

Corruption Resistance Strategies: Researching risks in local government

Research findings

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Research Section

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 NSW 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 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 their 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 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 councils, 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 these financial pressures and believes there are solutions that will remove corruption risks and have minimal cost implications for councils. Other solutions 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 to the differences between councils, taking into account factors such as size, budget, and economic development in the area.

I wish to thank all the local council General Managers, council staff and councillors who participated in this study. We look forward to further developing the ICAC's interaction with local councils and will endeavour to provide assistance whenever possible.

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 on this research.

Irene Moss AO
Commissioner

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Executive summary

The Independent Commission Against Corruption (ICAC) has an ongoing responsibility to identify potential risk areas for corruption in the NSW public sector, including local government.

ABOUT THE LOCAL GOVERNMENT RESEARCH STUDY

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

This research study provides an overview of the types of strategies in place in local councils which assist local government to be resistant to corruption. The research findings also highlight potential corruption risks in council administration and practice.

Corruption risks can be furthered by the culture of an organisation, poor ethical leadership or a lack of policies and procedures to assist council staff and councillors in carrying out their roles as public officials. When a potential incident of corrupt conduct becomes apparent and staff have no information or process to guide them in dealing with the situation, inappropriate choices can be made.

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. By making a random selection of staff from these councils the findings could 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. These councils were large and small, rural and urban, with a lot of development and little development, and those with a variety of approaches to corruption prevention. These interviews helped clarify and flesh out issues raised in the earlier surveys.

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 identify 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 the level of resistance 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 to 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 and manage risks?
- 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 do they have 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 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.

CORRUPTION RISKS

There was strong consensus among General Managers, councillors and staff on the major corruption risks for local government.

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 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 the area of 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.

Particularly in a large city, when you're talking about big buildings you have to have very tight controls over the procedures so that the councillors can't actually have the possibility of interfering. Also that they know what the rules are and that they can't interfere. It's important that the outside world also sees that there is not the possibility of the councillors doing that, and we've been doing a lot of strategic planning to set some pretty firm rules, especially in development applications. (Senior staff member, 04, large council, metro)ⁱ

While I appreciate the need for the highest level of integrity in any public office, one size does not fit all. The General Manager has responsibilities to ensure the proper conduct of the council. Sometimes all these plans that seem to be required burden smaller organisations with red tape for no benefit. This is not to say they are [un]necessary in some organisations. (General Manager, 43, small council, rural)

DIFFERENCES BETWEEN GENERAL MANAGERS AND STAFF

Another area which may lead to potential corruption is the gap between policies and procedures which General Managers state are in place and the level of awareness of them among staff. This level of awareness indicates whether or not the procedures are likely to be followed. The research identified a number of operational areas where this was the case.

Examples of the difference between what General Managers said was in place and staff awareness included the existence of council codes of conduct. All General Managers said there was one, but one in 10 staff did not know this and nearly half (45 per cent) of the staff in the study did

not know that their code of conduct applied to councillors as well as staff.

There were further disparities between what General Managers said were in place and what staff were aware of in the area of gifts, benefits and conflicts of interest. Half (55 per cent) of General Managers said their council had a gifts and benefits policy and a quarter (26 per cent) had a gift register. Yet half the staff said they did not know whether or not these existed in their councils.

These types of policies and registers are highly relevant to staff who work directly with the public or the private sector, and make decisions on tenders, contracts and development applications. If staff are unaware of a policy outlining the appropriate procedure, such as declaring the receipt or offer of gifts, then it will be an ineffective measure as staff will not use it.

Almost all General Managers (99 per cent) had heard of the *NSW Protected Disclosures Act 1994* and said their councils had internal reporting systems in place (91 per cent). Unfortunately, nearly one in two General Managers (41 per cent) said they had no strategy for informing council employees about protected disclosures. This is borne out in the small proportion of staff who were aware of **how** they could make a disclosure. Even though nearly all General Managers (94 per cent) said their staff could make disclosures in writing, only one-quarter (27 per cent) of staff knew this. Eighty-one per cent of General Managers said staff could make disclosures verbally, but only 37 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 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 ensure everyone would know who made the disclosure unless it is done anonymously.

Another distressing finding was that a large proportion of staff (42 per cent) said they did not know whether or not their council was serious about protecting people who reported corruption and a further 13 per cent thought their council was **not** serious about protecting staff who reported corruption.

Research 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 – risks have the potential to affect every public official and all public official functions.

The main risk areas are discussed in the chapters of this report.

Introduction

After 20 years in local government, it is apparent that most staff are honest, hardworking people who genuinely care about the communities. (General Manager, 17, small council, rural)

Examining ethics is like trying to catch a greasy pig. (General Manager, 124, small council, rural)

BACKGROUND

Local government was selected as the focus for this Independent Commission Against Corruption (ICAC) research study because:

1. The ICAC consistently receives more complaints about local government than any other area within the NSW public sector (see ICAC Annual Reports), possibly because local government is made up of many individual local councils, rather than only one organisation.
2. Local councils have a lot of discretionary powers within their decision making processes.
3. Local councils have many aspects in common because they are a group of organisations that have similar structure and functions and are likely to share similar problems.

The aim of this research was to identify corruption risk areas in local councils by measuring:

1. The presence or absence of corruption risk factors, such as the procedural and prevention strategies.

2. The culture of the organisation, by asking staff and managers how councils are perceived to function, notwithstanding the policies and procedures that are in place.

The ICAC's *Practical Guide to Corruption Prevention* (1996) states that:

*If the basic tools of good management are in place, then building on them and developing some specialised corruption prevention strategies is not a very difficult task. A good starting point is to list all the features of the organisation. These should include; a **code of conduct**, an **internal audit program**, a **gift register**, a **staff induction program**, a **complaints handling system**, as well as other things [emphasis added].*

The value, importance or priority that councils give to each of the following can indicate their level of resistance to potential corruption. These include:

- codes of conduct that outline areas such as the declaration of conflicts of interest, staff/councillor interaction, access to confidential information, and what is, and is not, acceptable behaviour
- well-defined, code of conduct supported by ongoing training and promotion that make it relevant to day-to-day council business
- comprehensive registers of any gifts and benefits which council staff and elected officials may receive or be offered and guidance so individuals know what to do when offered a gift and that there is openness and accountability in the process

- well-defined, ongoing training and promotion of the relevance of a gifts register or gifts and benefits policy
- non-pecuniary interest declarations that are defined and encouraged so individuals know what and when to declare
- support and guidance for staff and councillors that defines what a conflict is and when to declare it
- information on ethical work practices and standards to new recruits, contractors and developers so they know what to expect and how council functions
- well-defined local preference policies stating specifically when, how and why local businesses receive preference
- recording the contracts issued, payments made, as well as any problems with individual contractors. Ensuring that decisions and the reasons are documented
- recording contracts issued in annual reports to allow public scrutiny as a method of openness and accountability in council operations
- audit plans, internal audit charters and auditors that keep council activities transparent and accountable
- corruption and/or fraud prevention plans in place and committees set up to foreshadow possible problems and decide how to deal with issues as they arise
- following up on ICAC reports to learn from the experiences of other organisations
- vigilance in identifying possible future problem areas, in order that councils can manage their risks.

The final element in giving value, importance and priority to the above is that organisations need to be seen to be doing so as well, ie. walking the talk.

This wide ranging research measured how resistant NSW local councils are to corruption and aimed to discover whether or not councils in NSW have a range of corruption prevention measures in place as well as identifying any potential corruption resistance that may be lacking.

Discretionary powers in local government

One key feature of local government is the vast amount of discretionary power held by a variety of public officials, both staff and councillors.

Local government fosters a great deal of interaction between public officials and members of the community as well as the private sector. Public officials in local government are in a role whereby they make a number of decisions that affects the lives and business of others.

Local government staff and elected officials (councillors and Mayors) perform a variety of public official functions, such as:

- voting (eg. on behalf of the public interest)

- receipt of money
- receipt of information (eg. tender documents)
- secure storage of information
- assessment of information against appropriate pre-determined criteria
- developing community well-being (eg. libraries, companion animals, rural youth needs, recreational facilities)
- granting of authorisation, certification or exemption
- rezoning land use and approvals
- enforcing standards and regulations (eg. for building construction, food hygiene and health standards)
- enforcing legislative compliance (eg. building standards, animal control, and noise levels).

Discretionary decision-making is one area where, based on the ICAC's experience, there is often the potential for corrupt conduct to occur.

Elected positions and those based on merit selection

Government organisations have some positions that are obtained by merit selection eg. council staff. Other positions are chosen by election and popular vote, eg. local councillors.

One major part of how councils function, highlighted in the *NSW Local Government Act 1993*, is the division between administration of council and policy decisions or governance. General Managers are responsible for the former and the Mayor and councillors for the latter. Councillors also have the power to dismiss General Managers. This creates a risk of politicisation of the General Manager's position. If the actions of General Managers, while fulfilling their

public duty in accordance with the *Local Government Act*, are contrary to the wishes of the elected officials, they may be dismissed without redress.

Local government councillors, apart from being elected as official decision makers, are also members of the community and therefore usually have ties or interest in the economic and social development and welfare of the community. For example councillors, as citizens, may run local businesses or provide services to the community apart from their council duties.

In their role as a business person and community member, councillors are also required to follow council procedures, such as when applying for development applications for their personal use. This means that councillors may find themselves in a position of both the applicant and the decision maker. As bias or vested interest in decision making is not an acceptable part of council procedure, councils need procedures to avoid or reduce bias as well as to avoid the appearance of bias.

Public declarations of interest and the Pecuniary Interest Tribunal are systems set up by legislation to ensure personal or vested interest are not part of the public official decision making processes.

The *Local Government Act* defines a pecuniary interest as

“an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated” (Chapter 14, part 2).

Councillors are specifically required by the Act to lodge any pecuniary interests.

The Local Government Pecuniary Interest Tribunal Annual Report (2000) states that:

Councillors, senior staff and other designated persons are required to disclose their pecuniary interests and refrain from taking part in decisions on Council matters in which they have pecuniary interest. If a complaint of a contravention is proved, the Tribunal may, in the case of councillors, Council committee members and Council advisors, counsel, reprimand, suspend or disqualify from civic office and, in the case of Council employees, recommend dismissal or disciplinary action (p2).

Contracting goods and services

Councils are not always able to provide all the required goods and services in-house. When this occurs, these are purchased from other public authorities or the private sector.

The *NSW Local Government Act 1993* sets strict guidelines on when, and how, councils should contract from the private sector. Section 55 of the *Local Government Act* states that councils must invite tenders, by public notice and in accordance with any provisions prescribed by the regulations, before entering into contracts to:

- carry out work for council
- to provide goods or services
- to dispose of council property, or
- if the contract requires payment of instalments over two or more years.

Section 55(3) further states that this requirement to invite public tenders does **not apply** if the contract is:

- with the Crown or another council
- for the purchase or sale of land or leasing of community land for more than five years to a non-profit organisation
- for purchase or sale by a council at public auction
- for purchases specified by the State Contracts Control Board or the Department of Administrative Services of the Commonwealth
- for the employment of a person as an employee of the council
- due to extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders
- made in a case of emergency
- for less than \$100,000. [emphasis added]

When the tender procedure for a contract does not provide an acceptable option, councils may directly negotiate with a specific contractor.

Contracting via a schedule of rates

Many councils use a schedule of rates, a list of predetermined contractors to provide goods and services to the council. The list of contractors and their price is agreed for a set period, eg. one to two years. The list is usually developed following an open tender that invites interested contractors to submit their prices and services offered. Once the list is established, council can select any of these contractors to conduct work without having to obtain quotes or conducting a further tender process. The type of work

typically set out in a schedule of rates includes the provision of gravel, glazing, kerb and guttering repairs.

Local preference policies

As a means of supporting their communities, some councils have local preference policies. These policies set out the types of advantage granted to suppliers of goods and services from within the council's boundaries. The reasons for local preference policies may vary. On the whole they are used when it is perceived that a greater public benefit will be served (eg. more employment in the area) than the possible savings on an individual purchase from a remote supplier.

For example, a 10 per cent leeway on tender prices may be given to a local company or, if price and quality are equal between a local and a remote provider, council procedure will favour the local supplier.

The risk of giving local suppliers a preference is that doubts can be raised about whether best value for money solutions are achieved and negative perceptions can form about the probity of council practices and conflicts of interest for staff and councillors. Examples exist of local preference practices that create situations that allow corruption to flourish.

Contracting and corruption risks

Contracting out council services may not always be free from economic and corruption-related difficulties. For example, Pat Barrett, Commonwealth

Auditor-General, stated that "the experience of my office has been that a poorly managed outsourcing approach can result in higher costs, wasted resources, impaired performance and considerable public concern" (Risk Report, 2000, No.88, p.2). Barrett also stated that "increased flexibility in decision-making would be managed through strengthened accountability arrangements to ensure decisions were appropriately made and decision makers properly called to account should the question arise" (p.2).

Negotiating exclusively with one provider or entering into direct negotiations with a prospective provider without first using a competitive process has been identified as a corruption risk by the ICAC. This is due to the lack of openness, fairness, and accountability and may result in "outcomes which deliver less than best value to the community" (ICAC) *Under Careful Consideration: Key Issues for Local Government*, 1997, p.1).

Finances and the bottom line mentality

An emerging aspect of local government is the development of an entrepreneurial role (Zipparo, Cooke & Bolton, 1999, p.6).

A Local Government and Shires Association (LG&SA) discussion paper (2000) states that:

"Local government has been targeted in the push for smaller government and lower taxes, for greater reliance on market forces to set priorities and allocate resources, and for service delivery by the private sector" (p.21).

This LG&SA paper cites research by Gerritsen (1998) which suggests that the problem with this approach to contracting out to the private sector weakens the policy function of councils and can make it more difficult to respond effectively to community needs and aspirations.

Some councils have set up business units as part of their operations to provide sellable services, be economically independent and profit oriented. Sometimes the units are required to compete for council's own work; again areas that could be open to potential corruption.

Methodology

This research was conducted during 2000-2001. Three phases of data collection were used in this study. Two questionnaires were used; one was sent to all local council General Managers, and another to a sample of 300 local council staff. Forty interviews were conducted with a sample of general managers, local councillors and council audit managers.

PHASE 1 – GENERAL MANAGERS QUESTIONNAIRE

During May 2000, a questionnaire was posted to General Managers of all NSW local councils. A follow-up letter was sent in June 2000 and telephone calls were made in early July 2000.

A 90 per cent response rate was achieved with 156 of the 174 councils returning completed General Manager questionnaires.ⁱⁱⁱⁱ

Major workplace areas within local government that are relevant to potential corruption risks, and therefore included in the General Manager's questionnaire, were:

1. Code of conduct
2. Gifts and benefits
3. Recruitment
4. Protected disclosures^{iv}
5. Procurement/contracting
6. Audit
7. Corruption and fraud prevention
8. Implementation of recommendations from previous ICAC reports
9. Council's role as an entrepreneur.

Assurances were given that individual General Managers and councils would not be identifiable in any publicly available reports of this research.

PHASE 2 – STAFF QUESTIONNAIRE

During November 2000, a questionnaire was posted to a selection of 300 council employees. The sample contained 10 staff members from each of 30 randomly selected councils.

A 59 per cent response rate was achieved with 176 of the 300 staff returning completed questionnaires.^v

The topics included in the staff questionnaire were:

1. Code of conduct
2. Gifts and benefits
3. Conflicts of interest
4. Recruitment
5. Protected disclosures^{vi}
6. Decision making
7. Procurement/contracting
8. Council management
9. Access to information
10. Corruption and fraud prevention
11. ICAC information.

To reduce possible fears of recrimination, the staff questionnaires were not identifiable by person or council. Even so, one respondent returned their questionnaire uncompleted with the comment:

I would love to fill this questionnaire in but for me to answer these questions truthfully I would lose my job, regardless of secrecy. (Staff, 174, council size and location unknown)

Whether or not this staff member would lose their job for responding to the ICAC's request for information is unknown. It is tragic that an employee of a local council felt this way about their employer.

Many staff queried the value they could add to the research as they felt that they worked on the periphery of council or in a non-core area. These staff were reassured that their input was of value even if they did not know the answers because if councils have procedures in place but staff do not know they exist, they are unlikely to use them.

PHASE 3 – INTERVIEWS

Forty confidential and anonymous interviews were conducted with a random selection of General Managers, councillors, audit managers and staff from 20 randomly selected councils. The following cross-section of councils was included in the interview sample:

1. rural and urban
2. those with large, medium and small numbers of employees
3. those with a corruption and/or fraud plan and those without
4. councils that had conducted direct negotiations in the past four to five years and those which had not
5. councils that used extenuating circumstances in tendering in the past four to five years those which had not
6. those that considered internal audit to be essential and those considering audit irrelevant

7. councils that had recorded problems with contractors and those which did not.

The interview schedule covered the following topic areas:

1. Audit
2. Recruitment
3. Procurement/contracting
4. Corruption risk areas
5. Council management and decision making
6. Conflicts of interest
7. Council's role in development applications
8. Access to information
9. Council role as an entrepreneur.

ANALYSIS

Councils were divided into different locations and size was measured by number of employees. The locations were metropolitan, large towns (approx 30,000 population) and rural regions. Size was compared for councils with less than 100 employees, 100 to 499 employees and 500 and over.

Results

CORRUPTION PREVENTION

Risk in my opinion is reduced significantly by having clear processes and procedures for the way that things should be done, particularly in relation to development applications. (Senior staff member, 54, medium-sized council, metro)

One function of a small community is that councillors and staff are usually known to developers and contractors and additional pressures can be applied to them. (General Manager, 86, small council, rural)

"Prescribing" procedures rather than providing "guidelines" would enable staff and councillors to function more effectively by removing the potential for corrupt interpretation and enabling staff and councillors to function in an objective and accountable manner. Currently "guidelines" are not effective when staff or councillors choose to do the wrong thing and power relations reinforce the potential for corruption to be maintained. (General Manager, 144, medium-sized council, metro)

Summary – 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, in fact:

- 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. 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
- 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.

These findings show that 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 may differ, 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. For example, in common with other risks councils need to look at what they do, identify the corruption risks involved and define the most appropriate method of treatment. Decisions on treatment are based on the degree of risk, the likelihood of it occurring and the resources available to treat it.

Findings – Corruption prevention

Corruption prevention needs continuous, non-stop effort. All managers must lead by example. Managers must continuously monitor and evaluate income and expenditure and react to concerns. Education of staff and the public must be ongoing. Procedures must be reviewed and updated. Policies must be practical, distributed to staff and where necessary, workshop the grey areas. Staff must be encouraged to seek advice and report concerns or attempts to corrupt. (General Manager, 15, large council, metro)

Corruption prevention plans

General Managers were asked whether or not their councils had corruption prevention plans in place, and if so, what areas they covered, particularly whether or not they included seeking out potential corruption. Only 15 per cent of NSW

local councils have a prevention or fraud plan in place.

- reducing external threats (2)
- high investigation and detection standards (2).

Table 1: Existence of corruption and/or fraud prevention plan

Does your council have a corruption and/or fraud prevention plan?	
Response	GM
No	132 (85%)
Yes	24 (15%)
Total	156 (100%)

General Managers from councils with a corruption prevention plan said that the most important aspects of their plans were:

- promoting an anti-corruption organisational culture, especially in codes of conduct (15 councils)
- education and awareness training (11)
- internal audit, including random checks (11)
- regular fraud risk assessment (8)
- taking immediate action and knowing the action to take (6)
- specific aspects of council functions (including payroll, gifts, cash collection, instructions for building inspections and creditor asset control) (5)
- reporting and protected disclosure (PD) procedures (4)
- leadership which exhibits honesty, integrity, fairness, visible and active support (3)
- clearly defined responsibilities for prevention, detection and investigation (3)
- reviewing, monitoring and implementing recommendations (3)

Table 2: Plans include searching for potential corruption

Does your council's corruption/fraud prevention plan include looking for potential corruption?	
Response	GM (n=24)
No	7 (4%)
Yes	16 (10%)
Missing	1 (1%)

The 16 General Managers who said their council's corruption/fraud prevention plan included a method for searching for potential corruption were asked to identify how this occurred. The answers were:

- fraud risk assessments (11 councils)
- audit (4)
- staff and managers encouraged to report possible problem areas (1).

Table 3: Plans include appropriate action to take

Does the corruption/fraud prevention plan include the appropriate action to take when potential corruption has been uncovered?	
Response	GM (n=24)
No	5 (3%)
Yes	19 (12%)

The type of action that General Managers said should be taken when potential corruption has been uncovered included:

- internal reporting procedure (7 councils)^{vii}
- external reporting procedure (4)^{viii}
- internal investigation procedure (3)
- external investigation procedure (3)
- referral to the code of conduct (2).

General Managers were asked which areas of workplace activity their council's corruption prevention plans covered. On the whole they covered most of the areas outlined in Table 4.

Table 4: Plans include corruption risk areas

Does your council's corruption/fraud prevention plan have any of the following sections?	
Response	GM (n=24)
Bribery	18 (12%)
Gifts and benefits	18 (12%)
Building regulatory functions	16 (10%)
Tender selection	16 (10%)
Risk assessment	15 (10%)
Recruitment	15 (10%)
Health regulatory functions	11 (7%)
Managing post-separation employment	7 (5%)
Other [†]	8 (5%)

[†] This category included: conflicts of interest; protected disclosures; oversight of complaints management; purchasing, payroll; tenders; cash handling; expenditure; travel; confidential information; disposal of assets.

Informing staff about corruption prevention

General Managers were asked whether or not they informed their staff about corruption prevention. One in five General Managers said their council did not.

Table 5: Corruption prevention information for council staff

Is corruption prevention information provided to existing staff?	
Response	GM
No	30 (19%)
Yes	126 (81%)
Total	156 (100%)

On the whole, staff were less aware of corruption prevention information that General Managers said was available.

Table 6: Methods of informing staff about corruption prevention

In what form is corruption prevention information given to staff?		
Response	GM (n=156)	Staff (n=176)
Brochures/circulars	100 (64%)	39 (22%)
Posters	62 (40%)	11 (6%)
Training sessions	55 (35%)	22 (12%)
Performance reviews	26 (17%)	7 (4%)
Part of corporate plan	26 (17%)	15 (8%)
Induction information	13 (8%)	3 (2%)
Code of conduct	11 (7%)	7 (4%)
ICAC material	5 (3%)	2 (1%)
Staff meetings	5 (3%)	3 (2%)
Other [†]	3 (2%)	7 (4%)
None	30 (19%)	54 (31%)

[†] This category included: internal audit; reference library and letter of offer; corporate governance training; council policy; and newsletter.

Staff were asked how well they thought the ICAC and the DLG understood the issues facing councils. One-third said "well" but over half the staff said they were not aware of this.

Table 7: How well ICAC and DLG understand council issues

How well do you think ICAC and DLG understand the different types of issues country and city local councils face?		
Response	Staff	
	ICAC	DLG
Very well	9 (5%)	9 (5%)
Well enough	38 (22%)	38 (22%)
Not well enough	22 (12%)	26 (15%)
Missing/Don't know	107 (61%)	103 (59%)
Total	176 (100%)	176 (101%)

Informing the community about corruption

Staff were asked whether or not their council provided information to the community about bribery. One-quarter (27 per cent) said their councils did not and nearly half (46 per cent) were not aware of any information given to the community.

Table 8: Availability of information to the community

Does your council make available any information about bribery to the community?

Response	Staff (n=176) [†]
No	47 (27%)
ICAC brochures	17 (10%)
Other ICAC material	4 (2%)
Council material	27 (15%)
Other	4 (2%)
Missing/Don't know	80 (46%)

[†] This category allowed multiple answers.

Corruption prevention committees

General Managers were asked if their council had any people specifically designated to dealing with corruption issues.

Tables 9 and 10 shows that half all NSW councils do have a person or team designated to deal with corruption issues. Three-quarters of councils nominated only two or fewer people to deal with corruption issues with the General Manager being the most frequently nominated position (37 per cent).

Table 9: People designated to handling corruption issues

Does your council have a person, committee or team designated to deal with corruption issues?

Response	GM
No	75 (48%)
Yes	81 (52%)
Total	156 (100%)

Table 10: Positions of those designated to handling corruption issues

What are the positions of any staff members who deal with corruption issues or are members of the committee or team?	
Response	GM (n=81)
General Manager	57 (37%)
Director Corporate Services	19 (12%)
Senior management (undefined)	17 (11%)
Manager Administration	13 (8%)
Internal Auditor	10 (6%)
Public Officer	5 (3%)
Human Resources Manager	4 (3%)
Director Governance	3 (2%)
Legal Officer	3 (2%)
Director Environmental Services	3 (2%)
Mayor	3 (2%)
Manager Audit	2 (1%)
PD Co-ordinator	2 (1%)
Staff representatives	2 (1%)
Director Engineering Services	2 (1%)
Director Technical Services	2 (1%)
Other [†]	9 (6%)

[†] This category included: Assistant General Manager; Councillor; External Auditor; Project Leader; Risk Co-ordinator; Internal Ombudsman; Manager Business Support; Manager Works; Manager Financial Services.

Those General Managers who stated that their council did not have an existing person or team designated to deal with corruption issues were asked if they thought their council would benefit from designating these people (Table 11). One in four thought their council would benefit from such a situation.

Table 11: Benefit of people designated to corruption issues

Do you think that your council needs or would benefit from a person, committee or team to deal with corruption issues?

Response	GM
No	55 (73%)
Yes	20 (27%)
Total	75 (100%)

General Managers from councils without people designated to handle corruption issues were asked why they thought their council would or would not benefit from designating people to corruption issues.

The General Managers who said that their councils **would** benefit gave the following reasons:

- shows a commitment and it is good to be seen actively monitoring the process
- helps increase transparency
- anti-corruption team would act as a deterrent
- a team means shared responsibility and accountability
- would increase effectiveness in dealing with matters
- corruption prevention requires continual review
- assists with transition between existing and newly elected councillors
- specialist knowledge is developed
- useful when developing prevention plans and changes to practices
- assists with council mergers
- provides a formal mechanism to monitor best practice
- good method of highlighting risk areas, increasing awareness and disseminating information.

The General Managers who said their council would **not** benefit gave the following reasons:

- existing transparency, reviews, control and accountability measures are adequate
- corruption is not an issue/does not occur/has not been necessary in the past/no incidents to date
- small councils are currently able to deal with the issues/too small to worry about corruption/small councils are transparent
- it is the General Manager's responsibility alone/ General Manager is best placed to deal with issues
- it is the responsibility of all senior staff
- it is everyone's responsibility
- considered a luxury due to limited resources/resources do not permit
- Protected Disclosure co-ordinator/strategy is sufficient
- corruption matters should be dealt with by ICAC.

Corruption risks facing council

As an industry, local government, is continually under pressure to provide "more" with "less" which often results in shortcuts being taken. (General Manager, 109, medium-sized council, large town)

In the questionnaire, General Managers were asked to identify the major corruption risks facing their council. Table 11 outlines the areas within council operations where General Managers perceived corruption risks. The risk areas most commonly identified by General Managers concerned purchasing or tendering for goods and services, the use

of public resources in the form of materials and equipment, and matters concerning development applications or rezoning.

Table 12: Council operations associated with corruption risks

What do you see as the major corruption risks currently facing your council? (coded by area of operation)	
Response	GM (n=156) [†]
Purchasing/tendering/contracts	43 (28%)
Use of public materials/equipment	31 (20%)
Development applications/zoning	30 (19%)
Use of public monetary resources [‡]	16 (10%)
Staff matters [‡]	10 (6%)
Elections	8 (5%)
Use of email/internet/ecommerce	5 (3%)
Government services [‡]	4 (3%)
Use of public vehicles	3 (2%)
Use of information	2 (1%)
Reporting corruption	1 (1%)
Other/unspecified	68 (43%)

[†] This question allowed multiple answers.

[‡] This category included: cash; accounts; credit cards; and time.

[‡] This category included: staff benefits; wages; and recruitment practices.

[‡] This category included: ticket vending; and waste management.

During interviews the question of where the biggest corruption risks were for local councils was investigated further. Overwhelmingly, the interviewees identified the development application, rezoning and building area as having the most potentially corruption risk.

Table 13 outlines the types of corrupt conduct that General Managers perceive as potential risks. By far, the biggest risk

category concerned the misuse and theft of public resources.

Table 13: Types of corrupt conduct perceived as potential risks

What do you see as the major types of corruption risk currently facing your council?	
Response	GM (n=156)
Misuse or theft of resources	57 (37%)
Bribery	15 (10%)
Improper use of information	10 (6%)
Conflict of interest	9 (6%)
Favouritism/nepotism	8 (5%)
Threat/extortion/blackmail	7 (4%)
Fabrication/forgery/fraud	4 (3%)
Breach of policy/procedure	2 (1%)
Other/unspecified	90 (58%)

Types of corrupt conduct concerned with development applications were further explored as complaints about local government received by the ICAC have most frequently concerned development applications or rezoning. General Managers were asked which corruption risks their council faced, in relation to development applications.

Table 14 shows that bribery is the biggest risk category concerning development applications. As General Managers identified a wide range of different risks (eg. bribery, favouritism, blackmail, conflict of interest) associated with development applications, this suggests that corruption risks are not universal.

These findings indicate that different strategies are needed to target the risks associated with different council operations. The strategies highlighted as the most important aspects of

corruption/fraud prevention plans (promoting anti-corruption organisational standards, education and awareness training), need to be specifically directed to the different areas of council operation.

Table 14: Types of corrupt conduct perceived as potential risks related to development applications

What do you see as the major corruption risks specifically related to building and development applications?	
Response	GM (n=156)
Bribery	40 (26%)
Breach of policy/procedure	19 (12%)
Favouritism/nepotism	17 (11%)
Threat/extortion/blackmail	16 (10%)
Conflict of interest	13 (8%)
Improper use of information	12 (8%)
Misuse or theft of resources	5 (3%)
Fabrication/forgery/fraud	5 (3%)
Other/unspecified	25 (16%)

Staff perceptions of risk areas

Staff were well aware of the potential for corruption in the workplace, beyond what they had experienced for themselves. In fact, staff could see potential corruption risks in most areas that were raised for discussion. Staff described the following as areas which could be either "definitely" or "possibly" susceptible to corruption:

1. Development applications and rezoning.
2. Purchasing of goods and services.
3. Selling of council's assets.
4. Tendering and contracting.
5. Allocation of goods and services to the public.
6. Waste management.

7. Political interference in council processes and councillor involvement with staff and council processes.
8. Use of confidential council information.
9. Reporting of corruption.
10. Recruitment, promotions, dismissals and redundancies.
11. Allocation of work.
12. Management of staff and how staff treat each other.
13. Time sheets.
14. Use of council money, resources, vehicles and travel claims.
15. Use of the Internet.

It was interesting to note that cash handling was not perceived as having as high a corruption risk, possibly indicating that effective systems are in place.

Staff were asked if they had ever become aware of any instances of corrupt conduct in decision making. If so, they were asked about the frequency and severity of these instances and the positions of those involved.

Misuse or theft of council resources

Twenty-two per cent of staff said they were aware of one or two minor instances of misuse or theft of council resources, 15 per cent were aware of one or two serious instances, 14 per cent many minor instances and 5 per cent many serious instances.

Staff said misuse or theft occurred in construction (27 per cent), procurement and contracting (11 per cent), equipment and materials (6 per cent). Staff said that those involved in misuse or theft were most likely to be day labour (30 per cent), administrative staff (18 per cent) and managers (12 per cent).

Preferential treatment

Twenty per cent of staff said they were aware of one or two minor instances of preferential treatment, 14 per cent many minor instances, 11 per cent were aware of one or two serious instances and 7 per cent many serious instances.

Staff said the preferential treatment occurred in recruitment (26 per cent), procurement and contracting (16 per cent), development applications (12 per cent) and construction (10 per cent). Staff said that those involved in preferential treatment were most likely to be managers (30 per cent), administrative staff (16 per cent) and councillors (13 per cent).

Conflicts of interest

Twenty-one per cent of staff said they were aware of one or two minor instances of conflicts of interest, 13 per cent were aware of one or two serious instances, 9 per cent many minor instances, 4 per cent many serious instances.

Staff said the conflicts of interest occurred in procurement and contracting (24 per cent), development applications (20 per cent) and recruitment (16 per cent). Staff said that those involved in conflicts of interest were most likely to be managers (21 per cent) and councillors (20 per cent).

Bribery

Five per cent of staff said they were aware of one or two minor instances of bribery, 5 per cent were aware of one or two serious instances, 1 per cent many minor instances and 1 per cent many serious instances.

Staff said the bribery occurred in development applications (6 per cent),

procurement and contracting (6 per cent), and construction (2 per cent). Staff said that those involved in bribery were most likely to be managers (5 per cent) and administration staff (4 per cent).

with the issues surrounding incidents of potential bribery (Table 4).

Corruption risk areas reviewed by council

Councils were asked if they had reviewed any of the corruption risk areas outlined in Table 15 since June 1998. This date was chosen as the ICAC Corruption Prevention report *Accountable Health and Building Inspections: Recommendations for Local Government* was released in June 1998. The recommendations were that all councils review the risks of corruption in their health and building regulatory functions and incorporate them into fraud and corruption prevention plans.

It is notable that only 12 per cent of councils (Table 4) said they included bribery issues in their corruption prevention plans although bribery was considered the biggest risk associated with development applications and was identified as the second biggest risk overall.

That 26 per cent of councils had reviewed the risks associated with bribery in the past two years (Table 14) identifies this as an area of concern.

These results suggest that councils are concerned about potential bribery. General Managers think bribery is a risk area (Table 13) and have reviewed how it could impact on council's development function (Table 14). But on the whole they have not chosen to plan how to deal

Table 15: Corruption risk areas recently reviewed by councils

Has your council reviewed the risk of corruption in any of its functions since June 1998?	
Response	GM (n=156)
Building and development	60 (39%)
Waste management	45 (29%)
Public health and safety	24 (15%)
Animal control	20 (13%)
Food hygiene	18 (12%)
Water supply	15 (10%)
Noise control	11 (7%)
Clean air	10 (6%)
Other	37 (24%)

PROCUREMENT AND CONTRACTING

Summary - Procurement and contracting

Procurement is 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 which outline ethical principles and corruption resistant methods of contracting. Nearly all councils had a copy of the Department of Local Government publication Practice Note 8a *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 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 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, making the process more accountable and transparent for potential audit.

Although the ICAC does not consider direct negotiation with contractors 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 indicate that corruption resistant and less resistant practices co-exist in some councils. These include:

- 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 General Managers (45 per cent) said their councils included in contracts a commitment to acting ethically as a standard term. Yet there is a strong 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 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. Extenuating circumstances are a reason given for not conducting a full tender procedure. 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 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 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 resources available to guide councils, there is a lack of uniform standards in council procurement and contract administration practices. This issue is being dealt with in the ICAC

publication *Taking the Con out of Contracting: Issues for local government procurement and contract administration.*

WHAT DOES THIS MEAN FOR COUNCILS?

Uniform standards and consistency 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.

Findings – Procurement and contracting

The biggest risk is interaction that staff have with developers and the risk of there being incentives by developers to do certain things. I think the risk is actually greater with councillors. We have a number of councillors that are very active in the local business community. There are often very close relationships between councillors and business people and then the councillors are asked to make judicial decisions in relation to matters that come before them often put forward by those business people. So there's a potential conflict of interest there. (Senior staff member, 54, medium-sized council, metro)

A variety of questions were on council procurement procedures, such as:

- whether or not council had local preference policies

- use and method of compiling schedule of rates
- procedures for urgent and minor works
- procedures for procurement under \$100k
- use of extenuating circumstances
- use of direct negotiations
- the type of information recorded about contracts let.

Local preference policies

Table 16 shows that 28 per cent of councils have a local preference policy for contracting services. The most common components of these policies were to:

- select the local provider if price and quality are equal to best non-local provider
- select businesses that make and employ locally
- advertise locally
- give local business five to 10 per cent price advantage
- select Australian made products.

There was no difference between country and city councils or in the size of councils and the likelihood of having a local preference policy.

Table 16: Use of local preference policies in selection of contracts

Does your council have a local preference policy for selecting local business on contract?	
Response	GM
No	113 (72%)
Yes	43 (28%)

Total	156 (100%)
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[†] This question allowed multiple answers.

Use of “schedule of rates”^{ix} or set contracts

Table 17 shows that the vast majority of councils (89 per cent) used a schedule of rates for contract work. These schedules were developed predominantly (81 per cent) through advertising for the required services with interested contractors submitting tenders, contacting businesses directly (16 per cent), using the State Government Control Board list of suppliers (14 per cent) or some other method (12 per cent)^x (Table 18).

Table 17: Use of contractors for set periods of time or “schedule of rates”

Does your council use a schedule of rates?	
Response	GM
No	16 (10%)
Yes	139 (89%)
Missing/Don't know	1 (1%)
Total	156 (100%)

Table 18: Methods used for compiling lists of service providers for schedule of rates

How does your council compile the list?	
Response	GM (n=139) [†]
Advertise for required services	126 (81%)
Contact businesses directly	25 (16%)
State Government Control Board	22 (14%)
Other	19 (12%)

Procedures for urgent and minor works

For urgent work a contractor is selected with a proven record, value for money and which complies with Council regulations. (General Manager, 101, medium-sized council, large town)

Managers have guidelines and delegated authority to select a preferred supplier from the list obtained through public advertisement. (General Manager, 123, small council, rural).

Our Council has only once had the need for urgent work. On this occasion the decision was made based on staff recommendations. (General Manager, 59, small council, rural).

A wide variety of methods (see Tables 20 and 21) was employed by councils for urgent and minor works. The most frequent was using a schedule of rates or list of preferred service providers (50 per cent for urgent work and 38 per cent for minor work). Obtaining a selection of quotes was used for 20 per cent of urgent work and 32 per cent of minor work.

The next most frequently mentioned methods used for both urgent and minor works were to use council staff or to gain an unspecified number of quotes for the work (see Tables 20 and 21). Urgent work was more likely to be done by local or known companies or by directly contacting businesses that were able to do the job.

Procurement under \$100,000

Procedures vary depending on the nature of the work being contracted. (General Manager, 3, medium-sized council, metro)

Depends on contractor availability and cost. (General Manager, 25, medium-sized council, rural)

Normally three quotes are obtained, for more complex work tenders may be called. (General Manager, 91, medium-sized council, rural)

The *Local Government Act* specifies that for contracts involving amounts over \$100k, tenders are to be invited by public notice and in accordance with any provisions prescribed by the regulations, ie. a formal tender procedure is to be used.

General Managers were asked if their councils used the same tender procedures for amounts **under** \$100k as well. If councils used different procedures, they were asked which procedures were used for different dollar values.

Table 19: Set procedures used for procurement under \$100k

Does your council have the same set procedure for procurement of any amount under \$100,000?	
Response	GM
No	83 (53%)
Yes	69 (44%)
Missing/Don't know	4 (3%)
Total	156 (100%)

Half the General Managers said their councils had set different procurement procedures for amounts under \$100k from those for amounts over \$100k.

Some councils used the same procedures for any amount under \$100k while others had set different procedures for many different amounts, eg. contracts valued at <\$5k need only one verbal quote, \$5k to \$10k need two written quotes, \$10k to \$20k need the Director's authorisation, etc. The varying procedures for different dollar values tended to group around the following amounts:

- <\$20,000
- \$20,000 to \$50,000
- \$50,000 to \$100,000.

Of the 83 councils with different procedures for procurement under \$100k, 106 set procedures were identified by 52 councils for amounts under \$20k, 53 set procedures were identified by 35 councils for amounts between \$20k and \$50k, and 50 were identified by 36 councils for amounts between \$50k and \$100k.

Table 22 shows the types of procedures councils used for the different amounts involved.

The most common set procedures used for amounts under \$20k were: to obtain three written quotes; to obtain quotes (these respondents did not specify the number or whether they were written or verbal quotes); or three verbal quotes.

Procedures used for amounts between \$20k and \$50k were: to obtain quotes (number or type unspecified); three written quotes; or to use a tender procedure.

For larger amounts, those between \$50k and \$100k, the set procedures most commonly used were to obtain quotes (number or type unspecified) or to use a tender procedure.

Procurement over \$100,000

An open tender procedure is used or expressions of interest invited or DPWS period contracts used as per Council regulations. (General Manager, 65, medium-sized council, large town).

Six General Managers said their councils had different set procedures for amounts over \$100k.

One General Manager specified that for amounts between \$100k to \$250k the group manager had delegated authority to approve contracts. For amounts over \$250k the General Manager's approval must be sought.

Two General Managers said the procedures differed for amounts over \$500k; one had different procedures for amounts over \$750k, one for amounts over \$2 million and one council did not specify the amount.

Table 20: Methods councils use for urgent work

What procedure does your council use for urgent work?	
Response	GM (n=156)
Service providers list [†] /Preferred contractor/Schedule of rates	78 (50%)
Council staff	29 (19%)

Quotes	31 (20%)
Use local/known company	19 (12%)
Day labour	11 (7%)
Tender process [‡]	6 (4%)
Managers/Directors have delegated authority	5 (3%)
Accelerated selection process for quotes and tenders	2 (1%)
Expressions of interest/Advertise	2 (1%)
Mayor has delegations	2 (1%)
Documentation and authorisation for emergency procedures	2 (1%)
Decision made by council from staff recommendations	1 (1%)
Missing/Don't know	12 (8%)

[†] List compiled after public advertisement.

[‡] Tender process as per *Local Government Act* regulations.

Table 21: Methods councils use for minor work

What procedure does your council use for minor work?	
Response	GM (n=156) [†]
Service providers list [‡] /Preferred contractor/Schedule of rates	60 (38%)
Quotes (less than three, unspecified/minimum of three)	50 (32%)
Council staff	25 (16%)
Day labour	12 (8%)
Use local/known company	10 (6%)
Tender process [‡]	5 (3%)
Price is only deciding factor	4 (3%)
Invite expressions of interest	4 (3%)
Managers/Directors have delegated authority	3 (2%)
Documentation required/Decision recorded	2 (1%)
Mayor has delegated authority	1 (1%)
Missing/Don't know	12 (8%)

[†] This category allowed multiple answers.

[‡] List compiled after public advertisement.

[‡] Tender process as per *Local Government Act*.

Table 22: Set procedures for different amounts under \$100k

What are the dollar amounts that have different set procedures? [†]			
Responses for different amounts	<\$20k (GM, n=52)	\$20 - \$50k (GM, n=35)	>\$50k \$100k (GM, n=36)
Three written quotes	21	13	2
Quotes	19	15	16
Three verbal quotes	11	1	-
Officer discretion/ delegated authority	11	1	-
Tender procedure	7	7	15
Two written quotes	6	3	-
One verbal quote	6	1	-
Two verbal quotes	4	-	-
Documentation required	4	-	1
Expressions of interest/advertisement	4	5	5
Use local/known supplier	3	1	-
One written quote	3	-	-
Director authorisation/ discretion	3	3	3
No set procedure	2	1	-
More than three written quotes	1	-	2
Determine by price	1	-	-
GM authorisation/ determines	-	1	4
Use of a review panel	-	1	1
Mayor, GM and Director review	-	-	1
Total [‡]	106	53	50

[†] A further six councils said they had different set procedures but failed to nominate the dollar amounts under \$100k involved. These councils noted that the use of different set procedures depended on the nature of the work or product involved, the availability of service contractors, whether the purchase involved recurrent or capital expenditure. The set procedures for these councils involved obtaining quotations or using a tender process. One council said that the purchasing section would check the price quoted and another said the decision was at the discretion of the manager accountable for the expenditure.

[‡] These totals represent the number of times each procedure was nominated for the different amounts specified by the columns.

Use of extenuating circumstances in tendering

One-third of General Managers said their councils had used extenuating circumstances in tendering in the past five years. Examples of when extenuating circumstances may be used is during civil disasters such as impending flood or bush fire when urgent major work is required that would cost more than \$100k.

The *Local Government Act* s.55 states that councils need not use tenders for contracts over \$100k if, among other reasons, a council decides that there are "extenuating circumstances, remoteness of locality issue or competitive or reliable tenderers are unavailable", situations when a satisfactory result would not be achieved by inviting tenders or in the case of emergency. Neither the *Local Government Act* nor the DLG defines what extenuating circumstances could exist other than those of remoteness of locality, unavailability of competitive reliable tenders or cases of emergency.

Due to the specific risks of not using open tender procedures, or by councils either stating that there were extenuating circumstances, or the need to negotiate directly with a specific contractor, this research explored the relationships between using these methods and other risk factors.

Councils in metropolitan areas (54 per cent) and large/urban towns (52 per cent) were statistically more likely than those in rural settings (23 per cent) to have said that they have used extenuating circumstances in tendering.^{xi}

Councils with a medium (100 to 499) number of employees (44 per cent) and large councils (500+ employees) were more likely (43 per cent) than smaller councils (<100 employees) (21 per cent) to have used extenuating circumstances in tendering.^{xii}

The results show that councils with local preference policies (47 per cent) were significantly more likely than those without local preference policies (30 per cent) to have used extenuating circumstances in the past five years.^{xiii}

Table 23: Use of extenuating circumstances

How many times has your council used extenuating circumstances in tendering over the past 5 years?	
Response	GM
Never	101 (65%)
Less than 5 times	46 (30%)
Five to 10 times	5 (3%)
More than 10 times	2 (1%)
Missing/Don't know	2 (1%)
Total	156 (100%)

Of the seven General Managers who said their councils had used extenuating circumstances more than five times, four General Managers said they had not conducted direct negotiations, two said they had once and one General Manager said their council had conducted direct negotiations up to five times in the past four years.

Procurement by directly negotiating with contractors

If a tender procedure fails to produce a suitable option for contracts over \$100k or there are extenuating circumstances (s.55(3) *Local Government Act*), councils are able to enter into direct negotiations with a particular supplier. One-third of councils said they had conducted direct negotiations with contractors for amounts over \$100k in the past four years. Five councils said this had occurred more than five times in the past four years. When asked to specify how many times (more than five) direct negotiations had occurred, four did not answer the question and one said 10 times.

Table 24: Direct negotiations conducted by council in the past 4 years

How many times has your council conducted direct negotiations for amounts over \$100k	
Response	GM
Never	99 (64%)
Once	24 (15%)
Two to 5 times	24 (15%)
More than 5 times	5 (3%)
Missing/Don't know	4 (3%)
Total	156 (100%)

Councils in metropolitan (62 per cent) and large/urban towns (61 per cent) were statistically more likely than those in rural settings (18 per cent) to have used direct negotiations in tendering.^{xiv}

Relationship between direct negotiations and other aspects of council operations

All General Managers who said their councils had conducted direct negotiations said their procedure for procurement involving amounts more than \$100k was to use some form of tender procedure as per the *Local Government Act*.

The results show significant differences between councils that had used direct negotiations in the past four years and those that had not.

Councils which had conducted direct negotiations (56 per cent) were statistically **more** likely, than councils which had not (24 per cent), to have also used extenuating circumstances in tendering in the past five years.^{xv}

Particularly if a council conducts direct negotiations which increases corruption risk, having a code of conduct which spells out the interaction between staff and councillors, a policy on non-pecuniary interests, an internal audit charter, a gift register, an audit plan, a corruption and fraud prevention plan, a view that audit is important and sending out information on ethical standards are all considered by the ICAC to be important in reducing corruption risks..^{xvi}

Those councils which had directly negotiated were also more likely than councils which had not used direct negotiations to have each of the above in-place.

Those which had directly negotiated were **more** likely to have a non-pecuniary interest policy (66 per cent) than those

which had not used direct negotiations (47 per cent).^{xvii}

They were also **more** likely (71 per cent) than councils which had not directly negotiated (49 per cent)^{xviii} to say that internal audit was essential or very important.

Councils which had directly negotiated were **more** likely (36 per cent) than those which had not (21 per cent)^{xix} to have a gifts and benefits register and were **more** likely to send out information on ethical standards (29 per cent vs 13 per cent).^{xx}

Although comprising less than one-third of councils, there were still significant differences between the following. Those councils which had directly negotiated were also **more** likely (36 per cent) than those which had not (12 per cent)^{xxi} to have an audit plan, an internal audit charter (30 per cent vs 7 per cent)^{xxii} and a corruption and/or fraud prevention plan (23 per cent vs 7 per cent).^{xxiii}

Keeping records of contracts

General Managers were asked about the types of information their councils recorded on contracting of services. Amazingly, four General Managers said that their councils did not even keep a record of the contracts they issue (Table 25).

Table 25: Maintaining records of contracts issued

Does your council keep a record of the contracts it issues?

Response	GM
No	4 (3%)
Yes	151 (96%)
Missing/Don't know	1 (1%)
Total	156 (100%)

Nearly all General Managers (92 per cent) said they kept a continuous record of expenditure on each contract (Table 26).

Table 26: Continuous record of expenditure

Does your council's record of contract include a continuous record of expenditure?	
Response	GM
No	5 (3%)
Yes	144 (92%)
n/a	4 (3%)
Missing/Don't know	3 (2%)
Total	156 (100%)

One-fifth of General Managers said their councils did not record how they authorised variation and period contract payments (Table 27).

Table 27: Authorised variations and period contract payments

Does your council's record of contracts include how council authorises variations and period contract payments?	
Response	GM
No	31 (20%)
Yes	116 (74%)
n/a	4 (3%)
Missing/Don't know	5 (3%)

Total	156 (100%)
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Surprisingly one-third said they did not record any problems encountered with the contractor (Table 28). Recording any problems encountered with contracts to assist council avoiding the same problems in the future would seem to have obvious benefit. It is of concern that one in three councils said they did not do this.

Table 28: Problems encountered with contracts

Does your council's record of contracts contain any problems encountered with the contractor?		
Response	GM	Staff
No	50 (32%)	12 (7%)
Yes	98 (62%)	53 (30%)
n/a	4 (3%)	-
Missing/Don't know	4 (3%)	111 (63%)
Total	156 (100%)	176 (100%)

Table 29: Problems encountered with contract work

Have you encountered any of the following types of problems with council work that has been contracted out?	
Response	Staff (n=176) [†]
Tender/selection process unfair	10 (6%)
Unsuccessful tenderers complaining	30 (17%)
Other tender/selection problems	7 (4%)
Contractor failed to complete work on time	35 (20%)
Costs too high	37 (21%)
Excessive contract variations	18 (10%)
Unauthorised subcontractors	5 (3%)

Substandard product/service	34 (20%)
Conflicts of interest	15 (8%)
Other	2 (1%)
None of the above	47 (27%)
Don't know/Can't recall	52 (30%)

[†] This category allowed multiple answers.

Staff participation in contract work and levels of training

Staff were asked whether or not they had experience in tendering procedures. One-quarter (24 per cent) of staff said they had.

Table 30: Participation in tendering procedure for contract work

Have you ever participated in a tendering procedure for contracting out any NSW council work (for example being in-charge of, or participating in preparing a tender or being in a tender selection team or panel)?

Response	Staff
No	133 (75%)
Yes	42 (24%)
Missing/Don't know	1 (1%)
Total	176 (100%)

Staff were also asked if, while employed in local government, they had received training in tender selection procedures. Of the 42 staff who said they had participated in tendering, 20 had been trained but 22 said they had not.

Table 31: Training on tender selection processes, contract administration/management

Have you ever received training about tender selection processes or contract administration/contract management while employed in NSW local government?

Response	Staff
No	145 (82%)
Yes	26 (15%)
Don't know	3 (2%)
Missing/Don't know	2 (1%)
Total	176 (100%)

Staff were then asked which organisation had provided the training they had received on tender procedures. A variety of providers were mentioned, including on the job at council, professional development courses and DLG.

Table 32: Training providers

Who provided the training that you received about tender selection processes or contract administration/contract management?

Response	Staff (n=26) [†]
On the job at a NSW council	18(10%)
Professional development/standards course	13 (7%)
On the job somewhere else	5 (3%)
Department of Local Govt.	3 (2%)
Department of Public Works & Services	1 (1%)
ICAC	0 (0%)
Other	5 (3%)
Don't know/Can't recall	8 (4%)

[†] This category allowed multiple answers.

Publicly reporting contracts issued

The *Local Government Act* specifies that details of all contracts over \$100k awarded by councils, whether as a result

of tender or otherwise, must have the following information included in their annual reports:

- the name of the contractor
- the nature of the goods or services supplied by the contractor
- the total amount payable to the contractor under the contract.

General Managers were asked which details of contracts let were included in their council's last annual report. The vast majority (85 per cent) of General Managers said their council's annual report contained information on the nature of the goods or services and the total amount payable.

A list of contracts issued for amounts over \$100,000 where no tender procedure was used are listed in the Annual Report (General Manager, 45, large council, metro).

Significant contracts let under \$100,000 are also put in the Annual Report along with all contracts over \$100,000 (General Manager, 37, medium-sized council, large town).

Only 76 per cent said they reported the name of the contractor. Therefore, if the contracts were over \$100k, then the 9 per cent who said they did not report any information (see Table 33) did not fulfil the requirements of the *Local Government Act* by reporting the name of the contractors or the amounts of these contracts were less than \$100k.

Table 33: Reporting contracts in annual reports

What, if any, details of contracts let by your council were included in your last Annual Report?

Response	GM (n=156)
Name of the contractors	119 (76%)
Nature of the contracts	132 (85%)
Dollar value of contracts	133 (85%)
Other information [†]	13 (8%)
None	14 (9%)

[†] The category of "Other information" recorded in the annual report included: **only** reported details of contracts over \$100k; list of contracts over \$100k which did not go to tender; date of council resolution regarding the contract, duration of the contract and amount paid to contractor; significant contracts under \$100k; expenditure during period; legal document numbers.

Accessing information about ethics

I believe there is a significant benefit in educating contractors of Council work about corruption (General Manager, 46, large urban).

General Managers were asked about their council's access to three specific resources on contracting procedures and ethical considerations. The majority of General Managers said their councils held copies of the NSW Department of Public Works and Services (DPWS) *Code of tendering for procurement* (85 per cent) and *Code of practice for procurement* (78 per cent) and the Department of Local Government's *Code of practice for tendering* (92 per cent).

These documents outline ethical principles for dealing with sensitive areas, such as conflicts of interest, gifts and benefits, fairness and equity, and protecting confidential information.

Although councils are not required to follow DPWS policy, these publications outline the fact that all other NSW public authorities must comply with various rules and regulations when tendering and what the tenderers and contractors should expect from the process.

Informing contractors about ethics

Despite having access to documents which outline public sector ethical principles, 80 per cent of General Managers said their councils did not pass on this information by sending out any information about either their council's ethical standards or the standards they expected from contractors (Table 34).

Large (500 or more employees) and medium-sized (100 to 499 employees) councils were more likely than small (less than 100 employees) and rural councils to send out information on ethical standards to contractors.^{xxiv}

Table 34: Providing ethical information to contractors

Is it standard practice to send information to contractors about ethical standards of council and expected standards of contractors?	
Response	GM
No	125 (80%)
Yes	29 (19%)
Missing/Don't know	2 (1%)
Total	156 (100%)

General Managers from councils that did send out information on ethical standards were asked which department was

responsible for sending out the information. Mostly, (18 out of 29 councils) the department calling the tenders was responsible for sending out this information. Other departments cited were purchasing (4), engineering (4), administration (1), General Manager's department (1) and a contracts management team (1).

The results show that councils do not have a central department which holds responsibility for providing information on ethics. A central location could ensure information on ethics was kept relevant, appropriate and up-to-date.

For the two-thirds of councils that **did** send out information on ethical issues, it was up to the department responsible for the contract. Considering the wide variety of work contracted out by council, this could result in any and every department being responsible for sending out such information.

This devolved responsibility, coupled with the fact that one-fifth of councils did not record variations and periodic payments (Table 27) and that one-third of councils did not record any problems encountered with contractors (Table 28), suggests that any ethical problems relating to contracting out council work may be able to continue unnoticed or unrecorded.

General Managers were asked if acting ethically was a standard term in the contracts their councils issued (Table 35). Half of all the General Managers said that a commitment to act ethically was **not** a standard term of their council's service contracts (53 per cent). This is of particular concern as 17 per cent of these councils, without such a commitment,

said they had entered into direct negotiations with contractors. This means that council staff are expected to negotiate with a contractor without the guidance of clear ethical work practices.

Table 35: Acting ethically as a term of contract

Is a commitment to act ethically a standard term of your council's services contract?	
Response	GM
No	83 (53%)
Yes	69 (44%)
n/a	4 (3%)
Total	156 (100%)

Contracting out council services

Two-thirds (68 per cent) of General Managers said their councils contracted out the management (ie. the public official function) of council services (Table 36).

Table 36: Contracting out management of council services

Does your council contract out the management of council facilities or programmes?	
Response	GM
No	48 (30%)
Yes	105 (68%)
Missing/Don't know	3 (2%)
Total	156 (100%)

A wide variety of services was contracted to private sector organisations. This included essential community services such as water supply and waste removal, health services such as food inspection, immunisation and animal control, and leisure activities such as tennis and swimming pools.

The services most often contracted out included aquatic centres, waste disposal, entertainment/leisure facilities, caravan parks and property management (Table 37).

Table 37: Types of council facilities contracted out

Which council facilities or programmes does your council contract out?	
Type of facility	GM (n=105)
No facilities contracted out	48 (30%)
Aquatic centres	42 (27%)
Waste management/collection	41 (26%)
Leisure/Sports facilities	25 (16%)
Caravan park	24 (15%)
Property management	19 (12%)
Parks and gardens	14 (9%)
Recycling service	12 (8%)
Construction work/Capital works	11 (7%)
Golf courses	8 (5%)
Road works	8 (5%)
Cleaning/Office & building cleaning	6 (4%)
Tennis courts	5 (3%)
Street cleaning/Litter reduction	4 (3%)
Catering	4 (3%)
Animal control	3 (2%)
Vehicles, fleet services	3 (2%)
Environmental planning	2 (1%)
Tourist centres/sites	2 (1%)
Ferry operations	2 (1%)
Children's services – undefined	2 (1%)
Security – undefined	2 (1%)
Asset management	2 (1%)
Aged care meals on wheels	1 (1%)
Public toilet cleaning	1 (1%)

Sale yards	1 (1%)
Food inspection	1 (1%)
Health & Building	1 (1%)
Airport facilities	1 (1%)
Festivals – undefined	1 (1%)
Payroll services	1 (1%)
Parking meter collection	1 (1%)
Water Dam construction	1 (1%)
Event/Function centre management	1 (1%)
Horse racing track/pavilion	1 (1%)
Media/Public relations	1 (1%)
Immunisation programme	1 (1%)
Velodrome	1 (1%)
Lifeguard service	1 (1%)
Pecuniary interest register	1 (1%)
Research – undefined	1 (1%)
Bowling club	1 (1%)
Legal services	1 (1%)

With such a variety of services contracted to private sector organisations or individuals, there is a chance of conflicts of interest. General Managers were asked about methods their councils used to check for potential conflicts of interest when contracting out these council functions.

One-quarter of councils which contracted out council services did **not** conduct any checks for conflict of interest.

For councils conducting conflict of interest checks, the methods used (Table 38) included a variety of rigorous processes, such as requiring contractors to make declarations for each contract issued, full tender procedures, audit checks, reference checks and interviews consisting of specific questions, as well as some less thorough methods, such as leaving it up to staff discretion.

The less often cited methods varied in their levels of precision, reliability and transparency, including monthly checks, making contracts publicly available and using out-of-town contractors.

Table 38: Methods for checking conflicts of interest when contracting out management of council facilities

How does council check for conflicts of interest when contracting out the management of council facilities or programmes?	
Method of checking	GM (n=105)
No checks, plans or conflicts [†]	32 (21%)
Tender process used [‡]	22 (14%)
Contracts require declarations for each contractor/contract [‡]	14 (9%)
Code of conduct promoted/enforced	7 (4%)
Interview/use direct questions	7 (4%)
Use local knowledge	6 (4%)
Reference/referee checks	5 (3%)
Committee assesses tenders/Senior staff vet contractor applications	5 (3%)
Enquiry/screening/general investigation	4 (3%)
Council retains certain controls over the contract/annual statement of receipts and expenditure required	4 (3%)
Rely on staff discretion/objectivity/integrity/trust	3 (2%)
Probity audit/checks	3 (2%)
Undertake company searches	2 (1%)
Council ratifies recommendations from selection process/council as whole makes decision	2 (1%)
Separation of function/distance maintained between contractors and council	2 (1%)
Contracts publicly available	1 (1%)
Use out-of-town contractors	1 (1%)
Contracts are documented and reviewed	1 (1%)
Committee/selection panel screened for conflicts	1 (1%)
Criteria include community interest	1 (1%)
Curriculum vitae from contractors	1 (1%)
Monthly monitoring contracted companies	1 (1%)
Use of spot checks	1 (1%)
Specific council policies enforced	1 (1%)

[†] This category included: unspecified, “with great difficulty”, or comment that no conflicts exist.

[‡] This category included: terms of engagement set out specified criteria; assessment of each contract; assess expressions of interest; advertise open tenders; competition procedures; and, assess against selection criteria.

[‡] One council conducted annual declarations.

DISCUSSION – PROCUREMENT AND CONTRACTING

The results of the General Managers' questionnaire show that there are many instances when council procedures for procurement are carried out in a way that is likely to be resistant to corruption.

It was notable that councils using less resistant procedures, such as direct negotiation with contractors, also had some fundamental corruption resistant procedures in place as well. These included comprehensive codes of conduct, internal audit procedures, gift registers and corruption prevention plans.

To be comprehensive, a code of conduct includes the procedures that councillors should use when interacting with staff, such as when councillors request information from staff. Another procedure that would be of assistance to staff and councillors when faced with potentially corrupt situations, is a non-pecuniary interest policy. This policy spells out what council staff should do if asked to provide confidential information to a councillor, what a non-pecuniary interest is and when to make a declaration of interest.

It was also positive to find that councils which use direct negotiations also said that internal audit was essential or very important, suggesting that they

considered open scrutiny of decisions important.

Over half of councils did **not** include “acting ethically” as a standard term of contracts, nor did the vast majority of councils provide contractors with information about the ethical standards of councils and the standards expected of contractors.

Even if contractors agree to act ethically and are provided with information about how to go about doing so, this does not always ensure ethical practices. What agreements to act ethically can do is establish ground rules for contractors working with councils as well as letting contractors know that ethics are important to local councils. It can also be used to spell out what is meant by “ethics” while providing a baseline from which any deviations can be identified and rectified. For example, councils can state when and how their ethical standards have not been met and whether or not they are prepared to work with specific contractors again.

Councils said they had access to the publications (codes for procurement and tendering) which focus on procurement practices and ethical principles, but they did not pass on this information to those from whom they contract goods and services.

It may seem obviously beneficial to maintain a record of any problems experienced with contractors. However, only two-thirds of councils said they did and 3 per cent of councils said they did not even keep a record of contracts they issue.

A positive finding was that 95 per cent of councils said they kept a continuous

record of expenditure on each contract let. This would enable audits to be taken of council expenditure.

One finding of concern is that in two councils^{xxv} the decision about which procedure to use for urgent and minor work included Mayoral participation (Tables 20 & 21). This is problematic due to issues of control over decision making within council (an area that the legislation states that the General Manager is responsible for), for reasons of potential conflicts of interest and issues of favouritism in decision making procedures.

On the negative side, few councils^{xxvi} which had directly negotiated also had procedures in place to avoid corrupt conduct or information about what to do if potentially corrupt situations occur. Such procedures include a gifts and benefits register, an audit plan, an internal audit charter and a corruption and/or fraud prevention plan.

Councils that engaged in direct negotiations with contractors were also **less** likely to send out information on ethical standards to potential contractors.

A particular risk area that requires further examination and explanation is the difference between the ethical standards of councils and ethical standards or work practices of private sector contractors engaged to perform council work.

Private sector contractors may be unaware of the rules and regulations which govern public sector procurement, and may inadvertently offer incentives or seek personal favours, putting the council worker in a potentially corrupt situation.

Previous research on the public and private sectors (Zipparo & Cooke, 1999) found that one-third of private contractors were not aware of specific rules governing NSW public sector contracting and one-third did **not** agree that they should adopt public sector ethical values when doing public sector work.

Private contractors with a better understanding of the core values which underpin public sector work, such as public duty and ethical work practices, had a more positive attitude to public sector work. They were also less likely to see public sector rules as negative or pointless (Zipparo & Cooke, 1999).

This research on interaction between the two sectors suggests that public sector organisations would benefit from educating private contractors about the values and principles which underpin their organisations.

In this private contractors study, some contractors said they would not work with any organisation which did **not** follow strict rules, especially regarding tendering processes. Therefore, letting contractors know of the ethical standards a council holds may in fact be beneficial to the types of tenderers a council can attract.

By not setting the standard in the first place, a council may be more likely to have to deal with a potentially corrupt situation after it has begun.

AUDIT

Summary – 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 highly important 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, 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?

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.

BACKGROUND – AUDIT

Internal audit can provide objective assessment of how well a system is working, identify system weaknesses and make recommendations for improvement. It is considered a process which adds value and improves an organisation's operations by reviewing the reliability and integrity of information, compliance with policies and regulations, the safeguarding of assets, and the economical and efficient use of resources (Internal Audit Bureau, 2000).

The responsibility for the prevention and detection of fraud and error rests with management through the implementation and continued operation of an adequate system of internal control. Such a system reduces, but does not eliminate, the possibility of fraud and error (Sothertons, 1993, p5-500).

The Internal Audit Bureau (2000) advocates that an effective internal audit function contains a variety of components including:

- internal audit charters

- internal audit standards
- audit plans
- operational auditing
- audit committees
- comprehensive reporting systems.

The responsibilities of the internal auditor are to provide the organisation with a formal audit plan and details of internal audit staff structure.

Audit charters should align internal audit activities with management's expectations and principal needs and spell out the rights and obligations and processes of the audit committee.

Audit committees ensure that the audit process is effective, that external reporting and corporate governance responsibilities are addressed, and that the internal control and risk management structures are appropriate

Operational or performance audits are distinct from financial audits in that they review the process and procedures used rather than the financial aspects of a situation.

- how important audit was considered
- the proportion of council's budget spent on audit
- number of staff employed in the audit function
- whether or not someone was responsible for overseeing the implementation of audit report recommendations.

Importance of audit

General Managers were asked how important internal audit was to their council. Over half (53 per cent) said it was essential or very important, 28 per cent said it was moderately important and 8 per cent said it was irrelevant (Table 39). Two General Managers said their council was unable to afford internal audit.

Larger councils were more likely to say internal audit was of high importance (86 per cent) than medium-sized (60 per cent) and small councils (44 per cent)^{xxvii}

Findings – Audit

A variety of questions was asked regarding council audit procedures, such as:

- whether or not council had an audit plan, and if so, what years it covered
- how often council has undertaken operational or performance audits, and the topics of the last three audits
- the existence of an internal audit charter, an internal audit committee and an internal auditor (and their salary ranges)

Table 39: Importance of internal audit

How important is internal audit to your council?	
Response	GM
Essential	39 (25%)
Very important	43 (28%)
Moderately important	44 (28%)
Irrelevant	12 (8%)
Can't afford it	2 (1%)
Missing/Don't know	16 (10%)
Total	156 (100%)

Audit plans

Internal audit is a function that should be undertaken regularly and in a planned way. The revenue restrictions imposed by the State Government severely limit the choices in relation to the allocation of resources for audit activities (General Manager, 109, medium-sized council, large town).

Table 40 shows that over three-quarters (78 per cent) of NSW councils said they did **not** have audit plans. Of the 32 councils that said they had plans, half (18) covered only one year. Only four councils had audit plans that lasted for more than five years. This demonstrates that very few councils (3 per cent) conduct long-term audit planning even though 81 per cent said audit was important to their council.

Smaller councils were less likely (2 per cent) than were medium-sized (24 per cent) and larger councils (67 per cent) to have an audit plan.^{xxviii}

Rural councils were less likely (28 per cent) than councils in large towns (30 per cent) and metropolitan councils (43 per cent) to have an audit plan.^{xxix}

Table 40: Existence of audit plans

Does your council have an audit plan?	
Response	GM
No	122 (78%)
Yes	32 (21%)
Missing/Don't know	2 (1%)
Total	156 (100%)

Performance or operational audits

Table 41 shows that one-quarter (26 per cent) of councils conduct regular operational audits during the course of a year. Half of councils (49 per cent) do not conduct any operational audits or do so less than once every 10 years.

Table 41: Frequency of performance audits

How often does your council undertake an operational or performance audit?	
Response	GM
Never	66 (42%)
Less than once every 10 years	11 (7%)
Every two to 10 years	17 (11%)
Once a year	20 (13%)
More than once a year	40 (26%)
Missing/Don't know	2 (1%)
Total	156 (100%)

The topics of the last three performance audits conducted are outlined in Table 42. Local council performance or operational audits most frequently concerned corporate development and management plans (including the quality of service delivery), contracting out services and planning procedures (including development applications).

Last audit topic was "risk management of internal controls, eg staff awareness of risks" (General Manager, 64, large council, metro).

Last audit topic was "IT licensing requirements" (General Manager, 156, medium-sized council, metro).

Table 42: Topics of performance audits

What were the topics of your council's last 3 operational or performance audits?	
Response	GM (n=156)
Corporate development/Management plans [†]	31
Contracting/tenders/procurement	25
Planning/Development applications/ approval process	21
Community services [‡]	17
Budgets/finance	15
Human resources [‡]	14
Waste management/rubbish/recycling	12
Engineering	11
Vehicle/Fuel/Tyres/Fleets	8
Stores/Stock control and management	8
Records management	6
Cash receipting procedures	6
All areas of performance	5
Parks & Gardens	5
Public works	5
Road construction/maintenance	5
Information Technology (IT)	4
Administration	3
Debt recovery/creditors	2
Tourism	2
Risk Management	2
Other	5
Total	212

[†] Corporate development included management plans, achievements against strategic/corporate plans, reviews of activities, review of procedures, standards and service delivery.

[‡] Community services included aquatic, leisure and entertainment centres, halls, childcare, library, citizens advice and visitor information.

[‡] Human resources included payroll, OH&S, reviews of skills enhancement, retrenchment and back-filling, flexitime, overtime and competency assessments.

There was a statistically significant relationship between those councils that have undertaken performance audits and those that have conducted direct negotiations for procurement.^{xxx} The

more performance audits a council has undertaken the more likely they were to have directly negotiated with contractors for large projects.

Internal audit charters and auditors

I would love to have an Internal Auditor...the reality is that I operate with less than required staff numbers because of lack of funds. I know that the Council can be justifiably criticised by the DLG and probably the ICAC because not all bases are covered (General Manager, 90, small council, rural).

Small councils rely on their external auditor for many internal audit functions that larger councils have internal auditors for (General Manager, 34, small council, metro).

Councils were asked whether or not they had internal audit charters, auditors and committees.

Table 43 shows the number of councils with internal audit charters, auditors and audit committees.

Table 43: Audit facilities in councils

Does your councils have the following internal audit procedures in place?			
Response	GM (n=156)		
	Yes	No	Missing
Charter	23 (15%)	131 (84%)	2 (1%)
Auditor	28 (18%)	127 (81%)	1 (1%)
Committee	25 (16%)	129 (83%)	2 (1%)

None of the smaller councils (less than 100 employees) said they had an internal audit charter or an internal auditor.

Larger councils were more likely (57 per cent) than medium-sized councils (16 per cent) to have an internal audit charter.^{xxxix} They were also more likely (68 per cent) than medium-sized councils (20 per cent) to have an internal auditor.^{xxxix} Larger councils were also more likely (38 per cent) than medium-sized (18 per cent) and smaller councils (5 per cent) to have an internal audit committee.^{xxxix}

Councils in metropolitan (38 per cent) and large urban towns (30 per cent) were more likely than rural councils (2 per cent) to have an internal audit charter.^{xxxix} They were also more likely (metropolitan 38 per cent, large urban towns 30 per cent) than rural councils (8 per cent) to have an internal audit charter.

Rural councils were also less likely (8 per cent) than metropolitan (32 per cent) and large urban town councils (22 per cent) to have an internal audit committee.^{xxxix}

Resources allocated to audit

Many of the issues raised in the [research] questions are not fully addressed due to resource constraints. (General Manager, 109, medium-sized council, large town).

To gauge a level of importance given to internal audit, councils were asked what percentage of their budget was spent on audit and the salary level of their internal audit manager, in comparison to other managers.

Table 44 outlines the relation of council internal auditors' salaries to those of

other managers. In over half of the 28 councils with an internal auditor, they received either a salary lower than most other managers or the lowest.

Table 44: Internal auditor's salary compared to other council managers

How many other managers at your council have higher salaries than the internal auditor?	
Response	GM
Only GM has higher	1 (1%)
Internal auditor higher than most	2 (1%)
Equal number higher & lower	5 (3%)
Internal auditor lower than most	6 (4%)
Internal auditor lowest	11 (7%)
No internal auditor/Missing	131 (84%)
Total	156 (100%)

Table 45 shows that the majority of councils said they spent less than 1 per cent of their annual budget on audit. Surprisingly 8 per cent (13 councils) said they did not spend **any** money on audit. Of these councils which stated they spent no money on audit, 10 said they never conducted performance audits, two said they conducted performance audits less than once every ten years and one said they conducted performance audit every two to 10 years.

Table 45: Proportion of council budget on audit

What proportion (%) of your council's budget is spent on audit?	
Response	GM
Zero	13 (8%)
Less than 1% [†]	84 (54%)

More than 1%	20 (13%)
Missing/Don't know	39 (25%)
Total	156 (100%)

[†] Councils were asked to specify the actual percentage but many General Managers wrote “less than” or “more than” 1%.

Table 46 shows the number of staff employed in audit. Seventy per cent (108) of councils said they did not have **any** staff employed in the audit function at their council, and the majority (100 out of 108) also did not have an internal auditor. Thirty-four councils had one staff member employed in audit, seven had three staff, three had four staff and one had five.

Table 46: Number of staff employed in audit

What are the positions and salary levels of any staff employed in the audit function?	
Response	GM
No staff	108 (69%)
One staff member	34 (22%)
Three staff members	7 (4%)
Four or more staff members	4 (3%)
Missing/Don't know	3 (2%)
Total	156 (100%)

Larger councils (500 or more employees) were more likely (67 per cent) than smaller councils (100 to 499, 29 per cent; <100, 17 per cent) to have someone employed in an audit function.^{xxxvi}

Councils in metropolitan and large towns were more likely (43 per cent) than rural councils (20 per cent) to have staff employed in an audit function.^{xxxvii}

Table 47 illustrates the positions responsible for following up the recommendations made in audit reports. In the majority of councils it is the responsibility of the General Manager and various senior managers, particularly the Director/Manager of Finance or Corporate Services.

Fifteen per cent of councils stated that no-one oversees the follow-up of audit report recommendations.

Table 47: Implementation of audit report recommendations

Who oversees the implementation of recommendations from audit reports	
Response	GM
GM + senior managers	54 (35%)
General Manager	27 (17%)
Director/Manager Finance	19 (12%)
Internal audit committee [†]	12 (8%)
Director Corporate Services	11 (7%)
Internal auditor	7 (4%)
Noone	23 (15%)
Missing/Don't know	3 (2%)
Total	156 (100%)

[†] Only 25 councils that said they had an internal audit committee. Three of the 12 said the internal audit committee + senior managers

DISCUSSION – AUDIT

A positive finding was that 81 per cent of General Managers said that internal audit was important to their councils. Internal audit is important in assisting an organisation to be resistant to corruption. Internal audit is particularly useful in areas such as internal investigations of

potential corruption, contracting for services, cash handling and use of travel allowances.

It was encouraging to discover that one-quarter (25 per cent) of councils said they conduct more than one operational or performance audit a year. Unfortunately nearly half (49 per cent) of councils said they never conduct operational audits or do so less than once every 10 years. This illustrates that half of NSW local councils are not using audit to help them identify possible corruption risk areas within their operations.

A positive finding on risk management was that councils which said they had used direct negotiations in procurement also said they conducted operational audits, thereby increasing the likelihood that potential corruption would be uncovered.

Larger and metropolitan councils were more likely to have conducted operational audits and to have used direct negotiations for procurement of large projects. General Managers of two small rural councils stated they were unable to afford internal audit.

Fifteen per cent of General Managers said there was no-one in their council designated to oversee the implementation of recommendations from audit reports. This would suggest that even if these councils are conducting audits, the positive changes that could be made as a result of the findings may go unheeded.

When all the findings on audit were considered, the impression they gave was that risk management and corruption and fraud prevention are not a major part of local council internal audits.

CODE OF CONDUCT

Summary – Code 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 that 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 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 providing 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.

BACKGROUND – CODE OF CONDUCT

Organisational codes, such as codes of conduct, codes of ethics, codes of practice and compliance codes, are sources of explicit guidance for individuals (Pierce & Henry, 2000).

Pierce and Henry's study found that staff believed that unethical behaviour would not be tolerated if their organisation had codes on specific topics (eg. computer ethics). They also found that sanctions for breaches to the code deterred unethical behaviour.

The presence of a code has been found to be insufficient in influencing behaviour unless staff internalise the code and believe their organisation will enforce it (Akaah & Riordan, 1989). Therefore, codes need to not only be distributed and accessible to staff, they also need to be integrated into normal organisational activities, such as training and briefings about why they are important and how to apply them to daily operations.

Findings – Code of conduct

Table 48 demonstrates that practically all local councils had a code of conduct. A rather astonishing finding was that one General Manager said his council did not have a code of conduct. Subsequent to the questionnaire being completed, this council's code of conduct was established.

Even though all councils had a code of conduct, 10 per cent of council staff were unaware of the existence of their council's code of conduct.

Table 48: Existence of code of conduct

Does your council have a code of conduct		
Response	GM	Staff
No	1 (1%)	3 (2%)
Yes	155 (99%)	158 (90%)
Don't know	-	14 (8%)
Total	156 (100%)	176 (100%)

To gain a better understanding of the content of the codes, General Managers were asked how similar or different their code was from the Department of Local Government (DLG) Model code of conduct (Practice Note No. 6).

During interviews with General Managers, some said they found it helpful and less time consuming if they were able to base their own codes on existing models.

Table 49 outlines these differences. Just about all council codes are the same or

similar (91 per cent) to the DLG Model Code.

Table 49: Variations from the DLG model code of conduct

How different is your council code of conduct from the DLG Model Code?	
Response	GM
Same as model code	60 (39%)
Similar to model code	81 (52%)
Different from model code	10 (6%)
Missing/Don't know	5 (3%)
Total	156 (100%)

General Managers were asked which topic areas were included in their council's codes. These are outlined in Table 50. Most council codes covered a wide range of topics.

Only a few councils included the recently introduced child protection legislation [*Commission for Children and Young People Regulation NSW 2000*, *Children (Community Services Orders) Regulation NSW 2000*] into their codes. This legislation is relevant to councils which provide services to children, eg. aquatic centres, childcare. Also, only a few councils included use of the Internet in their codes (some council have limited computer facilities and outdoor staff in particular do not have a desktop computer).

Two other areas not widely covered in the codes were complaint handling (21 per cent of staff thought their council failed to take action if corruption was reported) and alcohol (32 per cent thought it occurred) and drug use (15 per cent

thought it occurred). These are areas where staff thought corrupt conduct occurred and which could have potentially major implications if not handled appropriately.

Table 50: Code of conduct topics

What areas does your council's code of conduct cover?	
Topic	GM (n=156)
Responsibilities of staff	152 (97%)
Responsibilities of councillors	152 (97%)
Gifts and benefits	152 (97%)
Use of information	150 (96%)
Use of resources	150 (96%)
Pecuniary interests	139 (89%)
Non-pecuniary interests	124 (80%)
Sanctions for breaches of code	116 (74%)
Treating community matters equitably	105 (67%)
Protected disclosures	91 (58%)
Secondary employment	91 (58%)
Staff/councillor interaction	90 (58%)
Complaint handling	47 (30%)
Alcohol and drug use	21 (14%)
Use of Internet	16 (10%)
Responsibilities under child protection legislation	12 (8%)

Table 51 shows that, according to General Managers, over half of councils had reviewed their code of conduct within the 12 months preceding the questionnaire (May, 2000). It was disappointing to discover that only one-quarter of staff were aware of this.

As this research was unrelated to council activity, it suggests that councils review their codes regularly. Councils were unlikely to have reviewed their code because this research was pending as they

were informed of the research just prior to receiving the questionnaires.

Councillors are elected every four years and 87 per cent of councils have reviewed their code within the last 4 years. Therefore, a high proportion of councils review their codes within the duration of their councillors terms.

Table 51: Code of conduct reviews

When was your council code of conduct last reviewed?		
Response	GM	Staff
Within the last 12 months	86 (55%)	42 (24%)
1 to 4 years ago	50 (32%)	33 (19%)
Over 4 years ago	17 (11%)	11 (6%)
Missing/Don't know	3 (2%)	75 (43%)
Total	156 (100%)	176 (100%)

Although the majority of General Managers (87 per cent) stated that their codes had been reviewed within the last four years, half of council staff (49 per cent) said they did not know when their code was last reviewed or were aware it happened over four years before.

Even though most of the codes were reviewed recently, Table 52 shows that for the majority of councils, staff (63 per cent) and councillors (71 per cent) received training on the code only once, usually at induction (a time when they receive training about many aspects of their work as public officials).

Consequently, this suggests that the majority of councillors and staff will not have received training on any changes as a result of council reviews.

A proportion of General Managers said their councils have **never** provided any training about council's codes of conduct (14 per cent for staff, 16 per cent for councillors). Over half of staff (57 per cent) said they had **never** received code of conduct training.

Table 52: Code of conduct training

How often does your council provide code of conduct training?		
Response	GM	Staff
Staff receive training		
Every six to 12 months	16 (10%)	1 (1%)
Every two to 5 years	17 (11%)	8 (5%)
Once†	98 (63%)	46 (26%)
Never	22 (14%)	101 (57%)
Missing/Don't know	3 (2%)	20 (11%)
Total	156 (100%)	176 (100%)
Councillors receive training		
Every six to 12 months	6 (4%)	
Every two to 5 years	12 (8%)	
Once†	111 (71%)	
Never	25 (16%)	
Missing/Don't know	2 (1%)	
Total	156 (100%)	

† The majority of this category indicated that training occurred only at induction. A small proportion (8 per cent) stated that training occurred at induction plus after any major revisions, at seminars, as required or occasionally.

Staff were also asked how often they referred to their code of conduct and how helpful they found it to be. Table 53 shows that codes are not frequently referred to by staff and Table 54 shows that most staff either do not find their code helpful or do not know if it is helpful (57 per cent). How staff can use

their code of conduct as a guide in decision making needs to be made more accessible either through ongoing training or by awareness training of how codes of conduct are active documents.

Table 53: Use of code of conduct

How often have you used or referred to your code of conduct?	
Response	Staff
Never	86 (49%)
Once	29 (16%)
Occasionally	45 (26%)
Often	3 (2%)
Missing	13 (7%)
Total	176 (100%)

Table 54: Helpfulness of code of conduct

How helpful do you consider your code of conduct to be?	
Response	Staff
Very helpful	19 (11%)
Sometimes helpful	56 (32%)
Rarely helpful	20 (11%)
Never helpful	10 (6%)
Missing/Don't know	71 (40%)
Total	176 (100%)

Table 55 shows that one-third of staff thought improvements could be made to their code. The types of improvements that staff would like to see to their codes included more consultation with staff about the code, and more practical content that deals specifically with

council situations and covers ethical dilemmas.

If codes of conduct were reviewed in consultation with staff and made more practical by covering specific ethical dilemmas, staff are more likely to refer to them and consider them helpful.

Table 55: Possible improvements to code of conduct

Do you think your code of conduct could be improved?	
Response	Staff
No	24 (14%)
Yes	57 (32%)
Missing/Don't know	95 (54%)
Total	176 (100%)

Table 56: Ways of improving codes of conduct

In what ways could your council's code of conduct be improved?	
Response	Staff (n=57) [†]
More consultation with staff	52 (29%)
It needs to be more practical	25 (14%)
Information on ethical dilemmas	21 (12%)
Made more relevant to council	12 (7%)
Other	15 (8%)

[†] This category allowed multiple answers.

Staff were asked whether or not they thought that their council's code applied to councillors as well as staff. Over one-third of staff (43 per cent) did not know (Table 57).

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 the councillors 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 refusing to be complicit in allowing inappropriate access to information.

Table 57: Code of conduct applied to councillors

Does your council's code of conduct apply to councillors?	
Response	Staff
No	4 (2%)
Yes	97 (55%)
Missing/Don't know	75 (43%)
Total	176 (100%)

To gauge staff perceptions of their council's commitment to ensuring correct procedures are followed, they were asked whether councillors and staff were equally held accountable to the code of conduct and how often council did something about breaches to procedures.

Staff were asked if they perceived councillors to be held accountable to the code of conduct and, if so, whether or not councillors and staff were held equally accountable (Tables 58 & 59). One-fifth of staff (19 per cent) said councillors were always held accountable to the code. One-quarter (26 per cent) of staff thought

councillors and staff were held equally accountable, but 10 per cent thought councillors got away with more than staff.

Table 58: Councillors held accountable to code of conduct

In your experience, are councillors at your council held accountable to the code of conduct?

Response	Staff
Yes, always	33 (19%)
Yes, some of the time	19 (10%)
Not very often	12 (7%)
Never	3 (2%)
Missing/Don't know	109 (62%)
Total	176 (100%)

Table 59: Councillors and staff equally held accountable

Are councillors and staff equally held accountable to the code of conduct?

Response	Staff
Yes, councillors and staff are held equally accountable	46 (26%)
No, councillors get away with more	17 (10%)
No, staff get away with more	2 (1%)
Depends on the individual(s) involved	15 (8%)
Missing/Don't know	96 (55%)
Total	176 (100%)

Very few staff said their councils would always (2 per cent) do something about councillors breaching procedures or do something most of the time (4 per cent) (Table 60). General Managers may not agree with their staff on the frequency

with which action is taken on breaches to procedures, but the perception among staff still exists. The perception that nothing will be done if councillors breach procedures may extend to the notion that nothing will be done if staff also breach procedures. This could be an area where councils need to show staff that they are taking action and stress the consequences for breaches to the code of conduct.

Table 60: Action taken when councillors do not follow procedures

When councillors do not follow the correct procedures, how often would you say your council does something about it?

Response	Staff
Never	13 (7%)
Some of the time	16 (10%)
Most of the time	7 (4%)
Always	4 (2%)
Missing/Don't know	136 (77%)
Total	176 (100%)

DISCUSSION – CODE OF CONDUCT

Current corruption resistant practices in local councils identified by this research include:

- all councils have codes of conduct (99% increased to 100% over the duration of the research period)
- nearly all (91 per cent) council codes were based on, or similar to, the model code recommended by DLG
- over half of councils codes had been reviewed within the last year and 87 per cent within the last four years
- almost all council codes included the crucial topics of responsibilities of

staff (97 per cent) and councillors (97 per cent), gifts (97 per cent), use of information (96 per cent) and resources (96 per cent)

- over three-quarters of council codes included financial (89 per cent) and non-financial (80 per cent) conflicts of interests as well as sanctions for breaching the code (74 per cent).

Risk areas associated with codes of conduct identified by this research include:

- some important and relevant topics, such as complaint handling (30 per cent), alcohol and drug use (14 per cent), use of Internet (10 per cent) and child protection legislation responsibilities (8 per cent) were **not** widely covered in the codes
- one in seven councils (14 per cent) have never provided their staff with training on their code, and well over half (63 per cent) have only provided training once at induction
- one in six councils (16 per cent) have never provided their councillors with training on their code, and 71 per cent only once at induction
- councillors not being held accountable to the code.

Councils which do not currently have the identified topics in Table 50, may consider adding them to their code of conduct.

Councils which currently provide code of conduct training to staff and/or councillors only at induction or never, may consider increasing the frequency of their training schedules.

Specific areas of staff awareness training these research findings suggest that would

help make councils more corruption resistant include:

- encouraging staff input to make their code of conduct more helpful and relevant
- developing policies and designating people to review requests for information from councillors
- procedures to follow if asked to do something or provide information to a councillor which staff consider to be an inappropriate request
- apply council codes of conduct to councillors and ensure processes make councillors accountable to the codes
- develop sanctions for breaches to the code of conduct, especially by councillors.

INTERACTION BETWEEN STAFF AND COUNCILLORS

Mandatory prescribed training for all staff and councillors would provide a useful balanced perspective to all groups.
(General Manager, 144, medium-sized council, metro).

Summary – 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, 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 (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.

BACKGROUND – COUNCILLORS' INTERACTION WITH STAFF

In 1993 changes were made to the *Local Government Act* which separated the governance and policy direction of council from the administrative procedures for implementing the policies. Governance and policy setting was determined as the role of elected officials with the General Manager established as

responsible for administration of the policies and all staff matters.

I have a direct pecuniary interest in a council matter so I certainly can't have any input or any decision making in that, I'm quite aware of that. A lot of council money is involved in this matter and I'm responsible to the ratepayers on what is spent. It's really tricky as I have the most skills in this area and I want to just give my input to them so that they can think about some of the thoughts that I've got on the matter and some of the issues that I know are out there. And yet I've got to do that quite unofficially. But when it comes to making decisions, you only need five crazy councillors and they could be making terrible decisions. (Deputy Mayor, 22, small council, rural)

Findings – councillors interaction with staff

To examine the roles and responsibilities of senior members of council, staff were asked who they considered the most powerful person in their council. The vast majority (60 per cent) said it was the General Manager (Table 61). This finding is in line with changes to the *Local Government Act* and it was expected that the majority of staff would perceive their General Manager as their boss.

Table 61: Most powerful person in council

Who do you think is the most powerful person in your council, that is, the person who really controls council decisions?

Response	Staff
General Manager	106 (60%)
Mayor	27 (15%)
Councillor(s)	16 (9%)
Head of Administration	1 (1%)
Other [†]	21 (12%)
Missing/Don't know	5 (3%)
Total	176 (100%)

[†] This category included: Councillor(s) & Customer Service Manager; Deputy General Manager; General Manager & Councillors; General Manager & Mayor; General Manager, Mayor & Head of Administration; Manager Technical Services; Safety Officer.

Staff were then asked how much influence the councillors had on the day-to-day business of running council, ie. the administration. It was expected that staff would say councillors had no role to play in the administration of council. One-quarter (23 per cent) of staff believed that councillors had too much influence, one-quarter (24 per cent) believed they had too little or no influence, one-quarter (26 per cent) said it was just right and one-quarter (27 per cent) didn't know (Table 62).

I have far more problems on the periphery of council than with the staff. Councillors, developers, community, particularly councillors. I'm forever fighting this battle of trying to keep them at arms length. There is a lot of implied pressure on staff from any Mayor's office. The huge problem is developers and consultants in the Mayor's office trying to lodge development applications (General Manager, 17, medium-size council, large town).

Table 62: Influence of councillors on day-to-day running of council

How much influence would you say councillors have on the day-to-day business of running your council?

Response	Staff
None	23 (13%)
Too little influence	19 (11%)
Amount of influence is just right	45 (26%)
Too much influence	41 (23%)
Missing/Don't know	48 (27%)
Total	176 (100%)

Along with questions on power and influence, staff were asked if their council had a policy on access to restricted information. Two out of every three staff said their council did not or they were not aware of such a policy existing (Table 63). Half of the staff who knew their councils had a policy on access to restricted information said that it covered councillors' access to information (Table 64).

Table 63: Access to restricted information

Does your council have a policy and procedures on access to restricted council information?

Response	Staff
No	5 (3%)
Yes	61 (35%)
Missing/Don't know	110 (62%)
Total	176 (100%)

Table 64: Councillors' access to information

Does this policy include councillors' access to information?

Response	Staff (n=171)
No	2 (1%)
Yes	30 (18%)
Missing/Don't know	139 (81%)
Total	171 (100%)

When councillors request information, staff were asked whether councillors followed the correct procedures. Again, over two-thirds (68 per cent) of staff said they did not know (Table 65). One in six staff said councillors never followed the correct procedure or only some of the time.

Table 65: Councillors following the correct policy and procedures

When councillors want information from staff, how often would you say they follow the correct policy and procedures?	
Response	Staff
Never	5 (3%)
Some of the time	24 (14%)
Most of the time	20 (11%)
Always	8 (4%)
Missing/Don't know	119 (68%)
Total	176 (100%)

During the interviews, General Managers said that their councils had set guidelines for councillors' access to staff. Most General Managers said that if councillors required information from staff they would go through the General Manager or the senior staff. Most staff (71 per cent) were not aware of this (Table 66). If staff are unaware that councillors are not supposed to approach them directly with requests for information, staff are unlikely to question or refuse inappropriate

requests. One in ten staff members said they had been asked by a councillor to provide information to which the councillor should not have access (Table 68) and one in 12 said they felt pressured by a councillor to do something they were not supposed to do (Table 70). One in three staff said their council did **not** check to see what sorts of requests councillors made of staff (Table 69).

Staff supported (73 per cent) the suggestion for a designated person (eg. General Manager) whom councillors go through when requesting information from staff (Table 67).

Table 66: Designated point of contact for all councillors

Is someone in your council designated as the point of contact for all councillors if they require information from a staff member?	
Response	Staff
No	21 (12%)
Yes	30 (17%)
Missing/Don't know	125 (71%)
Total	176 (100%)

Table 67: Practicality of the way information is sought

Do you think it is practical for councillors to go through the General Manager (or some other designated person) in order to ask staff to provide them with information?	
Response	Staff
No	35 (20%)
Yes	129 (73%)
Missing/Don't know	12 (7%)
Total	176 (100%)

Table 68: Provision of information

In the past four years, has any councillor asked you to provide them with information that you think they should not have access to?	
Response	Staff
No	156 (88%)
Yes	17 (10%)
Missing/Don't know	3 (2%)
Total	176 (100%)

on what is in the Local Government Act and what is expected through the ICAC at that point in time. If there are any changes at all throughout the four-years they must go back and redo the training (Deputy Mayor, 131, small council, rural).

Table 69: Requests made by councillors for information from staff

To your knowledge, does your council check to see what sorts of requests for information councillors make from staff?	
Response	Staff
No	65 (37%)
Yes	24 (14%)
Missing/Don't know	87 (49%)
Total	176 (100%)

Table 70: Persuasion and pressure from councillors

In the past four years, have you felt persuaded or pressured by any councillor to do something that you are not supposed to?	
Response	Staff
No	159 (90%)
Yes	14 (8%)
Missing/Don't know	3 (2%)
Total	176 (100%)

I think it should be mandatory that when you become a councillor your council must set aside in their budget funds for councillors to go and be completely trained

GIFTS, BENEFITS AND CONFLICTS OF INTEREST

Summary – 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 resistant 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. One in three 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.

BACKGROUND – GIFTS, BENEFITS AND CONFLICTS

There is a possibility in all positions of public office that situations may arise which impact on the capacity of public officials to exercise impartial judgment on matters under their purview.

It is not reasonable for public officials to be expected never to have a personal interest in matters they are required to deal with in their work. For example, a development application to council may

concern the property next door to the home of the public official who usually decides on such matters. This personal interest is unavoidable, but having a set procedure established before such a situation occurs means that it can be dealt with fairly.

The ICAC advocates a variety of ways to deal with situations involving gifts and conflicts. These include employees not receiving personal gifts or benefits as a result of exercising their function of public office. When benefits or gifts are unavoidable it is suggested that they be declared on a register. Having the register publicly available is a recommended facet of openness and transparency in government.

Declaring an interest in a matter and actively taking steps not to be involved with any decisions made on the matter are recommended ways of avoiding situations where bias or partiality can occur or have the appearance of occurring.

The *Local Government Act 1993 (NSW)* s.449 and schedule 3 states that councillors and designated persons must lodge disclosures with the General Manager containing any:

- real property
- gifts
- contributions to travel
- interests and positions in corporations
- positions in trade unions or associations
- dispositions of property
- sources of income
- debts
- anything else at their discretion.

Personal interest in a matter may be of a financial (pecuniary) or non-financial

(non-pecuniary) nature. The NSW Department of Local Government, code of conduct Practice Note No. 6 (March 1994) defines a non-pecuniary interest as any private interest that does not relate to money. Examples include any interest arising out of:

- kinship
- friendship
- membership of an association, society or trade union
- involvement or interest in an activity.

Findings – Gifts, benefits and conflicts

Gift registers

General Managers and staff were asked if their council had a gift register. Three out of four General Managers said their council did **not** have a register for staff to record any gifts or benefits they may have been offered or received (Table 71).

Table 71: Gift registers

Does your council have a gift register?		
Response	GM	Staff
No	116 (74%)	31 (18%)
Yes	40 (26%)	51 (29%)
Missing/Don't know	-	94 (53%)
Total	156 (100%)	176 (100%)

Those councils with a gift register were asked whether or not their registers were

publicly available (Table 72) and the type of information recorded (Table 73).

Table 72: Public availability of gift registers

Is your council's gift register publicly available?		
Response	GM	Staff
No	7 (5%)	13 (7%)
Yes	33 (21%)	13 (7%)
n/a/Don't know	116 (74%)	150 (86%)
Total	156 (100%)	176 (100%)

A positive finding is that when gift registers are used they are transparent. But it is less than optimal to discover that three-quarters of councils have not established registers.

A general observation is that having a gift register appears to indicate a council is more corruption resistant. The following findings illustrate this point.

Table 73 shows that the majority of councils with a gift register are recording valuable information on them. Further measures could be taken by some councils with registers to include reasons for decisions on gifts and the use of signatures to increase accountability.

Table 73: Information recorded on gift register

Proportion of council whose gift registers record the following:
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Response	GM (n=40)
Name of gift recipient	38 (95%)
Name of person and/or organisation offering	39 (98%)
Type of gift	38 (95%)
Decision taken	31 (78%)
Value of gift	29 (73%)
Signature of recipient's supervisor	22 (55%)
Reasons for decision taken	18 (45%)
Other [†]	9 (23%)

[†] This category included: signature of recipient; any previous occurrence of the same person(s) offering or receiving gift or benefit; relationship between parties; and gift recorded on personal file.

General Managers were asked whether or not their registers contained precise dollar values of gifts received or offered. Specifically, they were asked if there was dollar value below which the gift register did not apply and/or a dollar value above which gifts or benefits may not be accepted (Table 74).

Table 74: Dollar values in gift registers

Proportion of councils with set dollar limits covered by their gift registers	
Response	GM (n=40)
Value below which gifts not registered [†]	13 (33%)
Value above which gifts not accepted [‡]	10 (25%)

[†] This was generally defined as "token" or "nominal". On two occurrences each \$50, \$100 and \$500 were stated as the set value.

[‡] This was generally defined as any amount above a "token" or "nominal" amount, or above \$10, \$20, \$50 or \$100.

Councils with a gift register were more likely than those without one to have a code of conduct which covered a broad range of topics. Table 75 outlines these topics.

Table 75: Code of conduct differences between councils with and without a gift register

Proportion of councils whose code of conduct covered the following topics		
Topic area included	Gift Register (n=40)	No Gift Register (n=116)
Protected disclosures ^{xxxviii}	80%	52%
Secondary employment ^{xxxix}	73%	54%
Use of internet ^{xl}	25%	5%
Staff/councillor interaction ^{xli}	73%	54%
Community matters treated equitably ^{xlii}	83%	63%
Alcohol and drug use ^{xliii}	28%	9%

Councils with a gift register were also more likely to have reviewed their code of conduct recently (63 per cent less than one year ago, 37 per cent one to 4 years ago) than were those without a gift register (54 per cent <1 year ago, 31 per cent one to 4 years ago and 15 per cent over four years ago).^{xliv}

The amount of training provided to staff on their code of conduct varied between councils which did have a gift register and those which did not. One-fifth of General Managers at councils without a gift register (compared with only 3 per cent of those with a gift register) said they **never** provided staff with code of conduct training. Half of councils with a gift register provided training more than once to their staff.^{xlv}

The vast majority of councils with a gift register (93 per cent) were significantly more likely to provide their staff with information on corruption prevention, than councils without a gift register (77 per cent).^{xlvi}

There were significant differences between how council internal reporting procedures allowed protected disclosures (PDs) to be made. Table 76 outlines these differences. Councils with a gift register were more flexible in the ways PDs could be made.

Table 76: Internal reporting procedure differences between councils with and without a gift register

Proportion of councils whose internal reporting procedure allow disclosures to be made in these ways		
Procedure	Gift Register (n=40)	No Gift Register (n=116)
Verbally ^{xlvii}	95%	77%
Via telephone ^{xlviii}	69%	48%
Anonymously ^{xlix}	49%	27%

Councils with a gift register were more likely to have audit procedures in place, such as an audit plan, charter and to conduct operational audits. Table 77 outlines the auditing differences between councils with and without a gift register.

Table 77: Auditing differences between councils with and without a gift register

Proportion of councils with audit procedures		
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Item	Gift Register (n=40)	No Gift Register (n=116)
Audit plan ⁱ	40%	14%
Operational audits: ⁱⁱ		
never	25%	49%
more than once a year	43%	20%
Internal audit charter ⁱⁱⁱ	35%	8%
Internal auditor ⁱⁱⁱ	40%	10%
Staff employed in audit ^{liv}	50%	22%

The relationship between councils with and without a gift register also related to the existence of corruption prevention strategies within council. Table 78 outlines the corruption prevention strategies.

Table 78: Differences in corruption prevention procedures between councils with and without a gift register

Proportion of councils with corruption prevention strategies		
Procedure	Gift Register (n=40)	No Gift Register (n=116)
Corruption/Fraud Prevention Plan ^{lv}	28%	11%
Person committee or team designated to prevention ^{lvi}	73%	49%
Staff delegated to follow up ICAC reports ^{lvii}	64%	43%

Conflicts of interest

Staff were asked if their council had guidelines on conflicts of interest (Table 79) and the amount of guidance and training they received on conflicts of interest (Table 80).

Table 79: Conflict of interest guidelines

Does your council have guidelines on conflicts of interest?	
Response	Staff
No	9 (5%)
Yes	121 (69%)
Missing/Don't know	46 (26%)
Total	176 (100%)

Table 80: Training on conflict of interest

Have you ever been given any guidance or training by your council on conflicts of interest?	
Response	Staff
No	125 (71%)
Yes	38 (22%)
Missing/Don't know	13 (7%)
Total	176 (100%)

Table 81 outlines how confident staff felt about their capacity to identify conflicts of interest when they arose. The vast majority of council staff (84 per cent) said they felt confident in identifying conflicts of interest.

Table 81: Confidence levels in identifying conflicts of interest

How confident are you about being able to identify a conflict of interest when it arises?	
Response	Staff
Very confident	52 (30%)
Somewhat confident	95 (54%)

Unconfident	16 (9%)
Missing/Don't know	13 (7%)
Total	176 (100%)

Non-pecuniary interest

Non-pecuniary interests should be incorporated into the Local Government Act, making it a requirement to make a declaration if a non-pecuniary interest exists or possibly exists. This would ensure a better chance of non-pecuniary interests being declared. (General Manager, 46, large council, large town)

Questions on non-pecuniary interest were asked specifically on council policy of declaring non-pecuniary interests (Table 82).

Table 82: Non-pecuniary interest policy

Does your council have a policy on the declaration of non-pecuniary interest?		
Response	GM	Staff
No	69 (44%)	17 (10%)
Yes	85 (55%)	83 (47%)
Missing	2 (1%)	76 (43%)
Total	156 (100%)	176 (100%)

The ICAC has long recommended that councillors as well as staff be required to declare any interests they may have in matters arising at council (ICAC, 1992, *Report on investigation into local government, public duties and conflicting interests*). Over one-third of General Managers said their councillors were **not**

required to declare non-pecuniary interests (Table 83).

Table 83: Non-pecuniary interest of councillors

Are councillors at your council required to declare non-pecuniary interest?	
Response	GM
No	57 (37%)
Yes	97 (62%)
Missing	2 (1%)
Total	156 (100%)

General Managers were asked to define the procedures their council used when a non-pecuniary interest was disclosed. The results show that for just less than half of councils (45 per cent), the person making the declaration did so and then left the chamber before the matter was discussed and voted on (Table 84).

Alarmingly, for nearly one in five councils the person making the declaration remained to participate in both discussion and voting on the matter. In these cases, the councils evidently presumed that disclosure was sufficient and they could carry on without making any adjustments for the person's disclosure. In a further 8 per cent of councils the person with the interest was required to make the decision about whether or not they could remain impartial and choose whether or not they wish to participate or leave.

Table 84: Procedures for declaration of non-pecuniary interest

What procedures does your council follow when non-pecuniary interests are disclosed?	
Level of participation	GM
None, leaves chamber	71 (45%)
Discussion and voting	25 (16%)
Discussion but does not vote	13 (8%)
Individual chooses	12 (8%)
Remains but no participation	4 (3%)
Other [†]	15 (10%)
Missing	16 (10%)
Total	156 (100%)

[†] This category included: General Manager or Mayor make the decision about whether or not the person need leave the chamber; and "it depends" on the situation or issue.

Councils in metropolitan areas (70 per cent) and large towns (61 per cent) were more likely than those in rural areas (47 per cent) to have a policy on non-pecuniary interest.^{lviii}

Large councils (500 or more staff, 62 per cent) and medium-sized councils (100 to 499 staff, 68 per cent) were more likely than smaller councils (37 per cent) to have a non-pecuniary interest policy.^{lix}

As would be expected small rural councils were the group most likely **not** to have a non-pecuniary interest policy.

Those with a non-pecuniary interest policy were also more likely (59 per cent) than those without (28 per cent) to include a commitment to act ethically as a standard term of contracts let.^{lx}

Those with a non-pecuniary interest policy were also more likely (28 per cent) than those without (7 per cent) to send out

information on expected ethical standards to contractors.^{lxi}

Councils with a non-pecuniary interest policy were more likely (43 per cent) than those without (26 per cent) to have engaged in direct negotiations for large projects.^{lxii}

REPORTING CORRUPTION

Summary – 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 whom 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 there have been changes 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 orally 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. Of concern is the four in 10 staff who reported that they did not know whether or not their council was serious about protecting people who report corruption, and 13 per cent of staff who thought their council was **not** serious 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 aware and need to know about the protection offered them under the *Protected Disclosures Act*.

BACKGROUND – PROTECTED DISCLOSURES

The *Protected Disclosures Act (1994)* (PDA) came into operation in March 1995. It was intended to provide protection for public officials who disclosed corrupt conduct, maladministration and waste in the public sector.

In October 1995 (eight months after the legislation was implemented) the ICAC conducted a major research project to discover how many public sector organisations (agencies and local councils) had implemented internal reporting systems (IRS) (Zipparo, 1997a&b).

The 1995 research also established the level of awareness among public officials, any problems organisations had in regard to the PDA and IRS as well as the types of training councils had provided to staff.

In 2000 the ICAC conducted further research on local government. Part of this current research was to follow-up on the awareness of the PDA and implementation of IRS.

Findings – Reporting corruption

Figure 1 demonstrates that practically all local council General Managers have heard of the PDA and that there has been a significant increase in awareness over

the past five years from 92 per cent in 1995 to 99 per cent in 2000.^{lxiii}

The two General Managers who said they had **not** heard of the PDA also said that their councils did allow disclosures to be made in writing and verbally but not anonymously by their staff. They also said that there had been no disclosures made and that corruption was “simply not an issue” in their council.

The number of council staff who had heard of the PDA in 2000 was 78 (44 per cent).

Table 85 shows that the main sources of information about the PDA for General Managers were the DLG (39 per cent) and the ICAC (34 per cent) as well as published material (32 per cent) such as government circulars and the introduction of the legislation. The main sources for staff were council policy or training (26 per cent) and publications (19 per cent).

Table 85: Source of information about the PDA

How did you hear about the PDA? [†]		
Response	GM 2000 (n=156)	Staff 2000 (n=78)
DLG	61 (39%)	-
ICAC	53 (34%)	16 (9%)
Publications [‡]	50 (32%)	33 (19%)
Industry contacts [‡]	34 (22%)	8 (5%)
Council policy/training	33 (21%)	46 (26%)
NSW Ombudsman	14 (9%)	-
Media	3 (2%)	25 (14%)
Missing/can't remember	11 (7%)	11 (6%)
Other	-	7 (4%)

[†] General Managers were able to provide multiple answers.

[‡] This category included: brochures; newsletters; legislation; correspondence; and government circulars.

[‡] This category included: Local Government & Shires Association; Institute of Municipal Management/Local Government Managers Associations; and professional contact.

insert figure 1 here

General Managers were asked if their council had implemented an internal reporting system. Figure 2 shows that the number of councils with internal reporting systems in place has increased dramatically since 1995 when less than half (45 per cent) of councils had them to nearly all (92 per cent) in 2000.^{lxiv}

insert figure 2 here

Although 92 per cent of General Managers said their councils have an IRS in place, only half (52 per cent) of staff were aware that their council had an IRS. Sixty-five per cent of staff said they knew to whom they could report workplace corruption.

Staff were asked how well they thought their council had informed them about the PDA. Only 6 per cent said "very well", 22 per cent "well enough", 34 per cent "not well enough" and 38 per cent "not at all".

Table 86 elaborates on the information in Figure 1, showing the stages councils were at with implementing internal reporting channels.

Table 86: Implementation of internal reporting systems

Describe the position of your council regarding the implementation of internal reporting channels for PDs.	
Response	GM 2000
IRS established due to PDA	166 (74%)
IRS existed prior to PDA – has been amended	17 (11%)
IRS existed prior to PDA – no amendments needed	5 (3%)
IRS exists - not yet amended for PDA	5 (3%)
Other [†]	1 (1%)
Formal plan being developed	6 (4%)
Options being considered	4 (3%)
Not yet considered	2 (1%)
Total	156 (100%)

[†] This General Manager stated that council had resolved to adopt a policy on whistleblowers.

The methods councils use to inform their staff about how to make an internal report were included in the General Managers questionnaire. Figure 3 illustrates that over half of the councils have implemented information strategies, such as training programmes, posters and videos, to inform employees about making protected disclosures.

The proportion of councils with information strategies in place to inform their staff about protected disclosures has increased significantly from 25 per cent in 1995 to 59 per cent in 2000.^{lxv}

insert figure 3 here

Table 87 elaborates on the information in Figure 3, showing the stages councils were at with implementing information or training strategies.

It is important to note that 41 per cent of councils in 2000 still said that they did **not** have information strategies in place five years after the legislation was implemented.

Table 87: Implementation of information strategies

Describe the strategy of your council for informing employees about PDs.	
Response	GM
Strategy implemented	92 (59%)
Strategy being developed	7 (4%)
Options being considered	11 (8%)
No strategy considered	38 (24%)
Other [†]	7 (4%)
Missing	1 (1%)
Total	156 (100%)

[†] This category included: staff having access to the council solicitor; and occasional articles.

In order to tease out the structure of council IRS, General Managers were asked to indicate the modes by which their IRS specified staff could make PDs.

Table 88 shows that on the whole councils preferred to receive PDs in writing or verbally. This preference did not generally include staff making anonymous disclosures (32 per cent), a mode which the Act does specify. Five councils said their IRS did not stipulate how PDs could be made, one council stated that their PD officer recorded all information, one said the PDs happened

informally and one said that all disclosures went straight to the General Manager.

Table 88: Internal reporting system modes

How does your council's internal reporting procedure allow disclosures to be made?		
Response	GM (n=156)	Staff (n=176)
In writing	147 (94%)	47 (27%)
Verbally	126 (81%)	65 (37%)
Via telephone	83 (53%)	23 (15%)
Anonymously	50 (32%)	21 (12%)

General Managers were asked about the impact of the PDA on their council. This was asked to help determine if the PDA had a universal impact across local government as well as to measure any changes in impact since the Act was first introduced in 1995.

PDs are difficult to make in local government. (General Manager, 144, medium-sized council, metro)

Figure 4 shows that the main impact of the PDA over the past five years changed from “too early to tell” to “no impact.” The proportion of councils (19 per cent) where it has had a positive impact remained constant.

insert figure 4 here

Almost one-quarter (23 per cent) of councils still said that it was too early to tell and over half (58 per cent) said that the PDA made no impact. There were significantly more councils from rural areas who said it was too early to tell (74 per cent rural, 20 per cent urban, 6 per cent metro) or had no impact (64 per cent rural, 13 per cent urban, 24 per cent metro).^{lxvi} When asked why it was too early or made no impact, over half of these two groups said it was because their council had received either no PDs or very few.

Six General Managers said it was too early to tell as their councils were still developing a PD strategy or because training had not yet happened.

Eleven General Managers said there was “no need” for the PDA to have had an impact in their council because they were a small council, everybody knew each other, staff have high ethics, were honest and would not tolerate dishonesty or that they had a pre-existing strategy and a non-threatening environment where people are always open.

We have a stable, contented and mature staff and an accessible management. (General Manager, 116, small council, rural)

The advantage of working in a small rural council is that everybody knows everybody else's business. Whether the Act was in place or not, staff do not miss any wrongdoings. (General Manager, 52, small council, rural)

Other answers about why the PDA had no impact were because there had been no increase in the number of PDs received, or the council already had open

communication and effective policies upon which the PDA had no impact. Three General Managers commented there was no impact because employees were hesitant to “dob” in their mates or would feel unprotected.

Staff need to have the utmost confidence that any PD remains confidential and will not compromise their employment. (General Manager, 81, medium-sized council, rural)

Staff in a local government authority do not believe they will or can be “protected”. (General Manager, 92, medium-sized council, large town)

General Managers who said the PDA had had a positive impact on their council were mostly from metropolitan councils. They commented on the heightened awareness among staff and the positive changes to the corporate culture.

The Act provides a mechanism for justifiable complaints to be made without fear of retribution, which enhances public administration and public confidence in council. (General Manager, 76, large council, metro)

It has provided an environment which enables staff to raise matters of concern knowing that the disclosure will not have adverse impacts on their working environment (General Manager, 77, small council, rural)

Difficulties responding to PDA

General Managers were asked if they had experienced any difficulties in responding to the PDA. Figure 5 shows that the vast majority (92 per cent) said they did not.

insert figure 5 here

The problems encountered were that it was impossible to maintain confidentiality and stop the victimisation or negative personal impact on the person making the PD. Others said that there was a need for greater promotion of reporting systems.

General Managers considered overcoming these problems as not easy. Some suggested changing organisational culture through media coverage promoting PDs as positive rather than negative as well as exposing organisations which allow whistle-blowers to be persecuted. Others suggested providing further information to staff to increase awareness.

Relationships between having a PD training strategy and other aspects of operation

There were many statistically significant differences between those councils already implementing an information strategy to inform employees about making protected disclosures and those which had not yet implemented a strategy.

Although there were no differences between metropolitan and rural councils on whether or not they had a PD training strategy in place, there was a difference between the different sized councils. Half the small councils (<100 employees) had a training strategy and half did not. Of the large councils (500+ employees) only one did **not** have a training strategy.^{lxvii}

There were some differences in the content of the code of conduct of councils with and without a PD training strategy. Table 89 shows these. Where there were differences, those councils with a strategy in place were also more likely to have the various topics covered by their code of conduct.

Table 89: Code of conduct differences between councils with and without a PD training strategy

Proportion of councils whose code of conduct covered the following topics		
Response	GM	
Topic areas	With a strategy (n=92)	Without a strategy (n=63)
Use of information ^{lxxviii}	100%	93%
Pecuniary interests ^{lxxix}	97%	82%
Non-pecuniary interests ^{lxxx}	89%	69%
Community matters treated equitably ^{lxxxi}	77%	56%

Table 90 shows that those with a PD training strategy were also more likely to have a gift register, send out corruption prevention information to staff as well as disseminating information on council's ethical standards to contractors.

Table 90: Differences in gift registers and sending out corruption resistance information between councils with and without a PD training strategy

Proportion of councils which have the following practices		
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Response	GM	
Item	With a strategy (n=92)	Without a strategy (n=63)
Gift register ^{lxxii}	33%	16%
Corruption prevention information to staff ^{lxxiii}	88%	70%
Send out ethical standards information to contractors ^{lxxiv}	25%	10%

Table 91 shows that councils with PD training strategies in place were generally more flexible in how PDs could be made.

Table 91: Internal reporting procedure differences between councils with and without a PD training strategy

Proportion of councils whose internal reporting procedure allow disclosures to be made in these ways		
Response	GM	
Procedure	With a strategy (n=92)	Without a strategy (n=63)
Verbally ^{lxxv}	89%	70%
Via telephone ^{lxxvi}	63%	40%
Anonymously ^{lxxvii}	42%	18%

Councils without a PD training strategy (35 per cent) were more likely than those with one (15 per cent) to say that it was too early to tell what sort of impact the PD Act has had on their council.^{lxxviii}

In regard to audit, those councils without a PD training strategy were also more likely to say they never conducted operational audits and that no-one was tasked with the oversight of implementing the findings of audit reports. Table 92

shows that councils without a PD training strategy were less likely to use audit for corruption resistance.

Table 92: Auditing differences between councils with and without a PD training strategy

Proportion of councils with audit procedures		
Response	GM	
Item	With a strategy (n=92)	Without a strategy (n=63)
Operational audits: ^{lxxxix}		
never	32%	59%
more than once a year	32%	16%
Internal auditor ^{lxxx}	24%	10%
Staff employed in audit ^{lxxxi}	40%	12%
No-one oversees audit reports ^{lxxxii}	10%	23%

Councils with a PD training strategy were more likely (21 per cent) than those without (8 per cent) to have reviewed public health and safety since June 1998.^{lxxxiii}

Table 93 shows that these councils were also more likely to have staff specifically designated to deal with corruption issues^{lxxxiv} and ICAC reports.^{lxxxv}

Table 93: Staff designated to deal with corruption related issues between councils with and without a PD training strategy

Proportion of councils with staff designated to follow up corruption related issues	
Response	GM

Item	With a strategy (n=92)	Without a strategy (n=63)
Person, committee or team	59%	41%
Follow up ICAC reports	58%	34%

Staff were given a variety of statements and asked to say whether or not they agreed with them. Table 94 outlines the statements and the proportion of staff who agreed and disagreed.

Table 94: Staff perceptions of council responses to reports of corruption

Please rate how much you agree or disagree with each statement.		Staff
<i>My council is serious about protecting people who report corruption.</i>		
Disagree	23	(13%)
Agree	79	(45%)
Don't know	74	(42%)
Total	176	(100%)
<i>If I were to report workplace corruption to someone in my council, I'm confident something appropriate would be done about it.</i>		
Disagree	28	(16%)
Agree	102	(58%)
Don't know	46	(26%)
Total	176	(100%)
<i>It should be management's responsibility, to find and stop corruption in council</i>		
Disagree	133	(76%)
Agree	37	(21%)
Don't know	6	(3%)
Total	176	(100%)

DISCUSSION – PROTECTED DISCLOSURES

From 1995 to 2000 all General Manager responses had significantly (statistically) changed in a positive direction, indicating

that the response of local councils to the issue of protected disclosures has improved in the last five years. This is particularly good given that councils performed considerably worse than state level public authorities in the 1995 survey.

This improvement in the response to the Act reported by councils in the 2000 survey is borne out in the improved knowledge of council employees about where to go to report wrongdoing in their organisation.

In 1995, 60 per cent of local council employees said they did not know where to go in their organisation to report workplace corruption. In 1999 (Zipparo, 2000), 17 per cent of local council employees said they did not know where to go to report workplace wrongdoing. A drop of 43 per cent in those who don't know where to report wrongdoing is significant!

RECRUITMENT

Summary – 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.

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 said they 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 shows the councils that did examine the ethical commitment of potential new staff were also better equipped with other corruption resistant procedures than those that did not. 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, it was 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 in contracts. 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 they thought their existing practices 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, coupled with the 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.

BACKGROUND – RECRUITMENT

Appropriate recruitment procedures are outlined and well documented in the ICAC publication *Best Practice, Best Person: Integrity in Public Sector Recruitment and Selection*. This report states that public sector agencies, including local councils, must be able to show that their recruitment processes are fair and open, and undertaken without partiality or favouritism.

Recruitment processes are a clear indication of the ethical climate of an organisation. Corruption-free recruitment and selection processes set the tone and establish the level of conduct expected of staff (ICAC, *Best Practice, Best Person: Integrity in Public Sector Recruitment and Selection*, 1999).

The values that underpin ethical recruitment and selection are:

Impartiality

All stages of the recruitment process must be conducted impartially and objectively.

Accountability

Those involved in the recruitment process must be accountable for all their decisions and must ensure proper records are kept to support those decisions.

Competition

The pool of potential applicants must be maximised to the extent practicable and appropriate.

Openness

The factors impacting on recruitment and selection decisions must be clear to those involved. The process by which decisions are made must be transparent. Confidentiality must be maintained. Openness is enhanced by being

consultative with employees and their representative bodies, such as unions and professional associations, particularly when considering workplace changes that will result in spilling and filling of jobs.

Integrity

Recruitment and selection practices must be carried out in accordance with any guidelines, codes or rules that govern such practices and the behaviour of public officials performing public official duties. Integrity is enhanced by utilising recruitment and selection processes for the purpose intended, and not to circumvent other, more appropriate mechanisms established for resolution of problems (ICAC, *Best Practice, Best Person: Integrity in Public Sector Recruitment and Selection*, 1999, p3).

Findings – Recruitment

General Managers were asked whether or not ethics was part of the recruitment process at their council. The councils were divided with just more than half (59 per cent) including ethics and just less than half (41 per cent) not.

Table 95: Ethics as a component in recruitment

Does your council examine the ethics of potential new staff as part of the recruitment process?		
Response	GM	Staff
No	64 (41%)	45 (26%)
Yes	92 (59%)	60 (34%)
Don't know	-	70 (40%)

Total	156 (100%)	176 (100%)
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General Managers from the 41 per cent of councils which did **not** examine the ethics of potential staff were asked why. The predominant responses to this were that General Managers did not know **how** to examine the ethics of new recruits or they thought their existing practices were adequate. Their responses included:

- too difficult
- not necessary
- don't have the resources
- ethics has not been an issue
- not standard practice
- happens indirectly during recruitment.

How do you judge ethics in an objective interview situation? (General Manager, 76, large council, metro)

I don't know what process would be suitable and effective, but if you guide me I would be happy to introduce such a policy. (General Manager, 52, small council, rural)

Council has elected to train all new staff on the code of conduct and corruption prevention rather than try to address issues at the pre-employment stage. (General Manager, 42, medium-sized council, metro)

General Managers were asked which parts of their council's recruitment process explored ethical work practices. The majority (61 per cent) of said they included questions on ethical work practices at job interviews. One-quarter (26 per cent) said they included comment on ethical work practices in job descriptions and job selection criteria. Only 3 per cent mentioned that ethical

work practices were included in the letter of offer.

Yes	14 (9%)
Total	156 (100%)

Table 96: Recruitment procedures which explore ethical work practices

Is it standard practice for your council to include comment or questions on ethical work practices in any of the following?	
Response	GM (n=156)
Job interview questions	95 (61%)
Job descriptions	41 (26%)
Job selection criteria	41 (26%)
Job advertisements	14 (9%)
Reference checks	13 (8%)
Code of conduct/values	8 (5%)
Contracts/letters of offer	5 (3%)

General Managers were asked specifically if corruption prevention information was sent out as part of their council's recruitment process. Only 9 per cent of councils had a standard procedure of sending out this information.

The human resources department sent out this information for most of the 9 per cent, with three councils saying that it was up to the department organising the advertisement to send out the corruption prevention information.

Table 97: Corruption prevention as a component of recruitment

Is corruption prevention information sent out to potential recruits as a standard part of the recruitment process?	
Response	GM
No	142 (91%)

Risks in recruitment

Certainly you know if I was interviewing anybody that was a close personal friend of mine, then I would withdraw from the interview panel, I know what's right and wrong with that, but I guess we don't have that formal process in place. So I guess there's a lot of trust between people I expect anybody to tell me they've got a conflict of interest but no specific policy exists. (Senior staff member, 04, large council, metro)

The results show that councils which did examine the ethics of potential new staff were also better equipped with other corruption resistance procedures than those councils which did not examine ethics.

Table 98 outlines the items in the codes of conduct that were significantly different between councils which did and did not examine ethics.

The main area of potential corruption risk regarding codes of conduct was that protected disclosures and complaint handling were **less** likely to be included in councils which did **not** examine ethics. Consequently, these councils employed staff without examining ethics and did **not** provide those who may need extra guidance with access to information through their code of conduct (specifically on protected disclosures and complaint handling).

Table 98: Code of conduct differences between councils which did and did not examine ethics of potential new staff

Proportion of councils whose code of conduct covered the following topics		
Response	GM	
Topic area	Examines ethics (n=92)	Does not examine ethics (n=64)
Protected disclosures ^{lxxxvi}	66%	49%
Complaint handling ^{lxxxvii}	37%	21%
Pecuniary interest ^{lxxxviii}	86%	97%

Councils which did **not** examine the ethics of potential new staff were **less** likely (40 per cent) to have a policy on non-pecuniary interest than those which did (66 per cent).^{lxxxix}

By not examining the ethics of new staff as well as not requiring staff declare any non-pecuniary interests they may have, councils are at risk of recruiting people who may not consider it necessary to disclose their personal interests in council matters. One in four (25 per cent) councils did not examine the ethics of new staff and did not require staff to declare non-pecuniary interests.

Those councils which did examine the ethics of potential new staff did so in a variety of recruitment procedures (Table 99). The procedure most often used was during job interviews (83 per cent). Forty-one per cent of councils also included ethics in the job selection criteria.

Table 99: Differences in advertising ethical work practices between councils

which did and did not examine ethics of potential new staff

Proportion of councils which used the following to comment on ethical work practices

Response	GM	
	Examines ethics (n=92)	Does not examine ethics (n=64)
Recruitment procedure		
Job interview questions	83%	28%
Job selection criteria	41%	3%
Job descriptions	38%	8%
Job advertisements	13%	3%

Councils which did **not** examine ethics were also **less** likely (33 per cent) to include a commitment to act ethically as a standard term in contract than those which did examine ethics (53 per cent).^{xc}

Councils which **not** did examine the ethics of potential new staff were **more** likely (44 per cent) to have used extenuating circumstances in the past five years than those which did examine ethics (28 per cent).^{xcii}

Therefore, these councils are in a situation of employing staff with unknown ethical standards (presumably most people would have high standards but how does council know?), who may then establish and manage council contracts. The potential risk of corruption is increased by the lack of a commitment to act ethically in the contracts and a higher use of extenuating circumstances which circumvent the standard tendering procedures designed to prevent corruption. This situation leaves those councils with a critical corruption risk.

The reasons for not examining the ethics of new staff, (too difficult, not necessary, etc. outlined previously) do not appear to

sufficiently justify not examining ethics of staff. This situation puts council in a vulnerable position regarding potential corruption.

Staff awareness of merit selection

Staff were asked how confident they were in their understanding of merit selection in recruitment and how often it was used in their council.

Table 100: Staff understanding of merit selection

How confident are you about your understanding of merit selection in recruitment?	
Response	Staff
Very confident	56 (32%)
Somewhat confident	76 (43%)
Unconfident	22 (13%)
Don't know	22 (12%)
Total	176 (100%)

Table 101: Staff perspective of how often merit selection used

How often is merit selection in recruitment used in your council?	
Response	Staff
Always	46 (26%)
Most of the time	35 (20%)
Depends on the people or job	34 (19%)
Hardly ever	6 (3%)
Never	7 (4%)
Missing/Don't know	48 (27%)
Total	176 (99%)

COUNCILS AS ENTREPRENEURS

Summary – 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 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 does business differently to 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 on a profit-driven basis similar to the private sector.

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** few extra corruption risks 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 of 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 minimise 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.

The results of the questionnaire to General Managers show that in regard to the use of business units:

- one-fifth (31) of NSW local councils operate business units
- one-third (of the 31 councils) run their business units on similar lines to the private sector, ie. on a profit-driven basis
- the most frequently mentioned corruption risk associated with business units concerned procurement and contracting
- General Managers did not identify many corruption risks associated with running business units within council.

Findings – Councils as entrepreneurs

The business unit philosophy encourages managers to run their own business. This results in deviations from corporate policy and can increase the risk of breaches of the code of conduct. (General Manager, 80, large council, metro)

It is considered that the Business Unit Structure does not contribute to corruption-related risks (General Manager, 4, medium-sized council, metro)

One-fifth (20 per cent) of councils said they have a business unit (Table 102). On the whole, General Managers did not identify many potential corruption risk areas associated with running business units.

Table 102: Use of business units

Does council have a business unit structure?	
Response	GM
No	123 (79%)
Yes	31 (20%)
Missing	2 (1%)
Total	156 (100%)

Table 103 outlines what General Managers considered to be the most likely potential corruption risks associated with business units. Of these, the process of purchasing and contracting for goods and services was considered the most likely area.

One of the big differences between the public and private sectors is the acceptability of providing gifts and benefits to clients to entice their business. 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. These staff may need more training on how to deal with offers from the private sector.

Table 103: Council operations associated with risks in business units

Council operations associated with risks in business units	
Response	GM (n=31)
Purchasing and contracting	14 (9%)
Use of public resources	5 (3%)
Development applications/zoning	4 (3%)
Use of information	1 (1%)
Staff matters	1 (1%)
Other	14 (9%)

Table 104 lists the types of potential corruption considered by General Managers most likely associated with business units. Misuse or theft of resources and bribery were the most likely types of corrupt conduct identified.

Table 104: Types of corrupt conduct risks associated with business units

Type of corrupt conduct risks identified in business unit structures	
Type of corrupt conduct	GM (n=31)
Misuse & theft of resources	8 (5%)
Bribery/Gifts/Secret commission	4 (3%)
Failure to document information	3 (2%)
Conflict of interest	3 (2%)
Collusion	3 (2%)
Fabrication, forgery, fraud	1 (1%)
Improper use of information	1 (1%)
Failure to advertise appropriately	1 (1%)
Breach of policy or procedure	2 (1%)
Unspecified	10 (6%)

Of the 31 councils with business units, one-third (11 councils) said their business units operated on a similar basis to a private sector business, ie. profit driven.

Two-thirds (20 councils) were not profit driven (Table 105).

Table 105 illustrates that very few councils are using the methods of the private sector. Therefore, there are currently very few extra corruption risks in local councils concerning private sector business practices.

Table 105: Similarities between council's business unit structure and private sector operating practices

Does council's business unit structure operate on a similar basis to a private sector business?	
Response	GM
No	20 (13%)
Yes	11 (7%)
n/a	123 (79%)
Missing	2 (1%)
Total	156 (100%)

CONCLUSION

This research was undertaken to gain a view of the general state of play in local government regarding corruption resistance. The aim 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 where the potential corruption risk areas are 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 in many of the areas covered in this report – between rural and urban councils, and between large and small councils – particularly in terms of resources available for the various corruption resistance strategies, suggests that the ICAC needs to target the 174 councils differently.

The findings in this report will be useful in developing tailored approaches to the local government sector. Individual councils will be able to compare where they are in comparison to their peer organisations. This will enable them to

make decisions about areas of potential corruption risk to which they are vulnerable.

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

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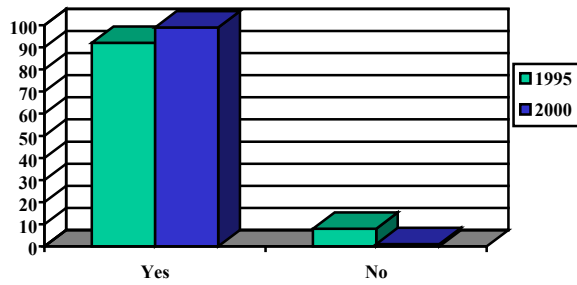


Figure 1: Proportion of GMs who had heard of PDA

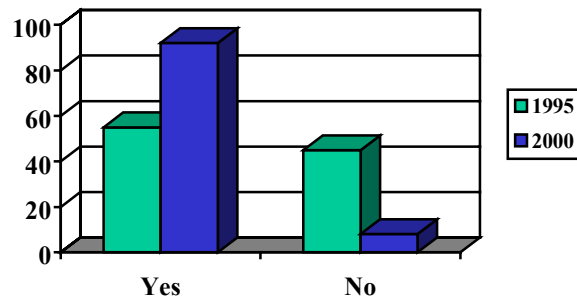


Figure 2: Proportion of councils with an internal reporting system

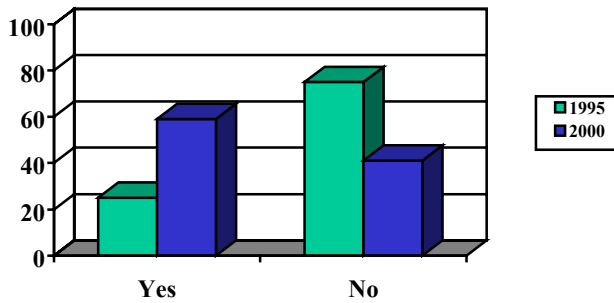


Figure 3: Training strategy exists for protected disclosures

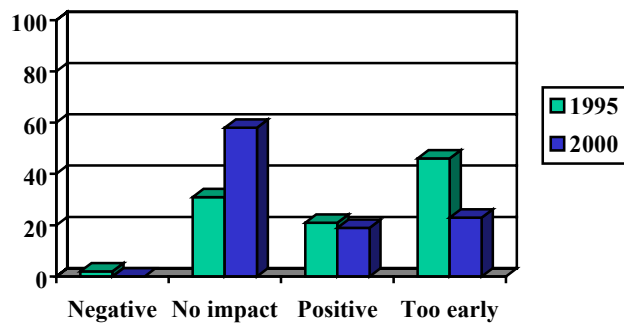


Figure 4: Impact of PDA

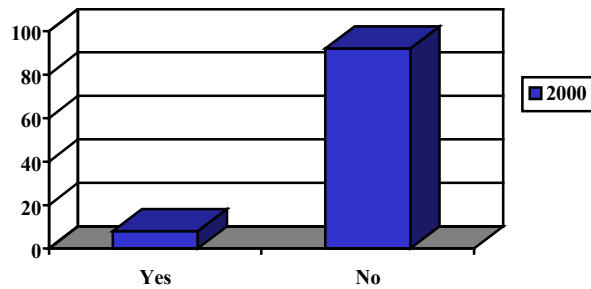


Figure 5: Proportion of GMs who had difficulty implementing PDA

ⁱ Respondent numbers were allocated on the basis of date received and have no relationship to any possible listing of councils.

ⁱⁱ At the time the questionnaires were posted there were 175 local councils. Various councils were in the process of amalgamating. Windouran Shire Council was removed from the sample as the council was not in operation.

ⁱⁱⁱ It is possible that the risk areas identified by the GMs in their responses may be understated as 18 GMs did not respond to the questionnaire and some GMs did not answer every question.

^{iv} The questions asked in this section of the study were taken from the ICAC report *Monitoring the Impact of the NSW Protected Disclosures Act 1994*.

^v Although random selection is used to generalise from a sample to the entire population, it is possible that the views of the staff in the sample differ from views held by other local council staff. Answers given by staff may differ from answers given by GMs due to the fact that staff were from a sample representing 17 per cent of all councils whereas the GMs represent 96 per cent of all councils.

^{vi} The questions asked in this section of the study were taken from the ICAC report *Monitoring the Impact of the NSW Protected Disclosures Act 1994*.

^{vii} Three of these councils stated that the reports should be made to the GM.

^{viii} External agencies included ICAC, Police, Audit Office and NSW Ombudsman.

^{ix} A “schedule of rates” is a contracted list of set prices for specified jobs established for a set period of time, usually derived from an open tender procedure.

^x The “other” category included the use of open and selective tendering procedures, or the use of Regional Organisation of Councils, Department of Public Works and Services, Municipal Authorities Purchasing System lists.

^{xi} $\chi^2=14.91$, $df=2$, $p<0.05$.

^{xii} $\chi^2=8.26$, $df=2$, $p<0.05$.

^{xiii} $\chi^2=3.87$, $df=1$, $p<0.05$.

^{xiv} $\chi^2=30.36$, $df=2$, $p<0.05$.

^{xv} $\chi^2=14.11$, $df=1$, $p<0.05$.

^{xvi} For more information see sections on audit and corruption and fraud prevention plans.

^{xvii} $\chi^2=4.78$, $df=1$, $p<0.05$.

^{xviii} $\chi^2=5.92$, $df=1$, $p<0.05$.

^{xix} $\chi^2=3.18$, $df=1$, $p<0.05$.

^{xx} $\chi^2=5.57$, $df=1$, $p<0.05$.

^{xxi} $\chi^2=11.52$, $df=1$, $p<0.05$.

^{xxii} $\chi^2=13.93$, $df=1$, $p<0.05$.

^{xxiii} $\chi^2=7.65$, $df=1$, $p<0.05$.

^{xxiv} $\chi^2=16.84$, $df=2$, $p<0.05$.

^{xxv} This total may be higher as 18 councils did not respond to this questionnaire.

^{xxvi} Between one-quarter and one-third.

^{xxvii} $\chi^2=11.33$, $df=2$, $p<0.05$.

xxviii $\chi^2=40.1$, df=2, p<0.05.
xxix $\chi^2=18.91$, df=2, p<0.05.
xxx $\chi^2=9.907$, df=3, p<0.05.
xxxI $\chi^2=39.36$, df=2, p<0.05.
xxxII $\chi^2=46.16$, df=2, p<0.05.
xxxIII $\chi^2=13.21$, df=2, p<0.05.
xxxIV $\chi^2=30.74$, df=2, p<0.05.
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xxxVI $\chi^2=18.85$, df=2, p<0.05.
xxxVII $\chi^2=9.72$, df=2, p<0.05.
xxxVIII $\chi^2 9.77$ df=1, p<0.05.
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xc χ^2 5.99, df=1, p<0.05.
xci χ^2 4.75, df=1, p<0.05.