted the agency's two regular suppliers to check if the claims were genuine. Both suppliers confirmed that the invoices were not from their companies.

The Finance Manager informed the Principal Officer of the situation and she asked the internal audit unit to conduct an investigation. The unit had auditors who were trained investigators. The Principal Officer also contacted the Police who said that it was appropriate, at this stage, for the agency to conduct their own investigation.

The purpose of the investigation was to assess whether any losses had occurred and if so, who was responsible for these losses, and to evaluate the internal controls on petty cash expenditure currently operating in the department concerned.

The investigation found that the employee had made false petty cash claims of up to $10 000 over a period of two years and that there had been a breakdown in internal controls. In some cases claims were not supported by receipts and in others the same receipt had been used to make several different claims. The signatures of the approving officers had been forged and an invoice book used to prepare fraudulent claims was found in the employee's filing cabinet.

The investigation results were then handed over to the Police. They interviewed the employee and he admitted the offences. He was charged with obtaining money on false pretences and subsequently resigned from the agency and offered to pay the money back.

This was a positive outcome for the agency who also took the opportunity to make a number of improvements to their internal controls that had been recommended in the investigation report.

These system changes included:

• making sure that authorising officers checked that receipts or other supporting documentation were attached to petty cash claims

• stamping petty cash receipts so that they could not be used again

• recouping advances on the day they were issued

• conducting regular checks of petty cash expenditure

• making sure that all petty cash shortages were investigated.

FURTHER INFORMATION

1. *Public Sector Management Act 1988*

2. *Public Sector Management (General) Regulation 1988*

3. *Discipline Guidelines*, NSW Department of Industrial Relations and Employment, Sydney, 1988

These guidelines are currently being revised by the Premier's Department. They will also be included in the next edition of the *Personnel Handbook*, also to be issued by the Premier's Department.

4. *Internal Reporting Systems*, Audit Office, ICAC & Ombudsman, Feb 1995

5. *Contracting for Services: The Probity Perspective*, Independent Commission Against Corruption, May 1995

6. *The Aftermath—Restoring the Workplace*, Defence Ethics and Fraud Awareness Campaign video, Department of Defence, June 1992

7. *Effective complaint handling guidelines*, NSW Ombudsman, 1995

8. *Commonwealth Fraud Investigation Standards Package*, Commonwealth Law Enforcement Board, Commonwealth Investigation Technical Standards Committee, 1996

9. *Complaints Management in Councils*, Department of Local Government, Practice Note No 9, August 1994.

TRAINING COURSES

Please note that the following list should not be treated as ICAC recommendations. There may be investigation courses run by other public sector agencies or private firms that are more appropriate for your organisation.

1. National Investigation Training Centre (NITC), Australian Federal Police, Canberra

   • Basic Investigation Course

   • Investigation Workshop

   • Introduction to Intelligence

   • Case Managers' Course

2. University of Canberra, Faculty of Education, Centre for Professional and Vocational Education, Security and Investigation Training Programs.

   • Investigation Methods

   • Investigative Interviewing and Recording Techniques

3. University of Western Sydney, Macarthur, Faculty of Arts and Social Sciences

Australian Centre for Security Research (in association with TRP International Pty Ltd)

- Certificate in Corporate Investigations

4. Charles Sturt University, Open Learning Institute, Wagga Wagga.

- The Investigation Process and Investigation Management Short Course
- Investigation Management Practices
- Investigation Interview Techniques

5. Charles Sturt University, Faculty of Arts, Wagga Wagga.

- Graduate Certificate in Investigations
- Graduate Diploma in Investigations Management

NB   Various manuals are obtained as part of training courses.