# I·C·A·C

## INDEPENDENT COMMISSION AGAINST CORRUPTION

### NEW SOUTH WALES

## NSW INDEPENDENT COMMISSION AGAINST CORRUPTION

# Advice on developing a fraud and corruption control policy

January 2021

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# Introduction

Pursuant to the _NSW Fraud and Corruption Control Policy_ (published as Treasury Circular 18-02), most NSW public sector agencies must have a fraud and corruption control policy ("a policy" or "the policy"). If an agency does not have to comply with this requirement, the NSW Independent Commission Against Corruption ("the Commission") recommends that it should, nonetheless, adopt a policy.

Importantly, a policy is different from an agency's fraud and corruption control _plan_ (or similarly named document). A fraud and corruption control plan is a comprehensive document that goes into significant detail about _how_ the agency controls fraud and corruption. A policy's main purpose is to set the basic approach to controlling fraud and corruption, rather than specifying detailed controls and behavioural expectations.

A policy is not the same as an agency's code of conduct, nor should it seek to replace key integrity policies relating to matters such as conflicts of interest, gifts or public interest disclosures. For this reason, a policy is usually a relatively short document.

# The agency's attitude to fraud and corruption

The policy should articulate a simple statement outlining the agency's appetite or tolerance for fraud and corruption. Most agencies incorporate a "zero tolerance" for fraud and corruption into their policy.

The policy should also help to establish the proper "tone at the top" by management. It should therefore be issued by a senior executive, preferably the head of the agency. A policy may also benefit from an introductory message from the agency head that emphasises the importance of minimising fraud and corruption.

Such a statement could also explain ways in which fraud and corruption can damage the agency's reputation, productivity, morale, ability to recruit and retain skilled staff, and its finances.

# Application

The policy should apply to all agency staff, including any volunteers. It may also be desirable to oblige contractors and suppliers to comply with the policy, or at least be aware of it. Many agencies have a "statement of business ethics" or similarly named document that describes the conduct required of suppliers. If this is the case, there may be no need for content to be reproduced in a fraud and corruption control policy.

# Defining fraud and corruption

Most policies explain the terms "fraud" and "corruption". TC 18-02 defines fraud as "dishonestly obtaining a benefit, or causing a loss, by deception or other means". Corruption is defined in s 7, s 8 and s 9 of the _Independent Commission Against Corruption Act 1988_ ("the ICAC Act"). However, for an agency policy, it may be preferable to use more simplified wording, which can be found here.

In practice, fraud carried out by a public sector employee in his or her official capacity will also be corrupt conduct. In addition, certain frauds perpetrated on the agency by external parties could be found to be corrupt under the ICAC Act.

It may also be helpful to provide some examples of fraud and corruption that have occurred, or could occur, in the agency.

Finally, because there are other forms of workplace misconduct that might not fall within the meaning of fraud and corruption, it is open to agencies to broaden their policy documents to also encompass matters such as maladministration, bullying and harassment, drug and alcohol use and minor breaches of the code of conduct.

# Responsibilities for fraud and corruption control

Like most policies, a fraud and corruption control policy should articulate some roles and responsibilities (which is also a requirement under TC 18-02).

By convention, fraud and corruption control is divided into prevention, detection and response/investigation measures. Agencies may therefore wish to explain who manages these three areas of responsibility.

Some other roles to consider include:
- the owner of the policy
- accepting and assessing complaints and complying with the *Public Interest Disclosures Act 1994*
- liaison with the Commission with regard to mandatory reporting under s 11 of the ICAC Act
- owners of any agency-level fraud and corruption risks
- designing and delivering training and awareness raising
- relevant responsibilities of the chief audit executive, general counsel and the heads of risk, human resources, cyber security and professional standards.

It is important that the prevention, detection and response/investigation roles be coordinated, so it may be necessary to appoint a single person or unit with overall responsibility for coordinating the agency's fraud and corruption control framework. Some agencies create an internal management committee that deals with certain integrity issues and it may be appropriate to reference the existence and mandate of such a committee in the policy.

The policy may also describe some general responsibilities of staff and managers. However, this can usually be achieved by referencing the code of conduct.

# Overview of the agency's approach

A policy does not need to contain the fine detail of an agency's control measures. However, in addition to describing some roles and responsibilities, it should set out some of the key ways in which the agency has chosen to control the risk of fraud and corruption. This could include:

- alignment to an industry standard such as the Australian Standard on *Fraud and Corruption Control* (AS 8001-2008) or guidance issued by the Commission, the NSW Ombudsman or the Audit Office of NSW
- a commitment to having prevention, detection and response/investigation controls
- a commitment to conduct regular fraud and corruption risk assessment (for example, every two years)
- a timetable for reporting to the Audit and Risk Committee
- a commitment to cooperating with agencies such as the Commission, the NSW Ombudsman, the Audit Office of NSW and the NSW Police Force
- a general requirement for all staff and managers to refrain from and discourage any behaviour that falls outside the appetite/tolerance statement.

## Compliance

The policy will not usually contain any detailed behavioural obligations (which would normally be in a code of conduct). However, it may be appropriate to detail the consequences of non-compliance with the policy.

## Interface with other policies

As noted above, there is no need for a policy to duplicate content that exists in other documents such as a code of conduct or policies that deal with conflicts of interest, gifts and public interest disclosures. However, the policy should reference these other relevant documents as required.

## Distribution and access

The policy should be distributed to all staff and posted on the agency's staff intranet. Agencies may also choose to publish their policy on their website.

## Sample policy

The Commission has published a **sample** fraud and corruption control policy that can be used by NSW public sector agencies to help them develop or refine their own policies.

## Further information

- www.icac.nsw.gov.au (website)
- icac@icac.nsw.gov.au (email)
- (02) 8281 5999 (telephone)
- 1800 463 909 (toll free)