Corruption Matters

ICAC
INDEPENDENT COMMISSION
AGAINST CORRUPTION

Can those at the helm see where they are going?

Almost exactly 20 years ago, David Osborne and Ted Gaebler described the importance of uncoupling policy and regulation from service delivery when it comes to driving transformational change in government; that the act of "steering" the boat, if you like, works best when separated from the act of "rowing".

The idea that those who steer should be separated from those who row has been taken up with gusto throughout the public sector; although not necessarily in the way envisaged by Osborne and Gaebler. Theirs was a call to action for a decentralisation of authority by separating the macro-level function of government from the micro-level creation and administration of public programming. In other words, have government influence direction in a broad sense in order to empower frontline agencies and communities to solve their own problems by creating and delivering services that resonate with the needs of their specific audiences.

The reality, unfortunately, is that in some cases agencies and communities are stripped of this power almost completely. Frequently, almost all aspects of policy, procedures and program design are centralised within distinct policy groups (those under the guise of steering), with little discretion devolved to staff in the operational units (those rowing). A cursory examination of almost any agency's organisational chart will show a policy group in head office that is separated from the operational group.

Disconnected policy

The result is that a disconnect can develop between the policies, procedures and programs directed from above and the operational realities of service delivery at the coalface. Operational staff are often unaware of the relevant policies, are unable to comply due to on-the-ground realities, or deliberately work around these policies to achieve the necessary outcomes.

For example, the Commission has seen corruption inadvertently facilitated because one policy in a given organisation, which required delegation and signature-checking for a transaction, was made impossible because of a supplier-payment timeframe dictated in another. In other cases, corrupt individuals have claimed the complexity of a policy was such that they could not understand what gifts were permitted.

Often procedures for tendering cannot be followed in remote areas because there are neither enough suppliers nor staff to run the tender process as it has been designed. In one case heard by the Commission, a policy required an academic to be responsible for staff security vetting in specific situations, which did not work out.

Contents

Corruption Matters is also available to download from the ICAC website www.icac.nsw.gov.au

apsac
CONFERENCE

The Australian Public Sector Anti-Corruption Conference will take place in Sydney, 26–28 November 2013.

Commissioner's editorial

The Independent Commission Against Corruption's 2011–12 year has been one of high-profile public inquiries and corruption prevention activity. The ICAC *Annual Report 2011–2012*, which was released in October, provides a comprehensive account of results from the last financial year.

In 2011–12, the number of complaints received by the Commission again increased, with almost 3,000 at the close of June. Yet our Assessments Section continued to reduce the time taken to deal with matters.

The Investigation Division almost doubled the percentage of preliminary investigations completed within our target of 120 days compared to the previous year. The Commission commenced 73 new preliminary investigations and 19 new operations. We also held 10 public inquiries over 70 days, which resulted in findings of corrupt conduct against 14 people, including a government minister, the head of a NSW government authority, and a local councillor.

At the prevention end of the spectrum, the Corruption Prevention Division undertook a major project into a high corruption-risk area that often features in our investigations and public inquiries – government procurement. In 2011–12, the Commission researched, identified and recommended a range of approaches to corruption control in government procurement. It also tackled another area vulnerable to corruption risk, recommending key anti-corruption safeguards to underpin the NSW planning system.

Staff worked solidly throughout the year, not only on the tasks at hand for 2011–12, but also those for the current financial year. Indeed, on 1 November 2012, the Commission began its public inquiry into what will probably be the largest investigation we have ever undertaken – an inquiry into issues relating to mining exploration licences and other matters.

Due to this increased workload, we have taken on extra staff to deal with these matters and have received some much-appreciated additional funding from the NSW Government to help carry out this work. A number of Commission officers have devoted their time and energy to this major operation, and are helping at various levels. Others are doing extra work to compensate for those working on the operation as other investigation and corruption prevention work must continue.

> The Commission will forge ahead in 2012–13, continuing to serve the NSW community through exposing, investigating and preventing corruption in our quest to improve the integrity of those agencies and individuals who serve our state.

A copy of the Commission's *Annual Report 2011–12* can be downloaded from our website at www.icac.nsw.gov.au.

The Hon David Ipp AO QC
Commissioner

The Hon David Ipp AO QC

2011–12: at a glance

- received 2,978 matters
- commenced 73 new preliminary investigations and 19 new operations
- conducted 135 compulsory examinations over 59 days
- completed 65 preliminary investigations and 20 operations
- conducted 10 public inquiries over 70 days
- made corrupt conduct findings against 14 people
- recommended the advice of the Director of Public Prosecutions be sought with respect to the prosecution of nine people
- delivered 116 workshops and training sessions
- undertook 79 speaking engagements attended by over 3,220 people
- awarded 10 scholarships to the Anti-Corruption Executive Course at the Australian National University
- furnished six investigation reports to Parliament.

Lax systems: fertile ground for corruption

Best practice inventory management can reduce waste and improve an organisation's business outcomes. But it can also reduce the opportunity for corrupt behaviour. Indeed, when the design of a procurement system, the management of inventory and the stock process are all working together to ensure that procurement and stores are run as efficiently as possible, many opportunities for corrupt behaviour are eliminated.

The Commission's recent investigation into gifts, procurement and inventory management (Operation Jarek) drew attention to the widespread practice of gift-giving by suppliers to public officials in councils and other public agencies in NSW. While all agencies involved in the investigation had policies in place on gifts, they did not appear to consider corruption risks in the broader relationship between buyer and supplier. Nor did these policies appear to consider the opportunity for corrupt behaviour to be hidden in wasteful and inefficient processes or by loose operational controls in procurement and inventory systems.

While the majority of staff in public sector agencies will not take the opportunity to act in their self-interest, there are risks in running a wasteful procurement and inventory system. During its investigation, the Commission discovered that storepeople working at both Bathurst Regional Council and Yass Valley Council were able to over-order, hold stock outside of inventory, operate stores in the absence of target levels and avoid effective stocktakes. Both councils had little idea of who was buying what, what they owned, what was obsolete or waste and whether capital was tied up unproductively.

> The Commission's report into the investigation makes 15 corruption prevention recommendations. These recommendations focus heavily on the design of an agency's procurement system and best practice in inventory control, such as the need to optimise stock levels and place controls on ordering and delivery.

In addition to the need to focus on reducing operational inefficiencies, the Commission noted the prevalence and effect of relational selling on council and agency staff, and the benefit of equipping staff to respond to these sales tactics. In its report, the Commission also recommends that agencies develop a proactive and comprehensive supplier engagement framework. This can deliver significant benefits to the agency, including increased market intelligence, better price discovery and better supplier understanding of the agency's need, and, importantly, also provides an opportunity to clearly communicate agency expectations around gifts and other problem behaviours.

The Operation Jarek report, titled *Investigation into allegations that staff from a number of local councils and other public authorities accepted secret benefits from suppliers and that staff from two local councils facilitated payment of false invoices from suppliers,* is available on the Commission's website www.icac.nsw.gov.au.

Do your suppliers know the rules?

In October 2012, the Commission announced that it made corrupt conduct findings against 22 employees of 15 public authorities (mostly local councils) who were found to have engaged in corrupt conduct by accepting gifts from suppliers as an inducement to continue placing orders or as a reward for placing orders with their companies. The gifts included TVs, camcorders, DVD players, iPads, iPhones, coats and gift vouchers.

Many of the salespeople whose conduct was investigated by the Commission were specifically trained in relational selling, whereby salespeople are trained to ask questions about a buyer's family, hobbies and health, and to pretend to have an interest in these matters. The process usually started with gifts worth modest amounts, increasing with the value of the orders placed by the public officials on behalf of their agencies. Salespeople would usually suggest sending the gifts to the buyer's home rather than to their workplace, in order to hide the arrangement from the employer.

As a result of the investigation, 15 salespeople were found to have engaged in corrupt conduct through their involvement in offering these gifts and benefits to public officials.

Among the 15 corruption prevention recommendations made, the Commission advised that councils communicate to suppliers a clear set of supplier behaviour expectations and the associated consequences for non-compliance. The Commission also recommended that councils review their codes and policies on gifts and benefits to ensure they effectively communicate expected behaviour in a way that the intended audience can easily grasp.

Can those at the helm see where they are going? *Cont. from page 1*

In some human service organisations, there are tens of thousands of pages of policies designed to cover every future operational eventuality and in response to almost every previous problem encountered. This so exceeds the cognitive capability of any staff that they cannot, and do not, follow much more than the broad intent that is communicated by their manager.

In short, the uncoupling of steering and rowing at this micro-level can result in policies, procedures and programs that are not suited to operational realities. Control of operations is neither by traditional policy prescription and compliance nor by devolved accountability for outcomes. All too often, the result is wasteful, low quality services. In turn, the waste, complexity and unworkability that stems from disconnected policies becomes conducive to corruption.

Integrating design and operations

The waste, mistakes and overall escalation of costs that results from the separation of design and operations is a central concern for personnel in the manufacturing industry. Far from seeing a benefit in separating the steering from the rowing at the micro-level, the approach of "designed for manufacturability" (DFM) aims to bring together those who design the product with those who make it. By designers understanding operations and vice versa, a product can be designed that the operations function of the organisation is suited to making. Costs and waste are reduced, and quality improved through a joint focus on, for example, simplicity, fewer parts, standard parts, ease of fabrication, minimal handling and use of modular components.

To integrate the design and operations functions of a given organisation requires significant organisational change. Culturally, the division between the designer elite and the operations staff has to be broken down. This is often difficult, as organisations may exist as silos with few connections between them. There is often a physical separation of designers from operational managers that must be overcome; as is the case with the physical separation of policy staff and operational staff in government. When coordination mechanisms are consciously developed to link design and operations, they often function for a short period at the initial stages but tend to revert to the designer-driven norm as the product is modified and upgraded – again not dissimilar to initial rounds of consultation by policy units followed by top-down directives.

While there is no doubt that uncoupling steering and rowing at a macro-level is important in driving transformational change, such an uncoupling may become dysfunctional at the micro-level. For a single frontline officer to require multiple and vastly different performance reports from the one non-government organisation that is providing services under several contracts with the one agency can be seen as a symptom of problems generated by the separation of program design from operations.

Another symptom is the prevalence of policies that run to tens of thousands of pages in length or a child protection officer, in a remote location, that sleeps in their office with at-risk children, against policy, because there was no other option. Separation of the function of steering – as intended by Osborne and Gaebler – from the accountable, devolved responsibility for operational outcomes is sensible. But the separation of micro-level policy and program design from operations under the guise of steering may well be counterproductive and conducive to corruption.

Photo: Joshua Sherurcij

Authors Osborne and Gaebler recommended that the steering function of government should be separated from the rowing function; that government should influence rather than retain control of an agency's or community's decision-making. In some cases, however, the steering function has come to dominate, with agencies grappling with policy, procedure and program designs that are not in step with reality at the frontline.

Controlling corruption in a NGO-centric model of human service delivery

In August 2012, the Commission published a consultation paper into the corruption risks associated with non-government organisations (NGOs) in NSW being funded by government to deliver human services.

Over the past 25 years, governments across the world have been transforming their approach to delivering human services. One key element of this transition has been the increased use of NGOs to deliver services.

As with any substantial change, this transition creates new challenges for controlling corruption risks. While the vast majority of NGOs and staff are dedicated to helping others, there are others who see government money as an opportunity for self-interested behaviour.

Agencies have introduced a range of control mechanisms to manage the corruption risks associated with NGO-delivery of human services. The Commission's paper examined the effectiveness of agencies' control frameworks in terms of three broad aspects: the design of agencies, how agencies and NGOs interact, and the broader operational environment in which NGOs are funded.

In relation to agency design, the Commission considered:

- how effectively agency structures manage corruption risks that exist in the new model

- the extent to which information systems support the obtaining, recording and analysing of NGO performance-related information exist

- what human capabilities are needed to manage NGO engagements

- whether any disincentives to reporting underperformance by NGOs exist.

In relation to agency–NGO interaction, the Commission considered:

- how funding relationships between NGOs and agencies should be conceived and formalised via funding instruments

- the applicability of market-based procurement mechanisms where weak NGO markets exist

- what specific risks may exist in relation to irregular allocations of funding, such as at the end of a financial year

- how the risk of agency staff over-identifying with NGOs or clients can be managed.

In relation to the broad operational environment, the Commission considered:

- how effectively the funding of NGOs was coordinated across programs and agencies

- the quality of NGO governance and the effectiveness of efforts to build NGO governance capacity.

The consultation paper, *Funding NGO delivery of human services in NSW: A period of transition*, invited responses to any or all of 37 questions it posed, or to make a more holistic analysis of the issues in question. Over 30 submissions were received by the Commission and it intends to publish a position paper in late 2012.
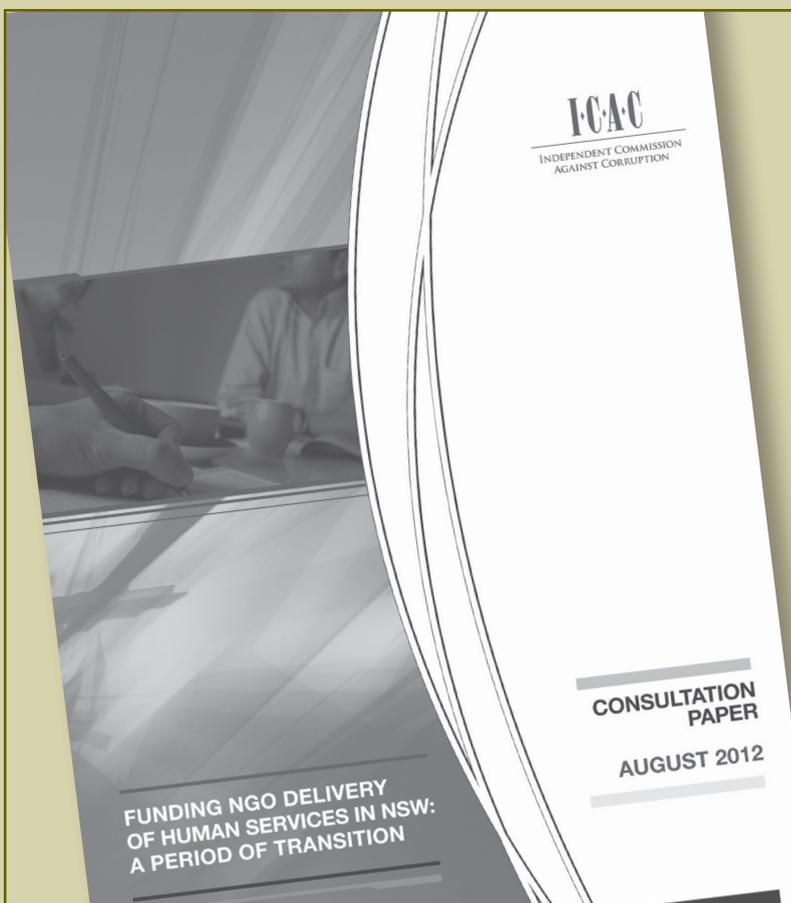
The Commission's consultation paper will be followed by a position paper planned for later in 2012.

Managing corruption risks of in-house ICT contractors

Every year, government agencies in NSW alone spend approximately $1 billion on information and communication technology (ICT) services. Approximately $211 million of this total is spent on contractor services. Given the substantial annual expense, how do agencies manage corruption risks when it comes to engaging in-house ICT contractors – experts whose highly specialised skills agencies are often forced to rely on to get the job done? This is one of the questions posed in a forthcoming Commission publication aimed at helping agencies better navigate the pitfalls.

Many managers of small- to medium-sized ICT projects that engage in-house ICT contactors have expressed continued concern over the challenges in limiting the opportunities for corruption while maintaining efficiency and effectiveness in hiring staff and managing and controlling projects.

Rather than a to-do checklist, the publication will provide better practice examples and practical ideas to enable government project managers to develop solutions tailored to their situation and reduce the risk of corruption and waste in engaging these experts.

ICT is generally characterised by highly-specialised contract workers whose value-add to a project is often complex, technical and hard for the average manager to understand. Often in-house ICT contractors are hired to undertake highly-specialised technical work, which makes informed, technical decisions and project specifications difficult for managers to verify.

In addition, contractors, recruitment firms and government project managers are often well connected and have pre-existing relationships from previous work, creating – if unchecked – conflicts of interest and opportunities for corruption. In-house ICT projects are also particularly vulnerable to a number of corruption opportunities, including over-charging, over-servicing, under-delivery, nepotism and project manipulation to create a dependency on a specific contractor, which make corruption difficult to detect and control in this area.

A number of recent, high-profile investigations have underscored the challenges faced in engaging and managing ICT contractors. Early in 2012, for example, the Commission's investigation into the procurement of ICT services of the then Department of Education and Training uncovered how weaknesses in procurement guidelines led to a number of corruption incidents. Contractors were able to manipulate procedures to appoint friends and associates and collect inflated commissions in the process. Contractors certified the work of other contractors, leading to deficient or incomplete results, which fell short of deliverable specifications. In one case, a single person was charged with managing over 60 contractors across a number of locations.

In October 2012, the Commission released its report on Operation Citrus, which exposed systemic recruitment violations and corrupt manipulation by one ICT manager at the University of Sydney. The manager was able to appoint his recruitment firm to hire numerous contractors, including a close personal friend, without proper approval, to a value of over $1.5 million.

Based on analysis of better practice operations in a number of organisations, the Commission's publication will address common challenges faced in the engagement of ICT contractors, such as:

- management of risks surrounding the hiring process, which may lead to nepotism and over-servicing
- lack of understanding of business needs before embarking on a project, leading to improper project specifications
- "project creep", which occurs when the simple installation of an off-the-shelf software package evolves into a customisation project due to unnecessary requests for modifications
- contractor collusion and conflicts of interest, which result from placing contractors in control of multiple areas of project scoping, design and construction
- contractor dependency, arising from unmanaged intellectual property and lack of in-house expertise
- lack of an appropriate project exit strategy, which allows contractors to remain on the books, in some cases, for years.

While there is no single right answer to solve every problem raised when hiring ICT contractors, the publication will aim to offer practical approaches to help managers find solutions that fit some common challenges faced by agencies.

Ombudsman
New South Wales

Review of the Australian standard on complaints handling

The Australian standard on effective complaints handling in organisations (known as *Customer satisfaction – Guidelines for complaints handling in organizations*, AS ISO 10002:2006) is one of the most popular guidelines produced by Standards Australia, the peak non-government standards body in Australia.

Unfortunately, the standard is out-of-date and does not reflect the current consumer environment. For this reason, Standards Australia has embarked on a project to revise the standard and produce a joint Australia–New Zealand standard.

As part of the project, Standards Australia has invited a number of representatives from various organisations, including the NSW Ombudsman, Australian Law Reform Commission, Society of Consumer Affairs Professionals, New Zealand Ombudsman and various other industry groups, to join a technical committee. The responsibility for the technical content of the standard resides with this committee.

In its review of the standard, committee members are required to ensure that the content is up-to-date, relevant and that it reflects community expectations. In particular, the committee's aim is to produce a standard that provides guidance to organisations in both Australia and New Zealand on the key principles and concepts in an effective, dynamic complaints-handling system.

> The fundamental principles that underpin the standards development process are consensus, balance and transparency. To this end, once a draft of the revised standard has been created by the committee, it will be released for public comment.

At present, it is expected that a draft of the revised standard will be released for public comment between June and October 2013. The draft for public comment will be available on the SAI Global website at www.saiglobal.com. Comments, feedback and objections are sought from any interested party and will be considered by the committee.

Publication of the revised standard is proposed for March 2014.

Chris Wheeler
Deputy Ombudsman

APSACC 2013: Vision. Vigilance. Action

The Australian Public Sector Anti-Corruption Conference (APSACC) comes full circle in 2013, as Sydney, host city of the inaugural conference in 2007, takes up the reins once again.

APSACC is Australia's premier event for public sector executives, managers and corruption prevention practitioners to learn more about current anti-corruption trends and strategies for risk controls. APSACC 2013, which will be held from 26 to 28 November at the Hilton Sydney, is also an opportunity for new managers to increase their understanding of corruption prevention practices and make vital contacts.

The conference is a joint initiative of three of Australia's leading anti-corruption agencies: the Independent Commission Against Corruption (NSW), the Corruption and Crime Commission (WA) and the Crime and Misconduct Commission (Queensland).

The APSACC 2013 program will offer a one-day interactive workshop segment and a two-day conference program of plenary sessions and four concurrent streams. The conference theme – vision, vigilance, action – encapsulates the knowledge, skills and attributes that public sector managers require to effectively identify, consider and respond to corruption and misconduct risks.

- VISION is necessary to identify potential corruption threats and think creatively to determine effective controls.
- VIGILANCE is vital to build and sustain an effective and efficient corruption prevention capability in light of competing priorities.
- ACTION is imperative to influence others and bring about lasting positive change.

Conference sub-themes include the identification and management of high-risk functions, early detection and intervention systems, tools and techniques, probity in decision-making, corruption and misconduct risks during organisational change, whistleblowing, and political corruption.

Log onto www.apsac.com.au/2011conference/ to register your interest in receiving updates and early bird registration information for 2013.

In other **news**

Corruption Prevention Network forum

A common interest in corruption prevention brought together over 200 delegates from the public, private and non-government organisation sectors at the annual forum of the Corruption Prevention Network (CPN), held on 6 September 2012 at Darling Harbour, Sydney.

The CPN is an independent network of practitioners who work in areas of corruption prevention and fraud control. The network meets several times each year, providing opportunities for those involved in corruption prevention to share knowledge and new approaches. The annual forum is the highlight of the CPN's calendar, bringing together a line-up of industry experts and speakers. Volunteers have run these annual forums since 1995.

The 2012 program included sessions on interview techniques, conflicts of interest, public interest disclosures, social media and corruption prevention, investigative journalism and electronic evidence. The 2013 forum is scheduled for 12 September 2013. For more information or to sign up to the CPN email service log onto www.corruptionprevention.net.

Publications for LALC members

Members play a vital part in their Local Aboriginal Land Councils (LALCs). In addition to electing boards to represent them, members vote on important decisions that affect the future of their LALC,

including land dealings and community and business initiatives. This means that members, as well as the elected board and staff, need to understand the corruption risks that LALCs can face, such as being alert to anyone who tries to corruptly influence their decisions.

The Commission has produced three flyers that have been distributed to all LALCs. These are *Members – Help make your LALC strong* (focuses on the importance of member involvement), *Gifts or bribes? Know the difference* (which uses a scenario to show that gift givers can have a corrupt motive) and *What is corrupt conduct?* (focuses on the meaning of corrupt conduct and, importantly, that while poor management may not amount to corrupt conduct, someone can take advantage of it for a corrupt purpose).

Information on corruption prevention for members of Local Aboriginal Land Councils is available on the Commission's website at www.icac.nsw.gov.au.

Investigation reports

At the conclusion of each public inquiry, the Commission releases a report that provides a summary of the Commission's investigation and its findings. Investigation reports are available from the Commission's website.

In November 2012, the Commission released its report into Operation Jarek (see page 3), which investigated allegations that staff from a number of local councils and other public authorities accepted secret benefits from suppliers and that staff from two local councils facilitated payment of false invoices from suppliers. The report details the Commission's findings of corrupt conduct against 41 people and presents 15 corruption prevention recommendations to all councils in NSW.

Since the last issue of *Corruption Matters*, the Commission has also released investigation reports into the recruitment of contractors and other staff by a University of Sydney IT manager, the conduct of officers of the Wagonga Local Aboriginal Land Council and others, the conduct of a University of New England (UNE) procurement officer and UNE contractors, and the payment of $4,500 to a councillor of Auburn City Council.