



National Integrity Systems

Transparency International

Questionnaire

Australia 2004

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Australia

The National Integrity System Indicators

Questionnaire

Executive

Can citizens sue Government for infringement of their civil rights?

Australia does not have a Bill of Rights and this is the subject of a quite vigorous debate. A number of statutes have been enacted to protect specific rights and the major ones are: *Sex Discrimination Act 1984*, *Racial Discrimination Act 1975* and the *Disability Discrimination Act 1992*. If mediation fails, citizens have a right to sue for damages in the areas covered by these statutes.

Are there procedures for the monitoring of assets, including disclosure provisions, for Cabinet and other Government Ministers?

As all Ministers are members of Parliament, they are bound by the disclosure of pecuniary interest provisions that are described under the 'Legislature' Section below. As well, Ministers are bound by the Prime Minister's guidelines on Ministerial responsibility (see A guide on key elements of Ministerial responsibility at http://www.dpmc.gov.au/pdfs/Key_Elements_Ministerial_Responsibility.pdf) which relate specifically to their duties as Ministers. Chapter 5 'Ministerial Conduct' requires that Ministers complete the PM's statement of interest forms. The PM's guidelines are widely regarded as being self-serving and weak, as he has refused to dismiss Ministers who have had conflicts of interest as defined in his guidelines.

Are there procedures for the monitoring of assets, including disclosure provisions, for high-level officials?

Yes, Senior Public Servants are required to disclose assets and interests to their Agency head (See Australian Public Service Commission *APS values and code of conduct in practice: Section 4 Personal Behaviour: Chapter 9 Conflict of Interest* at <http://www.apsc.gov.au/values/conductguidelines11.htm>).

Are there any differences in procedures and disclosure provisions between elected ministers, appointed ministers and high-level officials?

The major difference is that Ministers are members of Parliament and their 'member' declarations are made public by virtue of resolutions of the Houses. Neither Ministerial nor senior officials' declarations are made public.

Are there conflict of interest rules for ministers?

Yes, Chapter 5 of the Prime Minister's guidelines *A guide on key elements of Ministerial Responsibility*, contain general requirements for avoiding conflicts of interest as well as specific requirements on performing any other paid work, directorships of private companies and divestment of shares.

For high level officials?

Yes, all public servants (not just high level officials) are required to avoid conflicts of interest by virtue of the code of conduct as set down in Section 13 of the *Public Service Act 1999*.

Are there rules and registers concerning gifts and hospitality for ministers?

Chapter 5 of the Prime Minister's guidelines *A guide on key elements of Ministerial Responsibility*, prohibits Ministers from accepting gifts where there may be an appearance of impropriety. The guidelines do not require that registers of gifts be maintained.

For high level officials?

As described in detail in the section below on the civil service, all public servants are prohibited from accepting gifts.

If so, are these registers kept up to date? By whom?

No requirement specified, either for Ministers or senior public servants, noting the general prohibition on the accepting of gifts.

Have they legal powers to enforce disclosure?

No, again noting the general prohibition on the accepting of gifts.

Have they staff to investigate allegations?

For public servants, acceptance of gifts is contrary to the code of conduct would be a disciplinary offence and the agency would have an obligation to investigate and take action. The enforcement of the Ministerial guidelines is less clear and no investigation process is set down.

What powers of sanction are in place against parliamentarians?

The requirements upon parliamentarians do not specifically mentions gifts or hospitality. Section 45(iii) of the Australian Constitution provides that if a Senator or Member of the House of Representatives directly or indirectly takes or agrees to take any fee or honorarium for services rendered in the Parliament to any person or State, the place of the Senator or Member shall thereupon become vacant. There are no recorded cases of any substantive action taken under this section. Rather they use the broader term 'pecuniary interests'. Standing order 196 of the House of Representatives states that a Member may not vote in a division on a question in which he or she has a direct pecuniary interest not held in common with the rest of the subjects of the Crown. However, the rule does not apply to a question on a matter of public policy which means its effect is quite limited.

Have they ever been invoked?

No.

What powers of sanction are in place against ministers who are also parliamentarians?

By virtue of the Constitution, all Ministers are members of Parliament, therefore prohibitions noted above would apply. The powers of sanction that would apply to a Minister are by virtue of the PM's guidelines *A guide on key elements of Ministerial Responsibility* and these are the PM dismissing the Minister. As noted above, the current PM has been reluctant to discipline Ministers.

Have they ever been invoked?

No.

What powers of sanction are in place against ministers who are not parliamentarians?

Not applicable, by virtue of the Constitution, all Ministers are members of Parliament.

Have they ever been invoked?

Not applicable.

Are there restrictions on post ministerial office employment?

No. This has been the subject of some public debate, following a number of cases where Ministers resigned and took up employment immediately in positions directly related to their portfolio responsibilities. In March 2002, the Australian Democrats, a minority party in the Senate introduced a bill to regulate this activity but it was defeated.

Are members of the executive obliged by law to give reasons for their decisions?

Yes. Section 13 of the *Administrative Decisions (Judicial Review) Act 1977* gives a legal right to citizens for a review of a decision under an enactment (with some exceptions) and the citizen can apply to a court for a review of the decision.

Do Ministers or equivalent high level officials have and exercise the power to make the final decision in ordinary contract award and licensing cases? Is this power limited to special circumstances?

In the Australian system of government there are clear distinctions between Ministers and high-level officials. Ministers do not play any formal part in the awarding of contracts, at whatever scale, by virtue of the requirements of the *Financial Management and Accountability Act 1997*. Senior public servants can exercise such powers in accordance with the Act.

Are there administrative checks and balances on decisions of individual members of the executive?

Parliament – Ministers and senior public servants are answerable to the Parliament. This occurs through question time, and the operation of the parliamentary committees.

Courts – many of the decisions that Ministers and senior public servants make are subject to judicial review by virtue of legislation like the *Administrative Decisions (Judicial Review) Act 1977* and the *Administrative Appeals Tribunal Act 1997*. Cases that are the subject review can be appealed to the Federal Court or the Federal Magistrates Court.

Financial management – the core of the financial accountability system is statutory. Section 83 of the Constitution requires that all expenditure by the Commonwealth be appropriated by Parliament. Then there are the core statutes – the *Commonwealth Financial Management and Accountability (FMA) Act and Regulations 1997*, the *Commonwealth Companies and Authorities (CAC) Act*, the *Auditor-General Act 1997* and the *Public Accounts and Audit Committee Act 1951*. These are supplemented by the powerful overview by the Senate Estimates Committees. These Committees use the full powers of Parliament to regularly bring before them Ministers and public officials and question them on public spending.

Access to information – under the *Freedom of Information Act 1982*, citizens have a right of access to documents produced by Ministers, senior public servants and public service agencies. There are broad ranging exemptions, however the application of these is subject to scrutiny by the Administrative Appeals Tribunal.

Legislature

Is the legislature required to approve the budget?

Yes. Section 54 of the Constitution.

Are there significant categories of public expenditure that do not require legislative approval? (which departments does this involve, what is their expenditure and what percent does this represent of the government's annual expenditure?)

No. There are a number of agencies that have a 'one line appropriation'. What this means is that the appropriation bills do not go into as much detail as to what the spending items are. This occurs for those agencies where there is a degree of administrative autonomy, like quasi-commercial enterprises.

Are there conflict of interest rules for parliamentarians?

Partly. Section 45 of the Constitution makes a member's place vacant if the member accepts a fee for 'services rendered in the Parliament'.

For members of the House of Representatives, Standing Order 196 prohibits a member from voting on a matter where there is direct pecuniary interest 'not held in common with the rest of the subjects of the Crown' (see Parliament of Australia 2001 *House of Representative Practice* 4th Edition at <http://www.aph.gov.au/house/pubs/PRACTICE/Index.htm>: p 142). Because the rule does not apply to questions on a matter of public policy and most matters before the legislature are of a public policy nature, this prohibition has very limited effect. Standing Order 335

prohibits members sitting on a parliamentary committee if they have a direct pecuniary interest in the subject matter of the committee's deliberations.

Standing Order 339 requires that members disclose certain prescribed interests (shareholdings, assets, real estate) and failure to do so brings the member into contempt of the House. Registers are available for public inspection. The Senate has similar procedures for the registration of interests (see Parliament of Australia 2001 *Odgers Australian Senate Practice Tenth Edition*: <http://www.aph.gov.au/Senate/pubs/html/chap6013.htm>: p 163) and for the declaration of interests in matters before the Senate (see the various requirements listed; for example, http://www.aph.gov.au/senate/committee/interests_ctte/info/reg_interests.pdf).

Are there rules and registers concerning gifts and hospitality?

Yes. For members of the House of Representatives, the registers described above include:

- Gifts valued at more than \$500 from official sources or more than \$200 from other sources, provided that a gift from family members or personal friends in a purely personal capacity need not be registered unless the Member judges that an appearance of conflict of interest may be seen to exist; and
- Sponsored travel or hospitality received.

The Senate has elaborate rule for the registration of gifts (see the website noted above).

If so, are these registers kept up to date? By whom?

In each case, by a parliamentary committee.

Have they legal powers to enforce disclosure?

The authority is by virtue of standing orders.

Have they staff to investigate allegations?

Any allegation relating to breaches of the Standing Orders would be investigated by the relevant committee and each committee has (limited) staff to assist in its inquiries.

What powers of sanction are in place against parliamentarians?

Failure to comply is contempt of Parliament.

Have they ever been invoked?

No.

Are there restrictions on post legislature employment?

No.

Elections/Political Party Funding

Is there an independent Electoral Commission (if not, are the arrangements for elections in the hands of agencies who are widely regarded as being non-partisan)?

Yes. Section 6 of the *Commonwealth Electoral Act 1918* establishes a Commission with three commissioners– the Commissioner has a chair (who must be either a judge or retired judge of the Federal Court of Australia), an Electoral Commissioner and one other part-time, non-judicial member.

Who appoints the Head of the Commission?

The Commission is appointed by the Governor-General (s6).

Are there rules on political party funding?

No. Parties are required to be registered Part XI, of the *Commonwealth Electoral Act 1918*.

Are substantial donations and their sources made public?

Yes. Part XX, Division 4 of the *Commonwealth Electoral Act 1918*. Members of the public can access the information online at: <http://www.aec.gov.au/index.html>. This access provides a search engine so that the database can be searched by party, donor, or size of donation.

Are there rules on political party expenditures?

Yes. Part XX, Division 5 of the *Commonwealth Electoral Act 1918*.

Are political party accounts published?

Yes. Part XX, Division 5A of the *Commonwealth Electoral Act 1918*. They can be accessed online at: <http://www.aec.gov.au/index.html>.

Are accounts checked by an independent institution, are they published and are they submitted to parliament?

Accounts are scrutinised by the Australian Electoral Commission (the organisation) to ensure that they comply with the legislation. They are published, but not submitted to Parliament. The conduct of every election is reviewed by the Parliamentary Joint Standing Committee on Electoral Matters and a report of this Committee is tabled.

Does that institution start investigations on its own initiative?

Yes. The Australian Electoral Commission can initiate investigations and serious offences are referred to the Australian Federal Police.

Who appoints the head of the institution?

The Governor-General.

Supreme Audit Institution

Is the national auditor general independent i.e. is the appointment of the general auditor required to be based on professional criteria/merit?

The Auditor-General is appointed by the Governor-General, on the recommendation of the Minister, for a term of 10 years. Schedule 1 of the *Auditor-General Act 1997*. The legislation does not set down any criteria for merit or professional qualifications. Thus, while there are no formal qualification requirements for the appointment of the Auditor-General, it is a convention that only very senior and experienced officials are appointed to the office. Any departure from this standard would almost certainly involve the government in sharp public criticism. This consideration applies to most of the appointments for positions in high profile institutions like the Auditor-General and the Ombudsman. However, the practice of appointments to the very large number of statutory authorities, boards and committees effectively being a gift of the government of the day has been a cause of concern. Some Australian jurisdictions have moved to make these appointments less of a spoils system and criteria for selection have been established.

Is the appointee protected from removal without relevant justification?

Yes. The Auditor-General can only be removed on very narrow grounds (misbehaviour, mental or physical incapacity) upon request by both Houses of Parliament or on the grounds of bankruptcy (Schedule 1 of the *Auditor-General Act 1997*).

Are all public expenditures audited annually?

Yes. Part IV, Division 1 of the *Auditor-General Act 1997*. The Australian National Audit Office conducts a variety of audit functions besides examining expenditure.

Is reporting up to date?

Yes, and they can be accessed on the Australian National Audit Office website: <http://www.anao.gov.au>.

Are reports submitted to a Public Accounts Committee and/or debated by the legislature?

All reports are tabled and subject to review by the Joint Parliamentary Committee on Public Accounts.

Are all public expenditures declared in the official budget?

Yes.

Judiciary

Have the courts the jurisdiction to review the actions of the executive (i.e. Presidency, the Prime Minister's or other Ministers and their officials)?

There are three tiers of courts in the federal system. Under section 71 of the Constitution, the High Court's primary role is to interpret the constitution. The other two tiers, the Federal Court and the Federal Magistrates Court can review a range of administrative decisions, including those taken by Ministers. The scope of the decisions that can be reviewed are closely defined in a wide range of statutes, but the areas most subject to review are decisions in the areas of migration, taxation and welfare entitlements. It should be noted that there are a quasi-judicial review bodies like the Administrative Appeals Tribunal which are the first line of review of decisions, with rights of further review by the courts.

Are judges/investigative magistrates independent i.e. are appointments required to be based on merit? Are the appointees protected from removal without relevant justification?

Merit. Partly. Appointments to the judiciary are made on the basis of recommendations to the Governor-General from the Executive Council. To be eligible for appointment to the High Court or Federal Court, the nominee has to be a judge of another court or a barrister. In practice submissions are brought forward from the Attorney General and the names put forward are from a significant pool of eligible persons. The selection process is frequently criticised for bringing forward only names that are suitable to the government of the day. This is far more of an issue for appointments to the High Court than the other courts.

Removal from office. All levels of the judiciary have quite limited and specific reasons for dismissal built into the relevant statutes.

Are recruitment and career development based on merit?

Appointment is the only term used in the statutes and has been covered above.

Have there been instances of successful prosecutions of corrupt senior officials in the past 3 years?

None in the judicial system.

Civil Service

Are there laws establishing criminal and administrative sanctions for bribery?

Yes. Criminal sanctions for bribery are in subsection 141 (1) of the *Criminal Code Act 1995*. Subsection 13 (10) of the *Public Service Act 1999* proscribes using a public office for personal gain and Section 15 makes a breach of the Code of Conduct an administrative offence.

Are there rules requiring political independence of the civil service?

Yes. Sub paragraph 10 (1) (a) of the *Public Service Act 1999* mentions 'apolitical' as being one of the public service values. Section 13 require upholding the APS values as part of the code of conduct and Section 15 makes a breach of the Code of Conduct an administrative offence.

Are recruitment/career development rules based on merit?

Yes. Sub paragraph 10 (1) (b) of the *Public Service Act 1999* makes merit in selection, recruitment and promotion one of the APS values.

Are there specific rules to prevent nepotism? Cronyism? (note: rules discriminating positively in favour of marginalised or minority groups are not included in this description.)

Yes. Covered by Sub paragraph 10 (1) (b) of the *Public Service Act 1999* and Part 6 of the *Public Service Act 1999* establishes a Merit Protection Commissioner.

Are there rules (including registries) concerning acceptance of gifts and hospitality?

All public servants are prohibited from obtaining a personal benefit or advantage by virtue of the code of conduct as set down in Section 13 of the *Public Service Act 1999*. In its advice on acceptance of gifts, the Australian Public Service Commission notes (see Australian Public Service Commission (2003) *APS values and code of conduct in practice: Section 4 Personal Behaviour: Chapter 9 Acceptance of gifts* <http://www.apsc.gov.au/values/conductguidelines12.htm>) that gifts can only be accepted where refusal would cause offence and recommends that a register be kept of such gifts.

If so, are these registers kept up to date? By whom?

Agencies would be required to keep registers.

Have they legal powers to enforce disclosure?

Failure to disclose a conflict of interest would be a breach of the Code of Conduct and subject to disciplinary action.

Have they staff to investigate allegations?

This would be a matter for each individual agency. Generally each agency would have staff capable of conducting a fact-finding inquiry. A small number of the agencies have units of trained investigators. Very serious cases would be referred to the Australian Federal Police.

What powers of sanction are in place against civil servants?

The array of powers under the *Public Service Act 1999* to discipline breaches of the code of conduct range from reprimand through to dismissal. If the breach is serious enough to also be a criminal offence, disciplinary action would be suspended until the matter was investigated by the Australian Federal Police, and potentially, prosecuted.

Have they ever been invoked?

No.

Are there restrictions on post public service employment?

Yes. Guidelines issued by the Australian Public Service Commission (details of the disciplinary procedures are provided in Australian Public Service Commission. 2000 *Managing Breaches of the APS Code of Conduct* <http://www.apsc.gov.au/publications00/breaches.htm>) require public servants contemplating resigning and taking up a position where there could be a conflict of interest to notify their agency heads and a process is outlined for minimising the likelihood of conflict of interest. However, failure to notify would not attract any penalties because once the person ceases to be a public servant, the disciplinary provisions of the *Public Service Act 1999* would cease to apply. Other than this Act, there are no statutorily based procedures for regulating post separation employment.

Are procedures and criteria for administrative decisions published (e.g. for granting permits, licences, bank loans, building plots, tax assessments, etc)?

Yes. The procedures and criteria for virtually all decisions that affect citizens' interests decisions are published on agency websites and are available for inspection. For example, the criteria for decisions on taxation are on the Australian Taxation Office website (<http://www.ato.gov.au/>), welfare on the Centrelink website (<http://www.centrelink.gov.au/>), for customs duties on the Australian Customs Service website (http://www.customs.gov.au/site/index.cfm?nav_id=670&area_id=5) and so on.

Are there complaint mechanisms for public servants and whistleblower protection measures?

Yes. Section 16 of the *Australian Public Service Act 1999* and Public Service Regulation 2.4. (see the Australian Public Service Commission (2003) *APS values and code of conduct in practice: Section 4 Personal Behaviour: Chapter 15 Whistleblowing* <http://www.apsc.gov.au/values/conductguidelines17.htm>). However, while the complaint mechanisms are adequate, as noted in the narrative section of this study, the whistleblower protections are very limited and have been criticised by Parliamentary committees. Briefly, the whistleblower procedures are limited to breaches of the code of conduct, can only be used by public servants within their own agency, provide no statutory protection for reprisals and do not allow persons affected by reprisals to claim damages.

Are there means for complaints by members of the public?

Yes. The Ombudsman.

Are there administrative checks and balances on decisions of individual public officials?

Yes. The Commonwealth has enacted a package of administrative law protections that enable citizens to seek reasons for decision, review of decisions and access to documents.

Many statutory provisions that affect the lives and well-being of citizens contain such provisions, for example the *Social Security Act 1991*, the *Income Tax Assessment Act 1997*, and the *Migration Act 1958*. More importantly, there are specific statutes like the *Administrative Decisions (Judicial Review) Act 1977* that gives a legal right to citizens for a review of a decision under an enactment, with some exceptions (Section 13), and enables

the citizen can apply to a court for a review of the decision. Also the *Administrative Appeals Tribunal Act 1975* allows for the review of decisions in other enactments – like those mentioned above. Citizens have a right to access to documents by virtue of the *Freedom of Information Act 1982*. Under that statute, there is a presumption of access to documents unless specific exemptions apply (for example, section 36 allows an exemption for internal working documents. There are appeal rights to the Administrative Appeals Tribunal, with the capacity for Ministers to ultimately refuse to release particular documents.

Police and Prosecutors

Is the commissioner of police independent i.e. are appointments required to be based on merit?

Yes. The Commissioners (and Deputy Commissioners) are appointed on commission by the Governor-General (Section 17 of the *Australian Federal Police Act 1979*). While not required by legislation, when a new Commissioner is sought there are national and international advertisements and a merit-based selection process is undertaken before the recommendation is made to the Governor-General.

Is the appointee protected from removal without relevant justification?

Yes. Section 22 of the *Australian Federal Police Act 1979*.

Are public prosecutors independent?

Yes. The independence of the public prosecutor is statutorily based by virtue of the *Director of Public Prosecutions Act 1983*. Appointment to the position of Director is analogous to the appointment of judges (Section 18), can only be removed on specific grounds (Section 23) and the Director has authority to determine which cases are prosecuted (Section 6). The Attorney-General may issue guidelines for the Director to follow and these must be gazetted and tabled in Parliament (Section 8). The Director has a quasi-autonomous organisation working to him.

Are there special units for investigating and prosecuting corruption crimes?

No. This function is undertaken by the Australian Federal Police as part of their normal duties.

Is there an independent mechanism to handle complaints of corruption against the police?

Yes. Under the *Complaints (Australian Federal Police) Act 1981*, complaints about police can be made either to the police or the Commonwealth Ombudsman. The Ombudsman can initiate investigations into matters pertaining to police and use all the powers available to the Office, including reporting to Parliament.

Does civil society have a role in such a mechanism?

Any member of the public can lodge a complaint under the *Complaints (Australian Federal Police) Act 1981*.

In the last five years, have police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?

The author is not aware of any serious cases. The following data from the annual reports of the Australian Federal Police for action taken for **all** types of misconduct indicate very few cases of serious disciplinary action.

	1999/00	2000/01	2001/02	2002/03
Termination of employment by the Commissioner under s28	0	5	4	3
Serious misconduct finding	0	0	1	0

Are there any cases of corruption within the prosecuting agencies?

The author is not aware of any cases. The annual reports of the Office of the Director of Public Prosecutions do not record any cases.

Which legislative instruments can be used by the police and public prosecutors for the investigation and prosecution of cases of corruption/bribery?

The offences for fraudulent conduct in the *Commonwealth Criminal Code Act 1995* (Division 7.3 of the Criminal Code) are part of the provisions for theft against the Commonwealth and include:

- Dishonestly obtaining Commonwealth property by deception, maximum penalty of 10 years (section 134.1);
- Dishonestly obtaining a financial advantage from the Commonwealth by deception, maximum penalty of 10 years (section 134.2);
- Obtaining a gain from the Commonwealth, or causing a loss to the Commonwealth through general dishonesty, maximum penalty of 5 years (section 135.1 (1) and (2));
- Attempting to dishonestly influence a public official, maximum penalty of 5 years (section 135.1 (7));
- Knowingly obtaining a financial advantage from the Commonwealth when ineligible, maximum penalty of 12 months (section 135.2)¹;
- Conspiracy to defraud the Commonwealth, maximum penalty of 10 years (section 135.4); and
- Providing a false or misleading statements, information or documents to gain some benefit from the Commonwealth maximum penalty of 12 months (sections 136 and 137).

In examining the corruption element of the Criminal Code, Division 7.6 contains the following provisions:

- Giving a bribe to a Commonwealth official, maximum penalty of 5 years (section 141.1 (1));

- A Commonwealth official receiving a bribe, maximum penalty of 5 years (section 141.1 (3));
- Providing a corrupt benefit to a Commonwealth official, maximum penalty of 5 years (section 142.1 (3));
- A Commonwealth official receiving a corrupt benefit, maximum penalty of 5 years (section 141.1 (3)); and
- A Commonwealth official using his official position to dishonestly obtain a benefit, maximum penalty of 5 years (section 142.2 (1)).

Part 7.5 of the Criminal Code includes offences of unwarranted demands, which is analogous to the offence of blackmail. Section 139.1 sets out the offence of making unwarranted demands upon a Commonwealth official for some benefit and section 139.2 the offence of a Commonwealth official making unwarranted demands upon another person for gain, avoiding a loss or influencing another official. The penalty for both these offences is a maximum of 12 years.

The Criminal Code was amended recently to include an offence of bribery of foreign officials (Division 70, subsection 70 (1) – penalty 10 years.

Is the law applied?

Yes.

Is private-to private corruption punishable by law?

Not under Commonwealth statute.

Is the law applied?

N/A.

How many cases of prosecution have been undertaken in the past years? How many have been successful? If the number is low, are there other effective measures or other good reasons why the number is low?

N/A.

Public Procurement

Do rules for public procurement require competitive bidding for all major procurements with limited exceptions?

Public procurement arrangements have a statutory base in the *Financial Management and Accountability Act 1997* and *Financial Management and Accountability Regulations 1997* (specifically Part 4). Under this authority procurement guidelines have been promulgated (see Department of Finance and Administration 2002 *Commonwealth Procurement guidelines: Best Practice Guidance* (online) http://www.finance.gov.au/ctc/docs/CPGs_-_Amended_version_changes_edited_19.01.2004.pdf). The guidelines allow a range of procurement processes of which competitive bidding is just one – this flexibility is to allow agencies to forego competitive bidding with small or routine arrangements and utilising

common use processes. The guidelines require adherence to the principles of value for money, accountability, transparency and ethics.

Are the rules laid down in documents publicly accessible?

Yes, reference to website provided above.

Are there strict formal requirements that limit the extent of sole sourcing?

No limits are set down, however the transparency and accountability processes are determined by statute.

Are all major public procurements widely advertised to the private sector?

Yes.

Are procurement decisions made public?

Yes.

Is there a procedure to request review of procurement decisions?

Not under the procurement guidelines Any person can use the processes under the *Ombudsman Act 1976* or the *Administrative Decisions (Judicial Review) Act 1977*.

Can an unfavourable decision be reviewed in a court of law?

Yes, where action is taken using the *Administrative Decisions (Judicial Review) Act 1977*.

Are there provisions for blacklisting of companies proved to have bribed in a procurement process?

No.

Are there rules and procedures to prevent nepotism/conflict of interest in public procurement?

Not specifically. The procurement guidelines require procurement to be in accordance with the values as set down in Section 10 of the *Public Service Act 1999*. Also section 44 of the *Financial Management and Accountability Act 1997* requires the ethical use of resources.

Are assets, incomes and life styles of public procurement officers monitored?

Not specifically. Senior Executives would be subject to the agency-based disclosure of interest processes. Other staff would be subject to the general requirements of the code of conduct relating to conflicts of interest.

Ombudsman

Is there an ombudsman or its equivalent (i.e. an independent body to which citizens can make complaints about maladministration)?

Yes. Established under *Ombudsman Act 1976*.

Is the ombudsman independent i.e. are appointments required to be based on merit?

No.

Is the appointee protected from removal without relevant justification?

Yes. Section 28 of the *Ombudsman Act 1976* provides that the Ombudsman can only be removed from office on limited grounds and only with the agreement of both Houses of Parliament.

Has an ombudsman been removed without relevant justification in the last five years?

No.

Can petitioners complain anonymously if they fear possible reprisals?

Yes.

Are reports of the ombudsman published?

Yes. The *Commonwealth Ombudsman Act 1976* provides a comprehensive and layered approach to the reporting of the results of investigations. The first level provides for a report to the agency with the Ombudsman authorised to require a response, within a specified timeframe, to deal with any actions the Ombudsman may propose to remedy administrative problems identified (Section 15). Where the agency does not respond, the Ombudsman can refer the matter to the Prime Minister (Section 16). The Ombudsman can also refer matters to Parliament (Section 17) and even after reference to Parliament; the Ombudsman can also discuss with agency a resolution of the matter (Section 18).

As well as the avenues described above, the Ombudsman publishes reports on line (see http://www.ombudsman.gov.au/publications_information/reports_publications.htm#reports).

Does the government act on the ombudsman's recommendations?

Largely, yes. The legislative arrangements outlined above make it very difficult for an agency to refuse to act, although on occasion an agency will not accept that the Ombudsman's criticism is valid.

As well Subsection 12 (2) (b) of the annual report guidelines require agencies to detail their response to Ombudsman recommendations in annual reports which are tabled in Parliament (for guidelines, see Department of the Prime Minister and Cabinet 2004 *Requirements for annual reports* (on-line) http://www.dpmc.gov.au/pdfs/annual_report_requirements.pdf).

In the interview with the Deputy Ombudsman, he noted that most agencies were prepared to accept his recommendations, but this was by no means universal.

Investigative/Watchdog Agencies

Are there special investigative or watchdog agencies?

The Commonwealth does not have a specialist anti-corruption body.

What are their main responsibilities? Are they independent? Are the appointees protected from removal without relevant justification? Are their reports published (other than when criminal charges are pending)? Do they report publicly to the legislature on the general scope of their work? Can people complain to the agency without fear of recrimination?

Not applicable for all of the above.

Media

Is there a law guaranteeing freedom of speech and of the press?

No. However, recent decisions of the High Court² have indicated that the court considers that the Constitution implies a right of free speech.

Is there censorship of the media?

No.

Is there a spread of media ownership?

There are a very limited number of major media corporations. News Limited, the Fairfax Group and Australian Consolidated Press are the dominant players in the print media. Illustrative of the degree of domination by this one enterprise, NewsCorp controls:

- 67.8 per cent of the capital city and national newspaper market;
- 76.1 per cent of the Sunday newspaper market;
- 46.6 per cent of the suburban newspaper market;
- 23.4 per cent of the regional newspaper market.³

There are three commercial television networks and two state owned networks. All free-to-air television broadcasting in Australia is limited to these five outlets.

Does any publicly-owned media regularly cover the views of government critics?

Yes.

Have journalists investigating cases of corruption been physically harmed in the last five years?

No.

Does the media carry articles on corruption?

Yes. There is a very vigorous reporting on corruption particularly police corruption at the State level.

Do media licensing authorities use transparent, independent and competitive criteria and procedures?

Yes, noting that there is no licensing authority for the print media. The Australian Broadcasting Authority investigates ownership matters in electronic media and reports publicly. There has been considerable public debate about the neutrality of the Authority and in June 2004 the chairman was forced to resign after public criticism of political bias.

Are libel laws or other sanctions (e.g. withdrawing of state advertising) used to restrict reporting of corruption?

No.

Civil Society

Does the public have access to information and documents from public authorities?

Yes. Most Commonwealth agencies publish key documents on their websites. This is backed up by the *Freedom of Information Act 1982* that contains a provision requiring Commonwealth agencies to publicise and to make available 'a statement setting out particulars of the organization and functions of the agency, indicating, as far as practicable, the decision-making powers and other powers affecting members of the public that are involved in those functions' subparagraph 8(1)(a)(1).

Do the public authorities generally co-operate with civil society groups?

Yes. Not surprisingly, the degree of cooperation can be influenced by the political complexion of the government. Conservative governments are closer to business, industry and farmers groups whereas Labour governments are closer to organised labour, environmental groups and groups supporting health, education and welfare.

Are there citizens' groups or business groups campaigning against corruption?

Yes – Transparency International and Whistleblowers Australia are the two most prominent. It would be reasonable to conclude that the small number of community groups actively interested in corruption issues reflects the media's strong anti-corruption stance.

Are there citizens' groups monitoring the government's performance in areas of service delivery, etc?

Yes. There are community bodies in the areas of aged care, health, welfare, environment, women's rights that take an active interest in these areas. However, their focus is primarily on the delivery of benefits to their constituency rather than on corruption issues.

Do citizens' groups regularly make submissions to the legislature on proposed legislation?

Yes. This is not limited to proposed legislation but extends to the many inquiries into areas of public interest by Parliamentary committees.

Does the education system pay attention to integrity issues and corruption/bribery? Is it expected to?

It has never been a focus for the Australian education system. Since education is the responsibility of the states and territories, the Commonwealth has limited capacity to influence the curricula, even if it wanted to.

Regional and Local Government

Are there, at regional and local level, rules and disclosure provisions similar to those operating at national level on nepotism, conflict of interest, gifts and hospitality, and post public office employment?

Noting that this study is limited to the national level of government, the information on the other two tiers of government is a summary only.

All levels of state and local government in Australia have some form of integrity arrangements, although they differ significantly. Very broadly, they divide into two groups. The first group of States have an anti-corruption body with powers to look at breaches of integrity. These are:

New South Wales

In this state, each agency is required to have a code of conduct covering integrity issues. The primary driver of integrity is the Independent Commission Against Corruption because any breach of these codes would fall within the definitions of misconduct in the *New South Wales Independent Commission Against Corruption Act 1988*.

There are a large number of councils established by virtue of the *New South Wales Local Government Act 1993*. These councils are all required to abide by a code of conduct (see New South Wales Department of Local Government 1994 *Practice Note Number 6: Code of conduct* <http://www.dlg.nsw.gov.au/dlg/dlghome/documents>) and any breaches are subject to action by ICAC.

Queensland

In this state, each agency is required to have a code of conduct covering integrity issues. In the public service, this is a requirement of the *Queensland Public Sector Ethics Act 1994* and Part 5 of the *Queensland Public Service Act 1996*. The primary driver of integrity is the Crime and Misconduct Commission because any breach of these codes would fall within the definitions of misconduct in the *Queensland Crime and Misconduct Act 2001*.

The *Queensland Local Government Act 1993* covers the responsibilities of local governments in agency management and the development of internal controls, systems and procedures. Chapter 1, Part 3, s.6 defines 'material personal interest'. Chapter 16, Part 3, s.1137 covers concurrent employment of local government employees, Part 4, Sections. 1138-1144 covers their obligations, integrity, registers of interests including access to and queries on such registers, and disclosing personal interests by local government employees. Part 5 covers disciplinary action.

Western Australia

Part 1 Section 9 of *Western Australia Public Sector Management Act 1994* requires adherence to a code of conduct for all public sector employees. The *Western Australian Public Sector Code of Ethics* (Office of the Public Sector Standards Commission 2002 *Western Australian Public Sector Code of Ethics* (on line) <http://www.wa.gov.au/opssc/documents>) has been issued by the Office of the Public Sector Standards Commission and covers the gamut of ethic issues. Part 1 Section 4 *Western Australia Corruption and Crime Commission Act 2003* defines misconduct to cover a broad range of integrity issues.

Part 5, Section 103 of the *Western Australia Local Government Act 1995* requires that every council prepare and adopt a code of conduct. The legislation also contains disclosure of financial interest provisions (Part 5, Division 6).

The second group of states, like the Commonwealth government, do not have a specific anti-corruption body and breaches of integrity codes are dealt with either as disciplinary matters or criminal offences under the general criminal code. These are:

Victoria

The code of conduct for public sector employees is set down in s. 8(1) of the *Victorian Public Sector Management and Employment Act 1998*. It is backed up by a wide variety of guideline material (available at http://www.ope.vic.gov.au/domino/web_notes/OPE) including the *Code of conduct for the Victorian public sector*, *Model whistleblower guidelines* and *Model declaration of private interests*.

Local government is regulated by the *Victorian Local Government Act 1989*. Section 78 of the Act deals with pecuniary interests and section 81 with register of interests.

South Australia

Division 8 of the *South Australia Public Sector Management Act 1995* sets out a general requirement to act with integrity.

Part 4 of *South Australia Local Government Act 1999* contains highly specific requirements for codes of conduct, declaration of interests and conflict of interest for council members.

Tasmania

State Service Code of Conduct is set out in Section 9 of the *Tasmanian State Service Act 2000*.

What public offices at regional and local level are appointed by the national government?

None.

Is there a legal requirement that meetings of city/ town councils be open to the press and public?

All jurisdictions have clear requirements for public meetings:

- Section 9 of the New South Wales Local Government Act 1993.
- Section 462 of the Queensland Local Government Act 1993.
- Section 89 of the Victorian Local Government Act 1989.
- Part 5, Section 23 of the Western Australia Local Government Act 1995.
- Section 90 of the South Australia Local Government Act 1999.
- Section 59 of the Tasmanian Local Government Act 1993.

Are there clear criteria restricting the circumstances in that city/town councils can exclude the press and public?

Covered above – in Australia all council meetings are in public.

Do national agencies with a remit to deal with corruption (anti-corruption agencies, ombudsmen, supreme audit institutions, and so on) work at regional or local levels and are there specific agencies with regional and local responsibilities?

No. There are clear divisions between federal and the other two tier of government.

Progress with Government Strategy

Has the government announced an anti-corruption strategy and a timetable for implementation?

No. There is no specific anti-corruption body and the anti-corruption strategy is subsumed within the government's fraud control policy.

How much of the strategy has been implemented?

The fraud control strategy has been widely implemented since its inception in 1987. However, the impact upon corruption is very difficult to assess.

Is the strategy at national level or regional/local level?

National only.

Is the government meeting its own timetable?

Yes, although the Australian National Audit Office has criticised inconsistencies in implementation.

Donor Anti-Corruption Initiatives

Which bilateral and multilateral donor agencies are based in the country? What types of anti-corruption initiatives have they supported? Are there any examples of donors cooperating or coordinating their programmes?

Australia is not a recipient of aid. Nationally it has supported the policy of Transparency International to criminalize bribery of foreign officials and passed *Criminal Code Amendment (Bribery of Foreign Officials) Act 1999* which put that policy into effect.

Future Research and Donor Support

The views expressed in this part of the study are those of the author.

Can key areas or issues be identified in terms of corrupt activity that the research for the report has demonstrated as requiring immediate attention, and which are they?

The federal tier of government in Australia, very generally speaking, does not appear to have a corruption problem that warrants radical action. Having said that, there are a series of issues that do need to be dealt with.

The most immediate of these is the untangling of the anti-corruption strategy from the fraud control strategy. Whilst ever corruption is subsumed within the fraud control arrangements, it is not possible to deal effectively with two quite separate forms of criminal behaviour. It is recommended that a separate anti-corruption strategy be developed within the framework of a broad integrity policy that draws together the currently disparate elements.

Associated with this recommendation, is the need for a Commonwealth agency to take the lead in this endeavour and to actively 'champion' the fight for integrity. While there are a number of options for an institutional home, what is currently absent is any interest in the topic at Ministerial or senior official level.

Some key areas that a Commonwealth integrity policy would need to address are:

- The necessity for a specific watchdog agency;
- Transparency and accountability mechanisms that would enable decision-makers and the community to make a credible assessment of the levels of corruption; and
- Strengthening the institutional links between the financial management, fraud control, anti-corruption and ethical behaviour.

The procedures for the protection of persons who wish to make complaints about improper behaviour are inadequate. Other Australian jurisdictions have powerful legislatively based public disclosure regimes and the Commonwealth's lack of action in this regard is starkly apparent.

Finally, the Commonwealth's integrity systems are almost entirely at the level of the civil service. The Ministerial conduct guidelines are not highly respected and the level of political interference at senior levels is a matter for community concern. Leadership can only come from the political level.

Is there a particular aspect of corrupt activity either particular to the country concerned, or significant in terms of effect or impact, that would require more in-depth research?

Yes, the accessing and analysis of data on corruption.

Is there a particular approach or initiative to combating corruption that may be considered for further research or study as an example of best practice?

The Commonwealth's financial management arrangements are sophisticated and robust and have the potential to be an example of best practice.

Can key areas or issues relating to possible anti-corruption initiatives be identified as requiring donor support?

Not applicable for Australia.

Can key areas or issues relating to anti-corruption initiatives be identified in terms of forming the basis for potential donor prioritisation, sequencing, cooperation and coordination?

Not applicable for Australia.

Endnotes

¹ 'The general dishonesty offence does not require proof that the defendant deceived the victim and therefore does not warrant the severe maximum penalty which attaches to fraud (which is 10 years). Likewise the obtaining offences also warrants a much lower penalty'. *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Bill 2000* Explanatory Memorandum 23 November 1999.

² See Parliament of Australia (2002) *Research note 42 2001-02: Free speech and the constitution* (online) <http://www.aph.gov.au/library/pubs/rn/2001-02/02rn42.htm> [Accessed 13 June 2004], cites the following cases to demonstrate the High Court's change in view:

[*Nationwide News Pty Ltd v Wills*](#) (1992) 177 CLR 1; [*Australian Capital Television Pty Ltd v Commonwealth*](#) (1992) 177 CLR 106; [*Theophanous v Herald & Weekly Times Ltd*](#) (1993-1994) 182 CLR 104; [*Stephens v West Australian Newspapers Ltd*](#) (1993-1994) 182 CLR 211; [*Cunliffe v The Commonwealth*](#) (1993-1994) 182 CLR 272; [*Lange v Australian Broadcasting Corporation*](#) (1997) 189 CLR 520; [*Levy v Victoria*](#) (1997) 189 CLR 579.

³ For the nature of media ownership, see the Communications Law Centre 2002 *Media ownership update 2002* <http://www.comslaw.org.au>. While NewsCorp, Fairfax and PBL are publicly listed companies, all three are dominated by the interests of the Rupert Murdoch family and the Packer family. There are widespread concerns about the concentration of media ownership in Australia. The following website is indicative of these concerns: http://www.xmedia.org.au/component/option.com_frontpage .