



National Anti-Corruption Commission

Commonwealth Procurement and Contract Management Conference

**Combating corruption in
procurement**

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I acknowledge the traditional custodians of the lands on and from which we assemble, the Ngunnawal people, and also other people and families with connection to the lands, waters and skies of the Australian Capital Territory. I acknowledge their continuing culture, and the contribution they make to the life of this city and this region. I pay my respects to their elders, past and present; and I also acknowledge any First Nations people who are in attendance.

Scope

- **A predominant theme in referrals**
- **A strategic corruption priority**
- **Case studies**
- **Risk factors and vulnerabilities**
- **Prevention frameworks**

Thank you for the opportunity to address you today.

The theme of this conference, Commonwealth procurement and contract management, is an area of great interest to the Commission. This conference has an important place in assisting in efforts to combat corruption in public sector procurement, which is one of the three predominant themes that have emerged in referrals to the Commission since we commenced in July 2023. It is also one of our strategic corruption priorities – that is, one of the areas on which we focus our efforts. Of our 25 current corruption investigations, 8 relate to procurement. Today, I will present some case studies from the Commission, its predecessor agency ACLEI, and state-based integrity agencies, on corruption investigations relating to procurement. I will outline the corruption risk factors and vulnerabilities at the heart of procurement and the ways individuals and institutions can guard against it.

Corruption in procurement

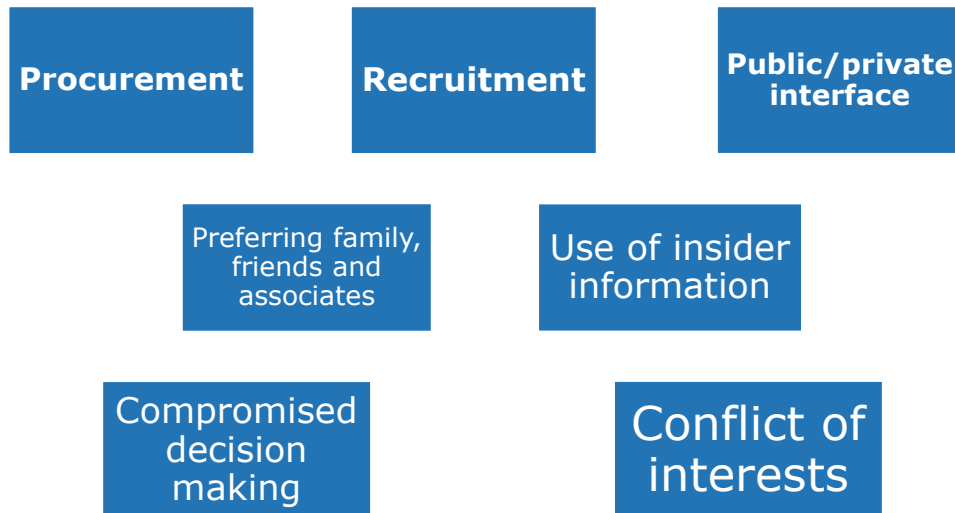
- Corruption in procurement will often lead to the overpaying of goods and services, at a cost to the taxpayer.
- It can also result in poor outcomes for projects that are awarded to tenderers that were not the most suitable.
- This can have negative impacts on public trust in institutions.

Corruption in procurement will often lead to not gaining value for money for goods and services, at a cost to the Commonwealth and to the taxpayer.

It can also result in poor outcomes for projects that are awarded to tenderers that were not the most suitable.

This can have negative impacts on public confidence in public institutions.

Themes in public sector corruption



Since commencement in July 2023, the Commission has received over 4200 referrals of suspected corrupt conduct. There are three main domains in which we are seeing both perception and actuality of corrupt conduct. They are in the fields of procurement, recruitment and promotion, and at the interface of the public sector and the private sector. In all those areas, the perceived and actual mechanisms of corruption are typically (1) the preferring of family, friends and associates; and (2) the misuse of official information to gain an advantage. These mechanisms produce a subversion of the public decision-making process, to serve a private benefit. Almost invariably, they have their origin in a conflict of interest.

Procurement referrals covered the tender process itself (such as awarding contracts to businesses who did not offer the most competitive tender, collusion to win contracts, failures to follow tender processes, public officials influencing procurement processes so that a company they are associated with gains a financial advantage through a contract, and secret commissions), and conduct during the delivery phase (misuse of government resources, contractors accessing government information and using it to win other contracts, and inflated invoices or payments for services never rendered or goods never supplied).



To assist in prioritising our efforts on a logical basis, the Commission has adopted 6 Strategic Corruption Priorities (SCPs). These are the thematic areas on which we want to focus, to best add value in combating corruption in the Commonwealth public sector. We focus on areas where we are not duplicating the efforts of others. Our current strategic corruption priorities are:

- corruption at the Australian border
- corruption in complex procurements
- corruption in senior public official decision-making
- corruption involving contractors and consultants
- corruption in the environmental sector
- corruption affecting vulnerable people.



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Operation Tardis

Case study 1

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I will now turn to five case studies, that help to illustrate some important themes, risks and issues in procurement.

As the Commission is still a young agency, just under 17 months old, they are drawn mainly from the experience of our predecessor, the former Australian Commission for Law Enforcement Integrity (ACLEI), and that of state and territory anti-corruption agencies.

Operation Tardis - scope

- Whether a staff member of the Australian Border Force engaged in corrupt conduct in authorising two milestone payments in December 2015 and July 2016, during the acquisition phase of the Cape Class Patrol Boat project.
- It was suggested that the conditions were not satisfied.

Operation Tardis was a joint investigation by ACLEI and the Department of Home Affairs. The issue was whether a staff member of the Australian Border Force had engaged in corrupt conduct in authorising two milestone payments in December 2015 and July 2016, during the acquisition phase of the Cape Class Patrol Boat project. The two payments related to the Acquisition Phase Final Acceptance payment, which was a final lump sum payment of \$44.6 million to be made by Home Affairs to Austal Ships Pty Limited (Austal) when a set of conditions under the contract were satisfied.

Operation Tardis - findings

- The investigation found **no corrupt conduct**, but identified a number of issues with the decision-making process undertaken in authorising the payments which created corruption vulnerabilities:
 - Inadequate records had been kept by the ABF staff member to explain their rationale for authorising them.
 - Governance structures of the project had fallen away during the process.
 - Legal advice was not followed.

The joint investigation did not identify evidence that the ABF staff member had received or intended to receive a benefit in exchange for authorising the payments or engaged in other corrupt conduct in authorising the two payments, and no corruption findings were made. However, the investigation established a number of issues with the decision-making process undertaken in authorising the payments. In particular, inadequate records had been kept by the ABF staff member to explain their rationale for authorising them; governance structures of the project had fallen away during the process; and legal advice was not followed. These factors created corruption vulnerabilities.

Operation Tardis - recommendations

- Review records management policy/procedures
- Review contract management process & ensure effective controls
- Review processes to ensure compliance with PGPA Rules and other obligations for high value contract management projects.
- Ensure employees in contract management know legislative obligations.

Recommendations made to address the corruption vulnerabilities identified included:

- Review records management policy and procedures
- Review contract management process & ensure effective controls in place
- Review processes to ensure compliance with PGPA Rules and other obligations for high value contract management projects.
- Ensure employees in contract management know legislative obligations.



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Operation Turnover

Case study 2

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Operation Turnover - facts

- Joint investigation by the QLD CCC, Queensland Fire and Emergency Services (QFES) and Queensland Police into a former senior QFES employee.
- The employee had obtained secured secondary employment as a contractor with two companies tendering for QFES work and provided significant assistance preparing their tender documents, earning close to \$200,000.

Operation Turnover was a joint investigation by the QLD CCC, Queensland Fire and Emergency Services (QFES) and Queensland Police into a former senior QFES employee, who had obtained secondary employment as a contractor with two companies that tendered for QFES work. In that capacity he provided significant assistance preparing his secondary employers' tender documents. For one he wrote most of the tender to QFES. Then in his role at QFES, he assessed the tender he had written, and recommended his secondary employer be selected. He took active steps to conceal his involvement with the two companies from QFES. He was paid nearly \$200,000 by his secondary employers for his contracting work.

Operation Turnover - outcome

- The employee had engaged in multiple types of misconduct including fraudulent procurement, improper disclosure of confidential information, and undeclared secondary employment.
- The employee pleaded guilty to four counts of official corruption and was sentenced to three years imprisonment.
- The investigation resulted in multiple recommendations to the QFES relating to secondary employment, conflicts of interest management and governance.

The employee was found to have engaged in multiple types of misconduct including fraudulent procurement, improper disclosure of confidential information, and undeclared secondary employment.

The employee pleaded guilty to four counts of official corruption and was sentenced to three years jail.

The investigation resulted in multiple recommendations to the QFES relating to secondary employment, conflicts of interest management and governance.



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Operation Daintree

Case study 3

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Operation Daintree - facts

- IBAC investigation of procurement and management of a \$1.2m contract to provide training services for health workers.
- A training provider received assistance from ministerial advisors to propose delivering training to health workers.
- Involvement of ministerial advisors led Department staff to believe the government wanted the training provider appointed.
- Despite concerns about the capacity of the provider, was a non-competitive procurement process which approached only the provider.
- After concerns about delivery were raised, intervention from ministerial advisors dissuaded department from terminating.

Operation Daintree was an investigation by the Victorian IBAC which examined the procurement and management of a \$1.2m contract for training services for health workers.

A union-established training provider received assistance from advisors in the Victorian Premier's and Minister for Health's offices to propose delivering training to health workers. The involvement of the ministerial advisors led Department of Health and Human Services (DHHS) staff to believe the government wanted the training provider appointed. Despite concerns by DHHS staff about the capacity of the provider to deliver the program, the DHHS Deputy Secretary authorised a non-competitive procurement process which invited only the provider to submit a tender proposal.

After the contract was signed, DHHS raised serious concerns about the standard of training provided under the contract, but intervention from advisors in the Minister for Health's and Premier's offices dissuaded DHHS from terminating.

Operation Daintree – outcome

- The evidence fell short of 'corrupt conduct' but revealed breaches of duties and improper influence and misconduct by ministers, ministerial advisors and senior public servants.
- Key recommendations included:
 - Amendments to the Ministerial Code of Conduct to ensure consistent understanding of ministerial responsibility
 - Revised guidance to ministerial staff and public servants on their respective roles

The evidence fell short of 'corrupt conduct' as defined by the IBAC Act but revealed breaches of duties and improper influence and misconduct by ministers, ministerial advisors and senior public servants.

IBAC made 17 recommendations to address integrity risks relating to the conduct of ministerial advisors, public servants and affiliated unions. Key recommendations included amendments to the *Ministerial Code of Conduct* to ensure a consistent understanding of ministerial responsibility, and revised guidance to ministerial staff and public servants on their respective roles



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WA CCC matter

Case study 4

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Geraldton Port

- In 2021 the Mid West Ports Authority executed a contract for the provision of security services with a total value of more than \$2.8 million to the incumbent contractor, a company owned by the city's former mayor, despite it ranking second on the qualitative criteria for assessment.
- The investigation could not identify a legitimate justification for why the tender was not awarded to the highest scoring applicant.

In 2021 the Mid West Ports Authority executed a contract for the provision of security services at the Port of Geraldton with a total value of more than \$2.8 million to the incumbent contractor, a company owned by a former Mayor of the City of Greater Geraldton.

The contract was awarded to the incumbent despite ranking second on the qualitative criteria for assessment.

The Commission's investigation could not determine a legitimate justification for why the tender was not awarded to the highest scoring applicant.

Geraldton Port – risks identified

The Commission did not form an opinion of serious misconduct, but identified three crucial deviations from standard procurement process which represented serious misconduct risks:

- Failure to follow internal guidance;
- A presentation to the Executive which included misleading and inaccurate statements that appeared to favour awarding the contract to the incumbent;
- A failure to adequately record key information and decisions during the tender process.

The Commission did not form an opinion of serious misconduct on the part of any public officer involved, or impropriety on the part of the company who won the tender, or its owner. However, the WA CCC identified several serious risks that arose when officers from the Mid West Ports Authority deviated from standard procurement and tender procedures.

The Commission identified three crucial deviations from standard procurement process which created serious misconduct risks:

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- A presentation to the Executive which included misleading and inaccurate statements that appeared to favour awarding the contract to the incumbent;
- A failure to adequately record key information and decisions during the tender process.



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Operation Pelican

Case study 5

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Finally, I turn to one of our own. It is still before the courts so I must be circumspect.

Operation Pelican

Operation Pelican involved an Executive Procurement Manager overseeing a multi-million contract for facility development for a Commonwealth entity approached the Managing Director of one of the tenderers and asking for 5% of the contract value in return for an assurance the company would be awarded the contract.

Operation Pelican involved an Executive Procurement Manger overseeing a multi-million contract for facility development for a Commonwealth entity – WSA - approaching the Managing Director of one of the tenderers and asking for 5% of the contract value in return for an assurance the company would be awarded the contract. The Managing Director, the intended recipient of the bribe, reported the allegation to the Commonwealth entity’s executive, and the following day, the entity referred the matter to the Commission and the Australian Federal Police (AFP). The Commission opened a joint investigation with the AFP. Over a 10-day period the matter was investigated utilising a wide variety of tactics, techniques and procedures. The POI was arrested after taking money in the course of a controlled operation. He was charged with soliciting a corrupt commission, contrary to section 249B of the Crimes Act 1900 (NSW). The matter remains before the NSW courts.



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Key takeaways

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From these five case studies some key and recurrent areas of risks can be identified.

Procurement risks

- Failure to follow applicable processes
- Inadequate documentation of decisions and reasons
- Influence of associates, including existing connections and external actors
- Limited tender processes
- Misuse of inside information

In particular, contracts for a value just under the threshold for a limited tender process tend to be a red flag.

Risk profiles

Entities are at a greater risk when they:

- Have a close relationship with industry
- Oversee very large and or very high value projects
- Have issues with governance, oversight, record-keeping and reporting

Entities are at heightened risk where there is a close engagement with industry, and a broad interface between the public sector and the private sector. The proliferation of contractors and consultants, and the outsourcing of functions of government to the private sector, inevitably creates conflicts of interest, with the private sector necessarily interested in and incentivised by profit rather than the public interest. Agencies with procurement as a large business area will always present a greater risk, and especially those that oversee very large projects that are of high value. Entities that have governance and compliance issues are also vulnerable, with the potential for inadequate oversight, record-keeping and reporting arrangements to create opportunities for corruption.

Conclusion: mere compliance is not enough

- The rules are intended to support value for money
- But there is still an overriding ethical obligation.
- Availability of a limited tender process does not permit preference of friends and associates.

Although I have referred to departure from applicable processes as a risk indicator, in the field of procurement, it is important to appreciate that mere compliance with the rules does not mean that conduct is ethical. For example, the fact that there might be circumstances that permit a limited tender process does not mean that you can ethically award the contract as a favour to an associate.



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Thank you for your time and attention.