

**CORRUPTION RESISTANCE STRATEGIES**

researching risks in local government

# research findings summary

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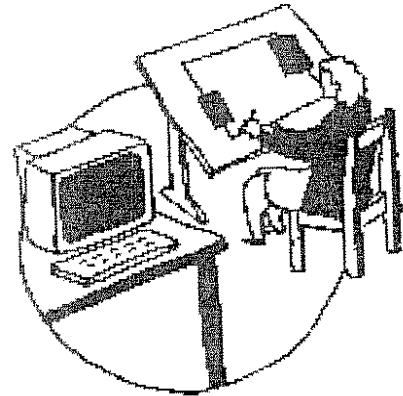
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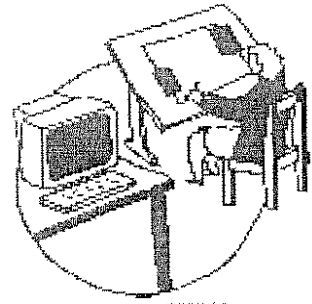




## CONTENTS

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Foreword	4
About the local government research study	6
Corruption risks	9
Corruption prevention	10
Procurement and contracting	12
Audit	14
Codes of conduct	16
Interaction between staff and councillors	18
Gifts, benefits and conflict of interest	19
Reporting corruption	21
Recruitment	23
Councils as entrepreneurs	25
Conclusion	26



# research

## FOREWORD

### *Why research local government?*

Dealing with local government is for many people their most significant contact with the public sector. Every person in the State has services that affect their quality of life delivered by local councils. Local councils are a major contributor to the economic well being of the State as well as a significant employer of people. Therefore, it is important that local councils operate efficiently, effectively and in the most corruption resistant way possible. Our aim at the Independent Commission Against Corruption (ICAC) is to help them achieve this.

Before suggesting to local councils how they can best resist corruption, our first priority was to establish through research, the practices councils currently have in place to prevent corruption. We know that councils already have some corruption resistance measures, for example all local councils now have a code of conduct.

The research took a multi-pronged approach to establish a full picture. General Managers were very helpful in providing a huge amount of information on strategies their councils have in place and in identifying potential corruption risks in local government. A sample of staff were involved in the research to measure the levels of awareness of strategies identified by General Managers. Some councillors were also included in the research because their role in the functioning of councils is vital to ensuring the governance of councils is in the best interest of the community.

Ensuring councils are resistant to any attempts at corruption is vital to the people of NSW, given the significant economic and social impact councils have in terms of budget, number of people employed and decisions made on behalf of the community.

### *How keen are councils to deter corrupt conduct?*

One gratifying finding was that councils are making great efforts to ensure their organisations and staff are resistant to potential corruption.

During the research interviews, many General Managers said that, due to limited budgets and an ever-increasing list of tasks required of council, they had to be very careful about how council money was spent and resources managed. Some General Managers said the cost of ensuring decisions are transparent and accountable was not warranted when faced with restricted budgets and the need to deliver core services. The ICAC understands the financial pressures councils face and believes there are some solutions to remove the corruption risks that have minimal cost implications for council. Others will warrant the cost to introduce appropriate measures when compared with the risks involved. Corruption resistance and good business are not the antithesis of each other—in fact ethical practices are about optimising the efficient functioning of an organisation.

### *Where to from here?*

The ICAC is committed to helping build the best, most corruption resistant State and local government sectors. A range of strategies, resources and assistance will be developed, based on the research, to help local councils meet the challenges they face in ensuring they are resistant to corruption. The range of strategies and products will be tailor-made for the differences between councils, such as size, budget, and economic development in the area.

We look forward to further developing the ICAC's interaction with local councils and will endeavour to provide assistance whenever possible.

*About this booklet*

This booklet, *Corruption Resistance Strategies: Researching risks in local government—research findings summary* is an overview of the key findings from the ICAC's local government research. It has been designed to be inserted into the *Roads, Rates and Rubbish: managing risk* folder, two copies of which were sent to the General Managers of all NSW local councils in May this year.

The full research report is on the ICAC web site at [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au) *Corruption Resistance Strategies: Researching risks in local government—research findings 2001*.

*Feedback and more information*

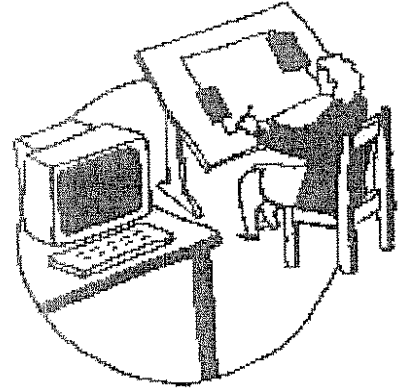
Further information about the research can be obtained by contacting Stephanie Cooke, ICAC Research Officer, on (02) 9318 5713.

The ICAC would welcome any feedback you may have in relation to this booklet and/or the full research report. This can be done by faxing back the feedback form inserted with this document.

*Irene Moss*

Irene Moss AO  
Commissioner





## **ABOUT THE LOCAL GOVERNMENT RESEARCH STUDY**

During 2000–2001 the ICAC conducted an extensive research study to help develop a profile of corruption risks in local government in NSW.

We began the research by seeking information from General Managers; 90 per cent of all councils in NSW (156 out of 174 councils) responded about the presence or absence of corruption risk factors in their organisation, and the organisational culture of their council.

We then sent a questionnaire to 300 council staff from 30 councils; 10 staff members were randomly selected from each of the 30 councils. Within the research methodology it was not possible to ask all council staff to respond. Therefore a sample of councils representing the range of councils in NSW was chosen. A random selection of staff was made from within these councils thus enabling the findings to be generalised to the whole population of council staff. The methodology was designed to maintain statistical validity. The return rate was well over half with 176 staff (59 per cent) responding. The staff were asked if they knew about the corruption prevention measures in their councils. The aim was to find out if councils were “walking the talk”.

We concluded the research by going on the road to talk to General Managers, councillors, audit managers and staff, a total of 40 people from a cross-section of 20 councils around NSW. The councils visited were large and small, rural and urban, with a lot of development and little development, and councils with a variety of approaches to corruption prevention. These interviews helped clarify and flesh out some issues raised in the earlier surveys.

We take this opportunity to thank the many people who participated in the research study.

### *Why did the ICAC conduct this research?*

We were interested in gaining a clearer picture of corruption risks in local government because:

- we consistently receive more complaints about local government than any other area within the NSW public sector
- local councils have a lot of discretionary powers within their decision-making processes
- local councils are valuable to study because, as a group of organisations with similar properties and functions, they are likely to share similar problems.

### *What areas did the ICAC research?*

Our research aimed to find out whether councils in NSW have measures to prevent corruption in their organisations. We also wanted to find out areas where councils may be less well prepared to resist corruption.

Our method was to talk to councils about the priority they gave to the following corruption prevention measures. We know from previous ICAC work that these are indicators of how resistant a council would be to potential corruption.

- Does the council have a code of conduct and do staff and councillors know about it?
- Does the council have a register of any gifts and benefits and do staff and councillors know about it?
- Does the council provide support and guidance for staff and councillors about what a conflict is and when to declare it, including non-pecuniary interests?
- Does the council provide information on ethical work practices to new recruits, contractors and

developers, so they know what to expect and how council functions?

- If the council has a local preference policy, is it well-defined by stating specifically when, how and why local businesses receive preference?
- Does the council record contracts issued, payments made, and any problems with individual contractors?
- Is council open to public scrutiny by using annual reports to record contracts issued as a means of providing openness and accountability in council operations?
- Does the council have an audit plan, internal audit charter or audit function which keep council activities transparent and accountable?
- Does the council have corruption and/or fraud prevention plans and committees to foreshadow possible problems and decide how to deal with issues as they arise?
- Does the council follow up on ICAC reports to learn from the experiences of other organisations?
- Is the council vigilant in identifying possible future problem areas, in order to conduct risk assessment?
- Do General Managers understand their reporting requirements under Section 11 of the ICAC Act?
- Do General Managers understand the relevant provisions of the Protected Disclosures legislation and appropriate internal and external grievance handling procedures?
- Is the council walking the talk, ie. actually doing what they say they do?

*What were the main differences between councils?*

In talking to councils about their corruption resistance we became aware that different corruption resistance issues and problems arose according to whether councils:

- were in regions with a lot, or little development
- had large or small budgets
- were in isolated or densely populated areas.

Where councils differed was the levels of development and amounts of money involved in procurement. Some risk factors related more to councils in metropolitan regions and others related to rural and regional councils. Risks related to development applications and rezoning emerged as more prevalent in metropolitan and coastal regions.

General issues specific to rural and regional areas included the difficulty for public officials in separating their social life from their public functions. Remoteness from information and training was also cited as a problem, along with the small pool of applicants for recruitment and contracting.

*What are the features of corruption with a bearing on this report?*

### **Relationships between elected positions and those based on merit selection**

All councils have positions that are appointed using the merit selection process (General Managers and council staff) and positions chosen by election (Mayors and councillors). In simple terms, under the *Local Government Act (NSW) 1993*, General Managers are responsible for day-to-day management and elected officials are responsible for policy and governance.

However, our research showed that the situation is anything but simple! Councillors have the power to dismiss General Managers without having to give reasons. Councillors are members of communities and therefore often have ties or interests in the local community that may lead to conflicts of interest. This creates a risk of politicising the General Manager's position.

### **Discretionary powers**

One key feature in all councils is the vast amount of discretionary power that is held by a variety of public officials and allows both staff and councillors to make a lot of decisions that affect the lives and businesses of others in their communities. Discretionary decision-making is one area where, based on the ICAC's experience, there is often the potential for corrupt conduct to occur.

### **Contracting**

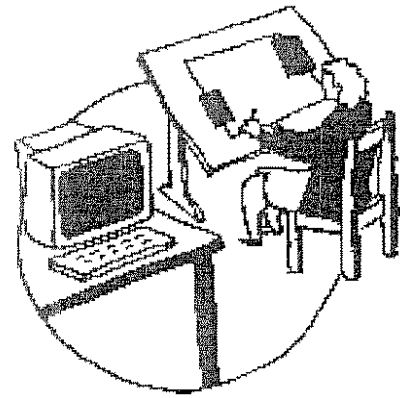
In spending and collecting revenue, councils purchase goods and services from other public authorities or the private sector. Many councils use a "schedule of rates" which is a list of predetermined contractors to provide goods and services to the council for a predetermined price over a set period, eg. one or two years. To support their communities, some councils have local preference policies. The *Local Government Act* sets out guidelines for how councils should procure goods and services. The diverse nature of councils and the discretion with which they are invested by the *Local Government Act* means that there are great differences in the way councils contract for goods and services. This lack of consistency may create circumstances in which corruption may flourish.

## Finances and the bottom line

Notwithstanding the increase in electronic fund transactions, many local councils find themselves handling substantial amounts of cash. This was also identified as a key corruption risk by councils in the research.

An emerging aspect of local government is the development of an entrepreneurial role. Some councils have set up business units, as part of their operations, designed to provide sellable services, be economically independent, profit-oriented and sometimes required to compete for council's own work; again areas that could be open to potential corruption.





## **CORRUPTION RISKS**

### **What are the main areas of potential corruption risk in councils?**

The main areas of potential corruption identified by this research are:

1. Partiality, bribery and conflicts of interest, particularly by elected officials, in assessing development applications and rezoning.
2. Partiality and personal interest in procurement, tendering and contracting.
3. Misuse of council resources.
4. Cash handling.

However other areas of potential risk were also raised during interviews. Staff discussed risks associated with use of the internet and email. Those interviewed in person identified councillors' conflicts of interest as a major risk area.

We asked staff if they had ever become aware of any instances of corrupt conduct in decision-making in councils. Half of local council staff said they had become aware of corruption in the following areas:

- misuse or theft of council property, such as construction materials, equipment and office supplies, especially by day labourers
- favouritism or preferential treatment by local government managers during recruitment and processing of development applications
- conflicts of interest involving local government councillors and council managers in relation to development applications and the approval process.

Bribery was seen as a potential risk, especially in relation to development applications. One-quarter of General Managers saw bribery as a major corruption risk in relation to development. One in nine staff members said they were aware of instances of bribery, particularly during the development approval process. On a more positive note, 40 per cent of councils reported they had reviewed the risks associated with bribery in the past two years.

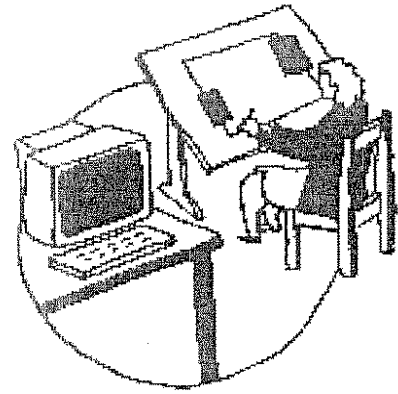
A further area which may lead to potential corruption is the difference between policies and procedures which General Managers state are in place and the level of awareness of them amongst staff. This level of awareness is indicative of whether or not the procedures are likely to be followed. The research identified a number of areas of council operation where this was the case.

Questions were asked about a range of policies and procedures relating to risk control, such as corruption prevention, procurement and contracting, audit, codes of conduct, interaction between councillors and staff, gifts and benefits, reporting corruption, recruitment and council's entrepreneurial activities.

#### *What does this mean for councils?*

No one is immune from risk—potentially risks can affect every public official and all public official functions.

The main risk areas are discussed in the following pages.



## **CORRUPTION PREVENTION**

### **What are councils doing to prevent corruption?**



As part of the research we talked to General Managers about their councils' strategies for preventing corruption.

#### *The good news*

Eight out of 10 General Managers that participated in the research reported that their councils provide corruption prevention information to staff and over half of councils have a person or team designated to deal with corruption issues.

#### *Areas of concern*

#### **Corruption risk—how important is corruption prevention to councils?**

The research indicated that council practices and procedures did not always reflect a high corruption prevention priority.

- only 15 per cent of NSW local councils have a corruption prevention plan or fraud plan in place
- while 80 per cent of General Managers told us they provided information about corruption prevention, staff were much less aware of this information. For example, 64 per cent of General Managers noted that they provided corruption prevention information in brochures, but only 22 per cent of staff were aware of the availability of these brochures
- almost three-quarters of council staff in the survey said that their council did not provide information to the community about bribery, or if they did, staff were not aware of it.

#### *What is understood by corruption prevention plans?*

General Managers from councils with a prevention plan defined the key aspects of corruption prevention plans as:

- the promotion of council as an organisation against corruption
- education, training and general awareness of the issues surrounding potential corruption
- the use of internal audit
- fraud risk assessment.

For those councils with prevention plans, the methods most often used to detect potential corruption were fraud risk assessments and audit.

#### *Feedback to ICAC and the Department of Local Government (DLG)*

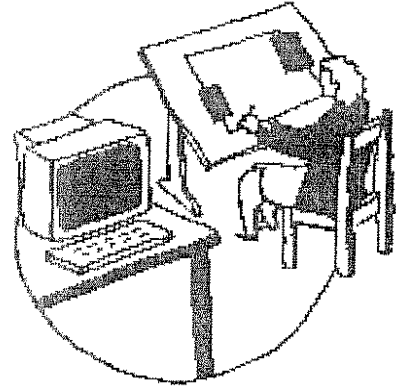
Staff were asked how well they thought the ICAC and the DLG understood the issues facing councils. Just over a quarter of staff said "well" but almost three-quarters of staff said not well enough, or they were not aware of this. Around 12 per cent of staff in the survey reported that ICAC brochures and materials were used to inform their community about bribery.

Both the ICAC and DLG may need to develop strategies to bring their messages to staff as well as General Managers and senior council management.

#### *What does this mean for councils?*

A risk is a risk—the way corruption risks are managed might be different, but the methodology for identifying them and planning their management is the same as that used by councils for public liability and occupational health and safety risks. Just because the risk is corruption doesn't mean it needs a

whole new method. For example, like other risks councils need to look at what they do, identify the corruption risks involved and define the most appropriate method of treatment. Decisions about treatment depend on the degree of risk, the likelihood of it occurring and the resources available to treat it.



## PROCUREMENT AND CONTRACTING

### Procurement

Procurement refers to the process of purchasing goods and services. In NSW the *Local Government Act* and the *Local Government (Tendering) Regulation 1999* provide the main legislative framework for how councils should purchase goods and services.

Procurement and contracting practices were highlighted in our local government research as an area of major potential corruption risk. General Managers, council staff and elected councillors all nominated procurement, purchasing and contracts as areas of potential corruption.

#### *The good news*

The vast majority of researched councils said they had resources on hand which outline ethical principles and corruption resistant methods of contracting. Nearly all councils had a copy of the Department of Local Government publication *Code of practice for tendering* (92 per cent), the Department of Public Works and Services publications *Code of tendering for procurement* (85 per cent) and *Code of practice for procurement* (78 per cent).

Schedules of rates were selected predominantly by advertising for services required (81 per cent). General Managers said that advertising was more likely to produce the best price and value available and open up the field for all to participate. The procedure most often used for urgent and minor works was to use the schedule of rates.

The procedure most often mentioned for contracts under \$100k was to obtain quotes (for example three

written quotes). Tenders were more likely for larger amounts up to \$100k (eg. \$50k-\$100k).

Nearly all General Managers (95 per cent) said their councils kept a continuous record of expenditure on each contract let. This makes the process more accountable and transparent for potential audit.

Although the ICAC does not consider directly negotiating with contractors to be a corruption resistant strategy, those councils using this process were more likely to also have other, more corruption-resistant measures in place. Although these relationships do not show cause and effect, they do show that corruption resistant and less resistant practices co-exist in some councils. These included:

- sending out information on ethical standards to contractors. Establishing ethical expectations as well as the differences between accepted behaviour in the public and private sectors is likely to assist corruption resistance
- including staff/councillor interaction and declarations of non-pecuniary interest in their codes of conduct. These are two key areas where councils can inform staff and councillors on how to avoid inappropriate access to information and conflicts of interest
- having a corruption and/or fraud prevention plan
- having an audit plan or an internal audit charter, and stating that internal audit was "essential" or "very important". This suggests that these councils are aware of the need for audit and corruption resistance.

### *Areas of concern*

#### **Corruption risk—putting contractors in the picture**

Four out of every five General Managers said their councils did *not* send out information to contractors about the ethical standards of councils.

Less than half of the General Managers (45 per cent) said their councils included in contracts issued a commitment to acting ethically as a standard term. There is a need to inform contractors about the ethical standards of council and to ensure that contractors take heed of these standards, such as including a commitment to act ethically in the contract and defining what “acting ethically” means. Setting the standard up front is a useful method of avoiding ethical problems after entering into a contract.

#### **Corruption risk—structural issues**

Although the most common procedure for contracts of amounts less than \$20k was obtaining quotes, some councils used other methods which included officer discretion or delegated authority. These methods of contract selection are not recommended as they put the officers in situations that are potentially vulnerable to corruption.

One-third of General Managers said their councils had cited extenuating circumstances for not conducting a full tender procedure on at least one occasion in recent years. One-third of General Managers also said their councils had used direct negotiations for tender of amounts over \$100k in the past four years. The councils that cited extenuating circumstances were more likely to have also directly negotiated with contractors in the past four years. These two methods of contracting are not considered corruption resistant.

#### **Corruption risk—contract administration**

Four General Managers said their councils did *not* record contracts they issue. This means that no audit can investigate contracts issued by these councils.

One-fifth of General Managers said their councils did *not* record how authorisations to variation and period contract payments were made. This means that decisions made on contract variations and payments are neither transparent nor accountable.

#### *The corruption risk—in a nutshell*

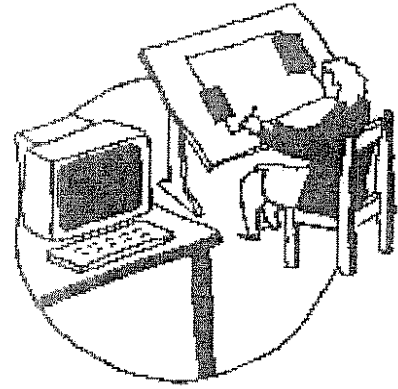
Although there are statutory requirements and a number of available resources to guide councils, there is a lack of common approach in council procurement and contract administration practices.

This issue is being dealt with in the ICAC publication *Taking the Can out of Contracting: Issues for local government procurement and contract administration*.

#### *What does this mean for councils?*

Consistent treatment of risks throughout the sector will lead to:

- heightened corruption resistance and public confidence in council practices
- better understanding by contractors and the public
- efficiencies through shared approaches, problems and solutions.



## AUDIT

### Internal Audit – what is it?

Internal audit can provide objective assessment of how well a council's systems function by reviewing the reliability and integrity of information, compliance with policies and regulations, the safeguarding of assets, and the efficient use of resources.

Audit can identify weaknesses in systems and make recommendations for improvement.

In the context of local councils, audit can include a number of key components:

- audit plans which identify the scope of audits, the topics to be covered and the process to be used
- internal auditors who conduct or oversee the audits and write audit reports
- audit charters which outline the jurisdiction and authority of the auditor
- audit committees which comprise people designated to oversee the audit process.

Operational or performance audits are distinct from financial audits in that they review the process and procedures used and outcomes achieved rather than financial aspects of council systems.

The research asked councils about their audit strategies.

#### *The good news*

A positive finding in this research study was that eight out of 10 General Managers said audit was important to their council, with over half saying it was

essential or very important. Larger councils were more likely to rate internal audit as high importance than smaller councils. Two General Managers said their councils were unable to afford internal audit.

#### *Areas of concern*

##### **Corruption risk—how important is audit to councils?**

The research findings indicated that a council's practices and procedures did not always reflect the General Manager's stated priority. General Managers from most councils said they did not have an audit plan, did not employ staff in the audit function, did not conduct long term audit planning, and did not have an internal audit charter, auditors or committee as the following findings show:

- over three-quarters of councils did not have an audit plan
- very few councils (3 per cent) conducted long-term audit planning
- half of councils had not conducted any operational audits or did so less than once every 10 years; only one-quarter said they conducted regular operational audits each year
- local council operational/performance audits most frequently concerned corporate development and management plans, contracting out services and planning procedures
- only two councils said risk management was a topic of their last three audits
- over 80 per cent of councils did not have internal audit charters, auditors or committees; however those councils with one of these mechanisms in place were also more likely to have the other two

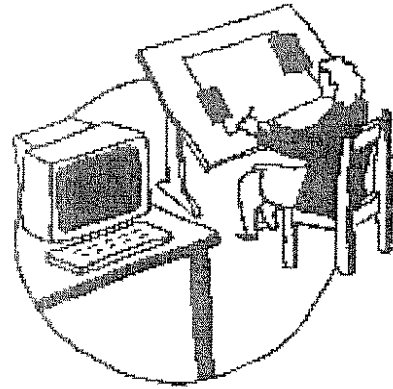
- the majority of councils spent less than 1 per cent of their annual budget on audit and 8 per cent said they did not spend any money on audit
- seven out of 10 councils said they did not have any staff employed in audit. Thirty-four councils had one staff member employed in audit, seven had three staff, three had four and one had five. Of the 28 councils that had an internal auditor, over half received a salary lower than most or all other managers
- in the majority of councils, it was the responsibility of the General Manager and various senior managers to follow up recommendations made in audit reports; 15 per cent of councils did not have anyone designated to oversee implementation
- metropolitan councils were more likely than town or rural councils to have an audit plan, an internal audit charter, an internal auditor and an internal audit committee
- large councils with 500 or more employees were more likely than medium or small councils to have an audit plan, an internal audit charter, an internal auditor and an internal audit committee.

*The corruption risk—in a nutshell*

Councils say audit is important but in general councils have either not made the practice a priority or have not had adequate resources available to introduce audit procedures to their organisations.

*What does this mean for councils?*

Put your money where your mouth is—finding ways to put into practice effective internal audit procedures is important, either by allocating sufficient resources to audit or finding creative ways of sharing audit functions with other similarly affected councils.



## CODES OF CONDUCT

### Codes of conduct—what are they?

In local government, a code of conduct sets out the standards of behaviour expected of staff and elected councillors. A council's code of conduct provides a framework in which staff and councillors agree to work.

#### *The good news*

All councils in NSW who responded to the General Managers' questionnaire said they have a code of conduct. Over half of councils' codes had been reviewed within the last year and 87 per cent within the last four years.

#### *Areas of concern*

##### **Corruption risk—covering the field in the code of conduct**

Specific topics in a code of conduct are useful for letting staff know what is considered to be acceptable and ethical as well as what is unacceptable or unethical, especially if the code outlines the sanctions or punishment for not complying.

Almost all council codes of conduct included the topics of responsibilities of staff and responsibilities of councillors, guidelines on gifts and benefits, use of information and use of resources.

Over three-quarters of council codes included financial and non-financial conflicts of interest as well as sanctions for breaching the code of conduct.

Some areas covered by only a few council codes included some important and relevant topics, such as alcohol and drug use (14 per cent), use of internet

(10 per cent) and child protection legislation responsibilities (8 per cent). Councils whose codes do not currently cover these topics, may consider adding them. Two-out-of-three councils (70 per cent) did not include complaint handling in their code.

##### **Corruption risk—awareness about who, and what, the codes cover**

Although all councils have a code of conduct, one in 10 staff did not know whether or not their council had one. Half of staff researched reported that they never refer to their council's code of conduct.

Nearly half the staff in the study did not know that their code of conduct applied to councillors as well as staff. This lack of awareness among staff becomes more relevant to corruption when coupled with the fact that one in 10 staff said that in the past four years they had been asked to provide information to councillors to which they should not have had access. If the staff had known that the councillors were breaking their code of conduct by asking for information they were not entitled to, then staff may have felt more confident or justified in refusing to be complicit in the inappropriate access to information.

##### **Corruption risk—training on codes of conduct**

###### **Staff**

Although over half of council codes had been reviewed within the last year and most within the last four years, staff training usually comprised of only one session during a new staff member's induction. General Managers from one in seven councils said their staff had never been provided with training on their code, and well over half (63 per cent) have only provided training once, at induction. If codes are reviewed regularly, then staff training on changes is required as well.



## Councillors

General Managers from one in six councils said their councillors have never been provided with training on their code, and 71 per cent received training only once, at induction.

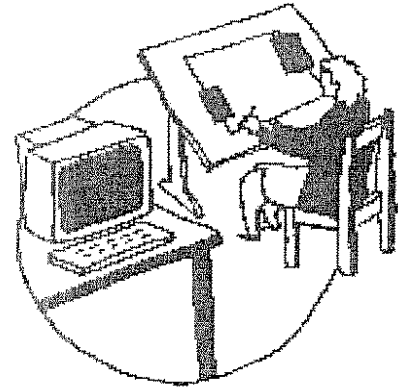
### *The corruption risk—in a nutshell*

Some important and relevant topics, such as complaint handling, alcohol and drug use, use of internet and child protection legislation responsibilities were *not* widely covered in councils' codes of conduct. Some councils never provide their staff or councillors with training on their code, with most only provided training at induction. Public officials who are unaware of the content of their code of conduct risk acting in ways which breaches appropriate standards of public duty.

### *What does this mean for councils?*

Make it relevant—codes of conduct need to be made more relevant through:

- awareness of who is covered
- training for these people, as required
- regular review to keep codes relevant
- clear sanctions for breaches, including councillors.



## **INTERACTION BETWEEN STAFF AND COUNCILLORS**

### **Who should staff report to?**

The *Local Government Act* states that the General Manager is the head of administration of the council's decisions. All staff are therefore accountable to the General Manager.

Staff were asked how much influence they thought councillors and mayors had on the administrative functions of their council. Staff responses were divided on the issue of how much influence their councillors had on the day-to-day running of council business:

- 24 per cent said none or too little
- 26 per cent said it was just right
- 23 per cent said too much
- 27 per cent did not know.

#### *The good news*

Three-quarters of staff surveyed believed that the practice of councillors' channelling requests for information through a designated person, rather than approaching the staff member directly, was practical. This ensures a third party is involved in any requests for information, thus avoiding a situation when staff are pressured to do things they believe are inappropriate.

It was pleasing to find that most staff have not been in a situation where they have been pressured to go against council procedures in providing information to councillors. Most staff (90 per cent) have not felt persuaded or pressured by any councillor to do something they were not supposed to do in terms of council processes. Similarly, most staff (88 per cent) had not felt pressured to provide a councillor with

information to which they thought the councillor should not have access.

#### *Areas of concern*

##### **Corruption risk—safeguards for staff asked to provide information?**

Most staff (71 per cent) said they were unaware of any person designated as the point of contact for councillors if they requested information from staff. During interviews for the research, General Managers and elected officials were asked if their council had this point of contact. They replied that there were systems to protect staff, with requests mostly going via the General Manager. In smaller councils the barriers were less formal but in some city councils the buildings were cordoned off, physically restricting councillors' access to staff work areas.

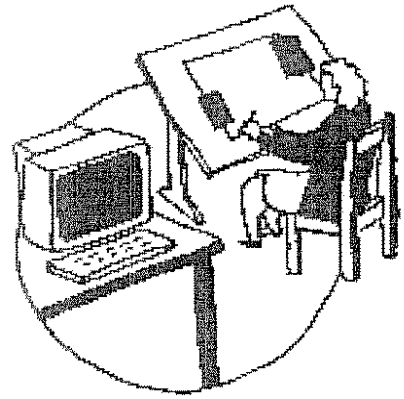
Most staff (68 per cent) said they did not know if councillors followed the correct policy or procedure when requesting staff to provide them with information, 3 per cent said councillors **never** followed correct procedures and 14 per cent said councillors did so only some of the time.

#### *The corruption risk—in a nutshell*

Many staff are unaware that councillors are not supposed to approach them directly with requests for information, and are not aware of correct procedures for access to restricted information.

#### *What does this mean for councils?*

Keeping an arm's length—councillors and council staff need more awareness training about the rules for interacting with each other. Systems need to be established that are consistent with these rules. Sanctions should apply for breaches of these rules. This issue will be explored in future work undertaken in the ICAC's local government strategy.



## **GIFTS, BENEFITS AND CONFLICTS OF INTEREST**

### **Gifts, benefits and personal interests—what are they?**



At some stage in their work, it is not uncommon for council employees and elected officials, to be offered a gift, either unsolicited and given innocently or as an attempt to influence their actions. Similarly, their work may place them in a situation where they could give or receive personal benefits which might include preferential treatment, promotion or access to information.

Council employees and elected officials may also find themselves in a situation of personally benefiting from the decisions of council, either financially or non-financially. For example, a council's decision about which roads are mended or where refuse stations are located might benefit (or disadvantage) a council staff member or councillor. Often, personal interests in council decisions are unavoidable but when they arise they need to be dealt with fairly. The *Local Government Act* provides direction on matters that may constitute a conflict of interest.

Declaring an interest in a matter and actively taking steps not to be involved in decisions on the matter can avoid bias or partiality.

#### *The good news*

Many councils have introduced measures to assist staff and councillors in dealing with these issues. Half the General Managers in our research said their council had a gifts and benefits policy and a quarter had a gift register. Councils that had gift registers made them available to the general public. Gift registers contained constructive information, such as the name of the recipient, the name of the person or

organisation offering it, the type of gift, its value and the decision about what should happen to the gift.

The existence of a gift register was associated with councils having other corruption resistance strategies in place, such as a code of conduct covering a wide range of topics, internal reporting procedures, comprehensive audit procedures and a corruption prevention strategy.

Half the General Managers said their councils had a policy on the declaration of non-pecuniary (or non-financial) interests. A larger proportion of General Managers (62 per cent) said councillors were required to declare non-pecuniary interests. What is not as clear is how these General Managers follow-up with their councillors, and how councillors know what and when they should declare, as this was generally not standardised in council policy.

Large councils and those in metropolitan areas were more likely to have a policy on the declaration of non-pecuniary interest. Those with this policy were also more likely to adopt corruption resistance strategies when letting contracts, such as sending out information on ethical standards and including in the contract clauses requiring a commitment to act ethically.

#### *Areas of concern*

##### **Corruption risk—staff awareness of corruption prevention measures**

There were disparities between corruption prevention measures that General Managers said were in place and the level of staff awareness of these measures, especially in the area of gifts, benefits and conflicts of interest. Half the council staff said they did not know whether or not a gifts and benefits policy or a gift register existed in their councils. One in three staff did not know if their council had guidelines on conflicts of interest.

Half the staff did not know if their council had a policy on the declaration of non-pecuniary interests.

Over three-quarters of staff said their council had never given any guidance or training on conflicts of interest. Given this lack of guidance and training it was rather surprising that one-third of staff said they felt "very confident" and half said they felt "somewhat confident" in being able to identify a conflict of interest when it arose.

### **Corruption risk—councillors and conflicts of interest**

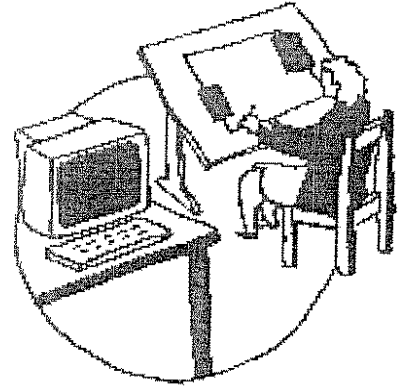
The research showed that the decision of what to do if a councillor makes a declaration of interest varied from council to council. Sometimes the responsibility for deciding how to handle the conflict rested with the councillor who had a personal interest. Given these findings, there is a clear need for councillors to receive specific training on conflicts of interest.

#### *The corruption risk—in a nutshell*

Some councils have policies and procedures governing the areas of gifts, benefits and conflicts of interest, however, staff and councillors don't always know about them or how to use them.

#### *What does this mean for councils?*

Awareness is the key—councillors and council staff need more awareness training about the rules on gifts and benefits and conflicts of interest. Systems need to be established that are consistent with these rules. Sanctions should apply for breaches of such rules.



## REPORTING CORRUPTION

### Protected disclosures—what are they?

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

The *Protected Disclosures Act* is a vital tool for councils in resisting corruption. A good internal reporting system is an important source of information about any corruption problems within an organisation. But staff will only report corruption if they know who to report to, how they can report, and that they will be protected from possible reprisal. Staff must feel that their reports will be treated confidentially and acted upon. Our research tried to find out if council systems facilitated this protection, confidentially and seriously.

In 1995, the ICAC conducted research within the public sector into the awareness of the *Protected Disclosures Act* and implementation of internal reporting systems. This local government research project followed up to see if anything has changed in local government in terms of awareness of the *Protected Disclosures Act* and implementation of an effective internal reporting system.

#### *The good news*

Almost all General Managers had heard of the *Protected Disclosures Act* (99 per cent) and said their councils had internal reporting systems in place (91 per cent). This represents a significant increase in

awareness and implementation over the past five years since the ICAC's last research.

#### *Areas of concern*

##### **Corruption risk—staff knowledge of the Protected Disclosures Act**

Unfortunately, the very high level of awareness on the part of General Managers about protected disclosures was not supported by an equal level of awareness among staff.

Only 44 per cent of staff had heard of the *Protected Disclosures Act*. While half of staff were aware that their council had an internal reporting system, and 65 per cent knew to whom they could make a report of workplace corruption, staff awareness was still low compared with General Managers.

This lack of awareness of staff could be because 40 per cent of General Managers said they had no strategy for informing council employees about protected disclosures.

This was borne out by the small proportion of staff who were aware of how they could make a disclosure. Even though nearly all General Managers said their staff could make disclosures in writing, only one-quarter knew this. The majority of General Managers (80 per cent) said staff could make disclosures verbally but only 40 per cent of staff knew this.

One-third of General Managers said their internal reporting system allowed staff to make anonymous disclosures but only 12 per cent of staff were aware of this method. The capacity to make anonymous disclosures is particularly important for council staff in close-knit communities where local grapevines could mean that the identity of the person who made the disclosure is known unless it is done anonymously.

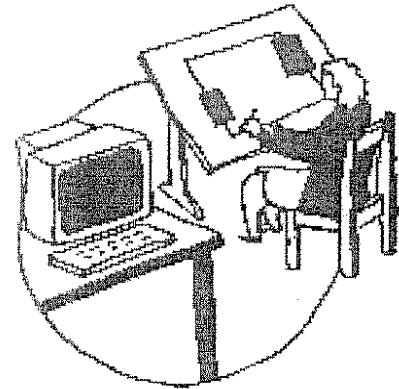
Six out of 10 staff were confident that if they were to report workplace corruption within their council, something appropriate would be done about it.

*The corruption risk—in a nutshell*

General Managers know about the *Protected Disclosures Act* and have introduced internal reporting systems, but levels of staff awareness in these areas is not high. Systems exist, but staff did not know about them.

*What does this mean for councils?*

Do you have protection?—staff need to know. While General Managers are very aware of the *Protected Disclosures Act* staff are less so and need to know about the protection offered them under the *Protected Disclosures Act*.



## RECRUITMENT

### Recruitment—what are the issues?

People who work in local government are required to behave in a way that promotes public confidence and trust in their organisation. The community expects staff to do their work with integrity, impartiality, openness, fairness, efficiency and accountability.

Recruitment processes send a clear message about the ethical climate of a council. Corruption-free recruitment processes, in line with the principles of merit selection, set the tone and establish the level of conduct expected of staff. Recruitment also provides councils with an opportunity to examine the commitment to ethical work practices of potential staff and promote the council's ethical standards to them.

The research asked councils about their recruitment processes and whether or not ethics was included in selection criteria.

#### *The good news*

More than half (59 per cent) of General Managers reported they examined the commitment to ethical work practices of applicants as part of the recruitment process in their council. Most did this through the questions they asked at job interviews, and by including commitment to ethical work practices in job descriptions, job selection criteria and job advertisements.

Our research results show that councils that did examine the ethical commitment of potential new staff were also better equipped with other corruption resistance procedures than those that did not examine ethics. In particular, councils that assessed applicants' ethical commitment were more likely to have a code of conduct that included protected disclosures and complaint handling.

#### *Areas of concern*

##### **Corruption risk—lost opportunities**

Many General Managers (41 per cent) said that they did not take any steps to examine the ethical commitment of potential employees during recruitment.

To compound the problem, we found that these councils were also less likely to have other measures to resist potential corruption. For example, they were less likely to include protected disclosures and complaint handling in their code of conduct or have a policy on non-pecuniary interest.

Councils that did not examine ethics during recruitment were also less likely to include a commitment to act ethically as a standard term of contracts let. They were more likely to have cited extenuating circumstances for not following a full tender procedure in procurement.

These councils' General Managers said that they did not know how to examine the ethics of new recruits or that they thought their existing practices were adequate. They thought assessing ethical commitment was too difficult, not necessary, or was not standard practice. Some said ethics had not been an issue for their council, they did not have the resources to examine this area, or that ethical commitment would be gauged indirectly during recruitment.

Only one in 10 councils send any corruption prevention information (such as a copy of council's code of conduct, guarantee of service, mission and values statements) to applicants as a standard part of their recruitment process.

#### *The corruption risk—in a nutshell*

The risk is that councils deny themselves a simple, effective way of assessing and communicating a

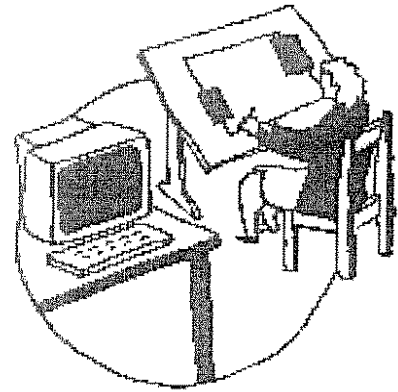
commitment to ethical practices at recruitment. The potential risk of corruption is increased by not having a standard clause in contracts that all parties must act ethically, and a higher use of "extenuating circumstances" which circumvent the standard tendering procedures designed to prevent corruption.

*What does this mean for councils?*

The way we do things around here is by the book—or is it?

Councils that do not examine the ethics of staff may be exposed to potential corruption.





## COUNCILS AS ENTREPRENEURS

### Business units

A growing feature of local government has been the development of an entrepreneurial role. Increasingly as part of their operations councils are setting up business units designed to provide marketable services, be economically independent or profit oriented. Examples of this are when councils provide waste collection services to other councils or participate in land development, another area that could be susceptible to potential corruption.

Private enterprise has different ways of doing things from the public sector. Traditionally the private sector is less bound by policies and procedures governing functions such as procurement, contracting, recruitment, gifts and incentives.

One of the big differences between the public and private sectors is the acceptability of enticing business by providing gifts and benefits to clients. This means staff working in a business unit competing for work with other private sector organisations may be more exposed to private sector values surrounding the acceptability of gifts and benefits.

#### *Business units—what did the research find?*

One in five NSW local councils whose General Manager's responded to the survey, operate business units. One-third of these 31 councils run their business units similar to the private sector on a profit-driven basis.

#### *The good news*

On the whole, General Managers did not identify many corruption risks associated with running business units within councils. The most frequently mentioned corruption risk concerned procurement and contracting. Misuse or theft of resources and bribery were the most likely types of corrupt conduct identified by General Managers.

Of the 31 councils with business units, only 11 said their business units operate on a similar basis to the private sector. General Managers are therefore probably correct in their perception that there are currently very few extra corruption risks in local councils concerning private sector business practices.

#### *The corruption risk—in a nutshell*

Based on our research, the current risk of corruption specifically associated with councils operating profit making business units is probably small, but General Managers are unaware or ignoring corruption risks, especially if the business unit is run along private sector lines.

#### *What does this mean for councils?*

Risks come with the deal—councils deciding to use a business unit structure need to be aware of the variety of risks involved and take steps to treat them. Enterprise units need to be able to take commercial risks, but systems need to deal with potential corruption risks and the financial exposure of councils.

## **CONCLUSION**

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This research was undertaken to gain an overview of the general state of play of corruption resistance in local government. The aim of the research was to identify corruption risk areas as well as strategies which are already in place in local councils to make them resistant to potential corruption.

The research findings indicate that General Managers, elected officials and staff have a common understanding of the potential corruption risk areas in local government. The following were identified as the foremost corruption risk areas:

1. Partiality, bribery and conflicts of interest, particularly by elected officials, in assessing development applications and rezoning.
2. Partiality and personal interest in procurement, tendering and contracting.
3. Misuse of council resources.
4. Cash handling.

The number of significant differences between rural and urban councils, and large and small councils, particularly in terms of resources available for the corruption resistance strategies, suggests that the ICAC needs to target the 174 councils differently.

The research findings will be useful in developing tailored approaches for the local government sector. Individual councils will be able to compare their position in comparison to their peer organisations, enabling them to make decisions on areas of potential corruption risk to which they are vulnerable.

A number of organisations including ICAC, DLG, the Local Government Managers Association and Local Government & Shires Association will be able to use the information gathered by this research to assist councils in targeting risk areas and developing corruption resistant strategies.

