



AUDITOR-GENERAL
AUSTRALIAN CAPITAL TERRITORY



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7 May 2003

The Speaker
ACT Legislative Assembly
South Building
London Circuit
CANBERRA ACT 2601

Dear Mr Speaker

In accordance with the Authority contained in the *Auditor-General Act 1996*, I transmit to the Legislative Assembly my Report titled "*Management of Fraud and Corruption Prevention in the ACT Public Sector*".

This audit was managed and conducted by Rod Nicholas with the assistance of Nancy Choy, Naomi Behla, Bobby Pawagi and Katinka Mutandadzi of this Office.

Administrative support was provided by Megan Walters.

Yours sincerely

John A Parkinson

**MANAGEMENT OF FRAUD AND CORRUPTION PREVENTION
IN THE ACT PUBLIC SECTOR**

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1. REPORT SUMMARY AND AUDIT OPINION

INTRODUCTION

1.1 This report presents a summary of the results of a performance audit which reviewed the management of fraud and corruption prevention in the ACT public sector.

BACKGROUND

1.2 Fraud, in a general sense, is obtaining a benefit through deceit or other dishonest means. It occurs both in the public and private sectors and in all industries. For many reasons, the extent of fraud is difficult to determine. However, the Australian Institute of Criminology (AIC) estimated in 1996 that fraud and misappropriation costs Australia between \$3 billion and \$3.5 billion a year, which is approximately one third of the cost of all crime.¹

1.3 Analysis of official statistics on fraud by the AIC shows that, while the recent trend has been a decline in fraud cases reported to the police in Australia overall, the opposite is true for the ACT. For the ACT both the number of reported cases and the rate of incidence have increased.² Unfortunately, statistics such as those analysed by the AIC can provide only a limited indication of the incidence and cost of fraud, as they exclude unreported cases. In a recent survey by KPMG Australia, almost 40% of major frauds detected by respondents during the survey period (October 1999 to September 2001) were not reported to the police.³

1.4 In the public sector, the actual and intangible costs of fraud are significant. As public funds are involved, there is a direct effect on government revenue and expenditure. Less tangibly, fraud can affect public confidence in government entities (which may, in turn, reduce the effectiveness of those entities), disrupt work, affect morale in the workplace, as well as redirecting resources from key tasks to investigating incidents and dealing with the inevitable parliamentary and media scrutiny.

¹ Smith, R G 1997 *Measuring the Extent of Fraud in Australia*, Trends and Issues in Crime and Criminal Justice, No. 74, Australian Institute of Criminology, Canberra

² *ibid*

³ KPMG Australia 2002 *Fraud Survey 2002*

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1.5 Although issues relating to fraud and corruption prevention may not have varied a great deal over time, the ACT public sector, in common with other jurisdictions, has experienced significant change in recent years. Such change has included:

- the use of a range of service delivery options, particularly the increasing use of third party providers, which raise new concerns about transparency and accountability;
- an increasing focus on outcomes, which while appropriate in guiding entity objectives can increase pressures on entities and lead to the view that the end justifies the means; and
- the increasing use of technology and links with communications infrastructure that has provided many benefits in terms of process efficiency, but can also make it easier to commit fraud through, among other things, the creation of false identification documentation and the diversion of payments.

1.6 Fraud and corruption prevention requires active management as fraud and other improper conduct is difficult to detect, and there may be a tendency in the agency to discount the possibility of it occurring. The effectiveness of fraud and corruption control will largely depend on the successful integration of the most appropriate mix of prevention and detection measures.

1.7 Chief Executives and Ministers, as part of their corporate governance obligations, are responsible for the protection of Territory assets and processes. As such, they are ultimately responsible for the prevention and detection of fraud in their agencies.

AUDIT OBJECTIVES

1.8 The objective of this Audit was to provide an independent opinion on whether:

- the whole-of-government framework for fraud and corruption prevention is suitable for effectively preventing and dealing with fraud, corruption, and other improper conduct;
- authoritative data are available to reasonably quantify the extent or cost of fraud, corruption, and other improper conduct in the ACT public sector;

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- selected ACT government agencies have in place suitable strategies to assist in effectively preventing and dealing with fraud, corruption, and other improper conduct.

AUDIT APPROACH

1.9 The focus of the Audit was on the practicalities of fraud and corruption prevention management (i.e. implementation of arrangements to prevent and deal with fraud, corruption and other improper conduct), rather than the supporting framework.

1.10 The audit considered the extent to which recommendations have been implemented arising from the PriceWaterhouseCoopers whole of government review of strategies for the prevention of fraud and corruption in the ACT Public Service. This review was commissioned by the Chief Minister's Department (CMD) and reported in July 1999. It included nine recommendations aimed at strengthening fraud prevention and control strategies.

1.11 The approach included seeking preliminary information regarding fraud control arrangements across a wide cross-section of entities. Information requested included details of risk assessments, fraud control plans, policy and guidelines, as well as incidents investigated over the previous two years.

1.12 Fraud control related documentation and activities of selected entities were examined to determine whether there is an adequate framework in place to prevent and detect fraud in the ACT Public Sector. The Audit also assessed whether fraud control arrangements have been implemented in a manner consistent with ACT Government policy and guidelines and accepted practices. This involved fieldwork and discussions with relevant staff of selected agencies.

1.13 The Audit also examined reported incidents of fraud and the manner in which they were investigated by agencies.

1.14 Finally, a survey across the ACT public service was undertaken as part of the Audit. The survey, which attracted more than 300 responses, has provided a valuable insight to the views of ACT public employees on fraud and corruption matters. Key findings from the survey are presented in this report.

AUDIT OPINION

1.15 The independent opinions drawn against the audit objectives are set below.

AUDIT OPINIONS

Objective 1

The whole-of-government framework for fraud and corruption prevention is suitable in principle for effectively preventing and dealing with fraud, corruption, and other improper conduct, but requires strengthening in several important areas to improve its practical application.

Objective 2

Authoritative data are not available to reasonably quantify the extent or cost of fraud, corruption, and other improper conduct in the ACT public sector.

Objective 3

ACT government agencies have in place generally suitable strategies to assist in effectively preventing and dealing with fraud, corruption, and other improper conduct. However, implementation of the strategies has consistently been less than effective.

BASES FOR OPINION

Opinion 1

1.16 The opinion that *the whole-of-government framework for fraud and corruption prevention is suitable in principle for effectively preventing and dealing with fraud, corruption, and other improper conduct, but requires strengthening in several important areas to improve its practical application* is supported by the following findings:

- The recommendations of a 1999 review of strategies for the prevention of fraud and corruption in the ACT Public Service, which aimed to address practical limitations of the framework, have not been fully implemented. Overall, the fraud and corruption prevention framework now is in much the same state as it was in 1999 – conceptually sound, but deficient in practice.
- A revised framework has been proposed aimed at better linking fraud and corruption prevention activities with activities aimed at assessing and treating business risks in general, and streamlining administrative related arrangements. The proposed revision is generally positive, but it will take a concerted effort on behalf of all agencies to ensure the penetration of any ‘integrity’ framework into the public sector at a practical level. Further, a continued effort must be made to maintain awareness at a high level.
- The statutory basis for fraud control and prevention in the ACT public sector is spread across a variety of legislation, and is only loosely defined in key legislation such as the Financial Management Act and the Public Sector Management Act.
- Anecdotally, there is confusion regarding the responsibilities for fraud control and prevention at a practical level, and a lack of ownership by agencies, encouraged by unclear administrative requirements.
- Definitions of fraud and corruption are often narrowly interpreted, with an emphasis on the alleged offender receiving undue financial rewards. There is a need to extend the definitions of fraud and corruption to readily incorporate improper conduct such as breaches of values/principles, or mismanagement leading to waste and abuse of public resources.
- The Chief Executive or Board of all ACT public bodies do not publicly report a statement of responsibility and certify that a

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system of internal control was in place and operated effectively throughout the year. A certificate or report of this nature would promote a firm understanding of responsibility for establishing an effective internal control structure (which among other things will minimise opportunities for fraud and corruption).

Summary

1.17 The present whole-of-government framework for fraud and corruption prevention is basically sound – in principle it offers a suitable base for preventing and dealing with fraud, corruption, and other improper conduct. However, the framework has not always been applied effectively across the public sector. Several significant improvements, needed to strengthen the framework, will improve its impact in practice.

1.18 A review of strategies for the prevention of fraud and corruption in the ACT Public Service conducted for CMD in 1999 concluded that the ‘conceptual’ framework in place was ‘sophisticated and well advanced’ when compared against other jurisdictions and showed ‘many characteristics of best practice’. However, the review cautioned that practical implementation of the framework was not as effective as intended. The recommendations of the review have not been fully implemented. As a consequence, the fraud and corruption prevention framework in 2002 is in much the same state as it was in 1999 – conceptually sound, but deficient in practice.

1.19 CMD has proposed a revised framework aimed at better linking fraud and corruption prevention activities with activities aimed at assessing and treating business risks in general, and streamlining administrative related arrangements. The proposed revision is generally positive, but the Audit considers there are advantages in providing resources for monitoring the implementation and on-going operation of the revised framework at a whole-of-government level. This would include maintaining a capacity to provide high quality advice and assistance. One means of ensuring such capabilities exist would be to designate a position as the ‘Government Integrity Officer’ (or similar) and charge them with specific accountabilities relevant to a whole-of-government perspective.⁴

⁴ This may be a role for the Commissioner for Public Administration.

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1.20 Overall, the Audit supports moves to revitalise the fraud and corruption framework in the ACT public sector. It appears that revitalisation is both warranted and necessary. However, the Audit considers it will take a concerted effort on behalf of all agencies to ensure the penetration of any 'integrity' framework into the public sector as a whole at a practical level. Further, a continued effort must be made to maintain awareness at a high level.

1.21 The statutory basis for fraud control and prevention in the ACT public sector is spread across a variety of legislation, and is only loosely defined in key legislation such as the Financial Management Act and the Public Sector Management Act. Anecdotally, there is confusion regarding the responsibilities for fraud control and prevention at a practical level, and a lack of ownership by agencies, encouraged by unclear administrative requirements. Better definition of responsibilities through legislative amendment would clarify requirements and provide a sound basis for accountability.

1.22 Legislating responsibility requirements for internal control structures, clearly an important factor in effective fraud and corruption prevention and control, could further strengthen corporate governance arrangements and accountabilities. A statement of responsibility for internal control structures and a certificate indicating whether a system of internal control was in place and operated effectively throughout the year would provide a means of encouraging the development of sound corporate governance arrangements, and reinforce the responsibility for establishing an effective internal control structure. An example of a Statement of Responsibility for Internal Control – the Statement included in the Auditor-General's Annual Management Report for 2002 – is shown at Attachment A.

1.23 The 1999 review of the fraud prevention framework recommended that definitions of fraud and corruption be clarified and adopted consistently across the public sector to help awareness and prevention, and to reduce confusion regarding that constitutes fraud. A paper aimed at helping public employees to better identify what might be fraud or corruption, which was prepared and distributed to agencies by CMD, may have assisted in this respect. The definitions, however, have remained unchanged.

1.24 The definition of fraud is often narrowly interpreted, with an emphasis on the offender receiving undue financial rewards. The

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definition does not readily capture all situations that might involve the breach of laws, rules, or guidelines or conduct that reflects poorly on the proper discharge of an employee's duties and responsibilities (i.e. conduct that does not conform with the values and principles that support ethical behaviour in the public sector). Nor does the definition capture other improper conduct associated with resource management in the public sector such as waste and abuse.

Opinion 2

1.25 The opinion that *authoritative data are not available to reasonably quantify the extent or cost of fraud, corruption, and other improper conduct in the ACT public sector* is supported by the following findings:

- The annual reports of government bodies for 1999-2000 and 2000-2001 disclose only a small handful of investigations into fraudulent or corrupt conduct.
- Annual Reports Directions, which require the disclosure of information regarding fraud and corruption prevention activities and incidents, are not applicable to all ACT government agencies. Essentially the reporting requirements apply only to the government departments and although other public bodies are encouraged to 'consider' including relevant information, few choose to make any disclosure.
- The information disclosed in annual reports is of little value in judging the effectiveness of fraud and corruption prevention activities or the manner in which agencies deal with identified fraud and corruption.
- Almost half of all respondents to the Audit's survey of public sector employees were aware of cases of fraudulent or corrupt conduct within their agency in the last two years.
- Of the respondents who were aware of some fraudulent or corrupt conduct, approaching half said the conduct had been reported and investigated.
- Almost three quarters of the survey respondents considered there was no change in the extent of fraudulent and/or corrupt conduct in their agencies over the last two years. Some 15% considered the extent of such conduct had increased.

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Summary

1.26 Information is not available to authoritatively quantify the extent or cost of fraud in the ACT Public Sector. Public reports (i.e. the annual reports of agencies) disclose only a small handful of investigations into fraudulent or corrupt conduct (annual reports of departments disclose five incidents in 1999-2000 and eleven in 2000-2001), and the information provided is very brief. The nature of the incidents is typically not disclosed, nor the estimated monetary value.

1.27 Other information obtained from agencies by the Audit revealed more reports and investigations of fraudulent or corrupt conduct than reported publicly. However, excluding the reports from one public authority, the data continues to reveal a very low number of incidents reported and investigated. This could, of course, mean that the prevention framework is operating very effectively; that little fraudulent or corrupt conduct occurs within the ACT Public Sector. Intuitively, however, it is difficult to accept that this data reflects the extant level of improper conduct.

1.28 Information such as the Audit's survey of public sector employees and other surveys and reviews conducted in other jurisdictions suggest there is a significant level of improper conduct that is undetected and/or unreported. For example, almost half of all respondents to the Audit's survey indicated they were aware of cases of fraudulent or corrupt conduct within their agency in the last two years. This conduct ranged from matters such as inaccurate entries in flextime records, inappropriately using internet/email, or using an office mobile phone for personal calls, to theft, misappropriation of money, and recruitment issues. Several respondents commented that many of the examples of improper conduct cited in the survey occurred frequently and were often accepted as a fact of life in any 'normal' office. This is disturbing.

1.29 Around half of the survey respondents who were aware of some fraudulent or corrupt conduct in their agencies said the conduct had not been reported and investigated, and many more were unsure. This too, is disturbing.

1.30 Sound reporting mechanisms are clearly important as many surveys and reviews have noted that the most common method of detection of fraudulent, corrupt, or other improper conduct was a 'tip-off' from an employee. This suggests that effective reporting mechanisms and open

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channels of communication from employees to management can have a positive effect on fraud and corruption detection and mitigation.

1.31 Preventing fraud and corruption requires a very strong emphasis on creating a workplace environment that promotes ethical behaviour, deters wrongdoing and encourages all employees to communicate any known or suspected wrongdoing to the appropriate person. The review of the fraud and corruption prevention framework being undertaken by CMD should carefully examine factors that inhibit reporting. Circumstances where employees ‘couldn’t be bothered [reporting fraud because] the time spent chasing it up wasn’t worth it’ need to be addressed.

1.32 To deter fraud, appropriate and effective controls and policies need to be implemented. Agencies require effective internal control systems and risk management strategies. They must ensure that these controls and strategies are regularly monitored and updated.

Opinion 3

1.33 The opinion that *ACT government agencies have in place generally suitable strategies to assist in effectively preventing and dealing with fraud, corruption, and other improper conduct. However, implementation of the strategies has consistently been less than effective* is supported by the following findings:

Findings from the Audit of Agency Strategies

- Few agencies have developed a fraud and corruption prevention policy as a separate and identifiable instrument, most adopting the whole-of-government policy without substantive change. Similarly, most agencies have not developed their own code of ethics or code of conduct. Small agencies in particular did not have agency-specific policy, tending to fall under the aegis of the portfolio department.
- Agencies generally have suitable governance arrangements for fraud and corruption prevention, although this is more evident in larger agencies.
- Large agencies had undertaken a risk assessment at some time in the two years previous to the audit. Generally, however, the assessments focused on protection of financial and physical assets, and gave brief consideration to wider fraud and corruption issues (i.e. those often identified as integrity/ethics matters).

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- Few smaller agencies had undertaken their own risk assessments, although some were included in assessments undertaken by the portfolio department. Smaller agencies are, typically, operating without an objective analysis of the risks facing the agency.
- Progress on implementing recommendations arising from the plans was difficult to determine. Although most plans specified an implementation timetable, and reporting arrangements (such as annual reports to the Audit Committee) it was not clear that implementation was routinely followed-up.
- Senior Executives Responsible for Fraud Administration (SERFAs) have received little ongoing training and development to ensure they maintain the skills and current knowledge to undertake their role in the most effective manner.
- Poor internal controls generally or the over-riding of internal controls were dominant contributors in most of the reported incidents of fraud or misconduct in the ACT public sector.
- Most reported incidents of fraud or misconduct were detected through whistleblowers or third-party disclosures, although the operation of internal controls also contributed in two cases.
- The most significant reported fraud within the ACT public sector in recent years was detected through an anonymous tip-off. The conduct had occurred for several years and early warning signs - predominantly internal controls designed to prevent such conduct - had been ignored.
- ACT Government agencies have developed neither standards nor procedures for the conduct of investigations. The only formal guidance available is insufficient to ensure agencies perform investigations or manage outsourced investigations in accordance with best practice.
- Although most investigations reviewed by the Audit failed to demonstrate best practice and were not conducted efficiently, they were, generally, conducted in an objective manner, and returned appropriate outcomes. In all cases examined, the agency had taken reasonable and appropriate action to deal with the misconduct allegations.
- The lack of planning of investigations, inconsistent methodology, and inadequate documentation and reporting significantly increases the risk of both an inefficient and an ineffective investigation.

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- Agencies do not generally inform employees (and customers or clients where relevant) of outcomes of misconduct investigations, such as sanctions applied and steps taken to address any deficiencies in controls etc identified through an investigation.
- Agencies do not consistently review investigations to identify actions necessary to address any weaknesses in controls or any other aspect of the fraud and corruption prevention framework acknowledged during the investigation.

Findings from the Audit's Survey of Public Sector Employees

- Almost all respondents to the Audit's survey agreed they had a responsibility to assist in preventing fraudulent or corrupt conduct, but less than half felt their colleagues demonstrated their understanding of their obligations in this respect. Nevertheless, respondents generally did not have a clear understanding of their role in preventing fraud and corruption or the process for reporting suspected misconduct by their colleagues.
- Almost a quarter of respondents considered that management in their agency did not demonstrate a strong commitment to preventing and detecting fraud and corruption, and only 28% considered their agency dealt adequately with fraudulent or corrupt conduct uncovered.
- Two thirds of respondents said they would be more inclined to report suspicions of fraudulent or corrupt conduct if they could do so anonymously.
- Approaching 40% of respondents said they would be reluctant to report suspicions of fraudulent or corrupt conduct for fear of reprisal action.
- Many respondents to the survey were not aware of an ACT Public Service Code of Ethics or their obligation to report fraudulent or corrupt conduct within their agency and almost 40% were not aware the ACT has a Public Interest Disclosure Act.
- Only a quarter of respondents knew their agency had a formal Fraud Control Plan or formal fraud prevention strategies. Of those aware of the fraud control plan, only a third had read it in the previous twelve months, and only half agreed the plan discouraged staff from engaging in fraudulent or corrupt conduct. Less than a quarter agreed the fraud control plan was effective in exposing fraud and corruption.

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- Although about half of all respondents had participated in some training or activity relevant to fraud and corruption prevention in the past two year, training is infrequent and has been insufficient to maintain a high level of employee awareness. Few agency employees have been specifically trained in investigation methods.

Summary

1.34 The Audit has previously concluded that the whole-of-government fraud and corruption prevention framework is conceptually sound but deficient in practice. The Audit's review of implementation of the framework has shown several areas where agencies can, and should, strengthen their efforts. Smaller agencies, particularly, need to ensure they have a sound strategy in place to manage fraud, corruption, and other integrity risks.

1.35 Public employees are not sufficiently aware of the relevant policies, strategies, and processes necessary to create an effective fraud and corruption resistant workplace. Further, the audit review and survey suggests there is a significant number of employees who lack confidence in the management of their agency to demonstrate a strong commitment to fraud and corruption prevention or to deal adequately with fraud and corruption when it is uncovered.

1.36 This is especially important if it is recognised that the behaviour of managers and in particular, senior executives and supervisors, is far more influential on staff behaviour than is formal policy. Nevertheless, agencies cannot afford to ignore the benefits of a sound and effective communication program aimed at ensuring employees are aware of their responsibilities, are able to identify and prevent fraud and corruption in their areas, are aware of the proper procedures for reporting suspected improper conduct, and are informed of the outcomes where fraud and corruption is reported.

1.37 Among other things, this will require agencies to incorporate within their training and development program activities aimed at increasing employee awareness regarding fraud, corruption, and integrity matters. These activities need to be regular and ongoing – it is not good enough to target, through an 'induction program', only those employees who are new to the agency. Particular attention should be given to employees,

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including senior executives and SERFAs, with specific fraud detection, prevention, investigation, or oversight responsibilities.

1.38 Fraud, corruption, and misconduct occur within the ACT public sector, almost certainly far more often than reported incidents would seem to suggest. Almost half of all respondents to the Audit's survey of public employees were aware of (i.e. had detected) cases of fraudulent or corrupt conduct in their agency within the last two years.

1.39 Not all these identified cases have been brought to the attention of agency management, partly because employees do not generally have a clear understanding of their role in preventing fraud and corruption and the process of reporting concerns about suspected misconduct of their colleagues. This is concern enough, and indicates that agencies need to do more to communicate the message that 'fraud prevention is everyone's business'.

1.40 Of more concern, however, is the observation that many employees only wish to be involved in reporting suspected misconduct if they can remain anonymous. Their reasons can be inferred from responses to the Audit's survey, but they largely come down to a lack of confidence and trust in 'the system' and in management. Many fear reprisal. Based on survey responses, it would seem that several employees have directly experienced reprisals or witnessed reprisal action against an employee who 'dobbed'.

1.41 This is indeed unfortunate, because employees are one of the most important means available to an agency to protect itself from fraud, corruption, and misconduct and to identify such conduct should it occur. Agencies need to work hard to build a fraud resistant culture which encourages all employees to speak out, frankly and without fear, if they have concerns about the conduct of fellow employees (or clients, customers etc).

1.42 Conversely, agencies must recognise that employees are the most likely party to offend against the agency and to cause the greatest loss. The importance to the agency of a sound system of internal control, which is continuously tested to ensure compliance and efficacy, cannot be overlooked. Although agencies showed confidence in the controls in place to prevent fraud and corruption, they may be failing to recognise that they are reliant on employees and management with the ability to

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override them. Controls are of very limited value if they are not properly applied or if the ‘red flags’ they raise are ignored.

1.43 What happens following the detection of fraud, corruption, or other improper conduct or receipt of an allegation of such conduct is critical to effective fraud control. Agencies must act quickly and effectively to investigate and deal with suspicions or allegations. Failure to do so can be damaging for the agency and its employees.

1.44 The Audit examined several investigations that had been conducted by agencies over the past two years or so. Although the Audit concluded that, generally, the investigations were conducted in an objective manner, and returned appropriate outcomes, most failed to demonstrate best practice and were not conducted efficiently.

1.45 This is hardly surprising, given the absence of endorsed standards or procedures for the conduct of investigations, and that few agency employees have been specifically trained in investigation methods and practices. The lack of planning of investigations, inconsistent methodology, and inadequate documentation and reporting significantly increases the risk of both an inefficient and an ineffective investigation. It also increases the exposure of all parties - the agency, alleged offender, witnesses and investigators – to further loss and emotional stress.

1.46 Sanctioning proven offenders is important as one of the more visible aspects of the fraud and corruption prevention strategy. Effective sanctioning can pass on the message that the strategy is working – that is, there is a strong probability that employees engaged in improper conduct will be caught, investigated, and dealt with quickly.

1.47 In all cases examined by the Audit, the agency had taken reasonable action to deal with the misconduct allegations. However, the beneficial effect was in part lost because agencies do not generally inform employees (and customers or clients where relevant) of outcomes of misconduct investigations, such as sanctions applied and steps taken to address any deficiencies in controls identified as a result of investigation.

1.48 Nor was it evident that agencies learned from the incidents. The Audit observed that agencies do not consistently review investigations to identify actions necessary to address any weaknesses in controls or any other aspect of the fraud and corruption prevention framework acknowledged during the investigation.

SUGGESTIONS FOR FUTURE ACTION

1.49 The following suggestions are made to address the audit findings detailed in this report. It should be noted that the suggestions are summaries of the Audit's proposals. For a full understanding of them, readers should refer to those Chapters in which the suggestions are discussed in detail.

The Framework for Fraud and Corruption Prevention in the ACT Public Sector

- 1) The government is currently reviewing the Public Sector Management Act. In the context of that review, there is scope to consider more precisely defining the responsibilities for fraud and corruption prevention in the ACT Public Sector. This would include consideration of legislating the conduct of fraud and corruption risk assessments and prevention treatments (or more broadly, business risk assessments and treatments).
(Paragraphs 2.2 – 2.15)

- 2) In the context of the government's reviews of the Public Sector Management Act and the Financial Management Act, there is scope to require public sector bodies to include in their Annual Reports, a Statement of Responsibility for Internal Controls and certification regarding the Internal Control structures, signed by the Chief Executive or Board.
(Paragraphs 2.16 – 2.38)

- 3) The Chief Executive or Board of all ACT public bodies should publicly report a statement of responsibility and certification indicating whether a system of internal control was in place and operated effectively throughout the year. The statement and certification will provide a means of encouraging the development of sound corporate governance arrangements, and sheeting home the responsibility for establishing an effective internal control structure (which among other things will minimise opportunities for fraud and corruption).
(Paragraphs 2.16 – 2.39)

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- 4) CMD is currently reviewing the whole-of-government fraud and corruption framework. In the context of that review, CMD should revisit the 1999 review and ensure that practical limitations to the implementation of the framework identified in that review are adequately addressed.
(Paragraphs 2.40 – 2.64)
- 5) Suitable qualified or experienced personnel should be appointed with specific accountabilities for the whole-of-government implementation of the integrity framework.
(Paragraphs 2.70 - 2.86)

Defining Fraud and Corruption in the ACT Public Sector

- 6) In the context of the review of the fraud and corruption framework, the Audit considers there would be advantages in extending definitions of fraud and corruption to readily incorporate improper conduct such as breaches of values/principles, waste and abuse. This would be consistent with the concept of business and integrity risk currently being considered by CMD. In practice, extending the definitions to include all matters of ‘integrity’ is sensible risk management.
(Paragraphs 3.6 – 3.25)
- 7) Agencies should explicitly and candidly communicate to all employees practical policy and guidelines on the minimisation of resource misuse, including references to secondary employment.
(Paragraphs 3.30 – 3.46, 3.60 – 3.64)
- 8) Agencies should ensure all employees are aware of their broad public sector responsibilities and the specific agency policy and guidelines relevant to personnel matters.
(Paragraphs 3.47 – 3.54, 3.65 – 3.66)
- 9) Placing employees in a position where they feel driven to approach the media to ventilate concerns is unsatisfactory, both for the employee and the employer. Agencies should communicate to all employees appropriate mechanisms for reporting suspicions of fraudulent or corrupt conduct or other maladministration.
(Paragraphs 3.55 – 3.57, 3.67 – 3.74)

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Measuring Fraud and Corruption in the ACT Public Sector

- 10) The Chief Minister's Annual Report Directions should be amended to make it mandatory for all agencies to include in their annual reports details of all cases of fraud and corruption identified in the agency.
(Paragraphs 4.6 – 4.41)

- 11) Information provided in annual reports should include quantification of the cost of each case of fraud or corruption, descriptions of how each case was perpetrated, identified and what remedial action was taken to address control deficiencies, as well as the outcomes of each case's investigation.
(Paragraphs 4.6 – 4.42)

- 12) A summary quantifying the extent and cost of identified cases of fraud and corruption in the ACT Public Service should be included in the Commissioner for Public Administration's Annual Report tabled in the legislative Assembly in accordance with section of the *Annual Reports (Government Agencies) Act 1995*.
(Paragraphs 4.6 – 4.43)

Agency Policies and Strategies for Implementing the Fraud and Corruption Prevention Framework – Prevention Activities

- 13) All public sector agencies should develop a 'stand alone' policy statement regarding fraud and corruption prevention, which clearly defines the agency position and governance arrangements. The policy should be communicated to all employees and commitment to it should be clearly demonstrated through appropriate organisational arrangements and the behaviour of management.
(Paragraphs 5.2 – 5.19)

- 14) All public sector agencies should undertake periodic assessments of integrity risks (including fraud and corruption) and develop an operational plan aimed at effectively and efficiently treating the risks. Risk assessments should be comprehensive and undertaken by persons with a sound understanding of business and integrity risk assessment processes.
(Paragraphs 5.20 – 5.40)

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- 15) Risk treatment plans arising from risk assessments (i.e. Fraud Control Plans, or similar) should be agency-specific, and practical. Implementation and effectiveness should be monitored, with regular reporting to the agency's Audit Committee (or similar). The plan should be widely communicated within the agency.
(Paragraphs 5.20 – 5.41)
- 16) Agencies should develop and implement a communication program aimed at ensuring employees are aware of their responsibilities, are able to identify and prevent fraud and corruption in their areas, are aware of the proper procedures for reporting suspected improper conduct, and are informed of the outcomes where fraud and corruption is reported.
(Paragraphs 5.42 – 5.50)
- 17) Agencies should develop and implement a training and development program aimed at ensuring all employees understand their responsibilities to identify and prevent fraud and corruption and understand the proper procedures for reporting suspected improper conduct. Employees with particular fraud detection, prevention, investigation or oversight responsibilities should receive training to recognised accredited levels.
(Paragraphs 5.51 – 5.64)
- 18) SERFAs should be provided with, and encouraged to undertake, training and development opportunities to recognised and accredited fraud prevention competency standards.
(Paragraphs 5.65 – 5.71)
- 19) A SERFA network should be established to encourage the dissemination and sharing of relevant information among responsible Executives. Members of the network should meet periodically to discuss recent developments and better practice in fraud and corruption prevention in the ACT public sector and other public sector jurisdictions, and where relevant, private sector initiatives.
(Paragraphs 5.65 – 5.72)
- 20) Agencies should ensure all staff are aware of the role, responsibilities, and identity of the relevant SERFA.
(Paragraphs 5.65 – 5.73)

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Agency Policies and Strategies for Implementing the Fraud and Corruption Prevention Framework – Detection Activities

- 21) Agencies should ensure their fraud and corruption prevention strategy/integrity strategy positively encourages the disclosure by employees of suspicions of fraudulent, corrupt or improper conduct or maladministration. As an obvious corollary, the strategy must provide full support (and protection) for employees making disclosures.
(Paragraphs 6.2 – 6.56, particularly 6.43 – 6.49)

- 22) In the context of the current review by CMD of the fraud and corruption prevention framework, specific provision must be made to allow for reports of suspicious conduct, oral or written, to be received anonymously.
(Paragraphs 6.2 – 6.57, particularly 6.35 – 6.43)

- 23) Agencies should periodically review internal control procedures to ensure they remain apposite and effective in the face of changing circumstances.
(Paragraphs 6.58 – 6.64)

- 24) Agencies should ensure employees are aware of the importance of internal controls and that the failure to properly observe existing controls significantly exposes the agency to increased risk of fraud, corruption, and maladministration.
(Paragraphs 6.58 – 6.63)

- 25) Agencies should ensure that Internal Audit charters provide a link between internal audit and the agency's fraud and corruption prevention strategy (and *vice versa*).
(Paragraphs 6.65 – 6.69)

- 26) Internal audit activities should be soundly informed by risk assessments and should, as a matter of routine, consider circumstances of ineffective controls or non-compliance with controls as opening opportunities for fraud and corruption.
(Paragraphs 6.65 – 6.70)

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Agency Policies and Strategies for Implementing the Fraud and Corruption Prevention Framework – Investigation Activities

- 27) As part of the current review of the whole-of-government fraud and corruption prevention framework, authoritative and detailed standards, procedures and guidelines for the conduct of investigations should be developed and widely promulgated. The policy, procedures, and guidelines should be fully consistent with the misconduct provisions of the PSM Act and have regard (or make provision for) variations arising from agency-specific certified agreements.
(Paragraphs 7.2 – 7.20, particularly 7.2- 7.6)
- 28) Agencies should ensure investigations are conducted in accordance with best practice. In the absence of whole-of-government standards, procedures and guidelines, agencies should adopt standards etc of the Commonwealth or the NSW Independent Commission Against Corruption (modified as necessary).
(Paragraphs 7.2 – 7.21, particularly 7.2- 7.6)
- 29) Agencies should ensure investigations are conducted and managed by properly trained and experienced persons. If the skills are not available (and cannot be maintained) in-house, agencies should ensure they have access when needed to qualified investigators on contract.
(Paragraphs 7.2 – 7.22, particularly 7.13 – 7.19)
- 30) Agencies should ensure sufficient resources are available to undertake investigations in a timely manner. Ideally, investigators should be engaged ‘full-time’ on the task.
(Paragraphs 7.2 – 7.23, particularly 7.13 – 7.19)
- 31) Agencies should subject investigation practices to periodic quality assurance reviews.
(Paragraphs 7.2 – 7.24, particularly 7.13 – 7.19)

Agency Policies and Strategies for Implementing the Fraud and Corruption Prevention Framework – Sanctioning Activities

- 32) Agencies should ensure that all decisions regarding sanctioning of proven offenders are properly documented on the investigation file.
(Paragraphs 8.2 – 8.19, particularly 8.4 – 8.6)

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33) Agencies should ensure their fraud and corruption prevention or integrity policy includes a communication program which, among other things, informs all employees (and customers/clients where relevant) of outcomes of misconduct investigations, including sanctions applied and steps taken to address any deficiencies in controls etc identified as a result of investigation. Such information should be presented in a manner that maintains privacy and any other relevant confidentiality requirements (e.g. through case studies).

(Paragraphs 8.2 – 8.19, particularly 8.7 – 8.9)

34) Agencies should ensure all investigation reports give adequate consideration to actions necessary to address any weaknesses in controls or any other aspect of the fraud and corruption prevention framework identified during the investigation.

(Paragraphs 8.2 – 8.19, particularly 8.10 – 8.12)

RESPONSE TO THE REPORT

1.50 In accordance with section 18 of the *Auditor-General Act 1996*, a final draft of this report was provided to the Chief Executive of the Chief Minister's Department on 3 March 2003 for consideration and comments. The Chief Executive's response, received on 30 April 2003, is set in the following paragraphs.

The conduct of this performance audit is welcome as the effective management of fraud and corruption within the ACT Public Service is fundamental to the health of the Service itself and therefore the degree of confidence that the Government and the community can have in the way that it conducts its business.

The audit opinion on the current whole-of-government framework for fraud and corruption prevention is supported.

There are two aspects of the report on which I would like to comment.

The first relates to the proposal at paragraphs 3.22 to 3.25 to extend the definitions of fraud and corruption to incorporate improper conduct such as breaches of values/principles, waste and abuse. While I would accept that the current definitions would benefit from review, such as to reflect the Commonwealth approach, care is needed to avoid too wide a scope. There is a need to distinguish between matters that might well be the subject of disciplinary procedures – such as conduct inconsistent with organisational values, and conduct where a benefit is dishonestly obtained which is the appropriate focus of fraud and corruption investigations.

The second issue relates to the use of the information obtained from the survey conducted by the Audit Office. The information obtained essentially reflects the views of self-selected respondents, rather than a random sample, which suggests the need for some caution in the use of the data received. This is particularly the case in terms of any assessment of the frequency of specific types of fraudulent or corrupt conduct. While the report includes appropriate caveats about the material at table 4.3, such information can easily be misinterpreted or misrepresented. Having said that, the responses to the survey provide some very useful information that will be applied in revisions to fraud awareness training.

CONCLUDING COMMENTS

1.51 The Chief Executive's positive response to this report is welcome.

1.52 The Chief Executive has made specific comment on two aspects of the report. Each of those matters is discussed below.

Redefining Fraud and Corruption

1.53 The Chief Executive notes that although there may be benefit in reviewing the current definitions of fraud and corruption, care is needed to avoid too wide a scope. The argument is, essentially, that a distinction is necessary between conduct that might be the subject of disciplinary procedures, and conduct that might involve fraud and corruption investigations (and potentially, criminal charges).

1.54 Fundamentally, the Audit agrees. Such distinctions are necessary for identifying sound strategies to prevent the occurrence of the misconduct and for dealing with the conduct if it occurs. However, the thrust of the Audit's comments on redefining definitions is that misconduct cannot and will not be identified if public sector employees (including managers) are not aware of what constitutes misconduct. If the current definitions of fraud and corruption are narrowly interpreted, as the evidence available to the Audit suggests, misconduct that might be the subject of disciplinary procedures may not be identified as such, let alone identified as fraudulent or corrupt.

1.55 The Audit's preferred approach, as discussed at paragraphs 3.22 - 3.25, is to focus on an 'integrity framework' that would see misconduct of any kind (including fraud and corruption) interpreted not as a matter of financial probity, but as a matter of personal and organisational integrity. The framework could include guidelines for dealing with misconduct, depending on the nature of the conduct itself. Some misconduct (for example, abuse of flexitime, misuse of IT resources, or serious waste) might be dealt with as disciplinary matters. Other conduct (for example, misappropriation of funds, credit card abuse or contracting malpractice) might warrant more formal investigative or criminal procedures.

The Audit's Survey

1.56 The Chief Executive suggests that the data obtained through the Audit's survey should be treated with some caution, as 'the information

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obtained essentially reflects the views of self-selected respondents, rather than a random sample’.

1.57 The Audit recognises that there are inherent limitations associated with survey methodology. As such, the Audit accepts that the data obtained should be used with care, but this could apply to almost any survey. Nevertheless, the survey was distributed widely across the public sector (‘whole-of-government’ email distribution) and an analysis of responses suggests that a representative group of public sector employees participated (that is, the responses received were reasonably representative of agency, classification and gender distributions across the public sector). The Audit is of the view that the data obtained from the survey is sound.

1.58 The Audit considers the greatest value of the survey is the insight it has provided to the views of some 325 public sector employees – a broad cross section of the public sector. The survey responses suggest there are barriers to the effective implementation of a fraud and corruption (or integrity) framework that need to be addressed. Implementation of the suggestions for better practice included in this Report is one step in that process.

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PART 1

THE FRAMEWORK FOR FRAUD AND CORRUPTION PREVENTION IN THE ACT PUBLIC SECTOR

Part 1 of the report discusses matters relevant to the whole-of-government.

Included in this Part are the following Chapters:

Chapter 2 The Fraud and Corruption Prevention Framework

Chapter 3 Defining Fraud and Corruption in the ACT Public Sector

Chapter 4 Measuring Fraud and Corruption in the ACT Public Sector

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2. THE FRAUD AND CORRUPTION PREVENTION FRAMEWORK

INTRODUCTION

2.1 This chapter discusses the fraud control and prevention framework within the ACT public sector.

SIGNIFICANT FINDINGS

- *The statutory basis for fraud control and prevention in the ACT public sector is spread across a variety of legislation, and is only loosely defined in key legislation such as the Financial Management Act and the Public Sector Management Act.*
- *Anecdotally, there is confusion regarding the responsibilities for fraud control and prevention at a practical level, and a lack of ownership by agencies, encouraged by unclear administrative requirements.*
- *The Chief Executive or Board of all ACT public bodies should publicly report a statement of responsibility and certification indicating whether a system of internal control was in place and operated effectively throughout the year. This will promote a firm understanding of responsibility for establishing an effective internal control structure (which among other things will minimise opportunities for fraud and corruption).*
- *The recommendations of a 1999 review of strategies for the prevention of fraud and corruption in the ACT Public Service, which aimed to address practical limitations of the framework, have not been fully implemented.*
- *Overall, the fraud and corruption prevention framework in 2002 is in much the same state as it was in 1999 – conceptually sound, but deficient in practice.*
- *A revised framework has been proposed aimed at better linking fraud and corruption prevention activities with activities aimed at assessing and treating business risks in general, and streamlining administrative related arrangements.*

- *The proposed revision is generally positive, but it will take a concerted effort on behalf of all agencies to ensure the penetration of any ‘integrity’ framework into the public sector as a whole at a practical level. Further, a continued effort must be made to maintain awareness at a high level.*

STATUTORY BASIS FOR FRAUD AND CORRUPTION CONTROL AND PREVENTION

2.2 Chief executives of ACT Government entities are responsible for the full and effective implementation of fraud control strategies within their entities.⁵ The statutory basis for this responsibility is section 31 of the *Financial Management Act 1996*, which states:

- (1) The responsible chief executive ... shall be accountable to the responsible Minister ... for the efficient and effective financial management of the [entity].
- (2) The responsible chief executive ... shall be responsible ... for ensuring:
 - ...
 - (e) that adequate control is maintained over the assets of the department and assets in the control of the department; and
 - (f) that adequate control is maintained over the incurring of liabilities by the department.

2.3 This responsibility is echoed in the *Public Sector Management Act 1994* (the PSM Act), which states at section 29 (1):

- A Chief Executive ... shall, in relation to each administrative unit under his or her control—
- (a) be responsible, under the relevant Minister, for its administration and its business.

2.4 Public Sector Management Standards and Best Practice Notes have been developed to provide specific guidance on matters relevant to fraud and corruption.⁶ Management standards are issued under provisions of the PSM Act, and have the authority of subordinate legislation. Best Practice Notes are generally not legally binding.

⁵ Chief Minister’s Department, *Guidelines for Dealing With Fraud and Corruption in the ACT Public Service*, July 1996

⁶ Public Sector Management Standard 1 *Ethics*, Better Practice Note 1.3 *Fraud Prevention*

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2.5 The Public Sector Management Standards prescribe that a Chief Executive must:

- pursue a systematic approach to fraud control;
- assess the risk of fraud against each of their programs;
- develop detailed plans for fraud control (where programs have a significant risk of fraud)
- develop arrangements for fraud control and minimisation, and include those arrangements in corporate plans, internal audit plans, and other internal management plans (where programs have a less significant risk of fraud); and
- ensure that there is appropriate monitoring of plans between commencement and review.

2.6 The Public Sector Management Standards also prescribe that managers must regularly and systematically assess the potential within their area of responsibility for theft and fraud to ensure relevant fraud control procedures are being followed and are effective. Further, an entity must maintain records of all instances of fraud, including losses, and of resource allocations in respect of any inquiry or action that may have resulted.

2.7 In addition, the PSM Act imposes a series of general obligations on public employees, and these are listed in section 9 of the Act. These obligations reflect the behavioural standards expected of public employees, and establish the foundation for an ethical public sector that encourages all public employees to be active in protecting public funds and property. In particular, section 9 states:

A public employee shall, in performing his or her duties:

- (t) report to an appropriate authority—
 - (i) any corrupt or fraudulent conduct in the public sector that comes to his or her attention; or
 - (ii) any possible maladministration in the public sector that he or she has reason to suspect.

2.8 Other legislation also relevant to fraud and corruption issues includes:

- the *Public Interest Disclosure Act 1994* – this ‘whistle blowing’ legislation provides a means for people to report wrongdoing in

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the ACT public sector, such as dishonesty or bias, misuse of official information, and negligent or improper management of government funds;

- the *Ombudsman Act 1989* – this legislation provides a means for people to report the conduct of a government agency or employee they consider may be illegal, unreasonable, unjust or oppressive; improperly discriminatory, based on improper motives or irrelevant grounds, or based on a mistake of law or fact; and
- the *Government Procurement Act 2001* – under this legislation, the government Procurement Board may develop and implement policy and guidelines concerning procurement by government entities. Principles and guidelines relevant to probity and ethics have been developed.

Audit Comment

2.9 The statutory basis for fraud control and prevention in the ACT public sector is spread across a variety of legislation, but is loosely defined in the Financial Management Act and the Public Sector Management Act. These Acts do not make specific mention of fraud control and prevention, risk assessments or control plans.

2.10 The responsibilities of Chief Executives to implement and manage fraud control arrangements are clearer in the Public Sector Management Standards, which have legal authority. The Standards are not very prescriptive, and offer opportunities to tailor fraud control arrangements to suit individual entities. For example, it would appear to be within the scope of the Standards for a Chief Executive to include consideration of the risk of fraud (and relevant risk treatments) within a more general business risk assessment, rather than focusing separately on a fraud control plan.

2.11 Nevertheless, anecdotally there is some confusion regarding these responsibilities at a practical level, and a lack of ownership by agencies, encouraged by unclear administrative requirements. Any confusion could be eliminated by clarifying/defining responsibilities for fraud and corruption prevention in the ACT Public Sector through amendments to the Public Sector Management Act and Financial Management Act. This would include consideration of legislating the conduct of fraud and corruption risk assessments and prevention treatments (or more broadly, business risk assessments and treatments), and legislating responsibilities regarding internal control structures (see the following section).

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2.12 The Audit notes that the Commonwealth counterpart to the Territory's Financial Management Act requires Chief Executives to 'manage the affairs of the Agency in a way that promotes proper use of the Commonwealth resources', where *proper use* is defined as 'efficient, effective and ethical use'. Further, the Commonwealth legislation is more directive, in that it requires Chief Executives to implement a fraud control plan for their agency.⁷

2.13 The Commonwealth has also recently issued revised Fraud Control Guidelines⁸ that outline both policy requirements and guidance material. The approach take by the Commonwealth is prescriptive. Commonwealth agencies are required to put in place a comprehensive fraud control program that covers prevention, detection, investigation and reporting strategies. Chief Executives are to certify to their Minister or Presiding Officer in their agency's annual reports that they are satisfied that their agency has prepared fraud risk assessments and fraud control plans, and has in place appropriate fraud prevention, detection, investigation, reporting and data collection procedures and processes that meet the specific needs of the agency and comply with the Guidelines. Agencies must advise the Australian Federal Police (AFP) annually of their current identified major fraud risks and must provide comprehensive reports annually to the Attorney-General's Department on fraud resources, training and incidents.

2.14 There is no counter-part arrangement in the ACT public sector.

2.15 **Suggestion for better practice (1)** – The government is currently reviewing the Public Sector Management Act. In the context of that review, there is scope to consider more precisely defining the responsibilities for fraud and corruption prevention in the ACT Public Sector. This would include consideration of legislating the conduct of fraud and corruption risk assessments and prevention treatments (or more broadly, business risk assessments and treatments).

⁷ Financial Management and Accountability Act 1997, sections 44 and 45.

⁸ Issued by the Minister for Justice and Customs as Fraud Control Guidelines (May 2002) under Regulation 19 of the *Financial Management and Accountability Regulations 1997*

RESPONSIBILITY FOR INTERNAL CONTROLS

Background

2.16 In recent years, corporate governance has been the subject of increasing levels of attention in both the public and private sectors. The importance of good corporate governance has been highlighted in the private sector by the corporate excesses of the 1980's and the recent failures of a number of high profile private sector corporations. Poor performance, however, has not been limited to the private sector, as a number of public sector entities at both the Commonwealth and State/Territory level have also been found wanting. Recent reports by this Office have highlighted the criticality of sound governance arrangements.

2.17 Effective corporate governance practice includes formalising governance arrangements and making them clear to all stakeholders.

2.18 Corporate governance is the responsibility of the Minister and Chief Executive or Board. It combines legal duties with responsibilities to improve and monitor the performance of an organisation, and is focused on three principal objectives:

- to protect and reinforce the rights and interests of the stakeholders in an organisation, particularly in areas where those rights and interests may conflict with the interests of senior management;
- to ensure that the Board/CEO of the organisation properly fulfil their primary responsibility to direct the strategy and monitor the performance of the organisation, particularly with regard to assessing the performance of senior management; and
- to ensure that the organisation's Internal Control and reporting procedures are satisfactory and reliable. With respect to reporting, the information supplied by the organisation to stakeholders must provide a realistic, timely, and up-to-date assessment of the organisation's position and results.

2.19 Internal Control is thus one of the three critical elements of corporate governance. Internal Control provides the critical linkage between an agency's strategic objectives, which are dictated by the agency's vision and mission, and the tasks undertaken by the agency in pursuit of those objectives. An effective system of Internal Control

provides reasonable assurance regarding the achievement of the agency's strategic objectives.⁹

The Scope of Internal Control

2.20 Clearly, the scope of Internal Control is not limited to the 'traditional' areas of financial and reporting procedures; rather, it operates across the broad span of all an entity's financial and operational activities.

2.21 An effective system of internal controls will address the following organisational objectives:

- the effectiveness and efficiency of operations, including the use of the entity's resources;
- the reliability of financial and non-financial reporting (whether for internal or external use); and
- compliance with applicable laws and regulations;

2.22 An important subset of these objectives is the safeguarding of assets. Internal control should be designed to provide reasonable assurance regarding prevention of or prompt detection of unauthorised acquisition, use, or disposition of an entity's assets.

2.23 Internal Control is a *process*. Although internal control is a major part of managing an organisation, it is a means to an end, not an end in itself. It comprises the plans, methods, and procedures used to meet missions, goals, and objectives and, in doing so, supports performance-based management. Internal control also serves as the first line of defence in safeguarding assets and preventing and detecting errors and fraud.

2.24 Internal control is not one event, but a series of actions and activities that occur throughout an entity's operations and on an ongoing basis. Internal control should be recognized as an integral part of each system that management uses to regulate and guide its operations rather than as a separate system within an agency. In this sense, internal control is management control that is built into the entity as a part of its infrastructure to help managers run the entity and achieve their aims on an ongoing basis.

⁹ NSW Treasury *Statement of Best Practice - Internal Control and Internal Audit* 1995 (Section 1.3)

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2.25 In short, internal control, which is synonymous with management control, helps government program managers achieve desired results through effective stewardship of public resources.

2.26 Internal control is far more than policy manuals and forms. The people at every level of an organisation make internal control work. The responsibility for good internal control lies with the Board/Chief Executive but is delegated to the senior management and employees of an entity. Management sets the objectives, puts the control mechanisms and activities in place, and monitors and evaluates the control. However, all personnel in the organisation play important roles in making it happen.

2.27 Internal control can be expected to provide only *reasonable assurance*, not absolute assurance, to an entity's management and Board/Chief Executive. Management should design and implement internal control based on the related cost and benefits. No matter how well designed and operated, internal control cannot provide absolute assurance that all agency objectives will be met. Factors outside the control or influence of management can affect the entity's ability to achieve all of its goals. For example, human mistakes, judgment errors, and acts of collusion to circumvent control can affect meeting agency objectives. Therefore, once in place, internal control provides reasonable, not absolute, assurance of meeting agency objectives.

Responsibility for Internal Control

2.28 It is generally accepted that the responsibility for internal control lies with the Board/Chief Executive of an entity. This responsibility has been established under legislation in many jurisdictions.

2.29 In the ACT public sector, under the Financial Management Act (FMA), Chief Executives are accountable to the responsible Minister for 'the efficient and effective financial management of [their] department'.¹⁰ Among other matters, the FMA states that Chief Executives are responsible for ensuring

(d) that proper accounts and records are kept of the transactions and affairs of the department in accordance with generally accepted accounting practice; and

¹⁰ *Financial Management Act 1996* s31(1)

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- (e) that adequate control is maintained over the assets of the department and assets in the control of the department; and
- (f) that adequate control is maintained over the incurring of liabilities by the department.¹¹

2.30 These requirements can readily be interpreted as establishing that a Chief Executive in ACT Government is accountable for establishing and maintaining an internal control system in the entity.

Statement of Responsibility/Certification

2.31 In recent years, jurisdictions in Australia and overseas have sought to focus the attention of the Chief Executive or Board of an entity in both the public and private sectors on the importance of corporate governance. One approach adopted has been to require the Chief Executive or Board to acknowledge their responsibilities to improve and monitor the performance of the entity by providing firstly, a statement of responsibility, and secondly a certificate indicating whether a system of internal control was in place and operated effectively throughout the year.

2.32 In some jurisdictions, such as NSW, inclusion of a Statement of Responsibility is a matter of voluntary compliance. Anecdotally, this has not been a great success, as few organisations have volunteered to include the Statement in their annual report or financial statements. Further, the NSW Audit Office notes that since the Statement of Responsibility deals with operational matters, it is beyond the scope of a financial statement audit. As such, it is an unaudited assertion.¹²

2.33 In the private sector, the Directors of some organisations (for example, Superannuation Funds) are required to submit a report on the internal controls structure, acknowledging their responsibility for the design, implementation, and maintenance of the internal control structure

¹¹ *Financial Management Act 1996* s31(2)

¹² The concept of auditing control procedures is accepted practice in the profession. There are at least two professional statements that make significant reference to the practice – see AUS 810 *Special Purpose Reports on the Effectiveness of Control Procedures* and AGS 1026 *Superannuation Funds - Auditor Reports on Externally Managed Assets*. Both statements refer to providing assurance or factual findings about the design and operating effectiveness of control procedures for identifiable areas of activity within an entity. Essentially, the audit is to support a management assertion that the controls exist and operate effectively. The form of this assertion is not specified, but examples are included in the Appendixes to AUS 810 and AGS 1026.

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for the organisation and the general effectiveness and efficiency of the operations of the business. The Directors' report is intended to provide an overview of the control environment, and set out the control objectives and the specific policies and procedures established to meet each of these objectives. The Directors certify that the policies and procedures have been in place throughout the relevant period and have been effective in meeting the control objectives set out.¹³

2.34 Some international jurisdictions require similar practice for public sector bodies. For example, in the United Kingdom, non-departmental public bodies are required to include a Statement of Internal control in their annual reports. The Board is required to provide a narrative statement disclosing that there is an ongoing process for identifying, evaluating and managing the significant risks faced by the body, that it has been in place for the year under review and up to the date of approval of the annual report and accounts, that it is regularly reviewed by the board and accords with prescribed guidance. The disclosures should include an acknowledgement by the board that it is responsible for the body's system of internal control and for reviewing its effectiveness. It should also explain that such a system is designed to manage rather than eliminate the risk of failure to achieve business objectives, and can only provide reasonable and not absolute assurance against material misstatement or loss. The board should summarise the process it has applied in reviewing the effectiveness of the system of internal control and also disclose the process it has applied to deal with material internal control aspects of any significant problems disclosed in the annual report and accounts.¹⁴

Conclusion

2.35 Sound corporate governance arrangements act to protect and reinforce the rights and interests of the stakeholders in an organisation. A critical element of corporate governance is the Internal Control structure, which has as one of its important objectives, to safeguard the resources of the organisation. An effective Internal Control structure will provide reasonable assurance regarding prevention of or prompt detection of unauthorised acquisition, use, or disposition of an organisation's

¹³ See Auditing Guidance Statement AGS 1026 (*Superannuation Funds – Auditor Reports on Externally Managed Assets*) for an example and further detail.

¹⁴ See *Executive Non-Departmental Public Bodies: Annual Reports and Accounts Guidance*, HM Treasury 2001-02, and *Internal Control: Guidance for Directors on the Combined Code* The Institute of Chartered Accountants in England and Wales, London 1999

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resources. In effect, it will aim to protect the organisation against fraud and corruption – to build the integrity or corruption resistance of the organisation.

2.36 In recent years, jurisdictions in Australia and overseas have sought to focus the attention of the Chief Executive or Board of an entity in both the public and private sectors on the importance of corporate governance. One approach adopted has been to require the Chief Executive or Board to acknowledge their responsibilities to improve and monitor the performance of the entity by providing publicly firstly, a statement of responsibility, and secondly a certificate indicating whether a system of internal control was in place and operated effectively throughout the year.

2.37 The statement of responsibility and accompanying certificate are not required by legislation in the ACT. However, the Audit considers provision of a statement and certificate represents best practice in corporate governance. An example of a Statement of Responsibility for Internal Control – the Statement included in the Auditor-General's Annual Management Report for 2002 – is shown at Attachment A.

2.38 **Suggestion for better practice (2)** – In the context of the government's reviews of the Public Sector Management Act and the Financial Management Act, there is scope to require public sector bodies to include in their Annual Reports, a Statement of Responsibility for Internal Controls and certification regarding the Internal Control structures, signed by the Chief Executive or Board.

2.39 **Suggestion for better practice (3)** – The Chief Executive or Board of all ACT public bodies should publicly report a statement of responsibility and certification indicating whether a system of internal control was in place and operated effectively throughout the year. The statement and certification will provide a means of encouraging the development of sound corporate governance arrangements, and sheeting home the responsibility for establishing an effective internal control structure (which among other things will minimise opportunities for fraud and corruption).

REVIEW OF THE FRAUD AND CORRUPTION PREVENTION FRAMEWORK - 1999¹⁵

Background

2.40 In 1999, the Chief Minister's Department engaged a consulting organisation to undertake a review of strategies for the prevention of fraud and corruption in the ACT Public Service. The review considered fraud prevention and control activities from a strategic, 'whole of government' view. A key feature of the review was a survey of executives and managers across ACT public sector entities, supplemented by 'focus group' meetings with Senior Executives Responsible for Fraud Administration (SERFAs) and various other stakeholders. The review was reported in July 1999.

2.41 The current Audit drew on the findings of the 1999 review and considered whether key recommendations arising from the review have been implemented.

Findings of the 1999 Review

2.42 The review concluded that the 'conceptual' fraud and corruption prevention framework in place in the ACT public sector was 'sophisticated and well advanced' when compared against other jurisdictions and showed 'many characteristics of best practice'. However, according to the review although 'there [were] many sound strategies ... they [did] not always operate as effectively as intended'.

2.43 Key strengths of the framework were identified as:

- a requirement for agencies to periodically assess fraud and corruption risk exposure;
- a dedicated, whole of government point of coordination (the Fraud and Anti-Corruption Unit in the Chief Minister's Department); and
- responsibility for fraud prevention being placed at the agency level with each Chief Executive required to appoint a Senior Executive Responsible for Fraud Administration.

¹⁵ ACT Chief Minister's Department, *Review of Strategies for the Prevention of Fraud and Corruption within the ACT Public Service*, 28 June 1999 (actually published July 1999)

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2.44 The review noted that a clearer definition of ‘fraud and corruption’ was needed, and this would assist (among other things) the central reporting and recording of incidents. Further, communication of important fraud and corruption prevention strategies and activities needed to be improved, particularly processes for reporting fraud and corruption. Strategically, the review noted that risk management activities related to fraud and corruption could be better integrated with broader risk management and planning activities, and that the quality of risk assessments varied significantly across entities.

2.45 Significantly, the review highlighted a substantial difference in perceptions of the effectiveness of prevention, detection, and investigation processes between senior executives and management/staff. Generally, executives were far more positive about the status of fraud prevention and control within their entities than less senior staff. For example, while 95% of executives considered that the environment in which they worked encouraged the reporting of fraudulent or corrupt behaviour, this view was shared by only 64% of management and staff.

2.46 Overall, the review found the current fraud prevention framework in place in the ACT public sector presented a sound strategic base, although some improvements were needed to make the practical application of the framework more successful.

Audit Comments

2.47 The 1999 review provided some assurance regarding the strategic framework for fraud control management in the ACT public sector, but the comment that prevention strategies did not always operate as effectively as intended was significant. Also significant were the noticeable differences of opinion regarding the efficacy of fraud control practices between executive and other staff. The implication of the main findings of the review was that although the framework for fraud prevention and control was sound, implementation left gaps which had the potential to undermine the efficacy of the framework.

Recommendations from the 1999 Review

2.48 The 1999 review included nine recommendations aimed at strengthening the fraud prevention framework and ‘making the practical application of ... prevention strategies more successful’. The recommendations were:

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- consider and implement standards for the preparation of fraud risk assessments and fraud control plans;
- quality assurance reviews should be performed on fraud risk assessments, fraud control plans and investigation standards by the Fraud and Anti-Corruption Unit;
- improve education in and communication of fraud prevention strategies to staff, particularly with respect to ‘whistleblower protection, follow-up of reported incidents and related issues;
- establish a consistent definition of fraud and corruption ... and ensure its communication to management and staff. Included with this should be Guidelines on Best Practice in Fraud Control and Investigation;
- clarify requirements of what agencies need to report to the Fraud and Anti-Corruption Unit and maintain a central record of all incidents;
- agencies should strengthen linkages between their fraud risk management activities and other planning/strategic management activities. Fraud risk assessments and fraud control plans should reflect sub-agency issues appropriately;
- activities and functions with above budgetary responsibility should have their own SERFA;
- ACT Government policy with respect to Territory Instrumentalities (relating to fraud prevention) needs to be clarified; and
- the Fraud and Anti-Corruption Unit should liaise with Territory Instrumentalities to ensure that Government policy is adhered to.

2.49 The recommendations had cross-government application, and required action by the Fraud and Anti-Corruption Unit in the Chief Minister’s Department, as well as by individual agencies.

Audit Comments

2.50 The report was circulated to Chief Executives in draft and final format. The final draft was distributed to Chief Executives in July 1999, with a request to provide comments on implementation of the recommendations. No further directions or requests were made in relation to the report.

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2.51 Chief Executives indicated that they had no problems with the report or the recommendations, but did not offer significant detail on implementation plans. For example, the Chief Executive for the Department of Health and Community Services indicated that the Department would be ‘reminding staff of the procedures in place and of the existence of the Department’s Fraud Control Plan’. Further, the Department ‘supported CMD “driving” and checking action by agencies to implement the recommendations’.

2.52 At the whole of government level, several of the recommendations have been implemented.

2.53 Guidelines to assist entities in undertaking risk assessments and developing fraud control plans have been prepared¹⁶ although the current availability and status of the guidelines is unclear. The guidelines adopted the approach and practice recommended in the Standards Australia/Standards New Zealand publications on risk management.¹⁷

2.54 The Best Practice Note dealing with fraud prevention describes a whole-of-government role for the ‘Fraud Prevention Unit’ – i.e. the Fraud Prevention and Anti-Corruption Unit in CMD.¹⁸ The guidelines on fraud risk assessments and fraud control plans similarly indicate that the Fraud Prevention and Anti-Corruption Unit would undertake quality assurance reviews of completed plans. However, this unit has since been subsumed into the Public Sector Management Group, and its role is now under review. Although CMD officers continue to provide high-level advice and guidance on fraud matters, the Department has drawn back from its coordination and monitoring roles (including collecting data on incidents across the government) and has no involvement in investigations or liaison with the Australian Federal Police or Director of Public Prosecutions.

2.55 Practices for dealing with fraud matters are discussed in guidelines developed by the Chief Minister’s Department in 1996.¹⁹ These do not appear to have been updated since then, and notwithstanding that

¹⁶ Chief Minister’s Department, June 2000 *Guidelines for Conducting Fraud Risk Assessments and Preparing Fraud Control Plans*

¹⁷ Standards Australia/Standards New Zealand *Risk Management AS/NZS 4360:1999* and *Guidelines for Managing Risk in the Australian and New Zealand Public Sector: 1999*

¹⁸ ACT Public Service Best Practice Note June 2000 1.3 – *Fraud Prevention*

¹⁹ Chief Minister’s Department, July 1996 *Guidelines for Dealing With Fraud and Corruption in the ACT Public Service*

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references to management standards are now out of date, remain current recommended practice.

2.56 Public Sector Management Standards provide a formal definition of the terms 'fraud' and 'corruption'.²⁰ The Standards are subordinate legislation made under the PSM Act and apply to all ACT Public Service officers and employees, whether located in agencies or in the authorities staffed under the Act. The definition is supplemented by a document entitled *Identifying Fraud and Corruption in the ACT Public Service*, prepared by the Fraud and Anti-Corruption Unit in May 2000. This document identifies, in a practical manner, more than 100 situations involving fraudulent or corrupt behaviour in the workplace.²¹

2.57 Legal advice obtained by CMD in 1999 appears to have clarified whether ACT Government policy relating to fraud prevention applies to Territory instrumentalities. Unless an instrumentality has been formally declared by the Minister under the Public Sector Management Act not to be an instrumentality, it will be obliged to apply the policy.

2.58 Implementation of other recommendations is less clear.

2.59 The recommendation to improve education in and communication of fraud prevention strategies to staff was largely a matter for implementation by individual agencies. CMD documents are widely available on Internet and intranet sites and most agencies have their policy on fraud, fraud control plan and references to whole of government materials (PSM Act, Standards etc) available on their intranet. Nevertheless, it would seem that implementation of this recommendation has been variable. This is discussed further in Part 2 of this Report.

2.60 Reporting requirements are outlined in the Best Practice Notes and other guidelines.²² Under the guidelines, agencies are to notify the 'Fraud Prevention Manager' (i.e. the Fraud and Anti-Corruption Unit in CMD) of all reports and allegations of fraud and corruption no later than five working days of a matter being brought to notice. In part, this was to facilitate the collection of data relating to the incidence of fraud and

²⁰ Public Sector Management Standards, June 2000 *Standard 1 Ethics Part 4.2*

²¹ Chief Minister's Department, May 2000 *Identifying Fraud and Corruption in the ACT Public Service*

²² See, for example, ACT Public Service Best Practice Note June 2000 *1.3 – Fraud Prevention*, Chief Minister's Department, July 1996 *Guidelines for Dealing With Fraud and Corruption in the ACT Public Service*

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corruption. Little action was undertaken to clarify the reporting requirements as recommended in the review report. And, given that the Unit no longer exists as a separate identity, it would appear that the reporting requirements are still no clearer. Although some of the Unit's functions continue to be exercised by Public Sector Management Group, CMD no longer maintains a 'central register' of fraud and corruption incidents.

2.61 Reporting and consultation requirements as discussed in the Best Practice Note and the various guidelines are still officially current. Given CMD's changed role in fraud and corruption matters, it is appropriate to reconsider these requirements.

Conclusion

2.62 The 1999 review of strategies for the prevention of fraud and corruption in the ACT Public Service concluded that the 'conceptual' framework in place was 'sophisticated and well advanced' when compared against other jurisdictions and showed 'many characteristics of best practice'. However, the review cautioned that practical implementation of the framework was not as effective as intended.

2.63 The recommendations of the review aimed to address practical limitations of the framework. Implementation of the recommendations has varied – several whole-of-government recommendations have been acted on, but action at the agency level is less clear. Further, changing circumstances have overtaken the practical implementation of others; for example, CMD does not provide 'quality assurance reviews' of fraud risk assessments, fraud control plans, or investigation standards following the disbandment of the Fraud Prevention and Anti-Corruption Unit.

2.64 **Suggestion for better practice (4)** – CMD is currently reviewing the fraud and corruption framework (see below). In the context of that review, CMD should revisit the 1999 review and ensure that practical limitations to the implementation of the framework identified in that review are adequately addressed.

THE FRAUD AND CORRUPTION PREVENTION FRAMEWORK IN 2002

2.65 The fraud and corruption prevention framework in 2002 has changed little since 1999. There have been no changes to legislation or

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policy, although some guidelines have since been prepared in the course of implementing recommendations from the 1999 review. As discussed above, however, some of these guidelines are now out of date (e.g. they do not reflect the latest Public Sector Management Standards).

2.66 Most significantly, the centralised role of the Fraud Prevention and Anti-Corruption Unit envisaged by the framework, and identified in 1999 as a key strength, is no longer operative in the manner intended.

2.67 Furthermore, the penetration of the framework to the public sector generally continues to have practical limitations, as raised in the 1999 review. For example, a survey of ACT public employees undertaken by this Audit, which attracted 325 respondents²³ from across the ACT Public Sector, revealed that:

- 14% of respondents were not aware the Chief Minister's Department has issued an ACT Public Service Code of Ethics;
- 13% of respondents were not aware they have an obligation to report fraudulent or corrupt conduct within their agency;
- 38% of respondents were not aware the ACT has a Public Interest Disclosure Act;
- 66% of respondents were not aware there is a Senior Executive Responsible for Fraud Administration (SERFA) within their agency;
- 22% of respondents considered that management in their agency did not demonstrate a strong commitment to preventing and detecting fraudulent and/or corrupt conduct (a further 23% were not sure);
- only 30% of respondents were aware their agency had formal procedures in place for reporting alleged or suspected fraudulent or corrupt conduct (53% of respondents were not sure);
- only 28% of respondents considered their agency dealt adequately with fraudulent or corrupt conduct uncovered (57% of respondents were not sure); and

²³ Of the 325 respondents, 314 provided information regarding their classification: of these 73% were administrative/senior officers, 14% professional officers, 4% executives and 9% 'other'. Of the 325 respondents, 313 provided information regarding supervisory or management responsibilities: of these 45 % had supervisory or management responsibilities.

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- only 23% of respondents knew their agency had a formal Fraud Control Plan or formal fraud prevention strategies (69% of respondents were not sure). Of those aware of the fraud control plan, only a third had read it in the previous twelve months.

2.68 The 1999 review of the fraud prevention framework demonstrated that Executives had a more positive view of the fraud and corruption prevention framework than other employees. Executives responding to the Audit's recent survey unanimously agreed that management in their agency demonstrated a strong commitment to preventing and detecting fraudulent and/or corrupt conduct. But only 23% of non-executive respondents shared this view (a further 24% were unsure). Further, while 75% of executive respondents agreed their agency dealt adequately with fraudulent or corrupt conduct that was uncovered (25% were unsure), only 26% of non-executive respondents agreed (16% disagreed and 58% were unsure).

Audit Comment

2.69 Overall, it would seem that the fraud and corruption prevention framework in 2002 is in much the same state as it was in 1999 – conceptually sound, but deficient in practice.

PROPOSED REVISION OF THE FRAMEWORK

2.70 CMD is currently reconsidering the fraud and corruption prevention framework in the ACT Public Sector. As discussed above, the current framework is based, at least in theory, on a centralised approach whereby a dedicated unit provides a whole-of-government point of coordination for activities, including development of policy, standards and guidelines, and provision of advice, training and quality assurance processes. The current framework is focussed specifically on fraud and corruption. Until 2001, CMD provided this central contact point for dealing with fraud and corruption issues across the ACT Public Sector. However, CMD's role has diminished since the disbandment of the Fraud Prevention and Anti-Corruption Unit.

2.71 CMD has proposed several significant changes, aimed at 'ensur[ing] the framework is aligned with current directions in corporate governance, business planning and enhanced management of risk and opportunity'. CMD proposes a shift from the current centralised approach to a 'streamlined, integrated business and integrity risk framework'.

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2.72 Rather than limiting the revised framework to a possibly narrow interpretation of fraud and corruption, CMD's proposal emphasises good governance and the concept of business integrity. The latter embodies ethics and accountability as well as fraud and corruption. Assessment of risks to business integrity would necessarily include assessment and treatment of fraud and corruption risks. Chief Executives and agency executives would be encouraged 'to take ownership of their business risks, including integrity risk, by providing oversight of their agency risk profile and tolerance levels'.

2.73 The CMD proposal does not provide formal central agency oversight of agency fraud risk assessment, planning or monitoring. Agencies would be responsible for all management action, investigation, and litigation in regard to any matters of integrity that warranted such attention. However, CMD proposes that it take a leading role in developing the integrity framework, including developing policy, guidelines and procedures. As well, the Management Council would provide input into the development and review of the ACT Public Sector 'business and integrity risk framework' and would oversee the business public sector and integrity risk profile.

Audit Comment

2.74 The Audit supports CMD's proposal to better link fraud and corruption prevention activities with activities aimed at assessing and treating business risks in general. Fraud and corruption risks are a sub-set of a broader range of risks faced by any organisation. The current requirement to undertake a risk assessment specifically for fraud and corruption matters and to prepare a fraud and corruption control plan has the potential to place unnecessary and undue emphasis on fraud and corruption (however defined) at the expense of risks to the organisation overall.

2.75 The Audit notes that linking fraud prevention and control activities with other business activities was the essence of one of the recommendations arising from the 1999 review of the fraud prevention framework.²⁴

²⁴ The 1999 review recommended that 'agencies should strengthen linkages between their fraud risk management activities and other planning/strategic management activities'. Implementation of this recommendation was largely in the hands of individual agencies,

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2.76 The Audit also supports a broader focus on ‘integrity’ risks rather than the more limited notion of fraud risk (notwithstanding the broadening of that notion by also including corruption risks). The current approach unnecessarily separates ‘fraud and corruption’ matters from ‘integrity’ or ‘ethics’. The results of Audit’s survey of public sector employees (discussed in this report) suggest that public employees understand generally the concepts of ‘fraud and corruption’ and ‘ethics’ but do not necessarily link the two. In other words, some conduct considered by employees as unethical – such as disclosure of information, workplace harassment or time theft – is not seen as fraudulent or corrupt. Focussing attention on ‘integrity’ issues may be a useful means of getting around this problem.

2.77 The Audit is of the view that redefining ‘fraud and corruption’ is necessary to encourage greater recognition and awareness of matters of integrity within the workplace. This is discussed further in the following chapter.

2.78 In short, the Audit supports moves to revitalise the fraud and corruption framework in the ACT public sector. It appears that revitalisation is both warranted and necessary. Central coordination of such activity (as proposed by CMD) is essential, not the least because introducing the broader concept of ‘integrity risk’ is likely to require legislative change to ensure the concept is properly integrated in the Public Sector Management Act and the Public Sector Management Standards.

2.79 CMD proposes to ‘launch [a] Business and Integrity Risk awareness raising and skills development program to integrate risk principles and practices in business planning, budgeting, project planning’. This is a vital aspect of the CMD proposal. If the focus is expanded from ‘fraud and corruption’ to ‘integrity’, a high profile program will be needed to establish ‘integrity’ as a recognisable trait, and a dominant value, in the public service. This is necessary to achieve the desired ‘integration of risk principles and practices in the way [managers and staff] manage their business: business planning, budgeting, and project planning’.

2.80 The Audit notes, however, that it will take a concerted effort on behalf of all agencies to ensure the penetration of any ‘integrity’

rather than a ‘whole-of-government’ approach through the Fraud and Anti-Corruption in CMD. The Audit notes that implementation has been variable.

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framework into the public sector as a whole at a practical level. Further, a continued effort must be made to maintain awareness at a high level.

2.81 CMD proposes to develop a ‘step-by-step guide, tools, templates and databases [and] establish a self assessment philosophy and approach for agencies to assess, manage and monitor business and integrity risk on an ongoing basis’. The Audit considers this a valuable approach; ‘self assessment’ is a concept long promoted in other jurisdictions, such as the Independent Commission Against Corruption (ICAC) in NSW. It is an important and practical tool, but cannot exist on its own – there needs to be commitment to the value of the concept and its active promotion from ‘the top’. There is also a risk that as long as the process is voluntary, the resources available to it, and its relative priority within an agency’s overall governance arrangements, will be low. The effectiveness of a self assessment tool will be improved if it is used in conjunction with other initiatives such as the statement/certification of internal controls discussed earlier in this Chapter.

2.82 The revised framework proposed by CMD does not foresee a need to maintain a focal point for fraud and corruption (or integrity) matters across the public sector. Rather than have a central Fraud and Anti-Corruption Unit (or Integrity Unit) as previously existed, CMD proposes to have a senior Inter-Departmental Committee review and monitor the revised framework, based on quarterly meetings. This Committee would provide some support to the Management Council, which would provide high-level, strategic oversight of the ‘business and integrity risk profile’ by ‘input into the development and review of the ACTPS business and integrity risk framework’. The Management Council will also review the risk profile on a six-monthly basis.

2.83 Oversight at a senior level is undoubtedly useful. However, such arrangements are unlikely to provide the impetus and energy necessary to ensure the practical (and on-going) implementation of the revised framework and the successful integration of ‘integrity risk’ in the psyche of public employees.

2.84 The Audit considers there are advantages in providing dedicated resources for monitoring the implementation and on-going operation of the revised framework at a whole-of-government level. While responsibility for implementation at an agency level can properly be left in the hands of Chief Executives and equivalents, efficiency and effectiveness gains can be achieved through central coordination and

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provision of awareness campaigns, training, advice and monitoring. The latter should include collecting, analysing and disseminating information on the nature and extent of integrity issues raised within the ACT public sector (based on regular reporting by agencies to a central focal point). The role of disseminating information could include establishing and maintaining an integrity information network for responsible senior executives (SERFA equivalents) and the public sector as a whole, using (among other things) Internet and Intranet capabilities.

2.85 The Audit does not consider it necessary to recreate the Fraud and Anti-Corruption Unit within CMD. However, it is clear that CMD's proposed revision of the framework will require not only centralised coordination, but also considerable effort. Maintaining a capacity to provide high quality advice and assistance to the Inter-Departmental Committee and Management Council, which will oversight the framework, and to the public sector generally, will require suitably qualified and experienced personnel. The personnel should be charged with specific accountabilities relevant to a whole-of-government perspective.

2.86 Suggestion for better practice (5) – Suitable qualified and experienced personnel should be appointed with specific accountabilities for the whole-of-government implementation of the integrity framework.

CONCLUSION

2.87 The statutory basis for fraud control and prevention in the ACT public sector is spread across a variety of legislation, and is only loosely defined in key legislation such as the Financial Management Act and the Public Sector Management Act. Anecdotally, there is confusion regarding the responsibilities for fraud control and prevention at a practical level, and a lack of ownership by agencies, encouraged by unclear administrative requirements. Better definition of responsibilities through legislative amendment would clarify requirements and provide a sound basis for accountability.

2.88 Legislating responsibility requirements for internal control structures, clearly an important factor in effective fraud and corruption prevention and control, could further strengthen corporate governance arrangements and accountabilities. A statement of responsibility for internal control structures and a certificate indicating whether a system of internal control was in place and operated effectively throughout the year

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would provide a means of encouraging the development of sound corporate governance arrangements, and reinforce the responsibility for establishing an effective internal control structure.

2.89 A review of strategies for the prevention of fraud and corruption in the ACT Public Service conducted for CMD in 1999 concluded that the 'conceptual' framework in place was 'sophisticated and well advanced' when compared against other jurisdictions and showed 'many characteristics of best practice'. However, the review cautioned that practical implementation of the framework was not as effective as intended. The recommendations of the review have not been fully implemented. As a consequence, the fraud and corruption prevention framework in 2002 is in much the same state as it was in 1999 – conceptually sound, but deficient in practice.

2.90 CMD has proposed a revised framework aimed at better linking fraud and corruption prevention activities with activities aimed at assessing and treating business risks in general, and streamlining administrative related arrangements. The proposed revision is generally positive, but the Audit considers there are advantages in providing resources for monitoring the implementation and on-going operation of the revised framework at a whole-of-government level. This would include maintaining a capacity to provide high quality advice and assistance. One means of ensuring such capabilities exist would be to designate a position as the 'Government Integrity Officer' (or similar) and charge them with specific accountabilities relevant to a whole-of-government perspective.

2.91 Overall, the Audit supports moves to revitalise the fraud and corruption framework in the ACT public sector. It appears that revitalisation is both warranted and necessary. However, the Audit considers it will take a concerted effort on behalf of all agencies to ensure the penetration of any 'integrity' framework into the public sector as a whole at a practical level. Further, a continued effort must be made to maintain awareness at a high level.

3. DEFINING FRAUD AND CORRUPTION IN THE ACT PUBLIC SECTOR

INTRODUCTION

3.1 This Chapter examines the definitions of fraud and corruption currently used within the ACT public sector and whether ACT government entities use consistent definitions.

SIGNIFICANT FINDINGS

- *Although the 1999 review of the fraud prevention framework recommended establishing clearer and consistent definitions of fraud and corruption, the definitions have remained unchanged.*
- *The current definition of fraud is often narrowly interpreted, with an emphasis on the offender receiving undue financial rewards.*
- *There is a need to extend the definitions of fraud and corruption to readily incorporate improper conduct such as breaches of values/principles, or mismanagement leading to waste and abuse of public resources.*
- *As well, effort is needed to ensure all employees are aware of their broad public sector responsibilities and the specific agency policy and guidelines relevant to personnel matters, confidentiality and security of information, and mechanisms available for disclosing concerns regarding the conduct of public employees.*

BACKGROUND

3.2 Fraud is a generic category of crime. There are many interpretations of what constitutes fraud, and consequently it may not be well understood by public employees. Individuals may interpret conduct as fraudulent with reference to their own moral viewpoints or based on considerations of the intention, significance, consequence or frequency of the conduct. Consequently, there can be ‘grey areas’ as to whether an act is fraudulent. For example, some might regard taking a ‘sickie’ or taking home scrap material as acceptable. Others, however, would regard this as fraudulent.

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3.3 Put simply, fraud can be defined as dishonestly obtaining a benefit by deception or other means. This definition covers a wide range of conduct. For example, a public employee engaging in fraud may do so through specific acts or omissions; may receive a benefit or avoid a liability; may obtain monetary or non-monetary benefits, or may be involved in dishonestly obtaining property or information.

3.4 Corruption, or corrupt conduct, can be broadly defined as conduct that does or could adversely affect the honest or impartial exercise of official functions by a public official or authority. The conduct need not be on the part of a public official. Like fraud, corrupt conduct is closely linked to the concept of improperly obtaining a benefit not otherwise due. And, like fraud, it is faced with similar definitional vagaries.

3.5 It is clearly important for the effective operation of any fraud and corruption prevention framework, that all public employees, at all levels, understand and accept what constitutes fraud in the public sector. It is also important that agencies have a sound appreciation of the extent of the problem with which they are dealing.

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3.6 Public Sector Management Standard 1 Part 4 includes the following statements:

'fraud' means taking or obtaining by deception, money or another benefit from the government when not entitled to the money or benefit, or attempting to do so - this includes evading a liability to government; and

'corruption' in relation to an officer or employee means that the officer or employee seeks, obtains or receives any benefit, other than lawful salary and allowances, on the understanding that the officer or employee will do or refrain from doing anything in the course of their duties or will attempt to influence any other officer or employee on behalf of any person.

3.7 The definitions quoted above applied at the time of the 1999 review of fraud and corruption prevention strategies undertaken for the Chief Minister's Department. The review noted calls from some senior executives to clarify the definitions of fraud and corruption to help awareness and prevention, and to reduce confusion regarding what constituted fraud, particularly what needed to be reported to the Fraud

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Prevention and Anti-Corruption Unit. The report included the following recommendation:

establish a consistent definition of fraud and corruption for the purposes of the ACTPS and ensure its communication to management and staff therein. Included with this should be Guidelines on Best Practice in Fraud Control and Investigation.

3.8 The official definitions of fraud and corruption have not changed since the 1999 review. However, a document was prepared by CMD aimed at enabling Public Sector employees to better identify what might be fraud or corruption by '[providing] information relating to conduct, or rather a variety of situations, that in effect constitute fraud or corruption'.²⁵ The document described such situations as 'inappropriate behaviour' and made some distinction between criminal offences and 'fringe' behaviour that may be more commonly handled as a disciplinary matter. For example, the document stated:

... conduct that constitutes an offence might not necessarily be dealt with by prosecution. Minor instances of fraud, being those that do not incur a significant financial loss to the agency, and are 'one off' (that is, not part of a systematic course of conduct) might well be dealt with internally by the agency concerned. That might involve either counselling the alleged offender, or taking formal disciplinary action against him or her.

3.9 The CMD document has provided useful guidance on identifying fraudulent and corrupt conduct. However, there is still concern that the definitions are unnecessarily legalistic and are based on the concept of the offender receiving undue 'financial rewards'. A view expressed in the survey of public sector employees conducted by the Audit was that 'the perception of fraud should be extended well beyond the "fingers in the till" impression currently understood'. Views expressed by respondents to the Audit's survey are discussed later in this Chapter.

DEFINING FRAUD AND CORRUPTION IN OTHER JURISDICTIONS

3.10 Other jurisdictions, in Australia and overseas, apply various definitions of fraud and corruption, although many use similar terms to

²⁵ Chief Minister's Department, May 2000 *Identifying Fraud and Corruption in the ACT Public Service*

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those used in the ACT. For example, the Commonwealth Fraud Control Guidelines²⁶ issued in May 2002 define fraud as:

dishonestly obtaining a benefit by deception or other means.

3.11 The Guidelines state further that this definition includes:

- theft;
- obtaining property, a financial advantage or any other benefit by deception;
- causing a loss, or avoiding or creating a liability by deception;
- providing false or misleading information to the Commonwealth, or failing to provide information where there is an obligation to do so;
- making, using or possessing forged or falsified documents;
- bribery, corruption or abuse of office;
- unlawful use of Commonwealth computers, vehicles, telephones and other property or services;
- relevant bankruptcy offences; and
- any offences of a like nature to those listed above.

3.12 The benefits referred to can be either tangible or intangible. Examples include:

- hacking into, or interfering with a Commonwealth computer system;
- using a false identity to obtain income support payments;
- using Commonwealth systems to gain access to other systems without authority;
- charging the Commonwealth for goods or services that are incomplete or not delivered;
- hiding or disposing of assets by bankrupts to avoid paying creditors; and

²⁶ Commonwealth Fraud Control Guidelines Commonwealth Attorney-General's Department May 2002 (Issued by the Minister for Justice and Customs as Fraud Control Guidelines under Regulation 19 of the *Financial Management and Accountability Regulations 1997*)

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- making false statements under the *Commonwealth Electoral Act 1918*.

3.13 The Ministry of the Premier and Cabinet in Western Australian has prepared a better practice guide on fraud prevention strategies²⁷ which states:

To ensure consistency and common understanding across the public sector, government has adopted the following definition (which is also consistent with definitions used in other governments):

Fraud can be defined as any practice that involves deceit or other dishonest means by which a benefit is obtained from the government.

This definition takes a broad view and includes non monetary benefits, such as misusing ‘company time’ or assets. Fraud can therefore take many forms, including:

- substituting new goods with old;
- using the entity’s assets for private profit;
- using significant time at work for private purposes; and
- taking unrecorded leave.

3.14 In the United Kingdom, a guide issued by the Treasury Department²⁸ notes that:

No precise legal definition of fraud exists; many of the offences referred to as fraud are covered by the Theft Acts of 1968 and 1978. The term is used to describe such acts as deception, bribery, forgery, extortion, corruption, theft, conspiracy, embezzlement, misappropriation, false representation, concealment of material facts and collusion.

For practical purposes fraud may be defined as the use of deception with the intention of obtaining an advantage, avoiding an obligation or causing loss to another party.

²⁷ *Fraud Prevention in the Western Australian Public Sector* – Government of Western Australia 1999

²⁸ *Managing the Risk of Fraud – A Guide for Managers* – HM Treasury November 1997

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3.15 The Treasury document notes the distinction between fraud (deliberate falsification) and errors (unintentional mistakes) and discusses the three types of 'irregularity' which are of particular concern, namely:

Theft - Dishonestly appropriating the property of another with the intention of permanently depriving them of it ... This may include removal or misuse of funds, assets or cash;

False Accounting - Dishonestly destroying defacing concealing or falsifying any account, record or document required for any accounting purpose, with a view to personal gain or gain for another, or with intent to cause loss to another or furnishing information which is or may be misleading, false or deceptive; and

Bribery and Corruption - Offering a bribe to any public officer to influence his behaviour and similarly accepting such a bribe.

3.16 NSW takes a different approach; the focus is on 'corrupt conduct', although that term is very broadly interpreted.²⁹

(1) Corrupt conduct is:

- a) any conduct of any person (whether or not a public official) that adversely affects ... either directly or indirectly, the honest or impartial exercise of official functions by any public official ... or
- b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
- c) any conduct of a public official ... that constitutes or involves a breach of public trust, or
- d) any conduct of a public official ... that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

(2) Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects ... either directly or indirectly, the exercise of official functions by any public official ... and which could involve any of the following matters:

²⁹ *Independent Commission Against Corruption Act 1988*, Section 8

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- a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition)
- ...
- e) fraud
- f) theft
- ...

3.17 The many behaviours considered to constitute corrupt conduct are defined by the Independent Commission Against Corruption (ICAC). For example, 'fraud' is defined as 'deceit, trickery, sharp practice, or breach of confidence, to gain some unfair or dishonest advantage' and theft is described as 'the act of stealing. For example, claiming travel-allowance from two sources for the same trip'.

Audit Comment

3.18 The definitions shown above are examples only. They indicate the variety of approaches taken in defining fraudulent or corrupt conduct in the public sector, although several matters are generally consistent:

- the conduct is dishonest or deceitful;
- the conduct is deliberate;
- the conduct involves an abuse of trust; and
- the public sector employee involved (or some other person) 'obtains a benefit' from his or her actions.

3.19 These matters would be generally accepted as guidelines for determining whether conduct was fraudulent. But clearly they do not capture all situations that might involve the breach of laws, rules, or guidelines or conduct that reflects poorly on the proper discharge of an employee's duties and responsibilities (i.e. conduct that does not conform with the values and principles that support ethical behaviour in the public sector). For example, it is easy to see that an employee who takes advantage of an overworked Human Resources section and does not submit application forms to cover leave from work has obtained a benefit to which he or she is not entitled. However, it is less obvious that disclosing official information obtained through work in conversations at social occasions is fraudulent or corrupt, notwithstanding that such

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conduct may breach the Public Sector Management Act (section 9(p) and the Crimes (Offences against the Government) Act (section 10).

3.20 Nor do definitions such as those above necessarily capture other matters associated with resource management in the public sector considered inappropriate; namely waste and abuse (defined as follows).³⁰

Waste - the expenditure or allocation of resources significantly in excess of need; extravagant and needless use of resources. Waste need not necessarily involve a private use or personal gain, but invariably signifies poor management.

For example: overstocking resources that are subject to continuous review or can quickly become outdated or obsolete; unnecessary specifications in procurement.

Abuse - the exploitation of 'loopholes' in laws, policies or guidelines, primarily for personal advantage.

For example: unnecessarily scheduling official travel to coincide with an interstate sporting event; travelling interstate for a training program or conference that will be available locally on another date.

3.21 The Audit notes that waste and abuse in the management of public sector resources constitutes 'misconduct' in the context of the Public Sector Management Act (section 9(r) and 9(s)).

3.22 All the matters of 'improper conduct' referred to in the various definitions of fraud and corruption discussed above are matters of 'integrity' as framed within the context of the Public Sector Management Act (particularly section 9). The audit considers there would be benefit in extending the definition of fraud to better integrate the concepts of fraud/corruption and integrity, and to encourage a better understanding of the concept of fraud and corruption in the public sector. Focusing on an 'integrity framework' could broaden employees understanding of underlying concepts, such that fraud and corruption is interpreted not as a matter of financial probity, but as a matter of personal and organisational integrity.

³⁰ From *Controlling Fraud, Waste, And Abuse In The Public Sector*, Peter N Grabosky, Canberra, Australian Institute of Criminology 1991 and *Ethics Matters in Defence Resource Management – A Handbook Promoting Ethical Standards and Practices in Resource Management in Defence* – Department of Defence, Canberra July 2002

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3.23 A less preferred option could be to simplify the current definitions of fraud and corruption along the lines used by the Commonwealth. A definition of 'fraud' such as *dishonestly obtaining a benefit by deception or other means, or attempting to do so* would encompass 'corruption' and could be drawn out with examples, such as used by the Commonwealth or the ICAC. The examples would make clear the range of conduct considered fraudulent, and the nature of the term 'a benefit'. It is desirable that any explanation of terms be included as part of the policy statement, rather than as supplementary guidelines in a separate document.

3.24 The Audit recognises that fraud and corruption in the public sector will inevitably be simultaneously recognised as 'improper conduct', but not *vice versa*. That conduct is fraudulent or corrupt does not necessarily imply that criminal proceedings will be implemented (the conduct would need to be sufficiently serious to warrant such action). Similarly, improper conduct may be dealt with as a 'disciplinary' offence under the Public Sector Management Act, even though the conduct may also constitute a criminal offence. Some conduct will warrant both actions. The key is the conduct. The audit is not suggesting that, say, an employee's inaccurate attendance records ('time theft') need involve the police, but the conduct does need to be identified as improper (or lacking in integrity) **and** as fraudulent.

3.25 **Suggestion for better practice (6)** – In the context of the current review of the fraud and corruption framework, there would be advantages in extending definitions of fraud and corruption to readily incorporate improper conduct such as breaches of values/principles, waste and abuse. This would be consistent with the concept of business and integrity risk currently being considered by CMD. In practice, extending the definitions to include all matters of 'integrity' is sensible risk management.

CURRENT VIEWS ON FRAUD AND CORRUPTION

3.26 The survey conducted by the Audit as part of this task sought the views of public sector employees on a range of conduct that may be considered fraudulent or corrupt. The survey asked respondents to indicate how serious (or otherwise) they considered twenty-two separate examples of possibly fraudulent or corrupt conduct, based on whether the conduct occurred once or occasionally or the conduct occurred regularly. The conduct covered matters involving financial and physical resources,

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procurement activities, personnel issues (leave, attendance etc), and information security.

3.27 The Audit considers that responses to the survey provide some insight into how the definitions of fraud and corruption are understood within the public sector.

3.28 Respondents were offered a four-point scale as shown below.

Scale	Definition
1	Not fraudulent or corrupt
2	Minor – a matter that can be dealt with informally
3	Serious – a matter that would warrant formal disciplinary action
4	Very serious – a matter that would warrant police investigation and prosecution

3.29 The Audit survey drew 325 responses from employees across the ACT Public Service. Excluding ‘spoiled’ responses that could not be coded, and returns where no answer was provided, each question attracted around 310 responses. The Audit noted that generally, many respondents rated behaviour more seriously if it occurred regularly than if it occurred only once or occasionally – i.e. if a respondent indicated that certain conduct was a ‘minor’ matter if it occurred only once or occasionally, the conduct was likely to be rated ‘serious’ or ‘very serious’ if it occurred regularly.

Conduct Involving Financial Resources and Procurement

3.30 The Audit noted that respondents were very clear on conduct involving financial resources and procurement. They agreed almost unanimously that the following conduct was either serious or very serious fraud or corruption, regardless of whether it occurred once, occasionally or regularly:

- *theft or misappropriation of money* (of concern was that 5% of respondents said this was a minor matter if it occurred once or occasionally);
- *transferring agency revenue to a personal account;*

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- *using an agency credit card for personal use and not repaying the costs unless and until asked* (but 6% of respondents said this was a minor matter if it occurred once or occasionally);
- *favouritism in awarding a contract in return for a benefit provided by the successful contractor* (but 7% of respondents said this was a minor matter if it occurred once or occasionally); and
- *purchasing with agency funds goods to be used predominantly for personal use* (but 3% of respondents said this was not fraud if it occurred once or occasionally, and 1% shared this view even if the conduct was regular).

3.31 However, *personal use of petty cash* was viewed very differently. In considering conduct where an employee borrowed money from a petty cash advance and repaid it later, 13% did not consider it fraudulent or corrupt behaviour if it occurred once or occasionally, while 40% of respondents said this was only a minor matter. (The remaining 53% said it was serious or very serious.) Even if the conduct occurred regularly, 4% of respondents did not consider it fraudulent or corrupt and 16% were still of the view that it was a minor matter (80% said it was serious or very serious). The Audit considers there are real risks of loss if an employee is prepared to consider public moneys as a means of obtaining a short-term loan, regardless of the sum involved.

Conduct Involving Other Agency Resources

3.32 Broadly speaking, agency resources comprise anything that is paid for, owned or controlled by an agency. Resources include:

- staff time;
- materials and supplies;
- facilities;
- motor vehicles, fuel, spare parts and accessories;
- general plant and equipment;
- office equipment; and
- communication and information devices and services (such as phones, computer equipment, internet and email services).

3.33 Misuse of resources occurs when they are used for non-official purposes and without proper authorisation.

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3.34 Respondents to the Audit survey were less certain about conduct that involved the use of agency resources such as those above than they were about conduct involving financial resources and procurement. There was greater tolerance for occasional non-official use, and typically, few respondents felt there was a need for this type of conduct to involve police investigation or prosecution.

3.35 The fraudulent or corrupt nature of improper use of some agency resources may be more difficult to see at first glance. That is, the ‘benefit’ the employee may receive may not be as immediately obvious as the monetary benefit that may be gained if financial resources are involved. Nevertheless, under the PSM Act, public employees have an obligation to ‘not make improper use of the property of the Territory’ – i.e. official resources should be used only for official purposes.

3.36 Chief Executives or ‘an appropriate senior public employee’ may approve non-official use of public resources. Generally, public employees may make reasonable and moderate use of office equipment for personal use out of working hours, but they must supply their own consumable materials.³¹ Chief Executives are responsible for ensuring that public employees are aware of the limits on permissible use of official equipment. The survey results suggest that this information may not always be known.

3.37 *Making occasional use of an office mobile phone for personal calls and not paying for the calls unless and until asked* was not considered fraudulent or corrupt by 14% of respondents, and only a minor matter by a further 52%. About a third of all respondents considered this serious or very serious conduct. If this was regular behaviour, it was seen as a more significant matter, with only 4% ignoring it (not fraud), 18% considering it minor and the remaining 78% serious or very serious. Several respondents questioned why there should be any difference between personal use of mobile phones and landlines, or commented that personal use of mobile phones was an accepted practice, tolerated by management.

3.38 Respondents expressed similar views regarding *non-official use of an office photocopier* (for example to duplicate club circulars) or *borrowing agency owned tools or equipment for private use (without first seeking approval)*. About a quarter of respondents did not view this as fraud if it occurred occasionally, and more than half saw it as only a

³¹ PSM Better Practice Notes 1.1 Code of Ethics (Improper use of Territory property).

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minor matter. If the conduct was regular, less than 10% of respondents would ignore it (not fraud), and those who thought it minor fell to around a third. Well over half the respondents would see regular conduct of this type as a serious or very serious matter.

3.39 The occasional *personal use of agency vehicles* was not fraudulent according to 10% of respondents, and only a minor matter to a further 60%. If the conduct was regular, nearly 80% of respondents considered it a serious or very serious matter.

3.40 However, many respondents commented that personal use of agency equipment, including agency vehicles, was both acceptable and common. Further, whether it should be seen as a problem was largely a question of circumstances; for example several respondents suggested that using an agency vehicle to, say, 'call into a local shop in the rain to get bread' was acceptable, whereas 'trips to the coast' were not.

3.41 One respondent made the following comments. Similar comments were made by others.

I don't see any problem with borrowing office equipment (i.e. a laptop or video camera or a data projector etc) for occasional personal use as long as it does not interfere with work use and the equipment is not damaged. If the equipment is only going to sit in a cupboard gathering dust it should be available for staff to make use of as a reward or recognition for good work. There has to be a few 'perks' here and there for staff who regularly go above and beyond their normal duties. The ability to borrow a data projector for a weekend of 'big screen' football or for the kids to play the Sony Playstation could be a valuable staff reward and should not be seen as fraudulent. Obviously senior staff should be made aware when equipment is being borrowed.

3.42 The key to whether such conduct is acceptable may lie in the final sentence – 'senior staff should be made aware when equipment is being borrowed'. Regardless, the boundaries and the responsibilities of the employee need to be clear, as this conduct carries some risks for the employee and for the agency. One respondent commented that 'someone took home a digital camera, broke it and was never disciplined'. The consequences of non-official use of agency resources should be recognised and explicitly dealt with in policy and guidelines.

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3.43 *Inappropriate use of Internet or email facilities* was not fraudulent or corrupt according to 26% of respondents if it was occasional, while a further 54% saw it as only a minor matter. If the inappropriate use was regular, 8% of respondents did not consider this fraudulent or corrupt, but 50% said it was a serious or very serious matter. Several respondents saw a need to define 'inappropriate use'. The Audit agrees, but notes that guidance is available in the whole-of-government 'Acceptable Use of IT Resources Statement'³² and in similar policies of a number of ACT government agencies. Further, the Audit considers that the high level of community awareness regarding Internet and email facilities generally should give public employees a strong grasp of what is appropriate or not.

3.44 *Running a private business during working hours (or assisting with a relative or friend's business)* was generally recognised as improper conduct - only 3% of respondents said this was not fraud, even if it occurred occasionally. Regular occurrence of this conduct was a serious or very serious matter for 95% of respondents. Nevertheless, several respondents commented that they were aware of employees doing this, that it was commonly known (even by senior management) and that no action had been taken. For example, one respondent noted:

We have a member of staff who runs his restaurant during work time.

3.45 Under section 244 of the PSM Act, public employees must have the approval of their Chief Executive before engaging in any employment other than their Public Service position. Chief Executives should consider the following criteria when assessing applications, to engage in secondary employment:

- employees should not have a second job if that employment places them in a conflict with their official duties;
- a second job should not affect the work performance of employees in their official positions; and
- the second job should be performed totally in the employee's private time.

3.46 Running a private business during working hours is clearly a breach of the PSM Act, and falls well within any definition of fraud. That survey respondents almost unanimously recognised it as such is

³² *Acceptable Use of IT Resources Statement* – ACT Information Management August 2002

encouraging. However, secondary employment was nevertheless the subject of several comments from respondents, and this suggests that dealing with issues arising from this conduct may not always be straightforward. For example, one respondent said it was common knowledge that a departmental employee had ‘a second job when the CEO of the Department specifically said that in this area, it is NOT possible’.

Conduct Involving Personnel Matters (Conditions of Service etc)

3.47 Inappropriate conduct involving personnel matters (such as attendance, leave, conditions of service and allowances) was generally recognised by most respondents although there were significant differences in opinions regarding the severity of the conduct.

3.48 Most respondents considered that *making inaccurate entries in flexitime records* was fraudulent conduct, although if it occurred once or occasionally 8% were prepared to ignore it (not fraud) and 54% considered it a minor matter (38% said it was serious or very serious). On the other hand, if inaccurate recording of attendance was regular conduct, 86% of respondents said it was serious or very serious conduct (12% said it was a minor matter and 1% still said it was not fraud). Many respondents noted, however, that inaccurate time recording was common.

3.49 Occasionally *taking a ‘sickie’ when fit for work* was not fraud for 19% of respondents and only a minor matter for another 59% (22% said it was serious or very serious). Regularly taking a ‘sickie’ was seen as more of a problem – only 6% said it was not fraud, 21% said it was a minor matter, and 72% considered it serious or very serious. Interestingly, Executives had a more relaxed view of such conduct; 27% of executive respondents said an occasional ‘sickie’ was not fraud, 55% said it was minor and 18% serious. If the conduct was regular, 9% of executive respondents still did not consider it fraud, 45% said it was minor and 46% said it was serious. Perhaps the attitude to this conduct can be summed up in the following comment from one respondent (but echoed by several others):

[taking a sickie] is a universal perk.

3.50 *Failure to submit leave forms to cover absences from work* received almost identical responses. If it occurred once or was occasional, 8% of respondents said it was not fraud and 48% considered it a minor matter (45% said it was serious or very serious). Regularly failing to submit

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leave forms was still not considered to be fraud by 2% of respondents, while 86% regarded such conduct as serious or very serious (12% said it was a minor matter). Executives responding to the survey took a dimmer view. An occasional failure was considered serious by 73% of Executive respondents (27% said it was minor), and Executives unanimously agreed that regular occurrences of this conduct were serious or very serious. The Audit considers it should be of concern to these Executives that so many of their staff appear to view the failure to submit leave forms as a matter of little consequence.

3.51 *Altering dates on medical certificates to match dates when absent from work* was almost unanimously accepted as fraudulent or corrupt conduct, whether it was occasional or regular. An occasional occurrence was considered serious or very serious by 86% of respondents (13% said it was minor, and 1% said it was not fraud). Regular conduct of this type was considered serious or very serious by 95% of respondents (5% said it was minor).

3.52 *Occasionally claiming overtime when not worked* was considered serious or very serious fraud by 91% of respondents (8% said it was minor and 1% said it was not fraud). Regularly claiming unworked overtime was serious or very serious fraud to 98% of respondents (1% said it was minor, and remarkably 1% said it was not fraud). Almost 60% of respondents thought such conduct warranted police investigation and prosecution (i.e. rated it 'very serious').

3.53 *Working and claiming overtime when the work performed could have been done in normal hours* was seen differently. Such conduct, once or occasionally, was not fraud for 5% of respondents, was minor for 37% and serious or very serious for the remaining 58%. If unnecessary overtime was regularly worked and claimed, 2% of respondents would not see it as fraud, 8% saw it as a minor concern, but 90% saw it as a serious or very serious issue.

3.54 *Falsely including qualifications or experience in a job application* was also recognised by almost all respondents as serious or very serious fraudulent conduct, although disturbingly 4% said this was not fraud if it occurred only once or occasionally.

Conduct Involving Information Security

3.55 Nearly all respondents to the survey agreed that *altering or falsifying all or part of a document for reasons such as avoiding having to provide explanations for errors, to ensure recommendations are accepted, or to save time in processing the documents* was fraudulent or corrupt, even if it was once-off or occasional (73% said such conduct was serious or very serious, and only 3% did not see it as fraud). If this was regular conduct, the proportion of respondents who saw it as serious or very serious jumped to 92% and less than 1% said it was not fraud.

3.56 The Audit's survey sought views on *disclosing official information obtained through work to unauthorised persons (for example, in conversations at social occasions)*. This conduct was not fraud or corruption for 8% of respondents if it occurred occasionally, and a minor matter for a further 26% (68% said it was serious or very serious). If this conduct was regular, 92% of respondents would see it as serious or very serious, and only 2% would not see it as fraudulent or corrupt conduct.

3.57 *Leaking information on irregular actions by agency officials to the media* was not seen as fraudulent or corrupt conduct by 14% of respondents, and was a matter minor for another 16% (68% said it was serious or very serious). If such disclosure occurred regularly, 11% said it was not fraud, while 83% said it was serious or very serious (6% said it was minor).

Audit Comment

3.58 The survey responses provide some insight into how the definitions of fraud and corruption are understood within the public sector. Clearly, this affects the efficacy of any fraud and corruption prevention arrangements that are applied.

3.59 The Audit noted that respondents readily recognised improper conduct involving financial resources and procurement. Respondents agreed almost unanimously that the conduct exemplified in the survey was either serious or very serious fraud or corruption, regardless of the frequency of its occurrence. This is understandable. It is clear in most cases that the employee has improperly gained a benefit, and the benefit itself is easily identifiable.

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3.60 But respondents were less certain about conduct that involved the misuse of other resources of their agency. There was greater tolerance for occasional non-official use, and typically, few respondents felt this type of conduct was sufficiently serious to warrant police investigation or prosecution. Several factors contribute to this response:

- the fraudulent or corrupt nature of improper use of physical resources may be more difficult to see at first glance. That is, the ‘benefit’ the employee may receive may not be as immediately obvious as the monetary benefit that may be gained if financial resources are involved. Further, even if a benefit is recognised, it is difficult to quantify and is likely to be seen as insignificant;
- although under the PSM Act, public employees have an obligation to ‘not make improper use of the property of the Territory’, the PSM Standards provide that Chief Executives or ‘an appropriate senior public employee’ may approve non-official use of public resources;
- the limits on permissible non-official use of public resources may not always be clear; definitions are typically qualitative and subjective (‘should not be excessive’ or ‘individual users will be best placed to identify whether their personal use of [official] resources is acceptable’); and
- non-official use of public resources is apparently common and tolerated or implicitly endorsed by management.

3.61 The resources of an agency are provided for the sole purpose of pursuing the objectives of the agency. To the extent that the resources are diverted, through loss or misuse, they are unavailable for that purpose – in essence the community is being cheated by paying too much for the quantum and quality of services it is receiving. The non-official use of agency resources is wasteful of public resources and, although individual instances may be of little financial materiality, cumulatively the value of the resource loss may be significant. Nevertheless, even one-off transgressions carry some risks for the employee and for the agency. For example, the legal and financial consequences of unauthorised use of agency vehicles (apparently a frequent occurrence) are potentially very significant. As well, there may be other negative consequences for the agency, such as loss of public confidence.³³

³³ In NSW, the ICAC notes that 18% of all complaints received by the Commission in respect of local government councils involved the misuse of resources. Op cit ICAC May 2002

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3.62 The Audit considers that agencies should explicitly and candidly address the minimisation of resource misuse in their integrity/fraud risk assessments and resultant plans and activities. The key term here is ‘minimisation’. The Audit accepts that all agencies allow some non-official (i.e. ‘personal’) use of public resources. It is important, however, and in the interests of both the employer and the employee, to prescribe clearly and succinctly the limits on permissible non-official use and the responsibilities of the employee. Among other things, the following matters should be communicated:³⁴

- what constitute agency resources;
- the circumstances in which resources can be used for non-official purposes;
- a definition of reasonable use where such use is permitted;
- approval arrangements where use is permitted subject to approval;
- conditions and responsibilities when personal use is permitted or approved (responsibility for damage or loss, fees, impact on agency operations, licence requirements etc);
- the penalties for misuse;
- arrangements and guidelines for reporting misuse; and
- systems for monitoring and auditing the use of resources.

3.63 Respondents generally identified ‘running a private business during working hours’ as a form of fraudulent or corrupt conduct. Such conduct arises from secondary employment, an area that has been identified in other jurisdictions as a key risk, particularly in terms of resource misuse. For example the ICAC in NSW warns that:

... our experience suggests that conflicts of interest can frequently arise and ... all elements of resource misuse are evident – staff time, materials, plant and vehicles, office supplies and equipment. Secondary employment can also result in misuse of confidential information and intellectual property rights.³⁵

3.64 Suggestion for better practice (7) - Agencies should explicitly and candidly communicate to all employees practical policy and guidelines on

³⁴ This list is based on information contained in *No excuse for misuse: preventing the misuse of council resources - Discussion Paper 3* – ICAC May 2002

³⁵ *No excuse for misuse: preventing the misuse of council resources - Discussion Paper 3* – Independent Commission Against Corruption May 2002

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the minimisation of resource misuse, including references to secondary employment.

3.65 Most respondents readily recognised fraudulent or corrupt conduct involving personnel matters (such as attendance, leave, conditions of service and allowances). As may have been expected, many respondents considered such conduct to be a minor matter warranting informal action, particularly for occasional breaches, but where the conduct was regular, the view was that formal disciplinary action, and in some cases police investigation, was required. Respondents also indicated that conduct of the type they identified as fraudulent or corrupt occurred frequently within their agencies. On this basis, it could be expected that management would be advised of many incidents and action, including investigations, would be taken accordingly. However, as discussed in the following Chapter, this is not so. It would appear that recognising fraudulent or corrupt conduct involving personnel matters, and taking action to report and deal with the conduct, are two very different matters.

3.66 Suggestion for better practice (8) - Agencies should ensure all employees are aware of their broad public sector responsibilities and the specific agency policy and guidelines relevant to personnel matters.

3.67 Identifying fraudulent or corrupt conduct involving information security was not straightforward. Although respondents readily identified the improper nature of altering or falsifying documents, even for 'pragmatic' reasons, conduct relating to the disclosure of information to unauthorised persons was not clear-cut.

3.68 Unauthorised disclosure, or leaking, of official information is a breach of the Code of Ethics under paragraph 9(p) of the PSM Act and potentially of section 10 the Crimes (Offences Against the Government) Act. It is a matter often raised by agencies in briefings on ethics and codes of conduct. Many agencies, such as the Department of Urban Services (DUS), have taken a strong principled stand on unauthorised disclosure of information, with breaches resulting in termination of appointment (and potentially prosecution) regardless of whether the conduct occurred once or more often, and regardless of the circumstances for the breach of confidence.

3.69 Nevertheless, a third of respondents saw the occasional unauthorised disclosure of information as either 'not fraudulent or corrupt' or as a minor matter that could be dealt with informally (this

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proportion dropped to less than one in ten if the conduct was more frequent). Based on this response, it would seem prudent for agencies to communicate clearly to all employees the confidentiality provisions of the PSM Act and agency policy/guidelines, as well as the consequences of any breach.

3.70 Based on the comments from respondents, leaking information on irregular actions by agency officials to the media is also an area of confusion. Although unauthorised disclosure of official information is a breach of the PSM Act, it may also be seen as ‘whistleblowing’. Several respondents pointed out that although ‘indiscriminate’ disclosure to the media could be corrupt, an employee should not be penalised for disclosing information about fraud, corruption, abuse, or waste where the disclosure is in the public interest.

3.71 In the ACT, the Public Interest Disclosure Act (PID Act) provides a formal medium for reporting suspected maladministration, corruption, and fraud in government agencies. Using the PID Act, or other internal mechanisms such as a report to the Chief Executive or SERFA, to disclose problems would generally be seen as preferable to disclosures to the media. It is in this light that more than two thirds of respondents identified disclosures to the media as seriously fraudulent or corrupt conduct. One Executive respondent commented:

Leaking information to the media may be corrupt and subject to disciplinary action but acting under the whistleblower legislation is not corrupt. The difference relates to the channels through which irregular behaviour is brought to official attention.

3.72 But the Audit’s survey raises serious doubts about the level of awareness surrounding the PID Act; 38% of respondents were not aware the legislation existed. Further, there are negative perceptions regarding the culture in which the PID Act is administered; almost 40% of respondents expressed reluctance to report suspicions of fraudulent or corrupt conduct for fear of reprisal action against them, action that is clearly illegal under the provisions of the PID Act. Two comments are illustrative:

Sometimes I feel it is warranted for information to be given [to the media], particularly in [my workplace], where matters are not addressed as they should be - and in most cases [management is] not very honest as to what is ‘really’ happening behind the scenes.

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Leaking information to the media is sometimes believed necessary if a government is itself managing badly, but is really a symptom of a governmental lack of accountability and transparency if any employee feels driven to such lengths.

3.73 In these circumstances, defining leaking information to the media as fraud or corruption may be particularly counterproductive. It would seem more important to ensure all employees are aware of their obligations regarding protecting the confidentiality of information acquired through their employment and the proper mechanisms available for disclosing concerns regarding the conduct of public employees.

3.74 **Suggestion for better practice (9)** - Placing employees in a position where they feel driven to approach the media to ventilate concerns is unsatisfactory, both for the employee and the employer. Agencies should communicate to all employees appropriate mechanisms for reporting suspicions of fraudulent or corrupt conduct or other maladministration.

CONCLUSION

3.75 In 1999, a review of the fraud prevention framework in the ACT public sector recommended that definitions of fraud and corruption clarified and adopted consistently across the public sector to help awareness and prevention, and to reduce confusion regarding what constituted fraud. A paper aimed at helping public employees to better identify what might be fraud or corruption, which was prepared and distributed to agencies by CMD, may have assisted in this respect. The definitions, however, have remained unchanged.

3.76 The definition of fraud is often narrowly interpreted, with an emphasis on the offender receiving undue financial rewards. The definition does not readily capture all situations that might involve the breach of laws, rules, or guidelines or conduct that reflects poorly on the proper discharge of an employee's duties and responsibilities (i.e. conduct that does not conform with the values and principles that support ethical behaviour in the public sector). Nor does the definition capture other improper conduct associated with resource management in the public sector such as waste and abuse.

3.77 Respondents to the Audit's survey on fraud and corruption in the ACT public sector provided valuable insight into the practical

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interpretation of the definitions of fraud and corruption, largely confirming the comments above.

- Respondents readily recognised improper conduct involving financial resources and procurement but were less certain about conduct that involved the misuse of other resources of their agency.
- Most respondents readily recognised fraudulent or corrupt conduct involving personnel matters (such as attendance, leave, conditions of service and allowances) but many considered such conduct to be a minor matter warranting informal action, particularly for occasional breaches.
- Identifying fraudulent or corrupt conduct involving information security was not straightforward. A third of respondents identified the occasional unauthorised disclosure of information as either ‘not fraudulent or corrupt’ or as a minor matter that could be dealt with informally. This attitude seems at odds with the strong principled stand on unauthorised disclosure of information taken by many agencies.
- More than two thirds of respondents identified leaking information to the media as seriously fraudulent or corrupt conduct. Whether this conduct is fraudulent or corrupt may be a question of motive. Nonetheless, the survey responses suggest that not only are the proper mechanisms available for disclosing concerns regarding the conduct of public employees unclear, but also the mechanisms may not be effective.

3.78 Overall, the Audit considers there is a need to extend definitions of fraud and corruption to readily incorporate improper conduct such as breaches of values/principles, waste, and abuse. As well, effort is needed to ensure all employees are aware of their broad public sector responsibilities and the specific agency policy and guidelines relevant to personnel matters, confidentiality and security of information, and mechanisms available for disclosing concerns regarding the conduct of public employees.

4. MEASURING FRAUD AND CORRUPTION IN THE ACT PUBLIC SECTOR

INTRODUCTION

4.1 This Chapter considers the extent of fraudulent and corrupt conduct reported in the ACT public sector.

SIGNIFICANT FINDINGS

- *Information is not available to authoritatively quantify the extent or cost of fraud in the ACT Public Sector.*
- *The annual reports of government bodies for 1999-2000 and 2000-2001 disclose only a small handful of investigations into fraudulent or corrupt conduct.*
- *Annual Reports Directions, which require the disclosure of information regarding fraud and corruption prevention activities and incidents, are not applicable to all ACT government agencies. Essentially the reporting requirements apply only to the government departments and although other public bodies are encouraged to 'consider' including relevant information, few choose to make any disclosure.*
- *The information disclosed in annual reports is of little value in judging the effectiveness of fraud and corruption prevention activities or the manner in which agencies deal with identified fraud and corruption.*
- *Almost half of all respondents to the Audit's survey of public sector employees were aware of cases of fraudulent or corrupt conduct within their agency in the last two years.*
- *Of the respondents who were aware of some fraudulent or corrupt conduct, approaching half said the conduct had been reported and investigated.*
- *Almost three quarters of the survey respondents considered there was no change in the extent of fraudulent and/or corrupt conduct in their agencies over the last two years. Some 15% considered the extent of such conduct had increased. This suggests that the fraud and corruption prevention framework is not as effective as it could be.*

BACKGROUND

4.2 The cost of fraud and corruption is difficult to quantitatively measure in any jurisdiction, because information is inadequate; definitions differ across jurisdictions, and available data are often incomplete.³⁶ That it is a significant cost to the community is beyond doubt. For example, in November 1997, the Australian Institute of Criminology estimated that the cost of fraud and misappropriation in Australia was between \$3 billion and \$3.5 billion a year.³⁷

4.3 Other attempts have been made to estimate the extent of fraud, corruption, and misappropriation. In a recent survey conducted by KPMG³⁸ in Australia and New Zealand it was reported that:

- the 361 respondents lost a total of \$273 million to fraudulent conduct in the survey period (from October 1999 to September 2001);
- almost 45,000 instances of fraud were reported;
- the average loss for organisations experiencing fraud was \$1.4 million; and
- 55% of respondents experienced at least one fraud incident in the survey period.

4.4 An international survey conducted by Ernst & Young³⁹ showed that more than two thirds of all respondents had suffered from fraud and almost one in ten had suffered more than 50 frauds.

³⁶ In the USA, the Association of Certified Fraud Examiners published in 1996 an extensive report on the status of fraud and white-collar crime in the USA, called the *Report to the Nation on Occupational Fraud and Abuse*. The report noted that

The cost of fraud and abuse is so difficult to quantitatively measure because (1) not all fraud and abuse is uncovered; (2) of that uncovered, not all is reported; (3) incomplete information is gathered in some reported fraud cases; (4) that information which is gathered often is not distributed to management or the authorities; and (5) civil or criminal action often is not taken against the perpetrator(s) of fraud.

The report, which summarised the findings of a 2 ½ year study, observed that fraud and abuse cost US organisations more than \$US 400 billion annually, and that the average organisation lost about 6% of its total annual revenue to fraud and abuse. This amounted to a loss of more than \$9 a day per employee. A second report, in 2002, increased estimated losses to \$US 600 billion annually, or more than \$4,500 per employee.

³⁷ *Measuring the Extent of Fraud in Australia* - Australian Institute of Criminology - Trends and Issues in Crime and Criminal Justice, No. 74 Canberra November 1997

³⁸ *Fraud Survey 2002* – KPMG Australia April 2002

³⁹ *Fraud – The Unmanaged Risk* – Ernst & Young London 2000

4.5 Much of all fraud is undetected. Much of what is detected is unreported.

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4.6 Information is not available to authoritatively quantify the extent or cost of fraud in the ACT Public Sector.

4.7 Several requirements currently exist concerning reporting the cost of fraud. For example:

- the Public Sector Management Standards require agencies to keep records of all instances of fraud, including losses, and of resource allocations resulting from any inquiry or subsequent action. Agencies must include details of the implementation of fraud prevention strategies in their Annual Report to their Minister;⁴⁰
- Annual Reports Directions issued by CMD ‘require administrative units to include accurate information on fraud control and prevention strategies in their annual reports. Reports must include the number of reports or allegations of fraud or corruption received and investigated during the year, and the outcomes of any investigations’;⁴¹ and
- current guidelines for dealing with fraud and corruption state that ‘It is ... incumbent upon agencies to notify the Fraud Prevention Manager of all reports and allegations of fraud or corruption as soon as practicable, and no later than five (5) working days of a matter being brought to notice’.⁴²

Information Requested by the Audit

4.8 The Audit requested information from 32 ACT government agencies on fraud or corruption investigations initiated and/or completed for the 1999-2000 and 2000-2001 financial years. The 32 agencies included all ACT Government departments and collectively covered most of the ACT Public Sector. The responses are summarised in the following table.

⁴⁰ Public Sector Management Standards – Standard 1 – Ethics (Part 4 Fraud Prevention)

⁴¹ *Chief Minister’s Annual Reports Directions* – CMD May 2002. The Directions are issued under the *Annual Reports (Government Agencies) Act 1995*, which sets the framework for annual reporting across the ACT public sector.

⁴² *Guidelines for Dealing With Fraud and Corruption in the ACT Public Service* – CMD July 1996

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Table 4.1 – Fraud Investigations Initiated and/or Completed

	1999-2000		2000-2001	
	No.	Estimated value (\$'000)	No.	Estimated value (\$'000)
Fraud and corruption investigations initiated and/or completed in ACT Government Departments	15	17.5	15	169.2
Fraud and corruption investigations initiated and/or completed in other Public Bodies ¹	135	53.0	164	107.8

Note:

¹ This data includes ActewAGL investigations of alleged electricity and water theft or interference and other matters examined by investigating officers. The data supplied by ActewAGL records 134 incidents in 1999-2000, with an estimated value of \$43,000, and 159 incidents in 2000-2001 with an estimated value of \$15,400.

4.9 Excluding incidents examined by investigators from ActewAGL, in 1999-2000, the Audit was advised of 18 investigations into allegations of fraud and/or corruption across the 32 agencies approached by the Audit, involving less than \$27,500. In 2000-2001, 20 investigations were undertaken, involving about \$262,000. Information provided by ActewAGL indicated that incidents examined by the investigating officers covered a wide variety of matters, many of which would not necessarily involve fraudulent or corrupt conduct. For example, the investigating officers examined complaints regarding unusually high or low electricity or water consumption, faulty meters, metering mix-ups (installation faults or reading errors), vandalism, lightning strikes, disconnections for non-payment, users re-connecting themselves and sewage spills.

Information Included in Annual Reports

4.10 It could be expected that the annual reports of ACT government agencies would include information on fraud control and prevention strategies and incidents of fraud or corruption reported and investigated. However, the relevant part of the Annual Reports Directions issued by CMD apply specifically to ‘administrative units’ only – i.e. the government departments established under section 13 of the *Public Sector Management Act 1994*.

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4.11 Other public authorities are not required to refer to fraud and corruption prevention or incidents in their annual reports. The Annual Reports Directions state that ‘Public authorities making independent reports will report [on whole-of-government issues] as relevant ... public authorities should consider including information about their ... fraud prevention or risk management activities in the Corporate Overview’. The annual reports of some government agencies will be annexed to the annual report of an administrative unit or subsumed within it. The Annual Reports Directions indicate that such public authorities ‘will generally not report on these issues unless particular statutory requirements apply to the statutory entity or office holder - for example, public interest disclosure or freedom of information reporting’.

4.12 The Audit examined the annual reports for 1999-2000 and 2000-2001 of ACT government agencies, including the 32 agencies that had been contacted by the Audit for information regarding fraud or corruption investigations. The annual reports disclose only a small handful of investigations into fraudulent or corrupt conduct, as shown in the following table.

Table 4.2 – Fraud Incidents Disclosed in Annual Reports

	1999-2000		2000-2001	
	No.	Estimated value (\$'000)	No.	Estimated value (\$'000)
Fraud and corruption incidents disclosed by ACT Government Departments	5	Not stated	11	Not stated
Fraud and corruption incidents disclosed by other Public Bodies	81 ¹	\$9.7 ²	-	\$3.5 ³

Notes:

¹ In 1999-2000, ActewAGL reported 81 investigations, comprising two cases of internal fraud (both unsubstantiated), one case of external fraud (substantiated), one case of inappropriate conduct by employee (substantiated and disciplinary action taken), 37 alleged water thefts, and 40 alleged electricity thefts. ActewAGL did not report the same information in 2000-2001.

² In 1999-2000, Canberra Institute of Technology reported minor theft or loss of portable and attractive items ‘with no book value’, cash deficiencies and the theft of a projector. The total value of these incidents was \$9,743. The number of incidents or investigations was not reported.

³ In 2000-2001, Canberra Institute of Technology reported minor equipment lost or stolen and cash deficiencies with a total value of \$3,516. The number of incidents or investigations was not reported.

4.13 Information included in the annual reports regarding number of reports or allegations of fraud or corruption received and investigated during the year, and the outcomes of any investigations, was very brief.

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The nature of the incidents was typically not disclosed, nor the estimated monetary value.

Audit Comment

4.14 The Annual Reports Directions, requiring the disclosure of information regarding fraud and corruption prevention activities and incidents, are not applicable to all ACT government agencies. The reporting requirements apply only to ‘administrative units’ – essentially the government departments – and while other public bodies are encouraged to ‘consider’ including relevant information, few choose to make any disclosure, whether it is about their prevention activities or about incidents reported or investigated.

4.15 Further, the bare minimum of information is disclosed. The information provided is of little value in judging the effectiveness of fraud and corruption prevention activities or the manner in which agencies deal with identified fraud and corruption.

Information from the Audit’s Survey

4.16 The Audit survey sought information regarding the experience and perceptions of respondents with regard to fraudulent and corrupt conduct. The responses have provided an interesting counterpoint to the formal reports of fraud published by agencies in their annual reports.

Respondents’ Awareness of Fraudulent or Corrupt Conduct within their Agency

4.17 Overall, almost half (47%) of respondents were aware of cases of fraudulent or corrupt conduct within their agency in the last two years.

4.18 Respondents were asked to indicate the fraudulent or corrupt conduct of which they were aware. The table on the following page shows some of the conduct identified by respondents. It should be noted that the column headed ‘Number’ refers to the number of times respondents cited this conduct, it does not necessarily refer to a number of specific and unique incidents.

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Table 4.3 Fraudulent or Corrupt Conduct Identified by Survey Respondents

Type of Conduct	Number ¹
Making inaccurate entries in flextime records	31
Inappropriately using internet/email	25
Theft or misappropriation of money.	24
Using an office photocopier to duplicate club circulars.	23
Personal use of agency vehicles	22
Using an office mobile phone for personal calls	21
Not submitting leave forms to cover absences from work.	19
Recruitment issues (e.g. appointing friend/relative other than as 'merit' selection, 'snow job' to discourage unwanted applicants, appointment of unqualified persons to a professional position)	12
During working hours running a private business	9
Taking a 'sickie' when fit for work	8
Borrowing agency owned equipment for private use.	8
Claiming overtime when not worked	8
Stealing consumables (e.g. stationary, toilet paper) and theft of equipment	7
Disclosing official information to unauthorised persons	6
Transferring agency revenue to a personal account.	5
Accepting gifts and bribes	5
Borrowing money from petty cash and repaying later.	4
Travel issues (e.g. unauthorised use of Cabcharge, claiming expenses inappropriately, travelling interstate to a conference but not attending, arranging overseas travel for a matter that could have been attended to within Australia)	4
Contracting issues (e.g. favouritism in letting a contract; contract let without proper process, bribing clients with a contract)	3
Manipulating budgets to favour personal agendas or to 'curry favour with Minister'	3
Purchasing with agency funds goods to be used predominantly for personal use	3
Using an agency credit card for personal use.	2
Working and claiming overtime when the work performed could have been done in normal hours.	2
Mis-stating reasons for absences from work	2
Harassment of staff complaining of fraud or other work-place issues	2
Ignoring complaints of fraud	1
Rigging 'on-call' to get call-out benefits	1

Note 1 The column headed 'Number' refers to the number of times respondents cited this conduct; it does not necessarily refer to a number of specific and unique incidents.

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4.19 Several respondents commented that many of the examples of misconduct occurred frequently and were often accepted as a fact of life in any 'normal' office. For example:

I have seen evidence or examples of almost each and every [example cited in the survey], which quite often when brought to the attention of management, has been ignored or buried, depending on whether the staff involved were 'favoured' or not.

Some problems are endemic: leave and attendance abuses, use of email and telephone, some work on personal business, and generally tolerating poor behaviour on the part of others.

I believe that most employees are guilty of taking a sickie or making a personal phone call on a work phone.

[I am aware of] too many [cases] to mention - mainly minor things, but it all adds up over time.

4.20 The incidents referred to by respondents contrast to those reported by agencies. Clearly public employees are aware of far more incidents than are formally reported or investigated.

Respondents' Awareness of Whether Fraudulent or Corrupt Conduct was Reported and Formally Investigated

4.21 Respondents were asked whether, to their knowledge, the incidents of fraudulent or corrupt conduct they were aware of were reported as fraud and formally investigated. (This question was not relevant to about half (54%) of all respondents – i.e. those who were not aware of any cases of fraudulent or corrupt conduct in their agencies, and those who did not answer the question.)

4.22 Of the respondents who were aware of some fraudulent or corrupt conduct, 44% said the conduct had been reported and investigated, 44% said it had not, and the remaining 12% were unsure.

4.23 Many comments were received in response to this question. Some respondents indicated that the conduct was dealt with informally:

Any misconduct, perceived or real, was dealt with by the local manager. I believe this was effective and appropriate.

4.24 Several comments indicated that although the conduct was known to be improper, it was tolerated:

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[There is] widespread occurrence that seems to be tolerated.

It is generally accepted behaviour and has not gone over the top.

Only considered as minor infringements and with the exception of the private use of the vehicle generally accepted as normal office practice.

[Private use of mobile phones occurs all the time. Personal use of photocopiers and e-mail/internet occurs frequently ... it is not reported] because a certain amount of this is tolerated; indeed many managers do not consider it to be fraudulent.

4.25 Many comments reflect poorly on the implementation of the fraud prevention framework (although some may claim this is really little more than taking a pragmatic and practical approach):

Couldn't be bothered - felt that the time spent chasing it up wasn't worth it.

Not worth the stress.

Do any of [these items] ever get formally investigated?

4.26 Unfortunately, some comments are a cause for concern:

[Recording flex hours not worked] The conduct was on the part of the supervisors.

[Overtime being claimed that has not been worked.] A position was to be reclassified but the paperwork had not been completed so overtime was paid in an attempt to top up the person's salary (the overtime was not actually worked).

Not investigated as not reported by associates due to consequences or action that may have been taken at that time.

... when you have no confidence in management doing the right thing, where do you go and why bother reporting?

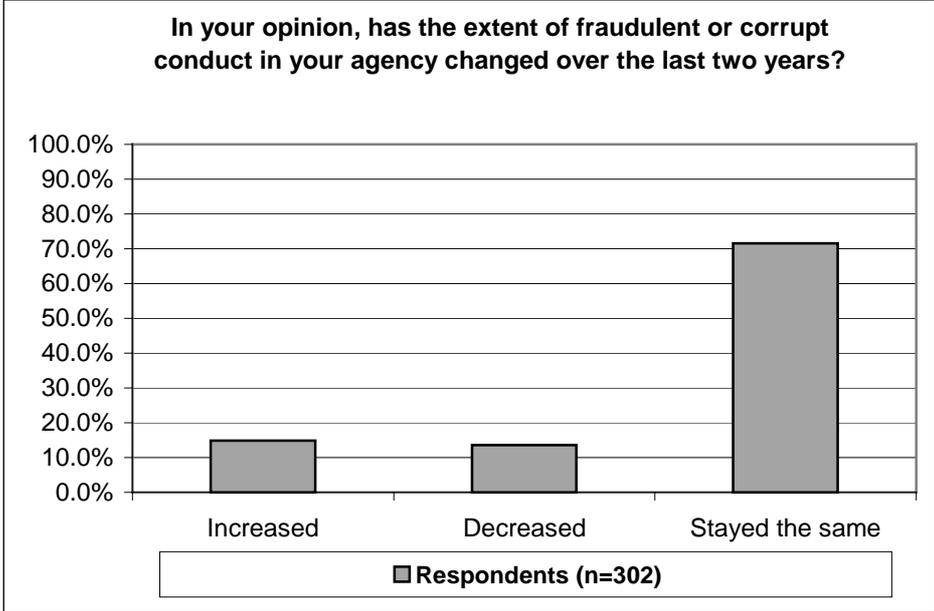
You must be joking! To report fraud in our area would be the kiss of death.

Respondents' Perceptions of the Extent of Fraudulent and/or Corrupt Conduct within their Agency

4.27 The survey also asked respondents to comment on their perception of the extent of fraudulent and/or corrupt conduct occurring within their agency.

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4.28 Almost three quarters (72%) of the 302 responses to this question considered there was no change in the extent of fraudulent and/or corrupt conduct. Some 15% felt the extent of fraud or corruption had increased, with the remaining 13% saying it had decreased.



Audit Comment

4.29 Almost half of all respondents to the Audit’s survey indicated they were aware of cases of fraudulent or corrupt conduct within their agency in the last two year. Most respondents, but not all, provided a brief description of the fraudulent or corrupt conduct. Some respondents provided several comments. As can be seen from Table 4.3, the types of fraudulent or corrupt conduct many respondents were aware of are those that might be considered by many as ‘less serious’ conduct, for example, inaccurate entries in flexitime records, inappropriately using internet/email, or using an office mobile phone for personal calls. On the other hand, many respondents were also aware of more serious conduct, such as theft, misappropriation of money, or recruitment issues.

4.30 However, trying to define fraud and corruption in terms such as ‘serious’ or ‘less serious’ is not very useful. The Audit has previously commented that the definition of fraud is often narrowly interpreted, with an emphasis on the offender receiving undue financial rewards. Narrow interpretations tend to significantly downplay ‘less serious’ misconduct, to the extent that such conduct is seldom recognised as fraudulent or corrupt. If it is not recognised, how is it treated?

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4.31 A work environment that does not recognise, or underestimates, the significance of ‘less serious’ fraud and corruption is exposed. Recognition of the significance of improper conduct needs to occur at all levels of the organisation, including management, which is widely acknowledged as a leading contributor to sound organisational ethics/culture.

4.32 With almost half of all respondents to the Audit’s survey aware of cases of fraudulent or corrupt conduct within their agency in the last two years, it is surprising, perhaps, that there are so few formal reports. Comments from respondents give some indication why this may be so. Several reasons are evident, all of which are of concern for the efficacious operation of the fraud and corruption framework:

- employees may be unsure about what constitutes fraud and corruption;
- some practices, generally recognised as improper, are disregarded, tolerated or implicitly endorsed by employees and managers;
- employees may be unsure of the appropriate mechanisms for reporting their suspicions or concerns;
- employees may be sceptical about the value of reporting fraud and corruption in their agency; that it may be ‘more trouble than it’s worth’;
- employees may be concerned about possible reprisal action by other employees if it becomes known that they have reported fraudulent or corrupt conduct.

4.33 Regarding the extent of fraudulent or corrupt conduct within their agencies, the vast majority of respondents consider that ‘little has changed’ over the last two years. Without an objective starting point, it is difficult to determine whether this is a good or bad result. However, when considered in the context of the ‘fraud experience’ of respondents – almost half of all respondents were aware of fraud within their agencies – it suggests that the fraud and corruption prevention framework is not as effective as it could be. Further, it implies that agencies may have a relaxed approach to fraud and corruption matters – a false sense of security.

4.34 The Audit notes respondents to a recent ‘fraud survey’ undertaken by KPMG across public and private sector organisations in Australia and

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New Zealand⁴³ expressed a far more pessimistic view. About 62% of respondents to that survey considered that fraud was an increasing problem, and only 1% said fraud was a decreasing problem (the rest – about 37% - said it would stay the same). The KPMG survey has been conducted biannually since 1993. Each survey has drawn similar results; i.e. around 60% of respondents consider fraud to be an increasing problem.

CONCLUSION

4.35 Information is not available to authoritatively quantify the extent or cost of fraud in the ACT Public Sector. Public reports (i.e. the annual reports of agencies) disclose only a small handful of investigations into fraudulent or corrupt conduct (annual reports of departments disclose five incidents in 1999-2000 and eleven in 2000-2001), and the information provided is very brief. The nature of the incidents is typically not disclosed, nor the estimated monetary value.

4.36 Other information obtained from agencies by the Audit revealed more reports and investigations of fraudulent or corrupt conduct than reported publicly. However, excluding the reports from one public authority, the data continues to reveal a very low number of incidents reported and investigated. This could, of course, mean that the prevention framework is operating very effectively; that little fraudulent or corrupt conduct occurs within the ACT Public Sector. Intuitively, however, it is difficult to accept that this data reflects the extant level of improper conduct.

4.37 Information such as the Audit's survey of public sector employees and other surveys and reviews conducted in other jurisdictions suggest there is a significant level of improper conduct that is undetected and/or unreported. For example, almost half of all respondents to the Audit's survey indicated they were aware of cases of fraudulent or corrupt conduct within their agency in the last two years. Indeed, several respondents commented that many of the examples of improper conduct cited in the survey occurred frequently and were often accepted as a fact of life in any 'normal' office. This is disturbing.

4.38 Around half of the survey respondents who were aware of some fraudulent or corrupt conduct in their agencies said it had not been

⁴³ *Fraud Survey 2002* KPMG Australia April 2002

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reported and investigated, and many more were unsure. This too, is disturbing.

4.39 Sound reporting mechanisms are clearly important as many surveys and reviews have noted that the most common method of detection of fraudulent, corrupt, or other improper conduct was a ‘tip-off’ from an employee. This suggests that effective reporting mechanisms and open channels of communication from employees to management can have a positive effect on fraud and corruption detection and mitigation.

4.40 Preventing fraud and corruption requires a very strong emphasis on creating a workplace environment that promotes ethical behaviour, deters wrongdoing and encourages all employees to communicate any known or suspected wrongdoing to the appropriate person. The review of the fraud and corruption prevention framework being undertaken by CMD should carefully examine factors that inhibit reporting. Circumstances where employees ‘couldn’t be bothered [reporting fraud because] the time spent chasing it up wasn’t worth it’ need to be addressed.

4.41 **Suggestion for better practice (10)** - The Chief Minister’s Annual Report Directions should be amended to make it mandatory for all agencies to include in their annual reports details of all cases of fraud and corruption identified in the agency.

4.42 **Suggestion for better practice (11)** - Information provided in annual reports should include quantification of the cost of each case of fraud or corruption, descriptions of how each case was perpetrated, identified and what remedial action was taken to address control deficiencies, as well as the outcomes of each case’s investigation.

4.43 **Suggestion for better practice (12)** - A summary quantifying the extent and cost of identified cases of fraud and corruption in the ACT Public Service should be included in the Commissioner for Public Administration’s Annual Report tabled in the legislative Assembly in accordance with section of the *Annual Reports (Government Agencies) Act 1995*.

PART 2

IMPLEMENTING THE FRAMEWORK FOR FRAUD AND CORRUPTION PREVENTION IN THE ACT PUBLIC SECTOR

The focus of the Audit was on the practicalities of fraud and corruption prevention management (i.e. implementation of arrangements to prevent and deal with fraud, corruption and other improper conduct), rather than the supporting framework.

Part 2 discusses aspects of implementation within the ACT Public Sector, and highlights matters identified through audit activity in the various agencies as well as through the Audit's survey of public sector employees.

Many discussions on the prevention of fraud and corruption focus on four interrelated stages at which various control measures may be implemented. The following Chapters deal with each of these stages:

Chapter 5 Implementing the Framework - Prevention Activities

Chapter 6 Implementing the Framework - Detection Activities

Chapter 7 Implementing the Framework - Investigation Activities

Chapter 8 Implementing the Framework - Sanctioning Activities

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5. IMPLEMENTING THE FRAMEWORK - PREVENTION ACTIVITIES

INTRODUCTION

5.1 The primary defence against fraud and corruption should be prevention. Policies and systems should be in place to minimise motivation and opportunities to engage in fraud.

SIGNIFICANT FINDINGS

- *Few agencies have developed a fraud and corruption prevention policy as a separate and identifiable instrument, most adopting the whole-of-government policy without substantive change. Similarly, most agencies have not developed their own code of ethics or code of conduct. Small agencies in particular did not have agency-specific policy, tending to fall under the aegis of the portfolio department.*
- *The Audit noted that agencies generally have suitable governance arrangements for fraud and corruption prevention, although this is more evident in larger agencies.*
- *Large agencies had undertaken a risk assessment at some time in the two years previous to the audit. Generally, however, the assessments were not an overall assessment of business risks and focused on protection of financial and physical assets, with brief consideration of wider fraud and corruption issues (i.e. those often identified as integrity/ethics matters).*
- *Few smaller agencies had undertaken their own risk assessments, although some were included within the assessments undertaken by the portfolio department. Smaller agencies are, typically, operating without an objective analysis of the risks facing the agency.*
- *Progress on implementing recommendations arising from the plans (i.e. specific risk treatments) was difficult to determine. Although most plans specified an implementation timetable, and reporting arrangements (such as annual reports to the Audit Committee) it was not clear that implementation was routinely followed-up.*

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- *SERFAs have received little ongoing training and development to ensure they maintain the skills and current knowledge to undertake their role in the most effective manner.*
- *Almost all respondents to the Audit's survey agreed they had a responsibility to assist in preventing fraudulent or corrupt conduct, but less than half felt their colleagues demonstrated their understanding of their obligations in this respect.*
- *Many respondents to the survey were not aware of the ACT Public Service Code of Ethics or their obligation to report fraudulent or corrupt conduct within their agency. Almost 40% were not aware the ACT has a Public Interest Disclosure Act.*
- *Almost a quarter of respondents considered that management in their agency did not demonstrate a strong commitment to preventing and detecting to fraud and corruption.*
- *Only 28% of respondents considered their agency dealt adequately with fraudulent or corrupt conduct uncovered.*
- *Only a quarter of respondents knew their agency had a formal Fraud Control Plan or formal fraud prevention strategies. Of those aware of the fraud control plan, only a third had read it in the previous twelve months, and only half agreed the plan discouraged staff from engaging in fraudulent or corrupt conduct. Less than a quarter agreed the fraud control plan was effective in exposing fraud and corruption.*
- *Although about half of all respondents had participated in some training or activity relevant to fraud and corruption prevention in the past two year, training is infrequent and has been insufficient to maintain a high level of employee awareness.*

PREVENTION STRATEGY, INCLUDING POLICY AND GUIDELINES

5.2 The whole-of-government fraud and corruption prevention strategy, and policy and guidelines are discussed in Chapter 2 of this report. It was noted that the policy and guidelines prepared by the Chief Minister's Department are essentially sound, although in some respects they are unclear and out-dated. A revised framework has been proposed, which will include revised policy and procedures, and new guidance material.

5.3 Better public sector practice is for agencies to build on the foundation of government policy by developing a Fraud and Corruption Prevention

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Strategy, specific to the agency environment, as a clearly identifiable instrument at the policy level. The strategy should clearly articulate the agency's stance on fraud and corruption. It should be linked to governance arrangements appropriate for the effective management of fraud and corruption prevention activities. The nucleus of the Fraud and Corruption Prevention Strategy should be a code of conduct/ethics statement that communicates unmistakably the standards expected of its employees.

Agency Strategies

5.4 The Audit examined information from 32 ACT government agencies on their extant fraud or corruption prevention strategies. The 32 agencies included all ACT Government departments, several large public authorities, and several small and ostensibly independent public bodies. The audit sought to determine whether the agencies had a satisfactory Fraud and Corruption Prevention Strategy in place.

5.5 Typically, agencies have adopted the whole-of-government policy without substantive change as their fraud and corruption prevention policy. That is to say, few agencies have developed a policy as a separate and identifiable instrument. Similarly, most agencies have adopted the whole-of-government *ACT Public Sector Code of Ethics* and have not developed their own code of ethics or code of conduct. Small agencies in particular did not have agency-specific policy, tending to fall under the aegis of the portfolio department.

5.6 The Audit noted that several agencies have included in their Fraud Control Plans statements of policy regarding fraud and corruption prevention. For example, the Department of Justice and Community Safety includes the following statement in its Plan:

Fraud of any description is unacceptable within the Department ... Where instances of fraud are detected appropriate remedies will be pursued thoroughly in accordance with relevant legislation, the Public Sector Management Standards, Department and whole-of-government guidelines.

5.7 The fraud control plan is only one element of a fraud and corruption prevention strategy, albeit an important one. It is a step towards operationalising the strategy, and although a fraud control plan will inevitably include policy statements to set the context, the plan should not be the primary policy tool. The Audit considers it is preferable to

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separate the policy from the operational tools. To this effect, a ‘stand alone’ policy statement is desirable as the foundation for all fraud and corruption prevention activity. The policy should be communicated to all employees and commitment to it should be clearly demonstrated through appropriate organisational arrangements and the behaviour of management.

5.8 Operationalising the fraud and corruption prevention strategy requires governance arrangements appropriate for the effective management of fraud and corruption prevention activities. In addition to policy and guidance documents, governance arrangements may include:

- support and accountability at senior management level;
- an Audit Committee (or similar) with responsibility to oversight fraud and corruption prevention activities;
- a designated area with major responsibility for fraud and corruption control;
- clearly defined roles/responsibilities of key players;
- operational arrangements, such as specific fraud reporting arrangements and regular reporting on the implementation of prevention activities; and
- risk management planning.

5.9 The Audit noted that agencies generally have suitable governance arrangements for fraud and corruption prevention. Roles, responsibilities, and operational arrangements appear to be satisfactorily defined although this is more evident in larger agencies. And, as was the case with the policy, details of governance arrangements are often included as part of the agency’s fraud control plan. This means that governance arrangements for smaller agencies are often not clearly defined, as most small agencies had not developed their own fraud control plan, but were typically included as part of the portfolio department’s plan.

5.10 Key aspects of the fraud and corruption prevention strategies examined by the Audit are discussed in this and following sections.

Employee Awareness of Agency Strategies

5.11 The effectiveness of an agency’s fraud and corruption prevention strategy can be assessed, in part, by considering how aware employees are of the strategy and its components. To this end, the Audit survey

sought information on respondents' awareness of the operation of their agency's strategy.

Responsibility to Assist in Preventing Fraudulent or Corrupt Conduct/Awareness of Obligations

5.12 The survey considered whether employees were aware of their role in preventing fraudulent or corrupt conduct within their work area. Of all respondents to the survey, 91% agreed they had a responsibility to assist in preventing fraudulent or corrupt conduct. Some were unsure (7%), but of concern was the 2% who did not acknowledge such a responsibility.

5.13 However, although respondents almost unanimously agreed they had responsibility to prevent fraud, many were uncertain whether their colleagues shared that view. Some 17% of respondents considered that staff in their agency were unaware of their obligations to prevent and report fraudulent and/or corrupt conduct and a further 36% were not sure. In other words, less than half of all respondents felt that their colleagues demonstrated their understanding of their obligations in this respect.

Management Commitment/Dealing with Fraudulent or Corrupt Conduct

5.14 The survey considered whether employees perceived management as strongly committed to preventing and detecting fraudulent and/or corrupt conduct, and were dealing adequately with such conduct. Almost a quarter of respondents considered that management in their agency did not demonstrate a strong commitment to preventing and detecting fraud or corruption and a further 23% were not sure. This concerning response suggests the fraud and corruption strategies are not as sound as they may first appear.

5.15 It is widely agreed that management plays a vital role in establishing and maintaining an ethical culture within an organisation, that is a culture of integrity, which minimises fraudulent, corrupt, and improper conduct. Research cited by the NSW Independent Commission Against Corruption⁴⁴ notes that:

- the behaviour of managers and in particular, senior executives, is far more influential on staff behaviour than is formal policy;

⁴⁴ *Ethics: the key to good management* NSW Independent Commission Against Corruption, 1998

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- staff are more likely to do what they see their supervisor doing than to adhere to ethics policy; and
- statements from the CEO on his or her stance on ethics have more impact on staff decision making than do the staff's own ethical goals and beliefs.

5.16 The challenge for agencies is to understand and change the factors that have led to a lack of confidence in their managers.

5.17 Lack of confidence in management may be one reason why only 28% of respondents considered their agency dealt adequately with fraudulent or corrupt conduct uncovered (57% were not sure).

5.18 Another factor contributing to how employees perceive the effectiveness of the framework in dealing with fraudulent or corrupt conduct is the extent and quality of communications regarding fraud prevention, detection and investigation activities. This is discussed at paragraphs 5.47-55 of this report.

5.19 Suggestion for better practice (13) – All public sector agencies should develop a 'stand alone' policy statement regarding fraud and corruption prevention, which clearly defines the agency position and governance arrangements. The policy should be communicated to all employees and commitment to it should be clearly demonstrated through appropriate organisational arrangements and the behaviour of management.

RISK ASSESSMENTS AND CONTROL PLANS

5.20 Practical implementation of the strategy means actively managing the risk of fraud and corruption within the agency. This involves identifying the potential for fraud and corruption, and developing sound approaches to minimise the risk of it occurring. The Agency should undertake a dedicated risk assessment periodically, preferably every two or three years or when significant change has occurred. The risk assessment should underpin a Fraud Control Plan (or an Integrity Control Plan), which addresses areas of risk identified by the assessment. In undertaking the risk assessment and developing the control plan, agencies need to consider factors such as its size, structure and the nature and complexity of its processes.

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5.21 PSM Standards require a Chief Executive to ‘pursue a systematic approach to the control of fraud’.⁴⁵ A Chief Executive must assess the risk of fraud against each of their programs, and where those programs have a significant risk of fraud, must develop detailed plans for fraud control. Where programs have a less significant risk of fraud, a Chief Executive must develop arrangements for fraud control and minimisation, and include those arrangements in corporate plans, internal audit plans, and other internal management plans. Fraud control arrangements must be assessed and reviewed every two years or more frequently if any significant suspected fraud is discovered or there is a significant change in the nature or scope of operations, procedures or systems.

5.22 The effectiveness of any fraud control plan depends upon the adequacy of the risk assessment in identifying and evaluating the nature and scope of risk of fraud. Fraud Control Plans should be reviewed regularly. The review should entail:

- determining that risk assessment methodologies are valid;
- conducting another risk assessment;
- reviewing changes in the programs operation and environment since the last plan;
- addressing recommendations in the last fraud control plan not yet implemented; and
- developing a further two year program for fraud control which will rectify residual shortcomings in the procedures.

5.23 The Audit sought to determine whether agencies had undertaken risk assessments and developed a satisfactory Fraud Control Plan.

Risk Assessments

5.24 The large agencies reviewed by the Audit, including each of the portfolio departments, had undertaken a risk assessment at some time in the two years previous to the audit.⁴⁶ Most had been undertaken by external consultants, and involved a self-assessment process at Business Unit (or similar) level.

⁴⁵ Public Sector Management Standards, June 2000 *Standard 1 Ethics Part 4.2*

⁴⁶ Several agencies are due to review their risk control arrangements, including re-assessing risks and updating control plans.

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5.25 Generally, the risk assessments focused specifically on fraud matters – i.e. they were not an overall assessment of business risks. Consideration of wider fraud and corruption issues (i.e. those often identified as integrity/ethics matters) was not overt; indeed, protection of financial and physical assets was the over-riding theme in many.

5.26 The risk assessment methodology applied appeared appropriate and followed the general structure of relevant Australian standards.⁴⁷ Several assessments clearly identified both inherent risks and control risks, and the basis for determining the residual risk for particular elements of the business was sound. Risks were generally assessed initially by agency managers, according to consequence and likelihood, and ranked in the risk assessment process accordingly.

5.27 Whether agency line managers are best placed to make risk assessments is debatable. Although it is accepted that managers have a detailed understanding of the operation of the various organisational elements in which they are involved, their lack of independence and specific training in risk analysis may obscure their objectivity. Thorough assessment of all risks by qualified persons, such as trained internal auditors, risk managers, or consultants, may result in a more comprehensive risk assessment. For example, it is interesting to note that in several departments the matters considered of the highest risk were items such as ‘theft of stationery’ or ‘staff making unauthorised personal STD phone calls’. And, in another example, the Department of Education and Community Services, which suffered an internal fraud of more than \$400,000 when a finance officer transferred departmental funds to a personal account over a period of several years, assessed the likelihood of such fraud as ‘zero’.

5.28 The Audit also noted that few smaller agencies had undertaken their own risk assessments, although some were included within the assessments undertaken by the portfolio department. For others, risk assessments had not been undertaken or were ‘being planned’. It would appear that smaller agencies are, typically, operating without an objective analysis of the risks facing the agency, particularly in terms of their exposure to fraud, corruption, or other integrity risks. The Audit considers this most undesirable.

⁴⁷ Standards Australia/Standards New Zealand *Risk Management AS/NZS 4360:1999* and *Guidelines for Managing Risk in the Australian and New Zealand Public Sector: 1999*

Fraud Control Plans

5.29 As would be expected, those agencies reviewed by the Audit that had undertaken a risk assessment had also prepared a fraud control plan based on the assessment. The plans varied in style and detail, but each appeared suitable for the circumstances of the particular agency.

5.30 As mentioned above, several plans appear to serve the two-fold purpose of establishing the agency's policy on fraud and corruption prevention, and of presenting an operationally focused methodology for reducing the associated risks. The plans were linked to the Government's fraud control policy and drew attention to whole-of-government guidelines. It was not always clear whether fraud control plans were linked to the agency's Corporate Plan, Code of Conduct/Ethics, or other relevant documents such as Chief Executive Instructions.

5.31 Fraud control plans dealt with agency-wide risks and risk treatments as well as those relevant to specific programs or business units. Particular attention was given to risks rated as high or very high, with such risks drawing specific treatment actions. Responsibility for the implementation of the plans has generally been allocated at operational levels of management. Strategic responsibility for the development, implementation and review of the fraud control plan often rests with the Audit Committee (or similar).

5.32 The Audit found that progress on implementing recommendations arising from the plans (i.e. specific risk treatments) was difficult to determine. Although most plans specified an implementation timetable, and reporting arrangements (such as annual reports to the Audit Committee) it was not clear that implementation was routinely followed-up. For example, biannual reports to the Board of Management at the Department of Urban Services had not occurred (they were described as 'over ambitious') and the department had engaged a consultant to assess implementation of the plan and report to the Audit Committee. In the Department of Justice and Community Safety, responsibility for monitoring implementation was allocated to Internal Audit, but little effective monitoring occurred as the internal audit position was vacant for a considerable time.

5.33 Ideally, fraud control plans should be available to all employees, as the plans are an important part of raising fraud and corruption prevention awareness in the agency, and of encouraging vigilance on behalf of

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management and staff. Most plans reviewed by the Audit were generally available; for example, when the DUS Audit Committee endorsed the 2002-2003 Fraud Control Plan, Executive Directors of DUS business units were advised that 'the Plan should be widely distributed within you Group'. The plan was also made available to employees through the department's intranet. The Department of Education and Community Services, on the other hand, noted that:

... the overall fraud control plan should not be widely distributed across the Department as it contains sensitive information that may be exploited. The plan should not be circulated outside of the Fraud Prevention Steering Committee and the departmental Executive Group.

Awareness of Fraud Control Plans and of Formal Procedures for Reporting Alleged or Suspected Fraudulent or Corrupt Conduct

5.34 The Audit survey sought information on respondents' awareness of the fraud control plan for their agency and formal procedures for reporting suspected improper conduct. Only 23% of respondents knew their agency had a formal Fraud Control Plan or formal fraud prevention strategies (69% of respondents were not sure). Of those aware of the fraud control plan, only a third had read it in the previous twelve months.

5.35 Only 30% of respondents were aware their agency had formal procedures in place for reporting alleged or suspected fraudulent or corrupt conduct (53% of respondents were not sure).

5.36 These results speak for themselves. The effectiveness of a fraud prevention framework must surely be dependent on how widely it is known and understood. The following are typical of comments received from respondents:

I am not aware of my agency's fraud control plan, nor has it been well published

I have not seen any formal documents within my agency addressing fraud or corrupt activities although I have only been in the organisation 12 months.

I have not seen a Fraud Control Plan recently in either of the two organisations that I have worked for.

Effectiveness of Fraud Control Plans

5.37 Respondents who were aware of the existence of their agency's fraud control plan were asked to give their views regarding its effectiveness:

- 52% agreed the fraud control plan (or fraud prevention strategies) discouraged staff from engaging in fraudulent or corrupt conduct (20% disagreed, and 28% were unsure); and
- 24% agreed the fraud control plan was effective in exposing fraud and corruption (23% disagreed, but 53% were unsure).

5.38 Some of the comments received from respondents were insightful:

Just because you have a fraud control plan doesn't mean anyone follows it.

As far as I am aware, there is no fraud control plan in [the agency]. I do not think that any fraud control plan would discourage a person intent in engaging in fraudulent or corrupt conduct.

5.39 The comments above illustrate one of the problems with the current fraud and corruption prevention framework. There is a perceived emphasis on the importance of the fraud control plan as a primary mechanism for preventing fraudulent and corrupt conduct. However, the plan is but one of many measures available to an agency, and as identified by research cited by the NSW Independent Commission Against Corruption,⁴⁸ is most unlikely to be effective on its own.

5.40 Suggestion for better practice (14) – All public sector agencies should undertake periodic assessments of integrity risks (including fraud and corruption) and develop an operational plan aimed at effectively and efficiently treating the risks. Risk assessments should be comprehensive and undertaken by persons with a sound understanding of business and integrity risk assessment processes.

5.41 Suggestion for better practice (15) – Risk treatment plans arising from risk assessments (i.e. Fraud Control Plans, or similar) should be agency-specific, and practical. Implementation and effectiveness should

⁴⁸ *Ethics: the key to good management* NSW Independent Commission Against Corruption, 1998

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be monitored, with regular reporting to the agency's Audit Committee (or similar). The plan should be widely communicated within the agency.

COMMUNICATION

5.42 An effective fraud and corruption prevention strategy requires effective communication throughout the agency. There should be in place a program of training and communication, which aims to ensure staff members are aware of their fraud control responsibilities, are able to identify and prevent fraud in their areas, and are aware of proper procedures for reporting suspected improper conduct.

5.43 The Audit notes that information on whole-of-government policy and guidelines relevant to fraud and corruption prevention is widely available to public sector employees. The information is included on government internet sites and is often available through agency intranets.

5.44 However, this does not guarantee that employees are aware of the material. The Audit survey of public sector employees showed that:

- 14% of all respondents were not aware the Chief Minister's Department has issued an ACT Public Service Code of Ethics;
- 13% of all respondents were not aware they have an obligation to report fraudulent or corrupt conduct within their agency; and
- 38% of all respondents were not aware the ACT has a Public Interest Disclosure Act.⁴⁹

5.45 Coupled with the survey results reported in paragraphs 5.33-39 regarding awareness of fraud control plans, these results support the importance of, and need for, a sound communication program. The Audit noted that communication within agencies of fraud and corruption prevention policy, guidelines, and operational arrangements was infrequent. Typically, communication was concentrated around reviews of risk assessments and revised/updated fraud control plans. In other words, communication was not on-going and did little to maintain a high level of awareness of fraud and corruption prevention matters.

⁴⁹ Ignorance of the PID Act means that many public employees are unaware of the avenues available to them to deal with concerns about the conduct of other employees. The PID Act can facilitate disclosures relating to fraud, corruption, mismanagement, abuse and waste and offers some protection to persons making a disclosure. It can hardly be expected to fulfil its role well if so many employees are unaware of its existence.

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5.46 It is also important that employees can see that improper conduct is identified and detected and appropriate measures are taken against those who infringe. In other words, codes of conduct, fraud control plans and the like alone do not stop improper conduct. They must be accompanied by clearly proposed sanctions if they are to minimise the likelihood of improper conduct; the policy and guidelines must be seen to be working.

5.47 Feedback of a fraud investigation outcome to the employee that reported the alleged fraud is critical as it reassures them that their report was taken seriously and investigated. Without such feedback the perception could develop that ‘nothing happens’ which would discourage further reports.

5.48 Further, communication of information regarding the incident to **all** employees is important for similar reasons. Many organisations communicate such information through staff newsletters or bulletins, highlighting recent investigations (perhaps as a ‘case study’), recent developments and other important aspects of the fraud and corruption prevention framework.⁵⁰

5.49 Finally, there are lessons to be learned from every identified incident of fraud, and the agency’s willingness to learn from experience is an important response to identified incidents. In part, this willingness will be demonstrated by examining the circumstances and conditions that allowed the fraud to occur with a view to making improvements to systems and procedures. This can occur in many ways, such as a specific review by Internal Audit, review by the relevant work area, or more generally by communicating broadly to employees the ‘lessons learned’.

5.50 Suggestion for better practice (16) – Agencies should develop and implement a communication program aimed at ensuring employees are aware of their responsibilities, are able to identify and prevent fraud and corruption in their areas, are aware of the proper procedures for reporting suspected improper conduct, and are informed of the outcomes where fraud and corruption is reported.

⁵⁰ An excellent example is *Ethics Matters*, a newsletter ‘examining ethical issues in the management and use of defence resources’ published quarterly by the Inspector-General Division of the Commonwealth Department of Defence.

TRAINING

5.51 A communication program, and training and development go hand-in-hand. As well as making employees aware of their responsibilities and other operational aspects, agencies need to ensure employees are able to identify fraud and corruption and take proper steps to prevent fraud and corruption. All employees require a general understanding of fraud and corruption prevention matters. Employees in high risk areas or areas where new and changing risks have been identified may need specific training and development. Further, employees who are primarily engaged in preventing, detecting, or investigating fraud, and employees who oversee or coordinate fraud prevention functions, should be trained to accepted fraud control competency standards. This latter aspect is strongly recommended by the Commonwealth Fraud Control Guidelines.

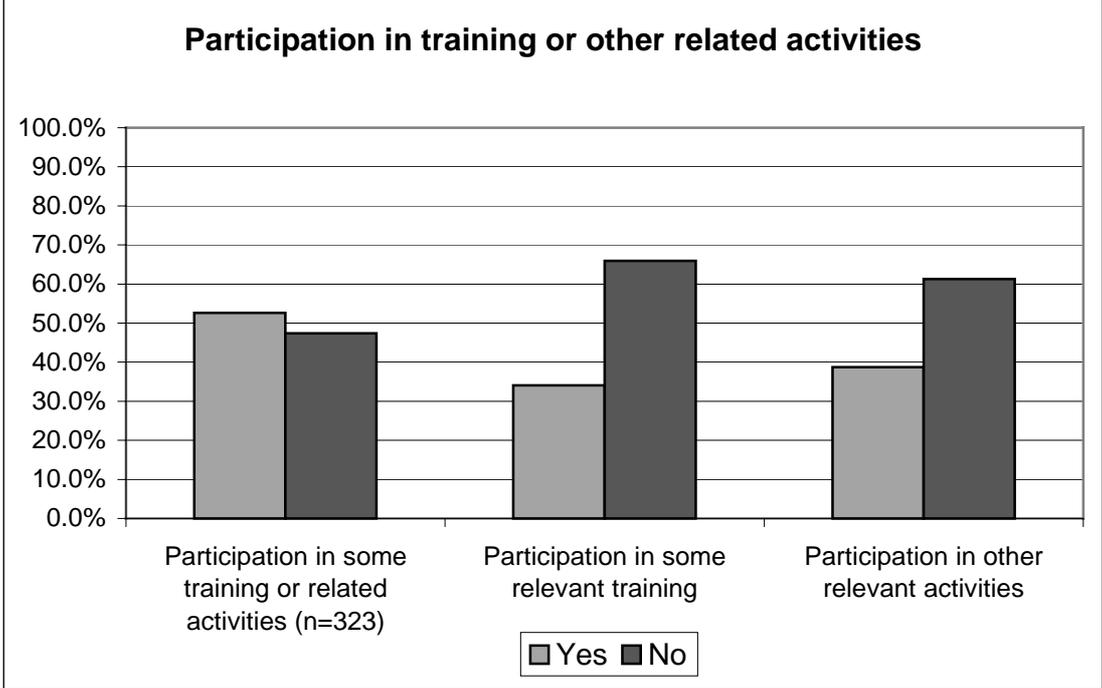
5.52 All large agencies reviewed by the Audit indicated they provided training and development on fraud and corruption matters (including ethics and code of conduct) to their employees. Training and development was most commonly provided to new staff as part of their induction program. Training and development activities for existing staff were generally provided around the time that a risk assessment was undertaken or a revised fraud control plan was introduced. It was not apparent from agency responses whether employees with a major responsibility for preventing, detecting, or investigating fraud (e.g. internal auditors) or for coordinating fraud prevention functions (e.g. Audit Committee members or SERFAs) had received training to recognised competency standards.

5.53 Small agencies reviewed by the Audit generally provided training on fraud and corruption prevention matters for new staff on induction, but relied on the training and development programs of portfolio departments with regard to existing staff.

5.54 The Audit survey sought information on the extent of respondents' participation in training and other activities relevant to fraud and corruption prevention.

5.55 About half (53%) of all respondents had participated in **some** training or activity relevant to fraud and corruption prevention in the past two years. This meant that respondents had been involved in at least one of the nine areas of activity nominated in the survey.

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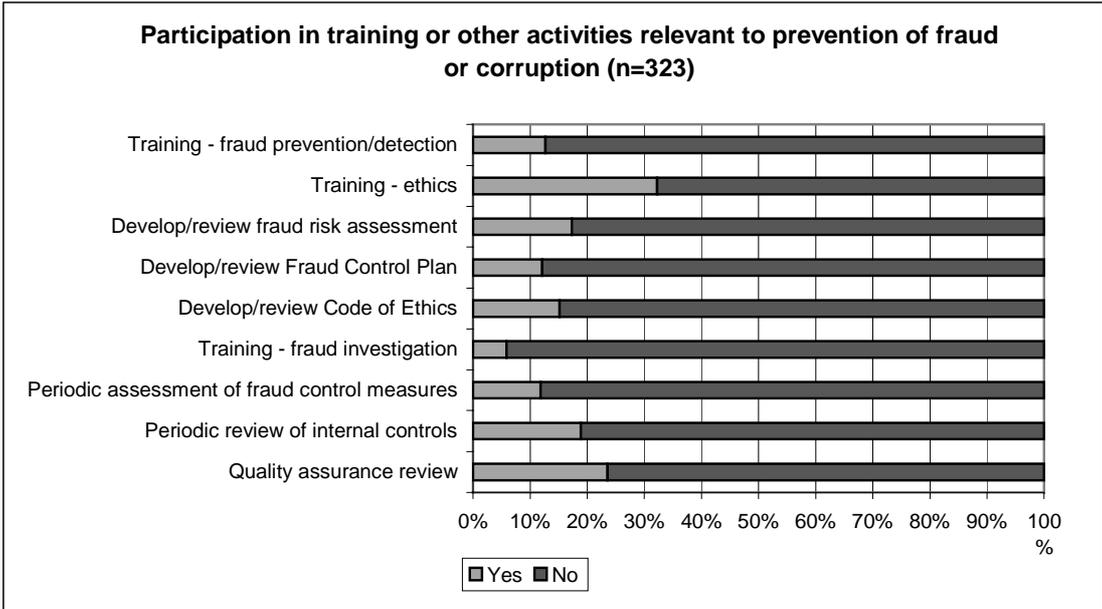


5.56 The participation rates dropped, however, if participation in training and development was isolated from participation in other activities such as developing or reviewing a risk assessment or fraud control plan. Only about a third (34%) of all respondents had participated in training and development on fraud and corruption prevention. Slightly more (39%) respondents had participated in other relevant activities. The participation rate shown in the table above (53%) reflects those who were involved in training, other activities or both. Clearly there was considerable overlap.

5.57 Participation in individual activities was much lower. The most common activity was training on ethics; about a third of all respondents had some training in this area. Training specifically related to fraud prevention and detection was attended by only 13% of respondents.

5.58 The following chart illustrates participation in individual activities.

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5.59 Agencies with a fraud control plan cite training and awareness as a major component of their prevention activities. Nevertheless, training and development in matters relevant to the prevention of fraudulent or corrupt conduct appears to be infrequent, as reflected in some of the comments received from respondents:

I remember receiving some sort of formal fraud prevention training earlier this year. I believe that it was agency-wide and supposed to be mandatory to attend.

I have had one lot of training on fraud and the prevention of fraud in the last five years. Not enough. This department has a high turnover of staff - training should be run more regularly - perhaps annually - and should be mandatory.

5.60 Training in itself may not be sufficient to maintain a high level of awareness:

Fraud was mentioned briefly at a staff meeting five or more years ago, but I can't recall anything about it being mentioned in our workplace since then.

5.61 Executive respondents reported a much higher level of participation in training and other activities relevant to fraud prevention overall, and in all of the nominated areas individually. Almost all (92%) Executive respondents had participated in **some** training or other activities. Involvement was predominantly in the development or review of a risk assessment, fraud control plan, code of ethics or quality assurance review

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(83% of Executive respondents). About 42% of Executive respondents had participated in relevant training over the past two years. This is not an unexpected result; management can hardly be expected to model sound behaviour and provide sound advice on relevant matters if it is unaware or uninvolved.

5.62 Overall, it appears that agencies need to reconsider their approach to training and development in fraud and integrity matters to ensure a higher level of participation and employee awareness.

5.63 Increasing fraud awareness can be achieved by a campaign with both long and short-term components. A long-term view is required, as there is the risk that awareness will soon fade without ongoing reinforcement. The detail of the campaign will depend on each agency's circumstance and may incorporate a number of methods, including:

- modifying and promulgating the agency's code of conduct;
- promotional aids – flyers and posters;
- intra-agency communication – newsletters, email and placing fraud on meeting agendas;
- developing and maintaining an intranet 'integrity' web-site offering a single point of reference for all relevant matters, including policy, guidelines, procedures, newsletters, case studies, articles, and similar material. The intranet site could also include interactive self-assessment quizzes and links to other relevant intranet and internet websites;
- fraud awareness seminars and publications;
- presentations to staff;
- making use of the induction process; and
- reporting to staff outcomes of investigations and disciplinary action against dishonest employees.

5.64 **Suggestion for better practice (17)** – Agencies should develop and implement a training and development program aimed at ensuring all employees understand their responsibilities to identify and prevent fraud and corruption and understand the proper procedures for reporting suspected improper conduct. Employees with particular fraud detection, prevention, investigation or oversight responsibilities should receive training to recognised accredited levels.

**SENIOR EXECUTIVES RESPONSIBLE FOR FRAUD
ADMINISTRATION (SERFAS)**

5.65 Public Sector Management Standards require a Chief Executive to select an Executive to be responsible for the implementation of the fraud prevention strategies and the processes for the detection and investigation of fraud.⁵¹ The role of the Senior Executive Responsible for Fraud Administration (SERFA) is to oversight and record details relating to the implementation of fraud prevention strategies within the agency, in particular, the conduct of risk assessments and the preparation implementation and review of fraud control plans. The SERFA also has a role in monitoring reports and investigations on fraud and corruption.

5.66 All agencies reviewed by the Audit had a nominated SERFA.

5.67 SERFAs interviewed by the Audit had not received particular training to levels recommended by the Commonwealth (i.e. training to recognised and accredited competency standards). They indicated that they had received information related to their role and responsibilities from the previous Fraud and Anti-Corruption Unit of CMD, and had received updates of relevant information from time to time from the same source. These included Commonwealth Fraud Bulletins and other relevant materials. However, following the disbandment of that Unit, such information is no longer identified and provided to SERFAs.

5.68 In short, SERFAs have received little ongoing training and development to ensure they maintain the skills and current knowledge to undertake their role in the most effective manner.

5.69 The Audit survey sought information on whether employees were aware there was a nominated SERFA within their agency. The survey has shown that 66% of all respondents were not aware there is a Senior Executive Responsible for Fraud Administration (SERFA) within their agency (25% of Executive respondents).

5.70 The SERFA's role in the fraud and corruption prevention strategy is an important one. They represent the 'public face' of the agency's commitment to fraud and corruption prevention and are a key point of contact in an agency's governance arrangements. It is important that public employees are aware of the existence and role of the SERFA

⁵¹ Public Sector Management Standards, June 2000 *Standard 1 Ethics Part 4.4*

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within their agency, if the strategy is to be implemented successfully. Quite clearly, employees also need to know the identity of the responsible Executive.

5.71 Suggestion for better practice (18) – SERFAs should be provided with, and encouraged to undertake, training and development opportunities to recognised and accredited fraud prevention competency standards.

5.72 Suggestion for better practice (19) – A SERFA network should be established to encourage the dissemination and sharing of relevant information among responsible Executives. Members of the network should meet periodically to discuss recent developments and better practice in fraud and corruption prevention in the ACT public sector and other public sector jurisdictions, and where relevant, private sector initiatives.

5.73 Suggestion for better practice (20) – Agencies should ensure all staff are aware of the role, responsibilities, and identity of the relevant SERFA.

CONCLUSION

5.74 To deter fraud, appropriate and effective controls and policies need to be implemented. Agencies require effective internal control systems and risk management strategies. They must ensure that these controls and strategies are regularly monitored and updated.

5.75 The Audit has previously concluded that the whole-of-government fraud and corruption prevention framework is conceptually sound but deficient in practice. The Audit's review of implementation of the framework has shown several areas where agencies can, and should, strengthen their efforts. Smaller agencies, particularly, need to ensure they have a sound strategy in place to manage fraud, corruption and other integrity risks.

5.76 Public employees are not sufficiently aware of the relevant policies, strategies, and processes necessary to create an effective fraud and corruption resistant workplace. Further, the audit review and survey suggests there is a significant number of employees who lack confidence in the management of their agency to demonstrate a strong commitment

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to fraud and corruption prevention or to deal adequately with fraud and corruption when it is uncovered.

5.77 This is especially important if it is recognised that the behaviour of managers and in particular, senior executives and supervisors, is far more influential on staff behaviour than is formal policy. Nevertheless, agencies cannot afford to ignore the benefits of a sound and effective communication program aimed at ensuring employees are aware of their responsibilities, are able to identify and prevent fraud and corruption in their areas, are aware of the proper procedures for reporting suspected improper conduct, and are informed of the outcomes where fraud and corruption is reported.

5.78 Among other things, this will require agencies to incorporate within their training and development program activities aimed at increasing employee awareness regarding fraud, corruption, and integrity matters. These activities need to be regular and ongoing – it is not good enough to target, through an ‘induction program’, only those employees who are new to the agency. Particular attention should be given to employees, including senior executives and SERFAs, with specific fraud detection, prevention, investigation, or oversight responsibilities.

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CASE STUDY - PRIVATE LIFE AND WORK

A routine trust account reconciliation while the usual operator was on leave identified several discrepancies. The employee's supervisor was alerted. Further investigation indicated that funds totalling about \$13,000 had been transferred from the trust to a personal account and that documents and computer records related to the payments had been altered.

On his return to work a few days later, the employee was interviewed by his manager. He admitted misappropriating the funds. He was suspended on full pay pending further investigations and told a decision was to be made regarding further action. He was invited to provide information to help the decision-maker. The employee was also advised that the police would be informed.

In his response to the allegations the employee expressed contrition and said his actions, over a three-month period, had been prompted by distressing personal circumstances. This spiralled into a gambling problem, looking for a 'quick fix'.

The employee was suspended without pay and an Inquiry Officer appointed to consider the matter. The Inquiry Officer considered the matter warranted formal disciplinary action, namely dismissal. After considering the employee's response at an interview, a determination was made to dismiss the employee.

Police inquiries led to a court appearance, where the former employee pleaded guilty to several offences relating to the misappropriation of \$13,080. He was sentenced to 12 months imprisonment, immediately suspended on a \$1,000 recognizance to be on good behaviour for two years. He was also sentenced to perform 208 hours of community service and make full restitution. He has agreed to repay the funds in fortnightly instalments over several years.

Audit Comment

This case was relatively straightforward. The employee was fully cooperative with the department and police.

The department's response was timely and effective. The department's approach took account of the employee's circumstances and included referring the employee to the Government Employment Assistance Program, an offer that was accepted. Disciplinary action was initiated under the relevant certified agreement rather than the PSM Act.

Control deficiencies were identified in the work area, but the employee had taken opportunity of a temporary lack of separation of duties to take control of the checking process and to manipulate it to his benefit.

The Department later conducted a full audit of the area and introduced several measures to strengthen controls.

6. IMPLEMENTING THE FRAMEWORK - DETECTION ACTIVITIES

INTRODUCTION

6.1 Inevitably, some fraud will occur. Systems for the effective detection of fraud are thus essential. Formal procedures for the reporting of fraud are an important aspect of this stage.

SIGNIFICANT FINDINGS

- *Poor internal controls generally or the over-riding of internal controls were dominant contributors in most of the reported incidents of fraud or misconduct in the ACT public sector.*
- *The majority of the reported incidents of fraud or misconduct were detected through whistleblowers or third-party disclosures, although the operation of internal controls also contributed in two cases.*
- *The most significant reported fraud within the ACT public sector in recent years was detected through an anonymous tip-off. The conduct had occurred for several years and early warning signs - predominantly internal controls designed to prevent such conduct - had been ignored.*
- *Respondents to the Audit's survey generally did not have a clear understanding of their role in preventing fraud and corruption and the process of reporting concerns about suspected misconduct of their colleagues.*
- *Two thirds of respondents said they would be more inclined to report suspicions of fraudulent or corrupt conduct if they could do so anonymously.*
- *Approaching 40% of respondents said they would be reluctant to report suspicions of fraudulent or corrupt conduct for fear of reprisal action.*

DISCOVERY OF FRAUD

6.2 That fraud, corruption and other improper conduct occurs must be taken as a 'given'. The Audit survey showed that almost half of all respondents were aware of cases of fraudulent or corrupt conduct within

their agency within the last two years. Other surveys – for example fraud surveys conducted by KPMG and Ernst & Young⁵² – report that between half and two-thirds of all respondents had experienced fraud within the reporting period.

6.3 Agencies are exposed to fraud and corruption risks from parties both internal to the agency and external. External parties are often involved in fraudulently obtaining services and benefits (e.g. electricity theft), credit-card fraud, telecommunications fraud, or theft of inventory or plant. Incidents such as these were reported to the Audit by several agencies. KPMG's most recent fraud survey indicated that external parties accounted for about 41% of all incidents reported by respondents but only 33% of the value of the frauds.

6.4 Unfortunately, according to KPMG, internal parties were responsible for both the majority of frauds committed and the major losses suffered as a result. KPMG further reported that employees at management level accounted for some 28% of fraud incidents, but two-thirds of the value of the incidents. Ernst & Young went further; their survey showed that 82% of all identified frauds were committed by employees, almost a third of which were by management. Nearly half had been with the organisation for more than five years and almost a quarter for more than 10 years.

6.5 Fraud, corruption, and improper practice can be first identified in a variety of ways. Surveys, such as those conducted by KPMG and Ernst & Young, indicate that employees are the 'front line' for fraud detection. KPMG's survey showed that almost 26% of incidents were detected and notified to management by employees. The operation of internal controls was also a vital aspect; KPMG reports that internal controls were instrumental in detecting another 23% of frauds. Anonymous disclosures accounted for a small proportion of identified incidents (4%) and internal or external audits less than 10%.

6.6 Several incidents of fraud and corruption investigated by agencies in the past two years or so, were examined by the Audit. These incidents were 'discovered' by the agency in one of two ways; a few were detected through the operation of internal controls, but in most cases the agencies were alerted to the alleged improper conduct by 'whistleblowers'

⁵² *Fraud Survey 2002* KPMG Australia April 2002; *Fraud – The Unmanaged Risk* – Ernst & Young London 2000

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(employees of the agency) or third parties. In only one case was the disclosure anonymous.

6.7 KPMG also reports that more than a third of respondents to their survey indicated that ‘red flags’ (i.e. early warning signs of the possibility that fraud has occurred) were ignored by the organisation. Acting on the early warning signs would have resulted in earlier detection of the fraud and reduced the impact of the incidents.

6.8 In several of the incidents examined by the Audit, early warning signs were evident, but were either ignored by the agency or their significance was not recognised. In two similar cases, internal controls operating as intended maintained an ‘audit trail’ which later provided evidence regarding the alleged misconduct. However, the controls appear to have done little to assist early detection, and it is likely that without the third party disclosure that brought the conduct to the attention of the agency, it would have remained undetected.

6.9 The implication from this information is that agencies can take a large step towards protecting themselves from fraud and corruption by ensuring they have a sound system of internal control and by ensuring employees are aware of (and understand) their fraud prevention and detection responsibilities.

REPORTING MECHANISMS

6.10 The Audit has previously made the point that more fraud and corruption is observed than is reported. The reasons for this vary – there may be practical limitations, such as a lack of awareness of proper reporting mechanisms, or unclear guidelines, or the reasons may be more fundamental, reflecting the concerns and attitudes of employees.

6.11 The Audit survey sought information regarding respondents’ reactions to fraud and corruption incidents, and regarding possible inhibitors to the effective operation of a prevention framework. The emphasis was on the practical implication of the prevention framework.

6.12 The PSM Act requires a public employee, in performing his or her duties, to report to an appropriate authority any corrupt or fraudulent conduct in the public sector that comes to his or her attention. No distinction is made regarding the nature of the conduct (e.g. the

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seriousness of the conduct or its frequency) or where the conduct occurs (e.g. in an employee's own work area or elsewhere).

6.13 Nevertheless, many respondents to the survey indicated that their response to suspected fraudulent or corrupt conduct would be dependent on a variety of circumstances, such as:

- perceptions of the seriousness of the conduct;
- perceptions of the motivating factors (e.g. whether it was carelessness, a lack of understanding or dishonesty);
- whether the conduct involved financial resources (e.g. cash or finances as distinct from equipment or time); and
- their relationship with the 'offender' (e.g. supervisor, friend etc).

6.14 In other words, respondents indicated that a pragmatic approach was required, rather than a strict 'black letter' interpretation of the law. As one respondent put it, 'warm working relationships are more important than stopping minor fraud'.

6.15 CMD has prepared a 'practical guide to all [public] employees who may encounter instances of fraud and corruption in the course of their duties'.⁵³ The guidelines remind public employees that, 'as trustees of the public interest, [they] have an obligation which goes further than passively waiting for a fraud to occur or documenting what activities public servants should avoid'. They also remind employees that although fraud and corruption might be identified by 'processing documentation' or 'astute managers or as a result of internal or external scrutiny such as an audit or review', 'in many other cases however, dishonest practices are initially observed or suspected by an offender's peers'. Indeed, experience suggests that 'an offender's peers' play a very important role in detecting (as well as preventing) fraud and corruption.

⁵³ *Guidelines for dealing with fraud and corruption in the ACT Public Service* CMD July 1996

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If I suspected a staff member had engaged in fraudulent or corrupt conduct I would discuss the matter with them before taking any action to report the matter.

6.16 Almost half (47%) of the respondents said they would discuss the matter with the staff member before reporting any suspicions. Some 24% disagreed and the remainder (29%) were not sure.

6.17 Any decision to first discuss any suspicious conduct with a staff member is clearly effected by the circumstances of the conduct (discussed in paragraph 6.13), as shown in the following comments, typical of those received in response to this question:

If I am merely suspicious about fraud or corrupt conduct, I would speak to my supervisor about it 'off the record' and let them take it from there.

My actions in reporting suspicions of fraudulent behaviour would depend on the severity of the fraudulent behaviour. If I felt it was minor (e.g. flex, internet use), I would discuss it with the officer involved. I would report suspicions of major fraud to the Supervisor or Manager involved.

The reporting of conduct depends on the gravity of the action e.g. altering/cheating on flex sheets. This is misconduct. If it continued repeatedly after speaking to the officer, it should then be reported.

6.18 The perceived distinction between fraud and misconduct is interesting. Many of the matters considered to constitute misconduct are, strictly speaking, fraud or corruption. However, they are of the type of conduct that would normally be seen as falling under the purview of supervisory management and could be expected to be dealt with through informal processes without invoking the fraud and corruption procedures. It may be appropriate, therefore, to discuss the conduct with the staff member before taking further, more formal, action.

6.19 Nevertheless, employees need to be aware that effective management of an assessment or investigation following a report of possible fraud or corruption may be directly influenced by the quality of the evidence available. Better practice advises that the assessment process should not alert any person who may be a suspect, to minimise

the opportunity to cover up conduct or to tamper with or destroy vital evidence.⁵⁴

I would be more inclined to report suspicions of fraudulent or corrupt conduct if the conduct occurred more than once.

6.20 An overwhelming majority (81%) of respondents said they would be more inclined to report suspicions of fraudulent or corrupt conduct if the conduct occurred more than once. Some 14% disagreed and the remainder (5%) were not sure.

6.21 In part, this response is to be expected. It links to responses to other questions where respondents said the frequency of the conduct influenced their perceptions of the seriousness of the matter. Employees may be willing to overlook one-off occurrences, considering the matter an aberration or not worth making a fuss about. Others may look for more 'certainty' before they make a report, as shown in the following comment:

Sound evidence of corruption/fraudulent behaviour is essential before reporting staff. Therefore behaviour may need to occur on several occasions to obtain reliable evidence.

6.22 However, as noted above, the frequency of fraudulent or corrupt conduct is not a factor raised by the PSM Act, Standards or Better Practices or by the various guidelines on handling fraud. Several respondents made the following points:

The frequency of the conduct is irrelevant. If it occurs it should be reported.

Inappropriate behaviour cannot be allowed to continue once, if it is noticed.

I would be more inclined to report suspicions of fraudulent or corrupt conduct if the conduct occurred within my own work area.

6.23 Most (69%) of respondents said they would be more inclined to report suspicions of fraudulent or corrupt conduct if the conduct occurred within their own work area. About 21% disagreed and the remainder (10%) were not sure.

⁵⁴ For example, see the Commonwealth Fraud Investigation Standards, and the CMD Guidelines on dealing with fraud.

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6.24 It is frequently noted that fraud and corruption is very harmful to the workplace, leading to loss and wastage, damage to the reputation and integrity of the agency and its employees, who become subject to innuendo and suspicion, and loss of staff morale. Fraud within one's immediate workplace can have a personal as well as organisational impact.

6.25 It is not surprising, therefore, that most respondents would be more inclined to respond to fraud in their own area than elsewhere. However, such a response may reflect a less helpful situation, where employees are less likely to become involved in reporting fraud outside their work area 'because it is not my concern'. Any campaign to raise the awareness of employees of their responsibilities to prevent and report conduct lacking integrity should emphasise the importance of reporting all suspicious conduct, not just that having a more immediate effect on the employee.

I would be reluctant to report suspicions of fraudulent or corrupt conduct unless I had 'evidence' to support my suspicions.

6.26 Persons reporting fraudulent or corrupt conduct will not generally be in possession of all the facts relating to the conduct or a full understanding of the relevant circumstances.

6.27 A very large majority of respondents (about 82%) said that without supporting 'evidence' they would be reluctant to report suspicions of fraudulent or corrupt conduct. Only 11% disagreed, although 6% were not sure. Typical of the comments received were:

One should have evidence before taking any action. Unfounded gossip can destroy a stable working environment.

I would check my suspicions prior to reporting.

I would need to be convinced of a fraudulent activity before I reported it. I would also need some evidence. However, if the matter was serious I would raise it with management.

6.28 A report of suspected fraud or corruption does not need to be accompanied by proof. The first step in investigating a report is to assess the information available and reach a decision as to whether further action is required. For this to occur, information regarding the nature of the allegation is needed (such as the alleged time or period of the conduct, the circumstances and location of the offence, and the name/s of the

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suspect/s). The preliminary assessment of an allegation of fraud will determine whether there is substance to the allegation.

6.29 Public employees have an obligation to report fraudulent or corrupt conduct that they are aware of, but they are not required to prove the allegation first. Indeed, it could be counter-productive to expect (or encourage) employees to provide 'evidence' with an initial report of suspicious conduct. The inquiries necessary to do this may, if undertaken by persons who were unqualified or inexperienced, jeopardise subsequent investigations. Nevertheless, allegations should not be without foundation, trivial, mischievous, or vexatious.

6.30 The comments from one Executive respondent sum up the situation well:

I would expect my staff to have sufficient trust in management discretion to handle allegations of fraudulent or corrupt behaviour sensitively and confidentially. As a policy I expect that my staff would raise issues of concern where there was some real indication, but would neither encourage nor expect a witch hunt for 'evidence'. I certainly would wish to encourage staff to stand by their allegations, whether they are proved right or wrong, otherwise the quality of office society would be diminished.

I would be reluctant to report suspicions of fraudulent or corrupt conduct, for fear of damaging the staff member's reputation if my suspicions were mistaken.

6.31 Given the responses to earlier questions, which indicated that many respondents considered a sound and harmonious working environment was perhaps more important than preventing and reporting 'minor' fraud, it could be expected that a large majority of respondents would consider the reputation of their colleagues before reporting suspicions of fraud. The responses to this statement, however, were surprising.

6.32 Slightly more than half the respondents (about 56%) said that fear of damaging a staff member's reputation would create a reluctance to report suspicions of fraudulent or corrupt conduct. More than 28% disagreed, and a further 15% were not sure.

6.33 CMD guidelines on dealing with fraud and best practice from other jurisdictions emphasise the importance of privacy issues. For example, CMD advises:

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Privacy should be a prime consideration and all cases should be treated on a need-to-know basis. False rumours and innuendo must be avoided to protect the reputation of innocent people.

... When making preliminary inquiries regarding an incident, a suspect transaction or a suspected fraud, the issue of **privacy** must be given the utmost priority.

6.34 The relatively large number of respondents who were less inclined to fear damaging a colleague's reputation can be seen as a positive statement concerning the fraud prevention framework. It reflects, importantly, recognition of the need to respond to suspicions of fraud and corruption, as well as some confidence that allegations will be treated in a confidential and careful manner.

I would be more inclined to report suspicions of fraudulent or corrupt conduct if I could do so anonymously.

6.35 Two thirds (67%) of respondents said they would be more inclined to report suspicions of fraudulent or corrupt conduct if they could do so anonymously. About 22% disagreed and the remainder (11%) were not sure. Respondents made several comments similar to the following:

I probably wouldn't report anything unless I could do it anonymously.

6.36 ACT policy and guidelines on dealing with fraud and corruption discourage anonymous reporting of suspect conduct. For example, CMD guidelines make no mention of anonymous reports and, although they allow for initial reports to be made orally, imply that the preferred method is detailed written reports.

6.37 Further, the Public Interest Disclosure Act, another forum available for reporting suspicions regarding fraud and corruption, makes clear that agencies are not obliged to investigate anonymous disclosures.⁵⁵ Public employees administering the PID Act are encouraged to alert an enquirer to this issue early in any discussion so that a decision can be made about whether to proceed with the disclosure. Anecdotal evidence, and the response to the Audit's survey, suggests that many enquiries do not proceed to a formal disclosure because anonymity cannot be guaranteed.

⁵⁵ *Public Interest Disclosure Act 1996* – s16 'Nothing in this Act requires a proper authority to investigate a public interest disclosure if the person making the disclosure does not identify himself or herself.'

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6.38 Practices in other jurisdictions are divided on the question of anonymous reports. Guidelines issued by the Western Australia government⁵⁶ state:

Staff should be discouraged from reporting alleged fraud anonymously. Anonymous allegations make investigations more difficult, as there is no opportunity to clarify or obtain further information from the employee that submitted the report.

6.39 On the other hand, procedures in the Commonwealth⁵⁷ state:

Agencies should facilitate and encourage the reporting and receipt of allegations of fraud, including anonymous allegations and reports from whistleblowers.

6.40 As another example, Victoria's Whistleblower's Protection Act specifically provides for anonymous disclosures about improper conduct.⁵⁸

6.41 Many jurisdictions recognise that some persons making an allegation regarding fraudulent or corrupt conduct may wish to remain anonymous. Their reasons may be varied, such as fear of reprisal action (see below) or not wanting to be involved, even an expression of guilt. Nevertheless, provisions are often made for anonymity in reporting, using mechanisms such as dedicated telephone 'hotlines'.

6.42 The Audit considers that as long as the 'informant' provides information to allow an initial assessment of the allegation, it is not **necessary** to be aware of the identity of the 'informant'. In light of the responses to this survey, the Audit strongly suggests that any revised fraud prevention framework specifically allows for reports of suspicious conduct, oral or written, to be received anonymously.

⁵⁶ *Fraud Prevention in the Western Australian Public Sector* Ministry of the Premier and Cabinet, Government of Western Australia 1999

⁵⁷ *Commonwealth Fraud Investigation Model Procedures* Attorney General's Department 8 July 2002

⁵⁸ *Whistleblower's Protection Act 2001*, s6 'A person may make a disclosure [about improper conduct] anonymously'.

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CASE STUDY – AN ABUSE OF TRUST

An anonymous note left on the windscreen of a motor vehicle alleged that a named public employee had ‘checked out’ the registration number for another person several months previous, possibly to ‘pay back’ the vehicle owner for some incident. The note was passed on to the responsible government agency.

Interrogation of the control systems by the named employee’s manager showed that the employee had accessed the vehicle’s computer records. There appeared to be no work-related reason for the employee to access the records.

The employee was interviewed by her manager and asked to comment on the complaint. She claimed no recollection of the incident, but conceded that she must have accessed the record. She offered suggestions regarding the circumstances under which this could have happened, but denied passing on confidential information to any other person. The employee appears to have gone on leave immediately following the interview.

The manager considered the explanations and the circumstances. He concluded the employee had no lawful reason to access the vehicle record, and had provided the details to a third party without authority. He prepared a report to the Chief Executive recommending the officer be dismissed. The Workplace Relations Unit reviewed the case report and provided comment on the recommendation. Dismissal was supported.

An Authorised Officer was appointed to review the allegations. Another report was prepared, agreeing with the initial assessment and also recommending dismissal. The Chief Executive wrote to the employee advising of his intention that she be dismissed, and inviting her to show cause why this should not happen. The Chief Executive also appointed an Inquiry Officer to consider the Authorised Officer’s report.

Two weeks later, in a meeting with the Inquiry Officer, the employee repeated her earlier comments regarding the circumstances of the access to the vehicle records. She was advised that a decision regarding her dismissal had not yet been made.

A week later, almost a year after the initial allegation and 18 months after the actual incident, but before the final decision had been made, the employee resigned.

Audit Comments

This case was relatively straightforward – ‘hard’ evidence about the incident was readily available although the employee denied passing on confidential information. It should not have taken almost a year to finalise, notwithstanding delays caused by the employee’s absence.

There were, in effect, four investigations of the incident (supervisor, Workplace Relations Unit, Authorised Officer and Inquiry Officer) and there were delays in completing several of these.

I would be reluctant to report suspicions of fraudulent or corrupt conduct for fear of reprisal action against me.

6.43 Approaching 40% of respondents said they would be reluctant to report suspicions of fraudulent or corrupt conduct for fear of reprisal action (13% **strongly** agreed with the statement). Although more than half (53%) disagreed and the remainder (10%) were not sure, the survey results are very concerning.

6.44 Many comments relating to this statement were received, such as:

Our organisation senior management would make life hell for anyone who dobbed them in.

Fear of reprisal - it has happened.

I have a friend who reported corrupt conduct on the part of officers senior to himself and was mercilessly victimised. He eventually lost his contract. I could not afford to be placed in that situation. **I would not report such conduct by officers senior to me.** [Audit emphasis]

Bullying culture in organisation difficult to overcome.

The possibility of reprisal depends on the status of those involved.

I have been the person who has reported corruption and the result was months of abuse from the violator (despite the fact that they were wrong and severely reprimanded) and a slow addiction to tranquillisers (due to the hell this person put me through) ... I was not given the opportunity to be held anonymous in this.

Staff often appear to be worried about the consequences if they were to [report suspicious conduct]. Management and friends can make things very difficult and uncomfortable for a person if they were to report someone in a management role.

It is hard to report upper management.

6.45 The strong response to this statement is closely linked to the strong response to anonymous reporting, as discussed above. It indicates a lack of confidence and trust in management and 'the system'. It seems clear that, notwithstanding the intent of the fraud prevention framework, including the legal provisions in the PID Act (under which reprisals are unlawful), many public employees view this as rhetoric. Further, the concern expressed by respondents reflects the hierarchy of the public sector – the junior employees perceive real limits to the extent of their

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influence and the relative power of more senior employees, as seen in the following comments:

I am NOT in any position to raise suspicions of corrupt behaviour - as I am ONLY an ASO2, and would fear that things would be said about me around the office ...

I have been in a position where I should have reported something but was very concerned about the repercussions as it was my supervisor.

6.46 This aspect of the survey revealed a significant difference in the views of Executive respondents. Only 8% of Executive respondents expressed any reluctance to report fraudulent or corrupt conduct for fear of reprisal; i.e. Executives expressed a high level of confidence in the fraud prevention framework. This is consistent with the outcomes of the 1999 survey of the fraud prevention framework, which found that:

Executive management had more confidence in and awareness of their agency's fraud and corruption prevention strategies than middle management and staff.

6.47 In recommending better communication of, and education in, the fraud prevention framework, the 1999 review made the following statement:

One of the most important areas on which this communication should focus is reinforcing the protection available to those reporting fraudulent conduct, together with details of the various reporting channels available. Findings from the survey indicated that almost one-third of middle management and staff did not believe they worked in an environment which encouraged the reporting of fraudulent conduct.

6.48 The Audit considers that urgent and significant attention be given to the negative perceptions of employees regarding the fraud prevention framework, and the apparent lack of confidence many hold in senior management to protect and support those persons who bring forward allegations of fraudulent or corrupt conduct. A sound communication and education program will be necessary, but ultimately the success of an 'integrity' framework depends on demonstration of their commitment to the framework by senior management.

6.49 Fortunately, not all respondents to the survey were pessimistic about the fraud prevention framework. As one respondent stated:

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[Fraudulent or corrupt conduct] should be reported even if you have fear of reprisal or it might damage a reputation because if it isn't reported for those reasons then it would never get reported and would never get stopped.

WHISTLEBLOWING

6.50 In practical terms, a person concerned about corruption or serious wrongdoing in or by a government agency has three options:

- to stay silent;
- to disclose the conduct ('blow the whistle') internally or with the person responsible; or
- to blow the whistle outside to proper authorities or the media.

6.51 Silence is the least risk option, and based on the responses to the Audit's survey, a common reaction. There may be many reasons why an employee chooses to remain silent, ranging from being unsure about the facts of the conduct, to being unsure about whether anything will be done to address the wrongdoing or even concern about how he or she will be treated if identified as a whistleblower. Unfortunately, whatever the reason, silence does nothing to provide the agency the opportunity to protect its interests.

6.52 Disclosing the conduct internally is often difficult for employees for the same reasons that they choose to remain silent. In some instances, the whistleblower may suspect (rightly or wrongly) that the conduct involves, implicates, or is condoned by more senior people in or outside the agency, in which case he or she will fear the matter will be covered up. Several respondents to the survey said this was an issue. Disclosing knowledge of the conduct to the person responsible will seldom be the best response. Although the disclosure may cause the offender to stop, or even to disclose the conduct themselves, it could also allow the offender an opportunity to destroy evidence, and thus ultimately to evade sanctions.

6.53 Without a safe internal route, the only perceived option for a whistleblower may be to disclose the matter outside - to a proper authority (such as the Ombudsman or Australian Federal Police) or more widely to the media and public interest groups. Anecdotally, disclosure to the media is increasingly common. Because external whistleblowing is

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at times treated as an undesirable action, often disclosures are (at least initially) made anonymously.

6.54 Whistleblowing should not be seen as a negative response to fraud, corruption, improper conduct, or maladministration. Indeed, it is the sign of a healthy organisation, and should be recognised as a means to deliver good management, to maintain public confidence and to promote organisational accountability. A strong ethical culture, reinforced by a clear signal from senior management that it is committed to the prevention of fraud and corruption, will:

- encourage disclosures of suspected wrongdoing;
- direct employees toward seeking impartial advice (from within the organisation – internal audit, SERFAs etc – or outside – from lawyers, professional bodies or a designated ethics service) and/or to disclosing concerns internally;
- provide assurances against reprisals for whistleblowing. These will apply even where the whistleblower is mistaken, provided he or she acted honestly and in good faith. This will help ensure that even if the whistleblower is mistaken, no unwarranted damage is done to the organisation or to individuals within it; and
- address the particular circumstances in which a wider disclosure may be justified. Essentially this should be an option of last resort and, where reasonable, would include a disclosure to the media.

6.55 The Audit is of the view that although the framework for prevention of fraud and corruption in the ACT public sector is generally sound, there are strong perceptions that the culture is not supportive. From the responses to the survey, it appears that the message ‘fraud prevention is everyone’s business’ still needs to be sold.

6.56 **Suggestion for better practice (21)** – Agencies should ensure their fraud and corruption prevention strategy/integrity strategy positively encourages the disclosure by employees of suspicions of fraudulent, corrupt or improper conduct or maladministration. As an obvious corollary, the strategy must provide full support (and protection) for employees making disclosures.

6.57 **Suggestion for better practice (22)** – In the context of the current review by CMD of the fraud prevention framework, specific provision must be made to allow for reports of suspicious conduct, oral or written, to be received anonymously.

INTERNAL CONTROLS

6.58 The role of internal controls in sound corporate governance (including protecting the assets of a business) has been discussed in Chapter 2 of this report. To reinforce the importance of internal control, the Audit has suggested the Chief Executive or Board of all ACT public bodies should publicly report a statement of responsibility and certification indicating whether a system of internal control was in place and operated effectively throughout the year (see paragraphs 2.16-39).

6.59 A strong system of internal control will contribute significantly to the prevention of fraud, corruption, and maladministration. It will also play a major role in detecting such conduct. For example:

- An analysis of reported fraud in government departments in the Britain concluded that ‘the main means of discovery of cases was through the normal operation of control procedures’⁵⁹; and
- KPMG’s most recent fraud survey indicates that the operation of internal controls was instrumental in detecting almost a quarter of the incidents of fraud reported by respondents to the survey.

6.60 Unfortunately, ineffective internal controls are also the major factor allowing fraud to occur in the first place. The British experience was that ‘an absence of proper control and failure to observe existing control procedures, where these existed, were again the dominant causes of fraud’.⁶⁰ KPMG’s survey showed that poor internal controls generally or the over-riding of internal controls were the dominant contributors in more than 72% of reported frauds.

6.61 This generalisation was supported by the Audit’s observations regarding several incidents of fraud in the ACT public sector. In each incident, the offender was able to easily manipulate or ‘work around’ internal control procedures or take advantage of known weaknesses in the controls. The only exceptions noted were in relation to incidents of disclosure of confidential information, where the offender used standard procedures to gain unauthorised access to the information. The controls in this case worked (they maintained a record of the access, which provided valuable evidence of the incident), but the offenders ignored the legal and ethical implications of their actions.

⁵⁹ 2000-2001 *Fraud Report – An analysis of reported fraud in Government Departments and best practice guidelines* – HM Treasury January 2002

⁶⁰ op cit

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6.62 The changing environment of the public sector, and of business transactions generally, challenges agencies to keep up. Although new business processes (such as increased outsourcing) and technologies (such as e-commerce and telecommunications improvements) create opportunities for improvements in service delivery and the efficiency and effectiveness of government operations, they also create new opportunities for external and internal fraud, corruption and maladministration. Agencies need to be alert to the opportunities, and develop and implement policies and guidelines to assist public employees to manage the new arrangements well. Concurrent to the development of policies and guidelines must be reasonable steps to monitor compliance.

6.63 Suggestion for better practice (23) – Agencies should periodically review internal control procedures to ensure they remain apposite and effective in the face of changing circumstances.

6.64 Suggestion for better practice (24) – Agencies should ensure employees are aware of the importance of internal controls and that the failure to properly observe existing controls significantly exposes the agency to increased risk of fraud, corruption, and maladministration.

INTERNAL AUDIT

6.65 Internal audit has an important role in assisting agencies in maintaining effective controls encompassing the agency's governance, operations, and information systems by evaluating their effectiveness and efficiency and by promoting continuous improvement. An integral part of this role will be internal audit coverage of key risk areas aimed at ensuring compliance with laws, regulations, standards and best practice guidelines and safeguarding agency resources. This encompasses fraud and corruption prevention and minimisation, and assessing the effectiveness of (and compliance with) the agency's code of ethics/conduct.

6.66 Recognising this role, Internal Audit charters should provide a link between internal audit and the agency's fraud and corruption prevention strategy (and *vice versa*). Internal audit activities should be soundly informed by risk assessments and should, as a matter of routine, consider circumstances of ineffective controls or non-compliance with controls as opening opportunities for fraud and corruption.

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6.67 Internal audit is widely recognised as a major fraud and corruption preventive mechanism – that is, it is regularly cited in literature, surveys, and better practices as a key control in this regard. Interestingly, however, experience suggests that internal audit does not play a major role in detecting fraud. Respondents to KPMG’s fraud survey indicated that internal audit was a factor in detecting less than 9% of reported incidents. The experience in Britain, as reflected in the 2000-2001 fraud report, was that internal audit was involved in detecting only 1% of reported incidents (more incidents were discovered ‘by accident’).

6.68 The frameworks for the internal audit functions of various ACT Government agencies were discussed in Audit Report 4 of 2002 (*Frameworks for Internal Auditing in Territory Agencies*). That report concluded that the internal audit functions of some agencies were inadequate to effectively contribute to good governance, but improvements were being implemented. Nevertheless, the capacity for the internal audit functions to play a significant part in the fraud prevention strategy of some agencies remains practically limited. This is particularly the case with smaller agencies that rely on the internal audit capacity of their portfolio department, but is by no means limited to that group.

6.69 Suggestion for better practice (25) – Agencies should ensure that Internal Audit charters provide a link between internal audit and the agency’s fraud and corruption prevention strategy (and *vice versa*).

6.70 Suggestion for better practice (26) – Internal audit activities should be soundly informed by risk assessments and should, as a matter of routine, consider circumstances of ineffective controls or non-compliance with controls as opening opportunities for fraud and corruption.

CONCLUSION

6.71 Fraud, corruption, and misconduct occur within the ACT public sector, almost certainly far more often than reported incidents would seem to suggest. Almost half of all respondents to the Audit’s survey of public employees were aware of (i.e. had detected) cases of fraudulent or corrupt conduct in their agency within the last two years.

6.72 Not all these identified cases have been brought to the attention of agency management, partly because employees do not generally have a

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clear understanding of their role in preventing fraud and corruption and the process of reporting concerns about suspected misconduct of their colleagues. This is concern enough, and indicates that agencies need to do more to communicate the message that ‘fraud prevention is everyone’s business’.

6.73 Of more concern, however, is the observation that many employees only wish to be involved in reporting suspected misconduct if they can remain anonymous. Their reasons can be inferred from responses to the Audit’s survey, but they largely come down to a lack of confidence and trust in ‘the system’ and in management. Many fear reprisal. Based on survey responses, it would seem that several employees have directly experienced or witnessed reprisals against an employee who ‘dobbed’.

6.74 This is indeed unfortunate, because employees are one of the most important means available to an agency to protect itself from fraud, corruption, and misconduct and to identify such conduct should it occur. Agencies need to work hard to build a fraud resistant culture which encourages all employees to speak out, frankly and without fear, if they have concerns about the conduct of fellow employees (or clients, customers etc).

6.75 Conversely, agencies must recognise that employees are the most likely party to offend against the agency and to cause the greatest loss. The importance to the agency of a sound system of internal control, which is continuously tested to ensure compliance and efficacy, cannot be overlooked. Although agencies showed confidence in the controls in place to prevent fraud and corruption, they may be failing to recognise that they are reliant on employees and management with the ability to override them. Controls are of very limited value if they are not properly applied or if the ‘red flags’ they raise are ignored.

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CASE STUDY – ANYTHING CAN BE DONE WITH A GOOD PRINTER

After an anonymous tip-off to the Auditor-General, an audit at a school could not find invoices to support two cheques totalling around \$10,000. A few phone calls revealed that the supposed payee had not invoiced the school for the amount involved. Another payment to the second supplier was located, but on examination, the auditors found that it was for a fictitious company. The police and the department were informed and a more detailed investigation began.

The department secured all relevant information, such as computers and files. The employee was suspended on full pay pending further inquiries. He did not deny his actions and asked whether things could be 'worked out', including repaying the money, without involving anyone else.

Examination of the cheques recovered from the bank showed the cheque numbers had been altered and the payee's name changed so the employee could bank the cheques in accounts in his name. Supporting invoices had been created by the employee. More suspect payments were identified and examined. In all, the employee was found to have created false invoices and payments for more than \$26,000.

Two months after the tip-off, the employee was charged with failing to perform his duty as an officer under section 9(c) of the PSM Act and suspended without pay. He had been stealing from the school for five years. Shortly after being formally charged by the department, the employee resigned.

Seven months later, the ex-employee appeared in the Magistrates Court and entered a plea of guilty to 14 of the 17 charges. The remaining charges were dismissed when the prosecution offered no evidence. The employee was sentenced to perform 320 hours of community service and was placed on a five-year good behaviour bond of \$5,000. The employee was ordered to pay restitution for the stolen public money.

Audit Comment

The case illustrates 'red flags' ignored.

The fraudulent payments had remained undetected for several years even though the items 'purchased' were unusual for the school. Outwardly, there was legitimacy to the transactions, but closer inspection would have identified that they were unusual.

Second, some transactions were not supported by documentation. This was noticed during a routine internal audit, but the explanations offered were accepted and the documentation was not followed-up.

Lastly, there was possibly inadequate segregation of duties. As a senior officer, the employee had authority for procurement (placing orders, acquitting invoices and sometimes receiving deliveries). The officer also managed the school's finances and was thus able to create a false trail for the transactions. Review of purchases, costs etc and finances by school management may have been inadequate.

7. IMPLEMENTING THE FRAMEWORK - INVESTIGATION ACTIVITIES

INTRODUCTION

7.1 Sound procedures for the investigation of fraud are important. Investigations will determine the veracity of reports, provide evidence for subsequent use in the sanctioning process, and identify shortcomings in prevention and control systems that may be remedied to reduce subsequent vulnerability to fraud.

SIGNIFICANT FINDINGS

- *ACT Government agencies have developed neither standards nor procedures for the conduct of investigations. The only formal guidance available is insufficient to ensure agencies perform investigations or manage outsourced investigations in accordance with best practice.*
- *Few agency employees have been specifically trained in investigation methods.*
- *Investigations reviewed by the Audit have, generally, been conducted in an objective manner, and returned appropriate outcomes. However, most failed to demonstrate best practice and were not conducted efficiently.*
- *The lack of planning of investigations, inconsistent methodology, and inadequate documentation and reporting significantly increases the risk of both an inefficient and an ineffective investigation.*

BACKGROUND

7.2 Broadly speaking, the investigation stage refers to actions taken following the detection of fraud, corruption, maladministration, or other improper conduct or receipt of an allegation of such conduct.

7.3 The investigation process is a critical component in effective fraud control. It is vital that once improper conduct has been detected it is handled and investigated competently. This means an agency must be able to act quickly and effectively to investigate and deal with an alleged offender. Failure to do so can further expose the agency to loss by

prejudicing or hindering further investigation and unnecessarily expose the alleged offender (and the informant) to suspicion, discrimination, or reprisal.

STANDARDS FOR INQUIRIES

7.4 Agencies should ensure investigations are effective and efficient. An effective investigation is one that satisfactorily proves or disproves the allegation. An investigation will be efficient if it is completed within a suitable time and at a reasonable cost, having taken into account the nature and complexity of the investigation, availability of resources (both material and human) and the aim of the investigation. It will be undertaken in accordance with any legislative or policy requirements.

7.5 The efficiency and effectiveness of investigations depends on ensuring policy and administrative procedures have been established to guide operational practices, including exercising powers and authority, evidence collection and handling, and maintaining confidentiality.

7.6 ACT Government agencies have developed neither standards nor procedures for the conduct of investigations. The only formal guidance available is brief information included in the *Guidelines for Dealing with Fraud and Corruption* prepared by CMD in July 1996. The Audit considers this guidance insufficient to ensure agencies perform investigations or manage outsourced investigations in accordance with best practice. More authoritative and detailed advice should be developed, preferably at a whole-of-government level, and widely promulgated.⁶¹

STAGES OF INQUIRY

7.7 The whole-of-government guidelines on dealing with fraud and corruption describe a two-stage investigation process; a preliminary assessment of the allegation, followed if necessary by a more substantive inquiry. This is consistent with best practices in other jurisdictions.

- The preliminary assessment may be undertaken by the line manager or SERFA and will be largely based on readily accessible evidentiary information. It will not usually involve

⁶¹ Sound examples are available – see *Commonwealth Fraud Investigation Standards and Model Procedures* published by the Commonwealth Attorney-General's Department, or *Internal Investigations* published by the NSW Independent Commission Against Corruption.

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extensive examination of the allegation because the purpose is to establish whether there is sufficient cause for concern, not to prove the veracity of the allegation. The outcome of the preliminary assessment is a determination as to whether there is substance to the allegation and the subsequent actions the agency intends to take.

- If the preliminary assessment determines that further investigation is required, a more formal inquiry will take place. This stage of the investigation should seek to satisfactorily prove or disprove the allegation or achieve some other acceptable conclusion. The substantive inquiry will gather evidence that would be admissible in 'prosecutions' under any criminal, civil, administrative or disciplinary proceedings that may be taken as the result of the investigation. The formal inquiry may be undertaken internally by the agency, using suitably skilled employees, or externally using specialist consultants (such as private investigators or contracted internal auditors). In some cases, the allegation will be referred to the Australian Federal Police for formal investigation.

7.8 However, inquiries regarding misconduct are conducted under the provisions of Part IX of the PSM Act (Discipline). Depending on how the Act and the fraud and corruption guidelines are interpreted by an agency, there may be further detailed inquiries.

- Under the Act, and as explained in the PSM Better Practice Notes, an allegation of misconduct will be referred to an 'authorised officer' (i.e. an officer authorised by the relevant Chief Executive under s186 to consider allegations of misconduct). The authorised officer will form an opinion whether the employee 'may have failed to fulfil his or her duty as an officer' and 'decide whether he or she should be charged'.
- If charges are laid, the relevant Chief Executive must appoint an 'inquiry officer' (i.e. an officer appointed under s187 to hold an inquiry into the charge). The 'inquiry officer' cannot have been involved in laying the charges (i.e. cannot have had previous involvement in the investigation). If the inquiry officer is satisfied that the officer charged has failed to fulfil his or her duty as an officer, he or she may direct certain action to be taken (such as counselling or dismissing the officer).
- An officer may appeal to a Disciplinary Appeal Committee against a decision made in respect of him or her, if the decision relates to a charge of misconduct, on the grounds that the charge

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should have been dismissed or that the action directed to be taken is unduly severe.

7.9 In short, compliance with the PSM Act requires a two-stage investigation, although each stage is, by implication, a detailed inquiry. This will be necessary if the first stage is to lead to charges, and the second stage is to prove the charges, although there may be some cases where the evidence gained in the authorised officer's inquiry is so compelling it almost obviates the need for the inquiry officer's investigation.

7.10 From cases examined by the Audit, it is apparent that some agencies conduct a preliminary assessment before referring the allegation to an 'authorised officer', who then conducts another assessment, potentially leading to formal charges. Then an 'inquiry officer' determines whether the charges laid have been proved on the balance of probabilities. Thus, there could be three or four inquiries, not including any appeals (none of the cases examined by the Audit involved an appeal). That is, there could be:

- an initial assessment by the recipient of the allegation (supervisor, or SERFA);
- a 'preliminary assessment' by another party (such as internal audit, the finance section or workplace relations unit) at the request of the SERFA;
- an inquiry by an 'authorised officer'; and
- an inquiry by an 'inquiry officer'.

7.11 This is not an efficient process; it creates unnecessary work and leads to delays. The inefficiencies arise (in part) because the fraud and corruption guidelines and the misconduct provisions of the PSM Act do not create a single and harmonious set of guidance materials (for example, the terms 'authorised officer' and 'inquiry officer' are not used in the guidelines). Although the two documents are not inconsistent *per se*, there is value in ensuring they reflect an obviously consistent approach to dealing with misconduct.

7.12 It should be noted that agency-specific certified agreements might also affect the investigation process, in that they may vary the misconduct provisions contained in the PSM Act. Care needs to be exercised to ensure whole-of-government and agency-specific policy and guidelines on fraud and corruption prevention have regard to such circumstances.

CONDUCT OF INQUIRIES

7.13 The current whole-of-government fraud and corruption prevention framework encourages agencies to refer investigations to the Fraud Prevention and Anti-Corruption Unit in CMD. The Unit had the skilled staff and capacity to undertake investigations on behalf of other agencies and provided a common point of liaison with the AFP and Director of Public Prosecutions on matters of criminality. This capacity, however, has not existed for some time, and agencies must now undertake investigations in-house or make their own arrangements for accessing external support.

7.14 Outsourcing investigations, and nominating a coordinating officer (the SERFA or Internal Auditor) to manage the outsourcing, may be more appropriate for agencies within the ACT government. Given the apparent level of improper conduct detected, it may be uneconomic to maintain an investigation unit specifically charged with responsibility for conducting fraud investigations. This does not diminish the need to ensure that relevant employees are adequately skilled and trained in investigation process and techniques. An efficient and effective investigation must be performed with due care, proper process, impartiality, and objectivity irrespective of the nature of the investigation – preliminary assessment or detailed inquiry; criminal fraud or disciplinary conduct. It must secure evidence of a sufficient and reliable nature that will accord with relevant legal rules of evidence and admissibility. It must maintain the rights of all persons involved. In short, an investigation must be performed with skill and care. Specific training, skills development, and experience would seem to be essential.

Investigations Examined During the Audit

7.15 The Audit reviewed documentation related to several investigations, both at the preliminary assessment stage and the detailed inquiry stage. Practices varied considerably.

Preliminary Assessments

7.16 The following observations were made regarding the preliminary assessments:

- the assessment was initiated quickly following receipt of the allegation (the same day or shortly thereafter);

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- how quickly the assessments were completed varied considerably, ranging from a few days to several months. For example:
 - allegations that an employee had transferred agency funds to a personal account (at that stage about \$28,000, although the final charges referred to more than \$440,000), were assessed within two days;
 - allegations involving transfer of agency funds to a personal account (about \$13,000) were assessed within four days;
 - allegations concerning unauthorised disclosure of confidential information were assessed in two weeks;
 - preliminary assessment of an almost identical allegation concerning unauthorised disclosure of confidential information within the same agency took almost 4 months;
 - complex allegations of improper conduct regarding school enrolments took around six months to assess (the agency engaged a qualified private investigator);
- none of the assessments reviewed appeared to follow a structured approach – i.e. there was no documented plan, terms of reference, reporting arrangements etc;
- typically, the assessment was coordinated by the recipient of the complaint (often the alleged offender’s manager or the responsible SERFA), but not undertaken by that person. Assistance was sought from other relevant areas of the agency, such as Internal Audit or Finance or Workplace Relations Unit;
- it was not always evident whether the preliminary assessment was the initial review of the allegations or a more thorough inquiry by an ‘authorised officer’ under the PSM Act. Few files included an instrument of authorisation for the investigating officer. In these cases, it was not clear under what authority the investigation was conducted;
- this assessment usually involved quickly gathering readily-available evidence (such as computer records of transactions, source documents etc);
- in some cases, the alleged offender was interviewed:
 - the Audit noted one case where the record of interview did not reflect best practice in investigation interviews, and could potentially have jeopardised the investigation had criminal charges been laid. Given the availability of other

evidence sufficient to substantiate a need for further inquiry, an interview at the preliminary stage was unnecessary;

- reports of the preliminary assessment generally took the form of a minute to the recipient of the allegation, and outlined the ‘findings’ from the assessment. However:
 - not all files included a report;
 - not all of the reports included a conclusion (e.g. a *prima facie* case has been identified that Ms X has breached s 9 of the PSM Act, in that she ... further investigation is warranted to substantiate the allegation – or the matter should be referred to the Australian Federal Police ...);
 - some reports, but not all, included recommendations regarding further action, and some indicated a likely penalty;
 - the Audit noted one case where the report contained material that was not germane to the allegation and could raise doubts about the objectivity of the preliminary assessment. The comments concerned the attendance record of the employee concerned – a matter irrelevant to the allegation – and concluded that the employee ‘was not a valued member of staff’. It is conceivable that these expressed views influenced the assessing officer’s recommendation that the employee be dismissed, a recommendation accepted by several other reviewing officers and the Chief Executive. (The preliminary assessment report was made available to each successive review.) Inclusion of such comment is contrary to PSM Better Practice Note 5.1.⁶²

Detailed Inquiries

7.17 The following observations were made regarding the detailed inquiries:

- some inquiries were initiated almost immediately following completion of the preliminary assessment, but others took much longer. In one case, more than six months elapsed before an authorised officer was appointed to conduct the inquiry;

⁶² PSM Better Practice Notes, June 2000 *5.1 Managing Grievances, Appeals and Discipline* discusses, among other things, dealing with misconduct. The BPN advises that a ‘report must be objective and not include subjective comment about the character of the officer’.

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- time taken to complete the investigations also varied greatly. In some cases this was a factor of the complexity of the investigation (in particular, the discovery of sustainable evidence). For example:
 - two investigations involving the transfer of agency funds to a personal account were completed within two weeks – in each case, reliable evidence was readily available from within the agency and various banking institutions;
 - an investigation regarding unauthorised disclosure of confidential information was completed within about four weeks (excluding public holidays) using reliable evidence obtained through regular internal control processes;
 - an almost identical case in the same agency took almost seven months, notwithstanding the availability of reliable evidence (this case featured four inquiries);
 - the detailed inquiry into allegations of improper conduct regarding school enrolments took about four weeks, using a qualified investigator as the ‘inquiry officer’;
 - an inquiry officer’s investigation regarding allegations of theft of inventory has taken almost 18 months to reach a stage of determining what disciplinary action will be taken against the employee (i.e. the inquiry has not yet been completed). This followed a nine-month investigation by an ‘authorised officer’; and
 - investigations regarding alleged misconduct by professionals took almost three years to reach a conclusion that insufficient evidence would be available to satisfactorily substantiate the allegations.
- as with the preliminary assessments, there is no evidence that the detailed inquiry followed a structured approach, with one exception. This was a case where the agency had engaged qualified private investigators to conduct both the ‘authorised officer’ and ‘inquiry officer’ investigations;
- most investigations were conducted ‘in-house’;
- most investigating officers were not involved ‘full-time’ on the investigation;
- typically, there was no instrument on file appointing the investigating officer under either s186 or s187 of the PSM Act;

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- with the exception of the investigation conducted by the qualified private investigators mentioned above, documentation of the investigation was haphazard and did not follow best practice, such as the Commonwealth Fraud Investigation Standards and Model Procedures;
- it was not evident that evidence was gathered and handled in accordance with best practice. This was particularly the case when employees or other persons were interviewed as part of the investigation;
- reports of investigations varied considerably in structure and broad content. Some reports were comprehensive, and all included a satisfactory summary of findings, conclusions, and directions for disciplinary action (where relevant), but not all evidenced consideration of matters required under s187 of the PSM Act. Further, few would meet best practice advocated by, for example, the ICAC.⁶³ For example, reports did not typically include:
 - a statement of the scope and focus of the investigation, including any changes;
 - comments on the methodology, including techniques employed, persons interviewed and material examined;
 - lessons learnt regarding the investigation process;
 - comments on what allowed the misconduct to occur or remain undetected (i.e. if or why correct procedures were not followed);
 - comments on the need for new or revised procedures or controls to prevent future problems; and
 - recommendations for future actions, such as system improvements, training and development.

7.18 Overall, the Audit considers the investigations examined fail to demonstrate best practice. This is not altogether surprising, given the absence of relevant standards, procedures, or guidelines at a government or agency level. This is not to say that the investigations have been of a poor standard or were ineffective. The Audit is satisfied that the

⁶³ See *Fact-Finder A 20-step guide to conducting an inquiry in your organisation* NSW Independent Commission Against Corruption, May 2002 or *Internal Investigations*, October 1997

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investigations have, generally, been conducted in an objective manner, and returned appropriate outcomes. However, few of the investigations were efficient. And, the lack of planning, consistent methodology, and thorough documentation and reporting significantly increases the risk of both an inefficient and an ineffective investigation.

7.19 Furthermore, it appears that few agency employees have been specifically trained in investigation methods. Investigations are not compliance reviews or audits. Nor are they ‘witch hunts’. The Audit considers it essential that persons conducting and managing investigations possess and maintain sound skills and relevant experience. Ensuring relevant employees are trained to accepted investigation competency standards is strongly recommended by the Commonwealth Fraud Control Guidelines. If the skills are not available (and cannot be maintained) in-house, agencies should ensure they have access when needed to qualified investigators on contract.

7.20 **Suggestion for better practice (27)** – As part of the current review of the whole-of-government fraud and corruption prevention framework, authoritative and detailed standards, procedures and guidelines for the conduct of investigations advice should be developed and widely promulgated. The policy, procedures and guidelines should be fully consistent with the misconduct provisions of the PSM Act and have regard (or make provision for) variations arising from agency-specific certified agreements.

7.21 **Suggestion for better practice (28)** – Agencies should ensure investigations are conducted and managed by properly trained and experienced persons. If the skills are not available (and cannot be maintained) in-house, agencies should ensure they have access when needed to qualified investigators on contract.

7.22 **Suggestion for better practice (29)** – Agencies should ensure investigations are conducted in accordance with best practice. In the absence of whole-of-government standards, procedures and guidelines, agencies should adopt standards etc of the Commonwealth or the NSW Independent Commission Against Corruption (modified as necessary).

7.23 **Suggestion for better practice (30)** – Agencies should ensure sufficient resources are available to undertake investigations in a timely manner. Ideally, investigators should be engaged ‘full-time’ on the task.

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7.24 **Suggestion for better practice (31)** – Agencies should subject investigation practices to periodic quality assurance reviews.

CONCLUSION

7.25 What happens following the detection of fraud, corruption, or other improper conduct or receipt of an allegation of such conduct is critical to effective fraud control. Agencies must act quickly and effectively to investigate and deal with suspicions or allegations. Failure to do so can be damaging for the agency and its employees.

7.26 The Audit examined several investigations that had been conducted by agencies over the past two years or so. Although the Audit concluded that, generally, the investigations were conducted in an objective manner, and returned appropriate outcomes, most failed to demonstrate best practice and were not conducted efficiently.

7.27 This is hardly surprising, given the absence of endorsed standards or procedures for the conduct of investigations, and that few agency employees have been specifically trained in investigation methods and practices. The lack of planning of investigations, inconsistent methodology, and inadequate documentation and reporting significantly increases the risk of both an inefficient and an ineffective investigation. It also increases the exposure of all parties - the agency, alleged offender, witnesses and investigators – to further loss and emotional stress.

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CASE STUDY – IT’S BEEN A LONG, LONG TIME

A new manager examining the catering practices and kitchen expenses at the workplace was concerned that expenditure exceeded income. After an employee commented that various items ordered were missing, the manger undertook further discrete inquiries and contacted internal audit. A stock-take was recommended, which showed goods were indeed missing. Further discussions with internal audit indicated several possible control weaknesses.

The police were contacted, but after some three months advised there was insufficient evidence to substantiate allegations of criminal conduct. Police estimated the loss was about \$2,200. They recommended disciplinary action under the PSM Act.

Disciplinary action was commenced and an Authorised Officer appointed to consider the allegations. The Department engaged a private investigator to undertake covert surveillance of the employee at various times over a three-month period.

Almost a year after concerns first arose, and based on findings from the private investigator and Authorised Officer, the agency asked the police to reconsider the case. The agency felt there was a strong possibility of criminal behaviour, and misappropriation of funds up to \$20,000 over the previous 12-15 months. This estimate was based on the value of goods ordered in excess of requirements. A few days later, the employee was transferred to another position in the agency.

Less than a month later, the police advised that criminality would be difficult to prove, based on the information available. The police declined further involvement. The department, however, continued its investigation. Shortly after, the Authorised Officer’s report identified several *prima facie* offences, involving an estimated loss of around \$50,000. Charges were laid. The employee engaged a lawyer.

An Inquiry Officer was appointed to examine the charges and to determine an appropriate penalty. Copies of various reports, witness statements and the transcripts of interviews were provided to the employee through his lawyer. Other information was requested of the Department so the employee could respond to the charges and various witness statements.

The Inquiry Officer concluded his investigation and found some charges proved. The primary charges related to a failure to exercise reasonable care and skill in performing duties, a failure to avoid waste and extravagance and a failure to report possible maladministration. After considering the employee’s response to the report, the Inquiry Officer directed that the employee be reduced in classification and dismissed. The case had taken almost three years to reach this conclusion.

Audit Comment

Several ‘red flags’, which may have alerted managers to the alleged misconduct, went unobserved for some time. This was compounded by control deficiencies, including inadequate segregation of duties, and inadequate inventory control procedures.

This case highlights the difference between criminal and disciplinary proceedings. Although the Police may choose not to pursue allegations where investigations suggest firm evidence is unlikely to be found, this need not deter agencies from initiating disciplinary action. The standards of proof required are different.

The case also highlights the complexity of some investigations and the need to ensure adequate resources are available to complete them within a reasonable time frame.

8. IMPLEMENTING THE FRAMEWORK - SANCTIONING ACTIVITIES

INTRODUCTION

8.1 Sanctioning of offenders, including in routine or minor instances of fraud where appropriate, may involve prosecution or disciplinary review, leading to the imposition of criminal, civil, administrative or disciplinary penalties.

SIGNIFICANT FINDINGS

- *In all cases examined the agency had taken reasonable action to deal with the misconduct allegations*
- *Agencies do not generally inform employees (and customers or clients where relevant) of outcomes of misconduct investigations, such as sanctions applied and steps taken to address any deficiencies in controls etc identified as a result of investigation.*
- *Agencies do not consistently review investigations to identify actions necessary to address any weaknesses in controls or any other aspect of the fraud and corruption prevention framework acknowledged during the investigation.*

BACKGROUND

8.2 A fraud and corruption prevention/integrity framework must be seen to be effective once instances of improper conduct are identified and proven. Sanctioning is therefore an important aspect of the framework.

8.3 In the case of a proven allegation, sanctions are the outcome of an effective investigation. Sanctioning serves several purposes. It will:

- deal appropriately with the offender/s;
- deter potential offenders;
- lead to control improvements;
- encourage restitution; and
- improve public confidence in the integrity of the public sector.

DEALING WITH OFFENDERS

8.4 Sanctioning will deal appropriately with the offender(s) in the relevant jurisdiction (criminal, civil, administrative, or disciplinary). This recognises that the primary aim of a fraud prevention/integrity framework (and any action resulting from the identification of improper conduct) is to ensure the effective administration of the ACT Public Sector, not to punish.

8.5 The Audit reviewed documentation related to several investigations and noted:

- after identifying the alleged misconduct, agencies generally acted quickly to prevent further incidents. Consideration was quickly given to the need to remove the alleged offenders from the immediate workplace, and in most cases action was taken to suspend the employee (with pay) pending further examination of the allegations;
- access to computers, data access points, and other potentially relevant agency records was secured quickly, again minimising the opportunity for further incidents (for example, passwords were changed, accounts locked and offices secured);
- alleged offenders were provided opportunities to comment on the allegations, consider the case against them, provide evidence to support their case, and (where relevant) appeal decisions. In some cases, the officers involved were given several opportunities to comment on the allegations, witness reports and other matters raised;
- alleged offenders were treated courteously and with respect for their personal circumstances;
- where relevant, agencies quickly referred allegations to other authorities (such as the Australian Federal Police) for appropriate action. Managers sought advice and assistance as necessary from the ACT Government Solicitor or other relevant party (such as the agency's workplace relations unit);
- in some cases, agencies chose to limit the extent of investigations, and therefore potential disciplinary action, for practical reasons. For example, three preliminary assessments showed there was a strong likelihood that more detailed investigations would provide evidence of further misconduct. However, the agencies chose not to take further action, apparently based on considerations of the

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cost of further investigations and the likelihood of the investigations providing sufficient quality evidence. In two of these cases, the Audit saw no evidence of an actual decision on the matter by an appropriate delegate – rather the decision was evidenced by a lack of further action;

- where relevant, agencies pursued disciplinary action separate from any other legal (AFP) actions;
- in all cases examined by the Audit, where the allegations were satisfactorily proven, the disciplinary action proposed was to dismiss the offender. This followed consideration of lesser actions (such as transferring, fining or demoting the employee). In each case, the Audit considers dismissal was an appropriate response to the circumstances of the misconduct;
- in all but one of the cases examined by the Audit, the employee resigned before action could be taken to dismiss them. In some cases, the employee resigned before a final decision regarding the misconduct had been made by the agency. In one prominent case, the agency sought legal advice regarding whether the agency could refuse to accept the employee's resignation. The agency was advised there were no reasonable grounds for it to do so.

8.6 The Audit considers that in all cases examined the agency had taken reasonable action to deal with the misconduct allegations.

DETERRENCE

8.7 Sanctioning offenders deters potential perpetrators as it illustrates the probability and consequences of being caught. This effect can be maximised by advising all employees of the outcome of successful fraud prosecutions and disciplinary actions.

8.8 The Audit noted that several of the allegations of misconduct investigated by agencies over the past two years were also the subject of criminal proceedings in ACT courts. As such, they attracted public attention and were reported in local news media. It is probable that these reports alerted many ACT public employees to the outcome of the misconduct. Indeed, this is likely to be the primary means by which many public employees learn of such outcomes, as agencies do not as a rule publicise the outcomes of misconduct investigations.

8.9 The Audit considers this is undesirable. Public employees will be more aware of their role in preventing fraud and corruption, and of integrity matters as a whole, if the issues are openly discussed. As discussed earlier in this Report (see paragraphs 5.47-55 and 5.68), communication with all employees regarding incidents of misconduct is an important part of 'closure'. The use of staff newsletters or bulletins to highlight important aspects of the fraud and corruption prevention/integrity framework, with incidents reported as 'case studies' can be a useful approach.

CONTROL IMPROVEMENTS

8.10 One outcome of an investigation should be control improvements. By examining the incident, investigators should seek to identify what allowed the misconduct to occur or remain undetected (i.e. whether there were control weaknesses that should be addressed). The investigator should consider the need for new or revised procedures or controls to prevent future problems and make recommendations to improve the internal control system. Recommendations for future actions should be a common feature of investigation reports.

8.11 In some cases, the lessons learned from an identified incident will also apply to other agencies. In such cases, agencies should circulate information regarding the incident and the possible control weaknesses to other agencies so they may examine their own arrangements and risks. A good medium for distribution of such information would be a SERFA network.

8.12 The Audit noted that some recent investigations prompted a thorough review or audit of the affected work area, which resulted in recommendations for improvements. Some recommendations were aimed at reinforcing existing controls that had not functioned as intended or were over-ridden (e.g. discrepancies in bank reconciliations were not investigated as they were considered to be 'immaterial', or computer security was weakened because passwords were shared). Other recommendations sought to establish new procedures and controls (e.g. separate incompatible duties such as ordering, and receiving, inventory), often difficult in small workplaces. Interestingly, information on revised procedures and reminders of the importance of properly applying current procedures, was often circulated within the affected work area (e.g. Finance Section) although the reasons for, or background to, the information was given only scant attention.

RESTITUTION

8.13 Another purpose of sanctioning is restitution. Offenders should not gain from their misconduct - the government should be reimbursed for any losses sustained as a result of the misconduct. In many cases, however, this will not be part of the agency's investigation, but rather part of the legal process if the misconduct is handled through the courts.

8.14 Current guidelines for dealing with fraud and corruption encourage agencies to seek recovery of losses (money and property) where this is appropriate, through criminal, civil or administrative proceedings. The Audit noted that recovery of funds was sought and awarded in each of the relevant cases that were handled through the courts. Restitution of funds was awarded in each case, but the capacity of the offenders to make restitution varied; recovery of more than \$400,000 in one case was unlikely, another has agreed to repay funds in small fortnightly amounts (it will take more than 12 years if the sum does not increase), and in others recovery was made through severance payments.

PUBLIC CONFIDENCE

8.15 Finally, effective sanctioning will improve public confidence in the integrity of the ACT public sector and the agency. Publicity surrounding an incident need not be seen as undesirable – there is an educative effect from the denunciation of the misconduct, and the message that offenders will be dealt with appropriately.

8.16 The impact on public confidence of effective sanctioning of identified misconduct is obviously difficult to judge. Perhaps more relevant is the impact on public employees. The Audit has previously noted in this report (paragraphs 5.19-23) that many public employees are not confident that management in their agency demonstrates a strong commitment to preventing and detecting fraudulent or corrupt behaviour, or that their agency adequately addresses such conduct when it is uncovered. This suggests that, in a practical sense, agencies have a long way to go to raise general levels of confidence.

8.17 **Suggestion for better practice (32)** – Agencies should ensure that all decisions regarding sanctioning of proven offenders are properly documented on the investigation file.

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8.18 **Suggestion for better practice (33)** – Agencies should ensure their fraud and corruption prevention or integrity policy includes a communication program which, among other things, informs all employees (and customers/clients where relevant) of outcomes of misconduct investigations, including sanctions applied and steps taken to address any deficiencies in controls etc identified as a result of investigation. Such information should be presented in a manner that maintains privacy and any other relevant confidentiality requirements (e.g. through case studies).

8.19 **Suggestion for better practice (34)** – Agencies should ensure all investigation reports give adequate consideration to actions necessary to address any weaknesses in controls or any other aspect of the fraud and corruption prevention framework identified during the investigation.

CONCLUSION

8.20 Sanctioning proven offenders is important as one of the more visible aspects of the fraud and corruption prevention strategy. Effective sanctioning can pass on the message that the strategy is working – that is, there is a strong probability that employees engaged in improper conduct will be caught, investigated, and dealt with quickly.

8.21 In all cases examined by the Audit, the agency had taken reasonable and appropriate action to deal with the misconduct allegations. However, the beneficial effect was in part lost because agencies do not generally inform employees (and customers or clients where relevant) of outcomes of misconduct investigations, such as sanctions applied and steps taken to address any deficiencies in controls identified as a result of investigation.

8.22 Nor was it evident that agencies learned from the incidents. The Audit observed that agencies do not consistently review investigations to identify actions necessary to address any weaknesses in controls or any other aspect of the fraud and corruption prevention framework acknowledged during the investigation.

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CASE STUDY – THE HIGH COST OF GAMBLING

An accounts manager with a gambling problem pleaded guilty in the Magistrates Court to stealing \$441,512 from a department. The money had been electronically transferred to her personal bank accounts over a period of three years. The court was told that over a period of four years the person had gambled \$1.6m (including ‘wins’) through poker machines at several Canberra clubs.

The court appearance followed a detailed investigation by the department and the police. The investigation began in November 2001 after the department’s SERFA received an anonymous tip-off that an employee had been transferring departmental funds to her own accounts. A short list of suspect transactions was provided.

An initial search of electronic funds payments showed that these transactions, and several others, were not supported by documentation. Further investigation with the help of the department’s bank, revealed that the payments were transferred into an account at another financial institution in the name of the alleged offender. About \$28,000 was involved.

The alleged offender was interviewed by the SERFA and suspended from duty with full pay, pending further inquiries. The police were informed immediately and arrangements made to freeze the personal account. Police inquiries the same day revealed that some \$202,000 had been deposited into the personal account over the previous 18 months, all coded as transfers from the department. Further inquiries showed about \$400,000 had been through the account over the last four years.

Charges of misconduct under s9 of the PSM Act were laid, and an Inquiry Officer appointed. The employee was suspended without pay. Shortly after, the employee offered her resignation. The department sought legal advice regarding whether they were obliged to accept it. They were told there were no reasonable grounds for refusing to do so. The employee resigned effective from 31 December 2001.

The police formally charged the employee in relation to 240 separate fraudulent transfers totalling \$441,512.57. Restitution is most unlikely.

Audit Comment

The department’s response to the initial allegations was swift and appropriate. The investigations, which involved coordinated inquiries with external agencies like the Australian Federal Police, various financial institutions, and the Chief Minister’s Department, were effective and efficient.

The case clearly highlights several key deficiencies in the internal control system that allowed the fraud to remain undetected for some five years. These deficiencies included inadequate password security to the electronic banking systems, inappropriate segregation of duties, and incomplete documentation of Bank Reconciliations. The department moved rapidly to address these deficiencies, both during the investigation, and in a thorough audit afterwards. Issues that may be relevant to other agencies were raised with the Department of Treasury.

The department had reason to suspect that other fraudulent transactions, totalling more than \$120,000, had taken place from as early as July 1993 (about the same time the employee became responsible for managing the day-to-day operations of the accounts unit). The department did not consider it practical to pursue these potentially fraudulent transactions further.

Appendix A – An Example of a Statement of Responsibility for Internal Control

The Audit has recommended that public sector bodies include, in their Annual Reports, a Statement of Responsibility for Internal Controls and certification regarding the Internal Control structures, signed by the Chief Executive or Board. An example of a Statement of Responsibility for Internal Control is shown below. This Statement was included in this Office's Annual Management Report for 2002.

AUDITOR-GENERAL'S STATEMENT OF RESPONSIBILITY FOR INTERNAL CONTROL

CONTEXT

As Auditor-General, I have responsibility for ensuring a sound system of internal control operates within the Auditor-General's Office. The system of internal control supports my legislated functions and provides me with assurance that the policies, aims, and objectives that I have set for the Office are being achieved. This includes ensuring the integrity and reliability of financial and non-financial information, as well as safeguarding the Office's funds and assets from loss through fraud or as a result of other occurrences. It also includes safeguarding the confidentiality of audit evidence and audit work-in-progress.

The system of internal control includes an ongoing process designed to identify the major risks which could negatively affect the achievement of my legislated functions or the Office's achievement of its principal policies, aims and objectives. The system includes evaluating the nature and extent of identified risks and implementing methods to manage the risks effectively and efficiently.

The system of internal control is intended to manage and not to eliminate all risk. The level of assurance sought that each risk is effectively managed is commensurate with the significance of that risk.

CERTIFICATE

I certify that internal control procedures, which are consistent with the preceding description, operated in the Auditor-General's Office throughout the year ended 30 June 2002.

John A. Parkinson, FCPA

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Appendix B - Audit Approach

METHODOLOGY

The focus of the Audit was on the practicalities of fraud control management (i.e. implementation of arrangements to prevent and deal with fraud), rather than the supporting framework. The audit also examined incidents of fraud with a view to highlighting issues using case studies to illustrate significant fraud prevention and control issues.

The audit considered the extent to which recommendations have been implemented arising from the PriceWaterhouseCoopers whole-of-government review of strategies for the prevention of fraud and corruption in the ACT Public Service. This review was commissioned by the Chief Minister's Department and reported in July 1999. It included nine recommendations aimed at strengthening fraud prevention and control strategies.

The approach included seeking preliminary information regarding fraud control arrangements across a wide cross-section of entities (32 large and small entities) to facilitate planning. Information requested included details of risk assessments, fraud control plans, policy and guidelines, as well as incidents investigated over the previous two years.

Documentation on fraud control administration gathered from around 30 government agencies has been reviewed. The review has allowed a broad conclusion that there is a generally good framework in place to prevent fraud through conduct of risk assessments and preparation of control plans. The incidence of fraud identified by agencies has been low according to the surveyed responses.

A benchmark for fraud and corruption prevention management was established by identifying policy, guidelines and better practices in Australian and overseas jurisdictions. Particular jurisdictions of note include the Commonwealth (especially policy, guidelines and standards issued through the Attorney-General's Department) and NSW (especially guidance issued by the Independent Commission Against Corruption). In addition, work undertaken by other audit jurisdictions was closely considered, particularly the Australian National Audit Office (which has undertaken a series of audits on fraud prevention issues) and the Audit Office of NSW.

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Fraud control related documentation and activities of selected entities were examined to determine whether there is an adequate framework in place to prevent and detect fraud in the ACT Public Sector. The Audit also assessed whether fraud control arrangements have been implemented in a manner consistent with ACT Government policy and guidelines and accepted practices. This involved field work and discussions with relevant staff of selected agencies.

The Audit also considered a selection of reported incidents with a view to preparing case studies

A survey across the ACT public service was undertaken as part of the Audit. The survey, which attracted more than 300 responses, has provided a valuable insight the views of ACT public employees on fraud and corruption matters. The survey methodology is discussed further at Appendix C.

Appendix C – Audit Survey Concerning Fraud and Corruption in the ACT Public Sector

INTRODUCTION

The Audit conducted a survey of ACT public employees, seeking information on the perceptions and awareness of public employees concerning fraudulent and corrupt conduct in the ACT Public Sector.

The survey was undertaken as part of the performance audit of Fraud Control Management in the ACT Public Sector being conducted by the Auditor-General.

The survey was expected to provide some insight into the practical understanding of the fraud and corruption prevention framework and the ‘penetration’ of the framework within the public sector. This was necessary to test the implementation/effectiveness of the framework (typically, agencies examined claimed to have implemented the framework – prepared assessments, plans and training etc – but there was little practical effectiveness of how well the framework was integrated into public sector practices and activities). The survey was seen as an efficient means of getting to a wide cross-section of public employees.

Questions were asked that were expected to elicit information on:

- the definitions of fraud and corruption – what is fraud and corruption, and how respondents perceive particular conduct;
- the experience of respondents with respect to fraud and corruption;
- respondents’ perceptions regarding the extent of fraud and corruption in the public sector;
- reactions of respondents to fraud and corruption incidents;
- possible inhibitors to the effective operation of a prevention framework;
- respondents’ awareness of key aspects of the current framework;
- awareness of the operation of the framework within respondents’ agencies; and
- respondents’ participation in training and other activities relevant to fraud and corruption prevention.

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The Audit considered the responses to the survey would provide valuable data to inform the audit opinions. Further, the Audit considered the data would also be of help in forming decisions regarding the management of fraud and corruption prevention activities in the ACT public sector.

METHODOLOGY

Basic Methodology

Consideration was given to the basic manner in which the survey would be conducted.

It was accepted that resources and timing did not permit personal or telephone interviews (although these techniques may have produced the highest level of response and the best quality of response).

The option of conducting a mail-out survey or an email survey was examined. A mail-out survey was seen as being relatively inexpensive, but time consuming (time involved in printing, obtaining addresses, preparing a mailing list, and in enveloping the survey). It was also considered that the elapsed time for returning the questionnaire might be more than the audit could afford. The cost of follow-up would almost match the initial despatch costs. Lastly, it was considered that respondents might initially see the questionnaire as time-consuming, with the result that it would be 'put aside' and not completed.

An email survey instrument was considered to offer several advantages, particularly in terms of time involved (elapsed time for the survey and time for respondents to complete the questionnaire). Obtaining 'addresses' was seen as an easier task and despatch of the questionnaire, including any follow-up, was quicker. Wider coverage could be achieved without any additional cost. Further, it was considered that the option to submit the completed questionnaire by email would encourage responses. The email database was available and accessible – inasmuch as there was already a set of 'mailing lists' available through InTACT/DUS Publications, covering the 'whole of government'.

- It was recognised that submitting a response to the survey by email would 'expose' the identity of the respondent (more properly, the user account that was used to return the completed questionnaire). This might have discouraged some employees

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who wished to remain anonymous.⁶⁴ Several steps were taken to address this issue:

- the cover sheet/letter of introduction for the survey stated prominently that responses would be confidential to the audit, and that information gathered during the survey would be presented in a way that would not disclose the names of individual respondents or agencies;
- the cover sheet made clear that the survey was voluntary;
- respondents had the option to complete a ‘hard copy’ of the questionnaire, which could be completed manually and returned by mail, rather than electronically. The ‘hard copy’ version of the questionnaire would be identical to the email version, other than for formatting to facilitate manual completion.
- It was recognised that a ‘bulk’ email would allow some respondents the opportunity to submit multiple responses. Although this was seen as a low risk, receiving responses by email allowed a manual check for duplicates (i.e. more than one response from the same user account).⁶⁵ It was not possible to check for multiple ‘hard copy’ responses.
- Responses by email allowed the survey administrator to perform a ‘completion’ check on each completed return and to contact respondents if the survey was received in a ‘spoiled’ state.⁶⁶
- It was recognised that an email message might not reach all public employees. However, all ‘whole-of-government’ messages carry the instruction **‘If you are the supervisor of staff who do not have access to e-mail, it is your responsibility to ensure they receive this information. Please forward it as appropriate.’** It was considered that this would encourage further distribution of the message.

⁶⁴ Many of the respondents included their name and contact details on the completed questionnaire.

⁶⁵ No instances of multiple responses from the same user account were identified.

⁶⁶ In general, each response was briefly examined to ensure it had been completed correctly and received intact. A small number of respondents failed to successfully return the completed questionnaire. These were followed-up, with a request to resubmit the form. Most did so.

Development of the Survey Instrument

The survey instrument was developed by Audit with reference to:

- a survey of ACT public sector executives and other senior staff conducted in 1999 by PriceWaterhouseCoopers on behalf of CMD;
- a biennial fraud survey across the private and public sectors conducted by KPMG;
- a fraud survey across the private and public sectors conducted by Ernst & Young;
- a public sector fraud survey by the South African Institute of Government Auditors;
- better practice in survey methodology and techniques, as demonstrated in various texts and documents available through Internet research.

The instrument was tested with a small sample of employees within the ACT Auditor-General's Office who had no previous involvement with the audit. Modifications were made to the instrument (design, layout, text and instructions) and to the questions as a result of the feedback received.

Extent of Coverage (i.e. Sample Size) and the Method of Distribution

Consideration was given to the extent of coverage (i.e. sample size) and the method of distribution.

It was recognised that, to maximise the benefits of the survey, the sample selected should be representative of the population of public employees, should be free from bias (intentional or otherwise) but that the selection process and the distribution process should be sufficiently controlled to allow reasonable inferences about the population to be drawn from the responses of the survey.

Early thoughts were to undertake a small survey based on a representative sample of employees across the agencies specifically targeted for the audit (i.e. CMD, DUS, DECS, JACS). Initially, a sample of about 200 was considered, to be selected 'at random' from the ACT Government Directory. However, after discussion with the Auditor-General it was agreed that the survey instrument would be distributed to all public

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employees using the ‘Whole of Government’ email list, organised through DUS Publications.

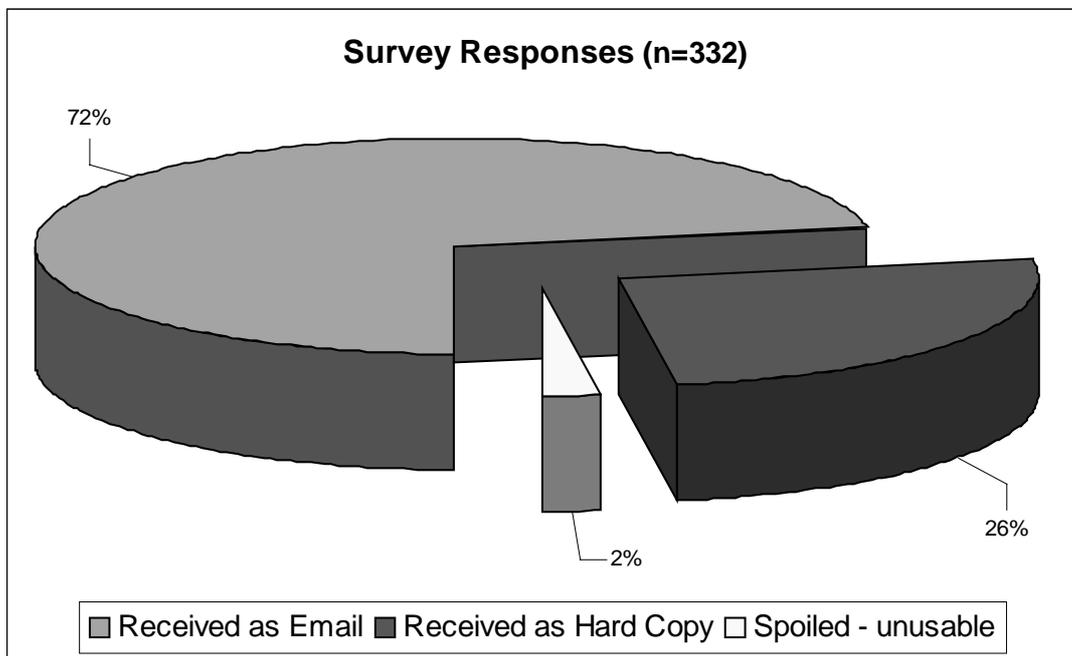
The survey was distributed as a ‘whole of government’ email message on Wednesday 28 August 2002. Respondents could choose to complete the survey questionnaire using either a ‘hard copy’ or ‘email’ version. The ‘closing date’ was Friday 13 September 2002.

A follow-up ‘reminder’ was sent on Wednesday 4 September 2002.

RESPONSES

Emailed responses were being received within minutes of the email being distributed (the first response was received seven minutes after the message went out, and nearly 60 responses were received within the first hour). By close of business on the day the survey was distributed, almost 100 responses had been received by email.

By 18 September 2002, 332 responses had been received as shown in the chart below, of which 325 were usable.



Several email responses did not return the completed survey questionnaire as expected (one possible reason is that the respondent did not follow the directions given with the questionnaire). All such responses were followed-up with the respondent, with a request to resubmit the questionnaire. Most did so, but a small number (7) were not

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returned. These have been identified as ‘spoiled’ – insufficient information was provided to allow the response to be considered further.

Not all respondents fully completed the questionnaire. For example, a small number of respondents did not complete both parts A and B of Question 1 (this question asked respondents to rate examples of conduct as if the conduct occurred only once or occasionally and as if the conduct occurred regularly; not everyone responded to the second part of the question). Responses were coded as they were received. For this reason, the total number of responses for each question varies.

SURVEY INSTRUMENT

The survey instrument (questionnaire) used for the Audit survey is shown on the following pages. The version shown is the ‘hard copy’ version – i.e. the version expected to be printed and completed by hand.



Survey concerning fraud and corruption in the ACT Public Sector

You are invited to take part in a survey of ACT public employees which is seeking information on the perceptions and awareness of public employees concerning fraudulent and corrupt conduct in the ACT Public Sector. The survey is being conducted by the ACT Auditor-General's Office.

Your response will be confidential to the audit. The information gathered during the survey will be presented in a way that will not disclose the names of individual respondents or agencies.

HOW DO I COMPLETE THE SURVEY?

The survey should not take you more than 20-30 minutes to complete.

This version of the survey (*Fraud Survey – Hard Copy*) has been designed to be completed manually. Print the document, complete it and return it through the internal mail system to:

Rod Nicholas
Audit Manager
ACT Auditor-General's Office
PO Box 275
Civic Square ACT 2608

We need your response by Friday 13 September 2002.

Feel free to elaborate or offer detailed responses. Further responses can be included after the relevant question or in the space provided at the end of the questionnaire.

If you wish to complete the questionnaire in an electronic format, use *Fraud Survey – Email*. Details on how to complete the electronic form are provided with the questionnaire.

DEFINITIONS

For the purpose of this survey:

Fraud is defined in Public Sector Management Standard 22 as:

taking or obtaining by deception money or any other benefit from the government when not entitled to the money or benefit, or attempting to do so – this includes evading a liability to government.

Corruption is defined in Public Sector Management Standard 22 as:

an officer is corrupt if he or she seeks, obtains or receives any benefit, other than lawful salary and allowance, on the understanding that the officer will do or refrain from doing anything in the course of his or her duties or will attempt to influence any other officer on behalf of any person.

CAN I TALK TO SOMEONE ABOUT THE SURVEY?

If you would like to discuss the survey, or fraud and corruption prevention activities in general, please contact Rod Nicholas on 6207 0824 or at the email address above.

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SECTION 1 - Fraud and corruption mean different things to different people. This section of the questionnaire seeks your views on a range of conduct that may be considered fraudulent or corrupt. It also seeks your views on the incidence and reporting of fraud.

QUESTION 1

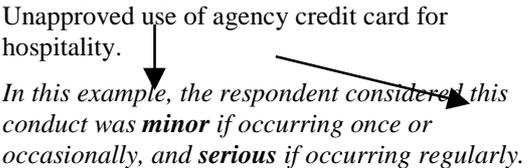
Listed below are examples of conduct that may be considered fraudulent or corrupt. How you see the conduct may depend on whether the conduct occurs once, occasionally or regularly.

Using the scale shown, how serious (or otherwise) do you consider the conduct is if:

- (a) the conduct occurred once or occasionally (mark your choice with ✓ or ✕)
- (b) the conduct occurred regularly (write your choice in the shaded box).

**SEE THE
EXAMPLE**

1	Not fraudulent or corrupt	
2	Minor – a matter that can be dealt with informally	
3	Serious – a matter that would warrant formal disciplinary action	
4	Very serious – a matter that would warrant police investigation and prosecution	

Example only
 Unapproved use of agency credit card for hospitality.

*In this example, the respondent considered this conduct was **minor** if occurring once or occasionally, and **serious** if occurring regularly.*

1 ✓ 3 4 **3**

Theft or misappropriation of money.

1 2 3 4

Transferring agency revenue to a personal account.

1 2 3 4

Using an agency credit card for personal use and not repaying the costs to the agency **unless and until asked**.

1 2 3 4

Using an office mobile phone for personal calls and not paying for the calls **unless and until asked**.

1 2 3 4

Borrowing money from a petty cash advance and repaying the money later.

1 2 3 4

Making personal use of agency vehicles.

1 2 3 4

Inappropriately using internet/email.

1 2 3 4

Favouritism in awarding a contract in return for a benefit provided by the successful contractor to self or to a relative, friend, etc.

1 2 3 4

Using an office photocopier to duplicate club circulars.

1 2 3 4

Borrowing agency owned equipment, tools or other property for private use, without first seeking approval.

1 2 3 4

Taking a 'sickie' when fit for work (e.g. to gain a long weekend).

1 2 3 4

Altering dates on medical certificates to match dates when absent from work.

1 2 3 4

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- 1 Not fraudulent or corrupt**
- 2 Minor – a matter that can be dealt with informally**
- 3 Serious – a matter that would warrant formal disciplinary action**
- 4 Very serious – a matter that would warrant police investigation and prosecution**

Not submitting leave forms to cover absences from work.

1 **2** **3** **4**

Making inaccurate entries in flextime records.

1 **2** **3** **4**

Altering or falsifying all or part of a document for reasons such as avoiding having to provide explanations for errors; to ensure recommendations are accepted, or to save time in processing the documents.

1 **2** **3** **4**

During working hours running a private business or assisting with a relative or friend's business.

1 **2** **3** **4**

Falsely including qualifications or experience in a job application.

1 **2** **3** **4**

Purchasing with agency funds goods to be used predominantly for personal use or for use by relatives, friends, etc.

1 **2** **3** **4**

Disclosing to unauthorised persons official information obtained through work e.g. in conversations at social occasions.

1 **2** **3** **4**

Leaking information on irregular actions by agency officials to the media

1 **2** **3** **4**

Claiming overtime when not worked.

1 **2** **3** **4**

Working and being paid overtime when the work performed could reasonably have been completed in normal working hours.

1 **2** **3** **4**

Please add any comments you may have on this question here.

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QUESTION 5

To what extent do you agree or disagree with the following statements?

(Use the scale below, and mark your choice like this: ✓ or ✗)

- | |
|---|
| <p>1 Unsure</p> <p>2 Strongly disagree</p> <p>3 Disagree</p> <p>4 Agree</p> <p>5 Strongly agree</p> |
|---|

If I suspected a staff member had engaged in fraudulent or corrupt conduct I would discuss the matter with them before taking any action to report the matter.

1 2 3 4 5

I would be more inclined to report suspicions of fraudulent or corrupt conduct if the conduct occurred more than once.

1 2 3 4 5

I would be more inclined to report suspicions of fraudulent or corrupt conduct if the conduct occurred within my own work area.

1 2 3 4 5

I would be more inclined to report suspicions of fraudulent or corrupt conduct if I could do so anonymously.

1 2 3 4 5

I would be reluctant to report suspicions of fraudulent or corrupt conduct unless I had 'evidence' to support my suspicions.

1 2 3 4 5

I would be reluctant to report suspicions of fraudulent or corrupt conduct, for fear of damaging the staff member's reputation if my suspicions were mistaken.

1 2 3 4 5

I would be reluctant to report suspicions of fraudulent or corrupt conduct for fear of reprisal action against me.

1 2 3 4 5

Please add any comments you may have on this question here.

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SECTION 2

This section seeks information on your awareness of the fraud prevention framework in the ACT Public Service and its operation in your agency.

QUESTION 6

Are you aware that:	Yes	No
the Chief Minister’s Department has issued an ACT Public Service Code of Ethics, which highlights (among other things) your obligation to act legally, honestly and fairly in performing your duties?	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
as an ACT Government employee, you have an obligation to report fraudulent or corrupt conduct within your agency?	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
the ACT has a Public Interest Disclosure Act (‘whistle-blower’ law), which protects persons reporting fraudulent or corrupt conduct?	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
there is a Senior Executive Responsible for Fraud Administration (SERFA) within your agency?	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

QUESTION 7

To what extent do you agree or disagree with the following statements?
(Use the scale below, and mark your choice like this: ✓ or ✗)

<p>1 Unsure</p> <p>2 Strongly disagree</p> <p>3 Disagree</p> <p>4 Agree</p> <p>5 Strongly agree</p>

In my work area, I have a responsibility to assist in preventing fraudulent or corrupt conduct.

1 2 3 4 5

In my agency, management demonstrates a strong commitment to preventing and detecting fraudulent and/or corrupt conduct.

1 2 3 4 5

In my agency, staff are aware of their obligations to prevent and report fraudulent and/or corrupt conduct.

1 2 3 4 5

In my agency, there are formal procedures in place for reporting alleged or suspected fraudulent or corrupt conduct

1 2 3 4 5

In my agency, fraudulent or corrupt conduct uncovered is dealt with adequately?

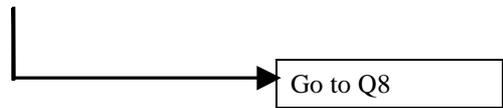
1 2 3 4 5

There is a formal Fraud Control Plan (or formal Fraud Prevention Strategies) for my agency.

1 2 3 4 5

I have read the Fraud Control Plan (or the strategies document) within the last twelve months.

1 2 3 4 5



In my agency, the Fraud Control Plan (or Fraud Prevention Strategies) discourages staff from engaging in fraudulent or corrupt conduct.

1 2 3 4 5

In my agency, the Fraud Control Plan Fraud (or Fraud Prevention Strategies) is effective in exposing fraud and corruption.

1 2 3 4 5

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Please add any comments you may have on this question here.

QUESTION 8

In the last two years, did you participate in any of the following activities related to prevention of fraudulent or corrupt conduct?

(Mark all relevant boxes)	Yes	No
Training on fraud prevention and detection	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Training on ethics	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Development or review of a Fraud Control Plan (or fraud prevention strategies)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Development or review of a fraud (or business) risk assessment	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Periodic assessment of fraud control measures	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Development or review of a Code of Ethics	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Periodic review of internal controls	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Quality assurance review	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Training on fraud investigation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Please list any other activities in which you participated related to prevention of fraudulent or corrupt conduct.

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ADDITIONAL COMMENTS

If you would like to make further comment about any aspect of the survey, or concerning fraud, corruption, or ethics in the ACT public sector, please use the space available here.

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SECTION 3

COMPLETING THIS SECTION OF THE SURVEY IS OPTIONAL.

This section seeks basic information about you and your agency. The information will help us to analyse the survey results. It would be helpful to our analysis if all parts of this section were completed. We understand, however, that some respondents may prefer not to complete this section or to complete only parts of it.

(From the choices below, please choose the appropriate - or closest - response.)

What is your classification?		Do you have supervisory or managerial responsibilities?	
Administrative Officer	<input checked="" type="checkbox"/>	Yes	<input checked="" type="checkbox"/>
Executive	<input checked="" type="checkbox"/>	No	<input checked="" type="checkbox"/>
Professional Officer	<input checked="" type="checkbox"/>		
Other	<input checked="" type="checkbox"/>		

What type of agency do you work in?		How many persons are in your agency?	
Department	<input checked="" type="checkbox"/>	Less than 100 persons	<input checked="" type="checkbox"/>
Statutory Authority	<input checked="" type="checkbox"/>	101 to 500 persons	<input checked="" type="checkbox"/>
Other	<input checked="" type="checkbox"/>	More than 500 persons	<input checked="" type="checkbox"/>

Your Name: _____

Agency: _____

Telephone: _____

Thank you for you cooperation

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PREVIOUS AUDIT REPORTS⁶⁷

Reports Published in 2003

1. Effectiveness of Annual Reporting
2. Belconnen Indoor Aquatic Leisure Centre
3. Emergency Services
4. Management of Fraud and Corruption Prevention in the ACT Public Sector

Reports Published in 2002

1. Special Purpose Review of Part of the Commission of Audit Report on the State of the Territory's Finances at 31 October 2001
2. Operation of the Public Access to Government Contracts Act
3. Governance Arrangements of Selected Statutory Authorities
4. Frameworks for Internal Auditing in Territory Agencies
5. V8 Car Races in Canberra – Costs and Benefits
6. Annual Management Report for the Year Ended 30 June 2002
7. Financial Audits with Years Ending to 30 June 2002

Reports Published in 2001

1. Financial Audits with Years Ending to 30 June 2000
2. Enhancing Professionalism and Accountability
3. Market Research and Marketing (Second Report)
4. Peer-Based Drug Support Services Tender – 1998
5. The Administration of Payroll Tax
6. Annual Management Report for the Year Ended 30 June 2001
7. Managing Canberra Urban Parks and Open Spaces
8. Canberra Tourism and Events Corporation – Relocation to Brindabella Business Park
9. Agents Board – Financial Administration of Training Grant Program
10. Corrective Services – Review of Certain Allegations
11. Financial Audits with Years Ending to 30 June 2001
12. The Freedom of Information Act

⁶⁷ 46 Reports were issued prior to 1996. Details can be obtained from the ACT Auditor-General's Office or the ACT Auditor-General's homepage: <http://www.audit.act.gov.au>.

Reports Published in 2000

1. Bruce Stadium Redevelopment — Summary Report
2. Bruce Stadium Redevelopment — Value for Money
3. Bruce Stadium Redevelopment — Costs and Benefits
4. Bruce Stadium Redevelopment — Decision to Redevelop the Stadium
5. Bruce Stadium Redevelopment — Selection of the Project Manager
6. Bruce Stadium Redevelopment — Financing Arrangements
7. Bruce Stadium Redevelopment — Stadium Financial Model
8. Bruce Stadium Redevelopment — Actual Costs and Cost Estimates
9. Bruce Stadium Redevelopment — Market Research and Marketing
10. Bruce Stadium Redevelopment — Stadium Hiring Agreements
11. Bruce Stadium Redevelopment — Lawfulness of Expenditure
12. Bruce Stadium Redevelopment — Governance and Management
13. Annual Management Report for the Year Ended 30 June 2000

Reports Published in 1999

- 1 Stamp Duty on Motor Vehicle Registrations
- 2 The Management of Year 2000 Risks
- 3 Annual Management Report for Year Ended 30 June 1999
- 4 Financial Audits With Years Ending to 30 June 1999

Reports Published in 1998

- 1 Management of Preschool Education
- 2 Lease Variation Charges - Follow-up Review
- 3 Major IT Projects - Follow-up Review
- 4 Annual Management Report for Year Ended 30 June 1998
- 5 Management of Housing Assistance
- 6 Assembly Members' Superannuation and Severance Payments to Former Members' Staffers
- 7 Magistrates Court Bail Processes
- 8 Territory Operating Losses and Financial Position
- 9 Financial Audits with Years Ending To 30 June 1998
- 10 Management of Schools Repairs and Maintenance

- 11 Overtime Payment To A Former Legislative Assembly Member's Staffer

Reports Published in 1997

- 1 Contracting Pool and Leisure Centres
- 2 Road and Streetlight Maintenance
- 3 1995-96 Territory Operating Loss
- 4 ACT Public Hospitals - Same Day Admissions
Non Government Organisation - Audit of Potential Conflict of Interest
- 5 Management of Leave Liabilities
- 6 The Canberra Hospital Management's Salaried Specialists Private Practice
- 7 ACT Community Care - Disability Program and Community Nursing
- 8 Salaried Specialists' Use of Private Practice Privileges
- 9 Fleet Leasing Arrangements
- 10 Public Interest Disclosures - Lease Variation Charges and Corrective Services
- 11 Annual Management Report for Year Ended 30 June 1997
- 12 Financial Audits with Years Ending to 30 June 1997
- 13 Management of Nursing Services

Reports Published in 1996

1. Legislative Assembly Members – Superannuation Payments/Members' Staff – Allowances and Severance Payments
- 2 1995 Taxi Plates Auction
- 3 VMO Contracts
- 4 Land Joint Ventures
- 5 Management of Former Sheep Dip Sites
- 6 Collection of Court Fines
- 7 Annual Management Report For Year Ended 30 June 1996
- 8 Australian International Hotel School
- 9 ACT Cultural Development Funding Program
- 10 Implementation of 1994 Housing Review
- 11 Financial Audits with Years Ending to 30 June 1996

Availability of Reports

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