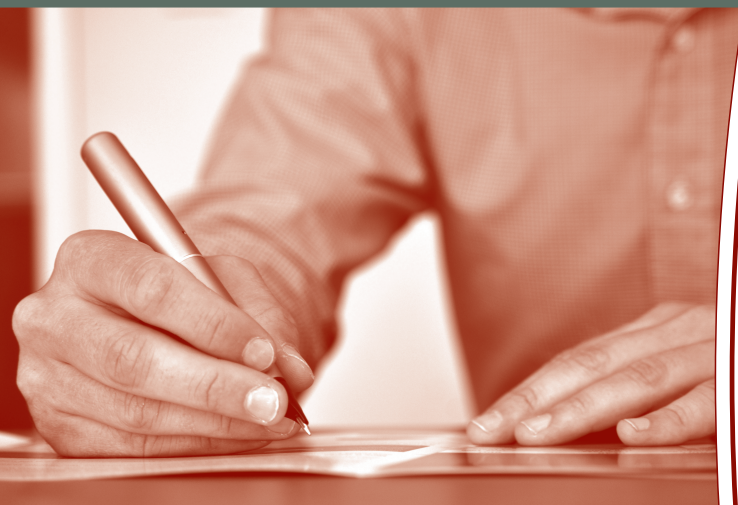


The logo for the Independent Commission Against Corruption (ICAC), featuring the letters 'I·C·A·C' in a serif font with dots between them.

INDEPENDENT COMMISSION  
AGAINST CORRUPTION



# CORRUPTION RISKS IN NSW GOVERNMENT PROCUREMENT

## RECOMMENDATIONS TO GOVERNMENT

JUNE 2011



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This publication provides readers with advice, guidance and/or recommendations regarding specific governance issues.

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Public sector organisations are welcome to refer to this publication in their own publications. References to and all quotations from this publication must be fully referenced.



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## NSW government procurement: the Commission's interest

The Independent Commission Against Corruption (ICAC) has identified procurement as a major risk area for corruption in the NSW public sector. Each year, approximately 12% of complaints received by the ICAC include allegations of corruption in NSW government procurement and approximately 30% of our public inquiries make findings of corrupt conduct related to NSW government procurement activities. Almost half of the 1,515 government suppliers<sup>1</sup> that took part in an ICAC survey reported that they believe corruption in public procurement in NSW is a moderate to major problem.

As part of its research into procurement corruption risks, the ICAC analysed the NSW Government's procurement policy, regulatory and legislative framework, undertook a survey of 153 state and local government organisations<sup>2</sup>, conducted interviews and focus groups with public sector procurement specialists and suppliers to government, reviewed the Department of Finance and Services' (DFS) government procurement training program, analysed ICAC investigation and complaint data, reviewed research literature, invited submissions to a consultation paper<sup>3</sup> and undertook the aforementioned survey of NSW government suppliers.

What became clear to the ICAC is that there is a general feeling from the perspective of the end users (that is, public sector procurement practitioners and suppliers) that NSW public sector procurement does not work well. Based on the responses from these end users, it was clear that there is general confusion about the best way to handle

procurement, where information is available and why decisions are made.

The following concerns emerged from submissions and wider consultation undertaken by the ICAC about the management of corruption risks in NSW public sector procurement.

- a. The NSW system is complex, confusing and difficult to apply to varying procurement scenarios.
- b. A lack of consistency exists between federal, state and local government procurement requirements, even though the underlying principles are essentially identical.
- c. There is a need for closer liaison between state central agencies that develop and take carriage of procurement policy and local government agencies regarding common issues and concerns (a number of local councils expressed a need to coordinate state and local government strategic procurement planning and support services).
- d. Accessing practical information to support practitioners in their procurement activities and decision-making is difficult.
- e. Central agencies fail to provide leadership and support to individual organisations, procurement practitioners and suppliers.
- f. The public sector is characterised by varying levels of procurement expertise. The sector would benefit from a more structured approach to training and development and from the application of minimum standards.
- g. A lack of compliance with procurement policy and procedures is widespread and there is an absence of sanctions within the system.

<sup>1</sup> In July 2010, suppliers to NSW government were asked to provide their perceptions of corruption in NSW state and local government by responding to a survey that had been prepared by the ICAC. Details and findings of this survey are available in *Corruption risks in NSW government procurement: suppliers' perceptions of corruption*, June 2011.

<sup>2</sup> The survey was distributed in hardcopy form by mail to NSW public authorities in 2009.

<sup>3</sup> *Corruption risks in NSW public sector procurement – consultation paper*, July 2010.



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While most corruption in procurement that comes to the attention of the ICAC is at the lower levels of public agencies, it is widely spread across tiers of government and affects most types of agencies. The problem may well be characterised as systemic across NSW.

This suggests that conditions that encourage, cause or allow corruption exist at the state policy and procedural level rather than solely at the lower levels of operational agencies.

The work of the ICAC indicates that statewide corruption risks with regard to procurement stem from a combination of system design and implementation weaknesses:

- Weaknesses in procurement system design
  - a. the absence of a central, leadership role
  - b. structural confusion
  - c. regulatory complexity
- Weaknesses in implementation of procurement policy
  - a. poor information, advice and support to agencies
  - b. low levels of procurement competence across the state
  - c. weak oversight of policy compliance.

Under these conditions, some managers, staff and suppliers are likely to be unaware of proper procedures, while others – without the fear of any central monitoring of compliance – may actively condone circumventing the state requirements. In a system with such loopholes, the opportunity to behave corruptly is likely to arise regularly and the risk of detection is likely to be low.

This report makes the following seven recommendations aimed at establishing clear leadership, a clear structure, a simplified regulatory environment and effective assistance to operational agencies in NSW.

## **Recommendation 1:**

### **Establish a procurement leadership role in NSW**

The ICAC recommends that a single, administrative NSW government entity be given explicit leadership responsibility for:

- a. formulating and maintaining the state procurement policy framework, including standards of conduct or practice
- b. building the capacity of the sector
- c. promoting the policy and compliance with its provisions
- d. monitoring and reporting on compliance and performance standards.

## **Recommendation 2:**

### **Undertake a comprehensive review of the NSW approach to procurement**

The ICAC recommends that, as part of the reform program already commenced, the NSW Government, under the leadership of the relevant Ministers, conducts a broad-based review of the system of public sector procurement in NSW that specifically includes the issues discussed and recommendations made in this report.

### **Recommendation 3:**

#### **Simplify the regulatory framework in NSW**

The ICAC recommends that the NSW Government develops a simplified regulatory framework for procurement that is contained in a single source, clearly distinguishes between mandatory obligations and advisory guidelines, has minimum exemptions and includes an explicit role to monitor procurement compliance of agencies.

### **Recommendation 4:**

#### **Align local government and state procurement policy**

The ICAC recommends that the NSW Government takes steps to unify elements of the local and state government procurement policy frameworks and associated procedures.

### **Recommendation 5:**

#### **Improve information, advice and support**

The ICAC recommends that, as part of the process of sector-wide procurement reform, the NSW Government reviews the central procurement information, advice and support functions and tests these activities in order to ensure that they effectively meet the identified needs of end users. As part of this review, the relevant central agency should take steps to ensure that it:

- a. fully understands the needs of end users (agencies and suppliers)

- b. implements client-centred advice and support services
- c. obtains feedback from end users and implements a program of continuous improvement.

Furthermore, during the review process, the relevant agency should take into account the need for:

- d. simplified, user-friendly processes and support materials, including best practice guidelines, tools and templates
- e. more accessible information about how the DFS is organised, the services it provides and the value of using DFS services
- f. the provision of experienced procurement advisers to agencies
- g. advisory services to be efficient, timely and user-focused rather than serving the achievement of central-agency business objectives.

### **Recommendation 6:**

#### **Build procurement competence**

The ICAC recommends that the NSW Government introduces a sector-wide procurement education and training assurance framework that provides for:

- a. mandatory minimum standards linked to levels of procurement responsibility
- b. auditing of agency procurement capabilities and associated training initiatives

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- 
- c. a system for mandatory certification of procurement policy and process awareness and compliance by agency staff.

## **Recommendation 7:**

### **Oversee policy compliance**

The ICAC recommends that the NSW Government establishes a centralised investigation/complaint management function with the capacity to receive, assess and manage reports about breaches of compliance with the regulatory controls that form part of the procurement policy framework.

## System design

The system of public sector procurement in NSW can be described as the combination of the design and implementation of leadership roles, structural arrangements and regulated processes. All three components of this system have flaws, which makes it vulnerable to corrupt conduct and conducive to improper practice. Under this system, for instance, leadership is fragmented across multiple agencies, the structure is both centralised and decentralised simultaneously, and processes are so complex that they are not well understood by those officials actually undertaking procurement.

### The absence of a central, leadership role

For any system to work effectively, there must be a single point of leadership at which the accountability, responsibility and authority of the system's design and implementation resides. Public sector procurement in NSW has no such point of leadership. Rather, this leadership is diffused across the NSW Treasury, the DFS (NSW Procurement), the State Contracts Control Board (SCCB), the Construction Consultative Committee (CCC) and exempt agencies. All play a role but not one is in charge.

The lack of a clear leadership role is set by the *NSW Government Procurement Policy* itself, an excerpt of which is provided below:

*Under the NSW Government Procurement Policy, NSW Treasury is responsible for:*

- *policy initiatives for policy development; and*
- *maintaining and monitoring the Procurement Policy, and in particular increased monitoring of major capital works projects. (Refer Attachment 6)*

*To achieve the benefits of the reform, NSW Treasury works closely with the Department of*

*Infrastructure, Planning and Natural Resources, and the Department of Commerce.*

*The Department of Commerce is responsible for:*

- *through the SCCB, carrying out procurement on behalf of the Public Service under the Public Sector Management (Goods and Services) Regulation;*
- *providing procurement advice to NSW Treasury and agencies in planning and managing the procurement of capital works, property, goods, services, and information and communications technology;*
- *maintaining the web based guidance material on behalf of NSW Treasury; and*
- *supporting NSW Treasury in implementing the Agency Accreditation Scheme, including the provision of a default procurement delivery system and the Gateway Review process (involving facilitation of agency reviews and maintenance of the Gateway system).*

*Agencies are accountable for the efficiency and effectiveness of their procurement and implementation of the NSW Government Procurement Policy. Implementation of the Procurement Policy will require agencies to particularly focus on the upfront preparation of procurement proposals.<sup>4</sup>*

<sup>4</sup> NSW Treasury, *NSW Government Procurement Policy*, July 2004, p. 6. As a result of government changes, it should be noted that since March 2011 the Department of Commerce has substantially become the Department of Finance and Services and that the responsibilities of the Department of Infrastructure, Planning and Natural Resources have been reallocated.

The CCC promotes “improved practices and standards and a streamlined approach to procurement of government construction procurement”.<sup>5</sup>

The *NSW Government Procurement Policy* goes on to say that further “policy advice” is available from the NSW Treasury, while “implementation advice” is available from the Department of Commerce (now the DFS).

Even if the issue of clear assignment of leadership is examined only at the level of individual policy goals rather than at the level of leadership of state procurement, the same lack of responsibility, authority and accountability is apparent. The lack of clear leadership at the level of policy goals is demonstrated in the table below.<sup>6</sup>

The fragmented leadership and complex web of authority in NSW stands in contrast to recent reforms implemented in Queensland and Western Australia. The Queensland Government’s “centrally-led” governance model established a lead role for the new Queensland Government Chief Procurement Officer (QGCPO). The QGCPO was responsible for leading the reform program, including revision of the *State Procurement Policy* framework and the establishment of a Procurement Board of Management in order to oversee, support and direct the procurement reform program.<sup>7</sup>

Western Australia has also adopted a new, centrally-led procurement model. In this state, procurement leadership resides with the Department of Treasury and Finance

Policy goal	Relevant agency’s roles and responsibilities
<i>a whole-of-government approach</i>	<ul style="list-style-type: none"> <li>■ Policy framework and regulation set by the NSW Treasury, Department of Premier and Cabinet, and the Department of Finance and Services</li> <li>■ Common-use/statewide contracts negotiated, operated and monitored by the State Contracts Control Board and the Construction Consultative Committee</li> </ul>
<i>ethical and sound procurement practice</i>	<ul style="list-style-type: none"> <li>■ <i>NSW Government Code of Practice for Procurement</i> developed by the NSW Treasury</li> </ul>
<i>effective procurement capacity and practice and competence</i>	<ul style="list-style-type: none"> <li>■ Technical advice for agencies is provided by the Department of Finance and Services and NSW Treasury on how to comply with the <i>NSW Government Procurement Policy</i>, the <i>NSW Government Code of Practice for Procurement</i> and associated guidelines</li> <li>■ Training provided by the Department of Finance and Services</li> </ul>
<i>appropriate support of the government’s economic, environmental and social objectives</i>	<ul style="list-style-type: none"> <li>■ Agencies</li> <li>■ NSW Treasury</li> </ul>
<i>monitoring of, and improvement in, agency performance</i>	<ul style="list-style-type: none"> <li>■ NSW Treasury analysts</li> </ul>

5 From the “procurement guidelines for construction” page of the NSW Government Procurement website: <http://www.nswprocurement.com.au/Government-Procurement-Frameworks/Construction/Policies-and-Guidelines.aspx>. Accessed on 17 June 2011.

6 NSW Treasury, *NSW Government Procurement Policy*, op. cit, p. 4.

7 E Jelliffe, “Reforming Procurement in Queensland Government,” *Public Administration Today*, Issue 26, April–June 2011.

(DTF). Specifically, Government Procurement is a business unit within DTF and is responsible for leading and supporting implementation across whole-of-government procurement of goods and services, construction and related services.

It is the ICAC's view that, without a clearly defined leadership role, procurement in NSW will not change.

## Recommendation 1:

### Establish a procurement leadership role in NSW

The ICAC recommends that a single, administrative NSW government entity be given explicit leadership responsibility for:

- a. formulating and maintaining the state procurement policy framework, including standards of conduct or practice
- b. building the capacity of the sector
- c. promoting the policy and compliance with its provisions
- d. monitoring and reporting on compliance and performance standards.

## Structural confusion

At face value, policy appears to describe public sector procurement in NSW as having a clear structure that is centralised, formalised and standardised; for instance, the NSW Treasury produces procurement policy, the DFS has carriage of the policy and operational agencies implement the policy.

In reality, public sector procurement in NSW operates within a structure that is characterised by complexity and a great deal of uncertainty; for instance, some procurement is centralised under the SCCB, some is centralised at the agency level and some is completely decentralised to frontline staff and even contractors. Furthermore, the formalised processes are complex and difficult to use, leading to a situation where certain informal processes overlap the formal system. Finally, as parts of procurement have become informal and decentralised, and in the absence of central leadership, the processes are not standardised but vary across individuals, units and agencies.

A structure that is both centralised and decentralised simultaneously is also evident in the complex allocation of responsibilities to different levels of the state system. A

number of variations exist with regard to which parts of state procurement policies and procedures apply to which agencies.

State owned corporations under the *State Owned Corporations Act 1989* are exempt, although they are encouraged to adopt aspects of the *NSW Government Procurement Policy* that are consistent with their statement of corporate intent.

Local government procurement in NSW is not subject to state procurement policy and processes. Local government procurement processes are largely controlled by statutory provisions under the *Local Government Act 1993* and Local Government (General) Regulation 2005 and guidelines issued by the NSW Division of Local Government. Even so, local councils are encouraged to follow state procurement policy principles and are able to purchase from state contracts administered by the SCCB.

The NSW Government's 2006 procurement reforms acted to re-establish the centralised nature of the structure by requiring agencies to use SCCB whole-of-government contracts, where available. Other reforms at this time included the introduction of an Agency Accreditation Scheme for Goods and Services, which allowed agencies to undertake their own goods and services procurement.<sup>8</sup> This scheme is in addition to the Agency Accreditation Scheme for Construction, which allows individual agencies to undertake their own capital works procurement.

The result of such confused structural arrangements is that public sector procurement in NSW is a mixture of compliance with state policy, individual agency practice, personal habits, informal arrangements and "work-arounds" – all of which provide opportunities for corruption to occur.

## Regulatory complexity

Without a clear leadership role or organising structure, the state procurement policy has developed into a complex body of regulations and policies, emanating from a variety of agencies. Such high levels of regulatory complexity have the effect of reducing compliance. Suppliers and managers who wish to comply often do not know how or may decide it is too difficult to find out, and for those not wishing to comply, regulatory complexity facilitates this.

The regulatory complexity is evident in the way the *NSW Government Procurement Policy* has been formed. The policy is implemented as a Treasurer's Direction under section 9(1) of the *Public Finance and Audit Act 1983* and is supported by a range of general implementation guidelines and specific issue requirements issued as NSW Treasury Circulars,

<sup>8</sup> Premier's Memorandum M2006–11.

Ministerial Memoranda or advice from the Department of Premier and Cabinet or the DFS.

All public sector agencies in NSW are individually responsible and accountable for organising and administering their own procurement functions in accordance with the aforementioned principles and procedures. Each agency generally has its own code of conduct, procurement guidelines, delegation manual and statement of business ethics that reflect central principles and any agency specific requirements.

Suppliers to the NSW public sector are expected to comply with the *NSW Government Procurement Policy* and the *NSW Government Code of Practice for Procurement*, associated guidelines and agency specific policies.

The resultant difficulty of such an approach to policy development is clearly evident from examination of the NSW Government procurement website at [www.procurement.nsw.gov.au](http://www.procurement.nsw.gov.au). For example, within the “Procurement Environment” section of the website, information contained under “Overarching Procurement Requirements” includes the *NSW Government Procurement Policy Statement*, the *NSW Government Code of Practice for Procurement*, the *NSW Government Tendering Guidelines*, and various memoranda or guidelines about trade agreements, the Gateway Review System, Total Asset Management, Privately Financed Projects, Public Disclosure of Information from NSW Government Tenders and Contracts, the Major Capital Reporting System and Sustainability for NSW Government, and the engagement of government agencies as service providers.

After familiarising themselves with the Procurement Environment, procurement practitioners are then directed to “Procurement Processes” and the six-step procurement process for the three categories of procurement: Goods and Services, Construction, and Property and Accommodation. As well as the standard six-step process, each of these three categories has additional guidelines and requirements. For example, the procurement of Goods and Services Framework includes a reference to guidelines about NSW Procurement Reforms, Local Jobs First Plan, Procurement Planning Guidelines, Agency Accreditation Scheme for Goods and Services, Consultants and NSW Procurement Guidelines – Simple Procurement.

The NSW Treasury, the DFS and the SCCB have advised the ICAC that there is currently a process underway to better deliver government services through reform of goods and services procurement. The SCCB’s 2010–2013 Business Plan provides the strategy for delivering goods and services procurement reform across government. Essentially, the reforms confirm the existing, broad procurement structure and processes, and involve the

development of a range of strategies aimed at better explaining that system and supporting agencies to ensure compliance with the system. Initiatives include:

- a. reviewing the policy framework and processes to ensure clarity of roles, simplicity and comprehensiveness
- b. strategies to require stronger statewide and agency procurement planning
- c. a sector-wide information and education campaign about government procurement
- d. a review of skills capability and the need for government procurement training, development and education
- e. better management of agency and supplier engagement.

The ICAC supports the current reform initiatives but notes that the approach to procurement reform is of the type that has been repeatedly undertaken in NSW for some time. The approach confirms existing structural arrangements and aims to ensure effective implementation and compliance through the addition of new controls, skills enhancement and better communication activities.

As highlighted above, recent procurement reforms in other state jurisdictions have taken a more fundamental approach. In 2007, the Queensland Government undertook a major review of procurement, in recognition that the size and complexity of procurement activity in the state had outgrown the capability of the procurement function.

In 2008–09, the Victorian Government Procurement Board (VGPB) began assessing procurement policy and governance frameworks with particular reference to the interrelationship between procurement complexity and the capability needed to effectively manage procurement processes. At the same time, the VGPB reviewed policies under which departments are authorised to administer their own procurement.

As a result of this research, the VGPB has since endorsed a new approach to government procurement that matches process and governance arrangements to the complexity of the procurement undertaken. This is a move to managing risk based on a complexity threshold rather than a dollar threshold. In addition, the approach will involve a new standardised procurement framework that will apply across the sector.

In 2003, the Western Australian Government made a decision to fundamentally review its public sector



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procurement system. The reform program has resulted in a model that features more standardised processes.

The ICAC considers that a more comprehensive review should be undertaken in NSW, in line with the scale of reforms undertaken in other states. Such a view is consistent with the NSW Auditor General's report on his examination of agency compliance with government electronic procurement and tendering. In response to widespread non-compliance with e-procurement and e-tendering, the NSW Auditor General referred to the need to reduce complexity, improve clarity and remove uncertainty about the operation of both manual and electronic procurement.<sup>9</sup>

The ICAC's view is also consistent with submissions received during our consultation process, which consistently pointed to the need to review, clarify and simplify the policy framework and associated guidelines that support NSW public sector procurement.

## **Recommendation 2:**

### **Undertake a comprehensive review of the NSW approach to procurement**

The ICAC recommends that, as part of the reform program already commenced, the NSW Government, under the leadership of the relevant Ministers, conducts a broad-based review of the system of public sector procurement in NSW that specifically includes the issues discussed and recommendations made in this report.

## **Recommendation 3:**

### **Simplify the regulatory framework in NSW**

The ICAC recommends that the NSW Government develops a simplified regulatory framework for procurement that is contained in a single source, clearly distinguishes between mandatory obligations and advisory guidelines, has minimum exemptions and includes an explicit role to monitor procurement compliance of agencies.

## **Recommendation 4:**

### **Align local government and state procurement policy**

The ICAC recommends that the NSW Government takes steps to unify elements of the local and state government procurement policy frameworks and associated procedures.

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<sup>9</sup> The Audit Office of NSW, *New South Wales Auditor-General's Report: Financial Audit*, Volume 1, February 2011.

## Implementation of procurement policy

In order for central agencies, such as the DFS, to effectively implement procurement policy in operational agencies, the provision of information, advice and support is necessary. This builds sector-wide procurement competence and assurance of policy compliance. A close relationship between central and operational agencies is key to implementation.

Based on information made available to the ICAC, it appears that there is a gap between central procurement agencies and operational agencies. Far from a close relationship characterised by collaborative advice and assistance mechanisms, respondents to the ICAC's consultation process have commented that the DFS has been inward focused and that its assistance can, at times, be viewed as a burden to be avoided.

### Information, advice and support

Respondents to the ICAC's consultation process pointed out that existing information about procurement policy and how to conduct public sector procurement is lengthy and overly complex. There is too much information for readers to easily absorb and it can be confusing and difficult to locate specific information. In a typical response, one local council official stated: "There appears to be an overlap and proliferation of information in the public domain, including outdated and superseded information on public sector procurement".

The respondents were keen to see one updated website that includes consistent information and practical checklists with hyperlinks to relevant policies and procedures and other websites. The ICAC notes that a consolidated procurement website has now been created. All the relevant policy and procedures have been listed on one site and grouped into categories. A review of the site, however, demonstrates the level of complexity within the

underlying system and the difficulty of trying to clearly and comprehensively explain and link complex policy and procedural requirements. It appears to the ICAC that, for an end user such as a NSW government procurement practitioner or supplier, the site remains difficult to use.

The DFS agrees that continued improvement can be made to the systems and processes that ensure the effective provision of information to agencies and suppliers. The Department has also acknowledged that because different parts of government are responsible for, or involved in, various aspects of procurement, there is a need to better coordinate the sources of information, including website content.

Other comparable jurisdictions in Australia have taken significant steps to support operational agencies with concise, user-friendly information and guidance on procurement. In Western Australia, the reform initiatives have included standardised procurement documentation across the sector. In October 2010, the Department of Treasury and Finance produced *Mini Guide to Procurement in the WA Public Sector*, a simple, user-friendly flip chart.

As part of its development of a new standardised procurement framework, the Victorian Government Purchasing Board is producing best practice guidelines, tools and templates to support the introduction of a new approach to procurement.<sup>10</sup> In September 2010, the Queensland Government Chief Procurement Office released a new *State Procurement Policy*, which provides (in one document) concise information about the state's policy framework and how it operates in practice.<sup>11</sup>

Beyond written information, agencies in NSW may also seek advice from the DFS and, under certain conditions, must work with the Department or purchase from SCCB

<sup>10</sup> Victorian Government Purchasing Board Annual Report 2009–10, p. 3.

<sup>11</sup> Queensland Government Chief Procurement Office, Department of Public Works, *State Procurement Policy*, September 2010.

contracts, depending on agency accreditation, type of procurement and dollar-value.

Concerns were expressed to the ICAC from a variety of sources about the central advice and support role played by the DFS. The concerns cover both the way the DFS, as an organisation, interacts with agencies and the approach of individual officers within DFS when interacting with agencies. Specific concerns expressed to the ICAC include that the DFS unnecessarily complicates processes, that DFS staff are unhelpful, and that DFS criteria for selecting suppliers does not always address an agency's needs. In responding to the ICAC's consultation paper, many respondents said that the DFS's current advice and support system is not user friendly and fails to actively engage agencies.

When considering how the situation could be improved, respondents highlighted the fact that agencies needed to have confidence that they would be easily able to contact the right person at the DFS, that they would receive prompt and accurate responses and that they would receive value from DFS-managed contracts. Other comments centred on the need for the DFS to engage agencies in setting procurement strategy and direction, focus on client needs, be flexible in order to meet agency-specific needs and embrace an agency capacity-building role.

The SCCB has advised the ICAC that in 2009 it commissioned an independent review of the operation of DFS' NSW Procurement. Recommendations as a result of this review are now being implemented in order to better align the SCCB and NSW Procurement strategy and ensure that NSW Procurement's organisational design and business processes support the SCCB's strategy for delivering procurement reform across government. The DFS has confirmed that NSW Procurement is currently undergoing a restructure in order to implement an end-to-end procurement model with better practice procurement processes and systems.

The effective provision of advice and support has been addressed in comparable jurisdictions, with changes designed to close the gap between central and operational agencies. Western Australia's central agency (Government Procurement) has specialist procurement staff physically located in operational agencies in order to assist with the management of contracts and provide advice on procurement matters.<sup>12</sup> This approach demonstrates an attempt to build close relationships, provide practical advice and assistance, and partner with agencies in order to solve problems. The Western Australian Department of Treasury and Finance reports that the reform program has

been successful and "has been a major driver of changing attitudes and practices in the public sector arena".<sup>13</sup>

The ICAC is of the view that there is a need to revise current procurement advice and support strategies to ensure that the needs of end users are being met. The ICAC recognises that this is difficult because simplification of support material is impacted by the complexity of the underlying procurement system and, as such, any review process can only go so far. It may be that streamlined communication is only possible if the underlying system is also streamlined. The ICAC supports the current reform initiatives being undertaken by the SCCB and the DFS and makes the following recommendation.

## Recommendation 5:

### Improve information, advice and support

The ICAC recommends that, as part of the process of sector-wide procurement reform, the NSW Government reviews the central procurement information, advice and support functions and tests these activities in order to ensure that they effectively meet the identified needs of end users. As part of this review, the relevant central agency should take steps to ensure that it:

- a. fully understands the needs of end users (agencies and suppliers)
- b. implements client-centred advice and support services
- c. obtains feedback from end users and implements a program of continuous improvement.

Furthermore, during the review process, the relevant agency should take into account the need for:

- d. simplified, user-friendly processes and support materials, including best practice guidelines, tools and templates
- e. more accessible information about how the DFS is organised, the services it provides and the value of using DFS services
- f. the provision of experienced procurement advisers to agencies

<sup>12</sup> From the "Government Procurement" page of the Department of Treasury and Finance's website at [www.dtf.wa.gov.au](http://www.dtf.wa.gov.au). Accessed on 21 June 2011.

<sup>13</sup> Western Australian Department of Treasury and Finance, *Procurement Reforms 2003–2008 Program Review*, September 2008, p. 6.

- g. **advisory services to be efficient, timely and user-focused rather than serving the achievement of central-agency business objectives.**

## Procurement competence

Effective control of procurement in NSW depends, in part, on the competence of the tens of thousands of staff undertaking procurement activities across the state and the competence of their managers. Without a degree of competence, managers are unlikely to effectively oversee procurement activities, and staff may adopt their own risky procedures or undertake corrupt transactions.

Achieving and maintaining procurement competence is a challenge for agencies. Responses obtained during the consultation process undertaken by the ICAC highlighted the difficulty in recruiting procurement specialists and finding staff within agencies to undertake procurement activities. In addition, lack of competence was identified as an issue for new staff, staff from the private sector and staff who do not regularly conduct procurement activities.

Findings from ICAC research indicate agencies have difficulty maintaining staff competence in an evolving procurement environment. It is the ICAC's view that the difficulty in maintaining procurement competence is also related to the complexity of the NSW procurement system. What it takes to be expert depends on the complexity of what is to be done. Lack of competence is not just a training issue – it is a direct outcome of the size of the challenge to achieve expertise and maintain that competence in a complex policy and procedural environment.

Formal NSW public sector procurement training is provided by the DFS through its Procurement Certification Training Program. Under this program, there are four levels of procurement training, ranging from understanding public sector procurement, procurement planning and negotiation, to contract management and strategic procurement. A model has been developed, in consultation with TAFE NSW, which provides recognition for students under the Australian Quality Framework.

Currently, only a small percentage of those undertaking procurement for the NSW Government receives such training. There is no sector-wide system in place that aims to give assurance that the level of procurement competence of agencies as a whole, and the level for individual procurement practitioners, is appropriate to the scale of procurement activities being undertaken. This is in stark contrast to the training the state mandates for merit selection, occupational health and safety, and equal employment opportunity.

The result is not only low levels of competence in some areas, but a high degree of variability between agencies. Under the Agency Accreditation Scheme for Goods and Services, agencies accredited to do their own procurement are required to provide training to employees who have a role in quotation or tendering processes. The Local Government and Shires Associations and Local Government Managers Australia provide their own local government procurement training, advice and support. A number of agencies advised that they include procurement training in their induction programs. Some pointed out that they have developed in-house competence levels and require minimum standards for key procurement positions, while others reported that they have no training requirements.

The approaches are quite different in other jurisdictions. The Western Australian Government has focused on developing procurement competence and professionalism. The reforms have included “developing a whole of government procurement education and training framework and arranging training programs targeting different sector personnel and facilitating accreditation options for procurement practitioners”.<sup>14</sup> This has included a range of ongoing training programs targeting both procurement practitioners and agency buyers; from post graduate studies in Strategic Procurement at Curtin University to workshops run by the Department of Treasury and Finance. There has also been implementation of new staff attraction and retention initiatives, such as graduate and lateral recruitment programs, staff rotation and scholarships.

The QGCPO has been leading the implementation of a range of workforce capability initiatives to attract, retain and develop procurement capability. Some of the major initiatives include strengthening agency-based workforce planning, establishing a uniform set of procurement capabilities for all levels of procurement staff, and implementing a career development framework for procurement practitioners.<sup>15</sup>

In addition to deficits in staff skills, it appears to the ICAC that there has been a lack of consideration of the structure of agency-level competence in NSW, such as the role of procurement professionals, the control of procurement officers and the minimisation of occasional buyers. The need for central control of minimum standards and the training decisions needed to ensure appropriate agency level competence have not been effectively addressed.

<sup>14</sup> Government of Western Australia, *Procurement Reforms 2003–2008 Program Review*, September 2008, p. 11.

<sup>15</sup> “Reforming Procurement in Queensland Government,” *Public Administration Today*, op. cit, p. 14.

The DFS and the SCCB agree that there is a lack of, or inconsistency in, procurement competence across the sector and that this issue should remain an area of continued focus. The SCCB has advised that improving procurement competence across the sector is a key priority and it intends to undertake a number of activities linked to the Board's review of its Agency Accreditation Scheme for Goods and Services, including:

- reviewing procurement capabilities across government agencies and investigating programs for fostering better use of these procurement capabilities
- reviewing of government procurement training, development and education
- supporting and monitoring the operation of the NSW Government's Chief Procurement Officers Forum.

While the ICAC supports current initiatives being undertaken by the SCCB and the DFS, it makes the following recommendation.

## Recommendation 6:

### Build procurement competence

The ICAC recommends that the NSW Government introduces a sector-wide procurement education and training assurance framework that provides for:

- a. mandatory minimum standards linked to levels of procurement responsibility
- b. auditing of agency procurement capabilities and associated training initiatives
- c. a system for mandatory certification of procurement policy and process awareness and compliance by agency staff.

## Policy compliance

The fragmented leadership, structural confusion and complex regulatory environment in NSW create a challenge for central oversight of operational agency compliance with procurement policy. Information about non-compliance from agency audits and complaint reporting, and action to rectify non-compliance, is spread across multiple agencies and is not effectively examined or assessed by central agencies.

The current *NSW Government Code of Practice for Procurement* ("the Code") and associated Implementation

Guidelines include compliance provisions.<sup>16</sup> Under these provisions, breaches of the *NSW Government Procurement Policy*, breaches of the Code, and breaches to other regulatory statements by agency practitioners are expected to be dealt with by the agencies themselves. If not resolved by the agency, the agency can report a breach to the SCCB for goods and services contracts or to the CCC for construction contracts. In relation to contractors, NSW Treasury has advised the ICAC that the Code is a condition of all SCCB contracts and that failure by contractors to comply with the Code will attract relevant legal sanctions for breach of contract. Apart from contractual or legal remedies, the Code makes provision for commercial sanctions that are based on the government's right to choose with whom it does business.

A form for reporting Code breaches appears as Appendix D to the Code. It is not clear whether the form should be used by both public sector agencies and suppliers. If a complaint is made direct to an agency, it is not clear who in the agency should receive the form and how it should be managed by the agency, particularly in terms of mandatory time frames.

There is no obvious method for reporting breaches that may be sanctioned by the agency itself. In most cases, it may be that only the agency will know that a breach has occurred and it is unlikely to report itself. The range of consequences for an agency in breach is equally unclear.

In contrast, the Commonwealth Government has improved its procurement complaints management. It has established a Procurement Coordinator within the Department of Finance and Deregulation. The Procurement Coordinator has a number of functions, including handling complaints from suppliers and interested external parties and reviewing complaints regarding contract administration. This role is supported by a Procurement Advice and Complaints Handling Unit.<sup>17</sup>

In the ICAC's view, the current non-compliance reporting mechanism in NSW is obscure and will lead to under-reporting. The reporting that does occur is to the agency rather than to a central body. This distributes non-compliance information across the public sector, rendering any attempt at central monitoring of statewide compliance ineffective. An inability to monitor compliance, combined with an approach of agency self-regulation in the case of breaches, weakens any central oversight of policy compliance.

<sup>16</sup> NSW Treasury, *NSW Government Code of Practice for Procurement*, January 2005, and Department of Public Works and Services, *Implementation Guidelines NSW Government Procurement*, 1999.

<sup>17</sup> From the "Procurement Coordinator" page of the Australian Government Department of Finance and Deregulation's website at [www.financeminister.gov.au](http://www.financeminister.gov.au). Accessed on 21 June 2011.

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The SCCB has advised the ICAC that its review of procurement policy will include a review of compliance mechanisms. As part of its review of the operation of the Agency Accreditation Scheme for Goods and Services, the SCCB will ensure the application of standard criteria, regular monitoring, review and performance audits of accredited agencies.

## **Recommendation 7:**

### **Oversee policy compliance**

The ICAC recommends that the NSW Government establishes a centralised investigation/complaint management function with the capacity to receive, assess and manage reports about breaches of compliance with the regulatory controls that form part of the procurement policy framework.



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## Conclusion

In the ICAC's 22-year history of investigations and public inquiries, procurement has been found to be the most common area for corrupt behaviour to occur. A survey of suppliers to government undertaken by the ICAC in 2010 indicates that almost half see corruption in NSW government procurement as a moderate to major problem.

The ICAC's examination of NSW public sector procurement has revealed a system that has grown and evolved over time without any clear leadership or direction. As a consequence, the very structure of the system, whether it is centralised or decentralised and whether it is standardised or variable, has become confused, as often competing incremental changes are made by a plethora of agencies.

Policy and procedural tweaks over time have resulted in regulatory complexity that has come to overwhelm those actually carrying out procurement.

The central agencies have focused on their policy considerations at the expense of providing assistance through effective information, advice, and support.

The seven recommendations contained in this report are aimed at establishing clear leadership, a clear structure, a simplified regulatory environment and effective assistance to operational agencies in NSW.



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