

12 month progress report

Investigation into allegations of corrupt conduct in the provision of security products and services by suppliers, installers and consultants

Art Gallery NSW

Please update this schedule with information about the status of each item as at 13 February 2015. Include details of the latest action/update in respect of each initiative, dates where relevant and attach copies of any documents referred to, where possible, in support of implementation of particular initiatives. Please provide the name of a contact person in your agency from whom we can seek more detail if needed. Please return this document to the ICAC in writing and electronically to bkokkaris@icac.nsw.gov.au by no later than 13 February 2015.

Recommendation 1.

That NSW government agencies ensure that overall responsibility for identified tasks associated with the selection of security integrators is maintained in-house, including:

- determining project budgets
- determining the scope of projects
- selecting tenderers to bid for contracts (in the case of limited and select tenders)
- communicating with tenderers
- coordinating tender evaluation panels and making recommendations
- evaluating tender submissions and writing selection reports.

Summary of progress

The recommendation is being: *<check one>*

- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action taken to implement recommendation

Recommendation 1 was endorsed by the Trustees of AGNSW in July 2012, subject to noting that, by virtue of the nature of its organisation, it may be impossible to bring certain functions in-house and that appropriate alternatives will be put in place. Consistent with that endorsement, Recommendation 1 will be implemented by AGNSW as described below.

AGNSW will ensure that the following functions are performed in-house:

- (i) determining project budgets;

- (ii) selecting tenderers to bid for contracts (in the case of limited and select tenders) in a manner that is consistent with NSW Trade & Investment's procurement policies and requirements and
- (iii) communicating with tenderers.

However, AGNSW may need to rely on external specialist advice with respect to:

- (i) determining the scope of projects;
- (ii) coordinating tender evaluation panels and making recommendations; and
- (iii) evaluating tender submissions and writing selection reports.

Accordingly, it may not be possible to completely bring these functions in-house, however, the Gallery will be guided by NSW Trade & Investment's Strategic Procurement Group to ensure that risk of corruption and fraud is minimised..

To give effect that as part of Recommendation 1 in an alternative way, AGNSW intends to implement a process of separate consultancy for each project function consistent with Recommendation 4 below. For example, AGNSW will engage an industry specialist to assist it with development of the scope of a project and a separate and unrelated industry specialist to assist in the evaluation of tender submissions. Throughout this process, the Gallery will be guided and advised by NSW Trade & Investment Strategic Procurement Group.

Supporting material

The Gallery had intended to produce an independent procurement plan in 2013/14. Following discussion with NSW Trade & Investment and a restructure of Building and Security Services, the Gallery has chosen to adopt NSW Trade & Investment procurement processes and procedures and develop specific procurement plans for all projects valued above \$100,000. These plans are approved within the Gallery and subsequently undergo a final review by NSW Trade and Investment Strategic Procurement Group. Templates of Minor and Major plans are attached. This new process is managed within the Building Services Department and the Sydney Modern Project Office of the Gallery.

Evaluation of implementation (Progress update)

AGNSW does not anticipate that it will need to procure the services of a security integrator through a competitive tender in the short or near term. AGNSW intends to audit compliance with Trade & Investment Procurement policies and processes in the 2015/16 year. The Director, Finance and Commercial Operations will be responsible for the internal audit of AGNSW's Procurement processes.

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Recommendation 2.

That NSW government agencies embarking on new large-scale security projects adopt a rigorous product selection approach. The selection process could include:

- obtaining feedback regarding product specifications from a variety of sources, including end-users
- extensive product testing and the evaluation of test results by a panel either to inform the development of tender specifications or as part of a tender evaluation process.

Summary of progress

The recommendation is being: <check one>

- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action taken to implement recommendation

Recommendation 2 was endorsed by the Trustees of AGNSW in June 2012. Consistent with that endorsement, Recommendation 2 will be implemented by AGNSW as described in the report when a large scale security project is undertaken.

Supporting material

There is no supporting material for this recommendation apart from the Procurement Plan template from Recommendation 1. When the Gallery next undertakes a large scale security project, a specific procurement plan will be developed, incorporating the recommendations from Operation Tilga and guided by the NSW Trade & Investment Strategic Procurement Group who will provide up to date advice about procurement processes and procedures.

Evaluation of implementation (Progress update)

A review of the procurement plan will be undertaken by NSW Trade & Investment Strategic Procurement Group. Internal auditing of procurement at the Gallery will be undertaken in 2015/16.

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Recommendation 3.

That NSW government agencies explore alternatives to relying exclusively on the advice of specialist consultants when selecting security integrators through a competitive process. Options for diluting the influence of specialist consultants include:

- identifying in-house security experts from other public sector agencies for tender evaluation panel participation
- ensuring that when consultants sit on tender evaluation panels, it is only in a technical advisory capacity
- identifying and seeking advice from agencies that have undertaken similar projects.

Summary of progress

The recommendation is being: <check one>

- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action taken to implement recommendation

Recommendation 3 was endorsed by the Trustees of AGNSW in June 2012. Consistent with that endorsement, Recommendation 3 will be implemented by AGNSW as described in the report.

Supporting material

There is no supporting material for this recommendation apart from the Procurement Plan template from Recommendation 1. When the Gallery next undertakes a security project at the value of \$100,000 or more, a specific procurement plan will be developed, incorporating the recommendations from Operation Tilga and guided by the NSW Trade & Investment Strategic Procurement Group who will provide up to date advice about procurement processes and procedures.

Evaluation of implementation (Progress update)

A review of the procurement plan will be undertaken by NSW Trade & Investment Strategic Procurement Group. Internal auditing of procurement at the Gallery will be undertaken in 2015/16.

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Recommendation 4.

That NSW government agencies consider the feasibility of separating tasks between security consultants for large-scale and complex projects, in cases where specialist advice is required.

Summary of progress

The recommendation is being: *<check one>*

- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action taken to implement recommendation

Recommendation 4 was endorsed by the Trustees of AGNSW in June 2012. Consistent with that endorsement, Recommendation 4 will be implemented by AGNSW as described in the report.

Supporting material

There is no supporting material for this recommendation apart from the Procurement Plan template from Recommendation 1. When the Gallery next undertakes a security project at the value of \$100,000 or more, a specific procurement plan will be developed, incorporating the recommendations from Operation Tilga and guided by the NSW Trade & Investment Strategic Procurement Group who will provide up to date advice about procurement processes and procedures.

Evaluation of implementation (Progress update)

A review of the procurement plan will be undertaken by NSW Trade & Investment Strategic Procurement Group. Internal auditing of procurement at the Gallery will be undertaken in 2015/16.

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Recommendation 5.

That NSW government agencies adopt a broad approach to the due diligence enquiries that are conducted as part of a security procurement process, including:

- the scrutiny of low bids
- consideration of previous performance
- seeking referee reports beyond those nominated by the tenderer
- the verification of case studies provided by tenderers
- conducting criminal record checks on successful applicants
- seeking information from established information networks.

Summary of progress

The recommendation is being: *<check one>*

- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action taken to implement recommendation

Recommendation 5 was endorsed by the Trustees of AGNSW in June 2012. Consistent with that endorsement, Recommendation 5 will be implemented by AGNSW as described in the report to the extent that AGNSW has the legal authority or capacity to conduct criminal record checks on successful applicants.

Supporting material

There is no supporting material for this recommendation apart from the Procurement Plan template from Recommendation 1. When the Gallery next undertakes a security project at the value of \$100,000 or more, a specific procurement plan will be developed, incorporating the recommendations from Operation Tilga and guided by the NSW Trade & Investment Strategic Procurement Group who will provide up to date advice about procurement processes and procedures.

Evaluation of implementation (Progress update)

A review of the procurement plan will be undertaken by NSW Trade & Investment Strategic Procurement Group. Internal auditing of procurement at the Gallery will be undertaken in 2015/16.

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Recommendation 6.

That NSW government agencies adopt a preference for open tender methodologies (including staged processes that involve open expressions of interest) for new security installation projects above \$250,000 in value. For contracts up to \$250,000 in value, a minimum of three written quotes should be obtained, unless exceptional circumstances exist and are documented or the contract is worth \$30,000 or less.

This recommendation does not apply where whole-of-government or multi-agency arrangements are in place. It also does not apply where the agency has a pre-qualification scheme in place or where existing warrantee or integration issues preclude open competition.

Summary of progress

The recommendation is being: *<check one>*

- X Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action taken to implement recommendation

Recommendation 6 was endorsed by the Trustees of AGNSW in June 2012. Consistent with that endorsement, Recommendation 6 will be implemented by AGNSW as described in the report.

Supporting material

There is no supporting material for this recommendation apart from the Procurement Plan template from Recommendation 1. When the Gallery next undertakes a large scale security project, a specific procurement plan will be developed, incorporating the recommendations from Operation Tilga and guided by the NSW Trade & Investment Strategic Procurement Group who will provide up to date advice about procurement processes and procedures.

Evaluation of implementation (Progress update)

A review of the procurement plan when developed at the appropriate time, will be undertaken by NSW Trade & Investment Strategic Procurement Group. Internal auditing of procurement at the Gallery will be undertaken in 2015/16.

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Recommendation 8.

That NSW government agencies improve their project management systems by:

- clarifying project roles and responsibilities
- developing in-depth project scopes and plans, as appropriate, to the size and complexity of a project
- specifying and ensuring compliance with contract terms and conditions
- introducing tight inventory controls
- close monitoring of project budgets and project expenditure
- establishing processes to verify and approve variations, including the use of quantity surveyors.

Summary of progress

The recommendation is being: *<check one>*

- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action taken to implement recommendation

Recommendation 8 was endorsed by the Trustees of AGNSW in June 2012. Consistent with that endorsement, Recommendation 8 will be implemented by AGNSW as described in the report.

As advised in Recommendation 1, since January 2014, procurement projects in excess of \$100,000 are managed by the Building Services Department and Sydney Modern Project Office within the Gallery under the guidance of NSW Trade & Investment Strategic Procurement Group. A position of Project Manager has been created who manages major projects, along with the Building Services Manager and provides advice and guidance regarding smaller projects to other Managers across the Gallery.

With the introduction of the SAP system across the Gallery, Project Managers have for the first time been formally identified across the Gallery and have been provided with SAP Project Management training.

Supporting material

There is no supporting material for this recommendation.

Evaluation of implementation (Progress update)

AGNSW intends to audit compliance with Trade & Investment Procurement policies and processes in the 2015/16 year. The Director, Finance and Commercial Operations will be responsible for the internal audit of AGNSW's Procurement processes.

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Recommendation 9.

That NSW government agencies ban employees directly involved in procurement activities from accepting any gifts, benefits and hospitality from potential contractors and consultants and existing contractors and consultants.

Summary of progress

The recommendation is being: *<check one>*

- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action taken to implement recommendation

Recommendation 9 was endorsed by the Trustees of AGNSW in June 2012. Consistent with that endorsement, AGNSW Recommendation 9 will be implemented by AGNSW as described in the report.

The Gallery has a Gifts and Benefits Policy, declaration process and register. Division Heads must sign off all declaration forms. Any gifts received by Procurement staff from contractors, consultants or suppliers are declared and returned.

Supporting material

Please find attached the Gallery's Gifts and Benefits Policy.

Evaluation of implementation (Progress update)

The Gifts and Benefits Register is reviewed on an annual basis. Reminder emails about the declaration process are issued to all staff on an annual basis. The Executive Team are reminded of their responsibilities under the policy on an annual basis.

Author: Donna Grubb Administration Manager

Authorised by: John Wicks, Director Finance and Commercial Operations

Originally issued: February 2007

Last reviewed: January 2015

TRIM File Ref: 07/0021

Location: G:/Strategic Management/Policy/AGNSW Gift and Benefits Policy – January 2015.doc

Accessibility: All Staff



AGNSW GIFTS AND BENEFITS POLICY

Purpose

The purpose of this policy is to provide clear direction to all employees concerning the appropriate response as public officials to any offer of gifts and benefits.

Gifts or benefits

A common sense and a professional approach must be applied in all circumstances where gifts, hospitality, entertainment or other benefits are offered.

Employees should not accept a gift or benefit if it could be seen by the public, knowing the full facts, as intended or likely to cause individuals to do their job in a particular way, or deviate from the proper course of duty. Employees should also be alert to any attempt to influence you in your role as a public official by the offer of gifts or benefits to others in your family relationships or involvements.

Value of gift or benefit

Employees of the Gallery must be able to demonstrate that they cannot be improperly influenced in the performance of their duties by offers of gifts and benefits. Any gifts or benefits that are offered or received must be declared in the Gallery's register within 10 days.

The Gallery has determined a nominal value of \$50 as the upper limit for an acceptable value of a gift or benefit. This would permit general acceptance of gift and benefits such as

an inexpensive pen or stationary; a box of chocolates; a flower arrangement; or a modest bottle of wine. The approval to accept such gifts would also be on the proviso that this gift or benefit was not one in a series of gifts or benefits offered by the same person/company.

By contrast gifts or benefits above the acceptable value would include tickets to major sporting events or other entertainment; jewellery; works of art; discounted products for personal use; use of facilities such as gyms and holiday homes; and free or discounted travel. These types of offers are to be refused wherever possible or be turned over as Gallery property and not retained as personal gifts.

Staff with procurement responsibilities

Staff who undertake procurement processes at the Gallery such as purchasing supplies, engaging contractors or consultants are banned from accepting gifts and benefits from such providers. The gift is to be declared and returned.

Cultural considerations

Sometimes representatives or delegations from other countries such as Japan, Korea and China may offer gifts and hospitality to Gallery staff and they consider this offer an important part of doing business with government officials. Culture or tradition should never be used as an excuse to accept inappropriate gifts and benefits.

Offers at Christmas

Christmas and other cultural or religious occasions do not represent exceptions to this policy.

Bribes or soliciting of personal gifts or benefits

If an employee is offered a bribe, the incident must immediately be reported to your Executive officer or the director. The ICAC, and where relevant, the police, must be informed immediately.

Soliciting personal gifts or benefits is strictly prohibited under all circumstances. If an employee becomes aware of another employee soliciting gifts or benefits, they should report it immediately to their Executive officer. The director will then inform the ICAC through a section 11 report.

Gifts that may not be outright bribes but are nevertheless suspected of being offered for the purposes of influencing a public official's behaviour in their official capacity should always be declined. In such circumstances your Executive officer should be notified of the incident and the director will consider whether to make a section 11 report to the ICAC.

Gifts of money

Accepting gifts of money is strictly prohibited in all cases, since in all likelihood such a gift would be perceived as an attempt at bribery. This includes offers of money to cover expenses for trips to view samples of work, or to expedite the work of the Gallery. Any such gift that is received (for example in the mail) must be immediately declared and every effort made to return it. If an employee is offered a gift of money, it should be refused and the incident reported immediately to your Executive officer.

Prizes and gifts

On some occasions a staff member may receive a gift or prize as a result of entering a competition or attending a conference while engaged in official duties. If it is appropriate to accept the prize gift as part of accepting the recognition for the submitted work it should be noted that the prize becomes the property of the Gallery.

While at a conference or procurement forum sessions staff are not to submit their business cards for lucky door prizes or sign up for a potential gift when seeking further information about products.

Declarations

The Gallery has developed an AGNSW Gifts and Benefits Declaration Form specifically to support this policy. The form is available on the intranet under Policies and Procedures/Downloadable Form section.

All offers of gifts or benefits made either directly or indirectly to an employee are to be reported within 10 days via the declaration form to your executive officer. The executive officer is responsible for forwarding the finalised declaration forms to the Administration department for filing on the Gallery's official 'Gift and Benefits Register'.

Some examples of appropriate treatment to offers of gifts and benefits:

Example: There are frequent attempts by suppliers of goods and services to government to 'sweeten a deal' by offering gifts or benefits, which may include expensive function tickets or other expensive gifts.

Solution: If such an offer is made, the employee must report the entire incident to their Executive officer and take action to exclude the supplier from further dealings with the Gallery.

Example: Employees undertaking negotiations involving overseas governments or organisation may experience the custom of gift exchange as part of a cultural approach to business dealings. Under most circumstances, it would cause offence to refuse to exchange gifts.

Solution: The local customs are observed and all such gifts are reported to the relevant Executive officer. Gifts of significance become Gallery property.

Further information:

If employees have any questions regarding this policy please contact the Gallery's Manager Human resources x795.

This policy will be revised from time to time and/or as NSW government policies and procedures regarding Gifts and Benefits are updated.

Compliance with this policy is mandatory.

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Recommendation 10.

That NSW government agencies be proactive in explaining the obligations on contractors and consultants to declare conflicts of interest, including those arising from either a pecuniary or non-pecuniary relationship.

Summary of progress

The recommendation is being: *<check one>*

- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action taken to implement recommendation

Recommendation 10 was endorsed by the Trustees of AGNSW in June 2012. Consistent with that endorsement, Recommendation 10 will be implemented by AGNSW as described in the report.

Supporting material

Please see the attached AGNSW Corruption Prevention Strategy.

Evaluation of implementation (Progress update)

The Corruption Prevention Strategy will be reviewed by Internal Audit in 2015/16. The Director, Finance and Commercial Operations will be responsible for the internal audit.



CORRUPTION PREVENTION STRATEGY

Purpose:

The purpose of the Corruption Prevention Strategy is to foster within the Art Gallery of NSW (AGNSW) an ethical climate that permeates all of its activities.

This entails integrating a corruption prevention focus within a framework that:

- Increases awareness of the high ethical standards of accuracy, honesty and accountability expected of every AGNSW employee.
- Minimises corrupt conduct through the promotion, development and implementation of appropriate policies, procedures mechanisms and controls.
- Facilitates the detection, reporting and investigation of corrupt activities.

Background:

In keeping with its high standards of probity and accountability, the NSW Government requires all Government agencies to implement and maintain a strategy for the prevention of internal and external corruption.

AGNSW's Corruption Prevention Strategy includes:

- o An integrated macro policy for fraud control
- o Responsibility structures
- o Fraud risk assessment
- o Employee awareness
- o Consumer and community awareness
- o Fraud reporting systems
- o Protected disclosures
- o External notification
- o Investigating standards
- o Conduct and disciplinary standards

This approach is consistent with Premier's Department, NSW Audit Office and Independent Commission Against Corruption (ICAC) Guidelines.

Art Gallery of New South Wales Policy:

The Gallery is committed to the management of its resources, including its reputation, in the most effective and economical manner possible and acknowledges its associated accountabilities. To this end, AGNSW maintains a strong ethical culture and an effective internal control environment to minimise the likelihood of corruption. It also implements all necessary measures to effectively manage the risk of corrupt conduct. Management of corruption prevention within AGNSW is holistic and complementary. AGNSW's employees, along with its management practices, systems, policies and procedures, are key factors in preventing and detecting corrupt conduct.

Fraud and Corrupt Conduct:

There are many types of corrupt conduct, fraud being one of them. The terms **corruption** and **corrupt conduct** are used throughout this document as they are inclusive of fraud and all other forms of corrupt conduct.

Fraud is a common form of corrupt conduct. It is any practice which involves the use of deceit to confer some form of benefit upon the perpetrator, either directly or indirectly, and results in some form of material loss to the entity defrauded. Fraud is not restricted to monetary or material benefits.

Corrupt conduct is misuse of public office and occurs when a public official is dishonest or partial in the exercise of official functions. It could also include a public official breaching public trust and/or misusing information or material for personal gain or to the benefit of any person. It is corrupt conduct for any person to adversely affect the honest and impartial exercise of official functions.

Corruption can be committed by persons inside or outside AGNSW, either alone or in collusion with other employees or people outside the organisation. Sections 7, 8 & 9 of the **Independent Commission Against Corruption Act, 1988** give a more detailed description of the nature of corrupt conduct. (**Attachment A**). For practical examples of corrupt conduct, see **Attachment B**.

RESPONSIBILITY STRUCTURES:

The key groups who have responsibility within AGNSW's corruption prevention framework are:

- ***The Board:***

As part of its fiduciary duties, the Board is ultimately responsible for ensuring that AGNSW meets all legislative and regulatory requirements. Unethical conduct poses a real risk that the Board must mitigate in order to maintain a successful business. The Board is accountable for ensuring that an ethical business environment is maintained and that a system to effectively minimise corruption is established and maintained within AGNSW.

- ***The Director:***

The Director is responsible for the effective and economical use of AGNSW's resources and for determining appropriate controls against corrupt conduct. This responsibility is appropriately delegated to the Executive and senior staff as detailed in Gallery's Delegation Manual.

Under Section 11 of the Independent Commission Against Corruption Act 1988, the Director is required to report to ICAC any matter that he suspects, on reasonable grounds, concerns or may concern corrupt conduct.

- ***The Audit & Risk Committee:***

The Audit & Risk Committee is the focal point for communication between the Board, the external auditors, the internal auditors and management, as their duties relate to the financial accounting, reporting and internal controls and compliance.

The Committee assists the Board in fulfilling its responsibilities as to accounting policies and reporting practices of AGNSW. It is the Board's principal agent in assuring the independence of AGNSW auditors, the integrity of management and the adequacy of disclosures to the public.

The Committee does not take over the responsibilities that the Director has under the Public Finance and Audit Act.

The right of the external auditors to meet with the full Board of Trustees is, however, not restricted. The delegation of various functions to the Committee does not relieve the Board of Trustees of its duties and responsibilities, but merely assists it in carrying out these responsibilities.

• **Management:**

All managers are required to take a leadership role in promoting ethical behaviour within AGNSW. They are responsible for:

- identifying all factors in their workplaces that may contribute to unethical conduct and for implementing measures to address them,
- creating and maintaining a work environment that supports ethical conduct and accountability for risk management,
- ensuring that staff are aware of and implement AGNSW's Policies and Procedures to prevent corruption,
- explaining obligations of contractors and consultants to declare conflicts of interest, including those of a pecuniary and non-pecuniary nature,
- maintaining appropriate internal controls to minimise risk and
- monitoring the effectiveness of internal controls.

• **All Employees:**

All AGNSW employees, including the Director, the Executive Managers and staff, are required to promote an ethical work culture by:

- understanding the responsibilities of their positions,
- familiarising themselves with all approved AGNSW Policies and Procedures and adhere to them at all times,
- being open with their colleagues,
- leading others by example,
- understanding the risk factors that can lead to corrupt conduct,
- demonstrating by actions and statements that AGNSW does not condone or tolerate corrupt conduct,
- encouraging ethical conduct and
- taking corrective action before a situation escalates.

They are also expected to act in a professional manner at all times by:

- complying with all legislative requirement and AGNSW Policies and Procedures, including the Code of Conduct,
- performing their duties with skill, care, diligence, honesty, integrity and impartiality at all times,
- avoiding misuse or waste of AGNSW resources,
- planning the use of AGNSW information, money, property, goods or services, so that use is efficient and economical,
- taking proper care of AGNSW property,
- using official AGNSW information for authorised and official purposes only,
- dealing with the public, colleagues and other stakeholders in an ethical manner that fosters positive perceptions of AGNSW and
- reporting any corrupt activity, even if it is based only on a suspicion

FRAUD RISK ASSESSMENT:

AGNSW is committed to ensuring that high standards of corporate governance apply, and are seen to apply, to the management of its business. Strategic initiatives in this regard include:

- Ongoing monitoring of and reporting to the Board on the effectiveness of its Corporate Plan and associated Operational Plans.
- Implementation of an Internal Audit program and immediate implementation of audit recommendations.
- Implementation and monitoring the effectiveness of a wide range of Policies and Procedures developed to satisfy statutory requirements, Government policies and the organisational fulfilment of all probity and accountability requirements.

AGNSW is also committed to the development of a “Risk Management” approach to business which is aligned with the business imperatives, mitigates risks within AGNSW’s Corporate Governance framework and creates an environment where managers are accountable for risk management. Strategic initiatives in this regard include:

- Monitoring the effectiveness of risk management in the implementation of key strategies and project based proposals
- Development and monitoring the effectiveness of a framework of key policies and procedures to guide the risk management process.
- Development of a risk management planning that links corporate risks to risk mitigation actions and performance indicators in the Operational Plans of Departments throughout AGNSW as part of the corporate planning process Framework

In this context, AGNSW is able to readily identify areas of potential or actual corruption risk and promptly develop policies and procedures which are conveyed to all employees and monitored carefully.

To date, the following policies and procedures have been implemented to assist corruption prevention in AGNSW:

- Code of Conduct
- Delegations Manual
- Acceptable Use Policy for IT Equipment
- Financial policies and procedures
- Gifts and Benefits
- Grievance and Harassment
- Procurement policy and plan
- Public Interest Disclosures policy
- Use of Electronic Devices
- Conflict of Interest Policy
- Motor Vehicle Policy
- Harrassment Policy
- Induction Handbook
- Working hours, Attendance and Leave Arrangements

AGNSW will monitor the effectiveness of its Corruption Prevention Strategy in the context of its Internal Audit Program and in accord with the NSW Audit Office’s “Self-Audit Guide and ICAC’s “Fighting Fraud Checklists”.

EMPLOYEE AWARENESS:

All AGNSW employees will be required to attend training programs on the Corruption Prevention Strategy and appropriate ‘refresher courses’ provided by management.

AGNSW's Policies and Procedures are readily available to all AGNSW staff via the Intranet. When a new policy is promulgated, the Executive are advised immediately and asked to ensure that all staff in their respective business units are aware of and implement the policy. At the same time, all staff are advised of the new policy and requirements associated with it.

In addition, Finance and Commercial Operations provide all staff with a list of current policies and procedures and the associated requirements and arrange appropriate staff training.

New employees to AGNSW, as part of their induction, are advised of the existence of AGNSW's Policies and Procedures and where they can be accessed. They are given a copy of the Code of Conduct and the Corruption Prevention Strategy and are required to sign a document verifying that they have received the documents and will implement all requirements contained therein.

CUSTOMER AND COMMUNITY AWARENESS:

AGNSW's standards regarding ethical behaviour are principally conveyed to customers, stakeholders and the community through the manner in which its employees conduct business with them. This is the strongest and most effective means of demonstrating our ethical standards.

Probity auditors will continue to be deployed in AGNSW's business negotiations with the private sector. All external parties assisting AGNSW in these negotiations are required to sign a Confidentiality Agreement and adhere to all probity arrangements put in place by AGNSW.

FRAUD REPORTING SYSTEMS:

AGNSW has an obligation to inform the police when a fraud is identified. There is no discretion in this matter.

The Director has a statutory obligation to report to ICAC any matter that he suspects, on reasonable grounds, concerns or may concern corrupt conduct.

Where appropriate, AGNSW may also report fraudulent acts to the Crown Solicitors, the Director of Public Prosecutions, the Auditor-General and the Ombudsman.

It is therefore a requirement within AGNSW that any matter which falls within the description of corrupt conduct be reported immediately to the Director.

The report should include:

- a complete description of the allegations;
- the name and position of any public official/s alleged to be involved;
- the name and role of any other person/s relevant to the matter;
- the dates and/or the time-frames in which the alleged conduct occurred,
- an indication as to whether the conduct appears to be a one-off event or part of a wider pattern or scheme;
- the date the allegation was made or the date on which the reporting officer became aware of the conduct;
- what the agency has done about the suspected conduct, including notification to any other agency (police, Ombudsman);
- what further action is proposed by the agency;
- approximate amount of money, if any, involved;
- any other indicators of seriousness; and
- any other information deemed relevant to the matter.

CONDUCT AND DISCIPLINARY STANDARDS:

Corrupt conduct, in any of its forms, would impact heavily on AGNSW's reputation, operating efficiency, finances and service obligations. Therefore, **AGNSW will not tolerate corrupt conduct in any of its forms and requires that, if it should occur, it be detected, reported and dealt with expeditiously. Perpetrators of corrupt conduct will face disciplinary action.**

Any questions as to whether a particular action might constitute corrupt conduct or the reasonableness of grounds for suspecting corrupt conduct should be referred immediately to AGNSW's Executive or Financial Controller.

FURTHER INFORMATION:

Fraud Control - Developing an Effective Strategy

Volumes 1 – 3

Audit Office of NSW and Premier's Department

www.audit.nsw.gov.au (Reports. Guides. Publications)

Fighting Fraud – Guidelines for State and Local Government

Independent Commission Against Corruption

www.icac.nsw.gov.au (Publications)

Good Conduct and Administrative Practice

NSW Ombudsman

www.nswombudsman.nsw.gov.au (Publications. Guidelines)

Inquiries:

Director, Finance and Commercial Operations

(John Wicks (02) 9225 1716)

Michael Brand

Director

Date:

INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988 NO. 35

Section 7 Corrupt conduct

- (1) For the purposes of this Act, corrupt conduct is any conduct which falls within the description of corrupt conduct in either or both of subsections (1) and (2) of section 8, but which is not excluded by section 9.
- (2) Conduct comprising a conspiracy or attempt to commit or engage in conduct that would be corrupt conduct under section 8 (1) or (2) shall itself be regarded as corrupt conduct under section 8 (1) or (2).
- (3) Conduct comprising such a conspiracy or attempt is not excluded by section 9 if, had the conspiracy or attempt been brought to fruition in further conduct, the further conduct could constitute or involve an offence or grounds referred to in that section.

Section 8 General nature of corrupt conduct

- (1) Corrupt conduct is:
 - (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or
 - (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
 - (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
 - (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.
- (2) Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:
 - (a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition);
 - (b) bribery;
 - (c) blackmail;

- (d) obtaining or offering secret commissions;
- (e) fraud;
- (f) theft;
- (g) perverting the course of justice;
- (h) embezzlement;
- (i) election bribery;
- (j) election funding offences;
- (k) election fraud;
- (l) treating;
- (m) tax evasion;
- (n) revenue evasion;
- (o) currency violations;
- (p) illegal drug dealings;
- (q) illegal gambling;
- (r) obtaining financial benefit by vice engaged in by others;
- (s) bankruptcy and company violations;
- (t) harbouring criminals;
- (u) forgery;
- (v) treason or other offences against the Sovereign;
- (w) homicide or violence;
- (x) matters of the same or a similar nature to any listed above;
- (y) any conspiracy or attempt in relation to any of the above.

- (3) Conduct may amount to corrupt conduct under this section even though it occurred before the commencement of this subsection, and it does not matter that some or all of the effects or other ingredients necessary to establish such corrupt conduct occurred before that commencement and that any person or persons involved are no longer public officials.
- (4) Conduct committed by or in relation to a person who was not or is not a public official may amount to corrupt conduct under this section with respect to the exercise of his or her official functions after becoming a public official.
- (5) Conduct may amount to corrupt conduct under this section even though it occurred outside the State or outside Australia, and matters listed in subsection (2) refer to:
 - (a) matters arising in the State or matters arising under the law of the State, or
 - (b) matters arising outside the State or outside Australia or matters arising under the law of the Commonwealth or under any other law.
- (6) The specific mention of a kind of conduct in a provision of this section shall not be regarded as limiting the scope of any other provision of this section.

- (1) Despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve:
- (a) a criminal offence, or
 - (b) a disciplinary offence, or
 - (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or
 - (d) in the case of conduct of a Minister of the Crown or a member of a House of Parliament – a substantial breach of an applicable code of conduct.

(2) It does not matter that proceedings or action for such an offence can no longer be brought or continued, or that action for such dismissal, dispensing or other termination can no longer be taken.

(3) For the purposes of this section:

applicable code of conduct means, in relation to:

- (a) a Minister of the Crown – a ministerial code of conduct prescribed or adopted for the purposes of this section by the regulations, or
- (b) a member of the Legislative Council or of the Legislative Assembly (including a Minister of the Crown) – a code of conduct adopted for the purposes of this section by resolution of the House concerned.

criminal offence means a criminal offence under the law of the State or under any other law relevant to the conduct in question.

disciplinary offence includes any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law.

(4) Subject to subsection (5), conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in section 8 is not excluded by this section if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

(5) Without otherwise limiting the matters that it can under section 74A (1) include in a report under section 74, the Commission is not authorised to include a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection (4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct could also constitute a breach of a law (apart from this Act) and the Commission identifies that law in the report.

Examples of Corrupt Conduct:***Computer Fraud:***

The main areas of computer fraud include:

- Unauthorised alteration of input data
- Misappropriation, destruction or suppression of output data
- Alteration of computerised data
- Alteration or misuse of software programs
- Unauthorised and/or deceptive transfers of funds

Provision of false or incomplete information:

Provision of submissions, briefs etc to Management, the Board, the Minister and to the public which are not objective, reflect personal agenda and are not in the best interests of the agency. Persons claiming to be someone else in order to obtain confidential information.

Abuse of official position for public gain:

Examples include acceptance of secret commissions, bribery, blackmail, improper use of confidential information, bias to suppliers or contractors or bias in staff promotions or appointments.

Theft:

The most common types of property stolen include consumables, supplies, computers, software, equipment, cash and intellectual property. Theft also includes the unauthorised use of resources such as corporate credit cards, motor vehicles, Cabcharge vouchers etc.

Abuse of AGNSW resources:

Reasonable and infrequent authorised personal use of AGNSW resources is permitted but it must not interfere with business operations or work responsibilities. AGNSW resources include motor vehicles, computers, photocopiers, telephones, facsimile machines, e-mail, Internet, administrative support and information.

Unauthorised or inappropriate sales, tendering practices and write offs:

Examples include selling information or services without authority, disposing of assets or inventory items for less than open market value or retail price, corrupt tendering practices and the unauthorised write-off of assets and bad debts.

Forgery or falsification of records to originate or conceal fraud:

Falsifying records and processing false statements is fraud. Examples include falsifying data or receipts, invoices, time-sheets, leave forms, or forging a signature on a purchase order or other document or forging certificates of competency or qualifications.

12 month progress report

Investigation into allegations of corrupt conduct in the provision of security products and services by suppliers, installers and consultants

Art Gallery NSW

Recommendation 11.

That NSW government agencies ensure compliance with the Department of Premier and Cabinet's *Guidelines for the Engagement and Use of Consultants (C2004-17)* when engaging and using consultants.

Summary of progress

The recommendation is being: *<check one>*

- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action taken to implement recommendation

Recommendation 11 was endorsed by the Trustees of AGNSW in June 2012. Consistent with that endorsement, Recommendation 11 will be implemented by AGNSW as described in the report.

Supporting material

There is no supporting material for this recommendation.

Evaluation of implementation (Progress update)

The Gallery's management team will monitor the compliance of the Guidelines and AGNSW intends to audit compliance with Trade & Investment Procurement policies and processes in the 2015/16 year. The Director, Finance and Commercial Operations will be responsible for the internal audit of AGNSW's Procurement processes.