



REGULATION BY LOCAL AND STATE GOVERNMENT AGENCIES IN QUEENSLAND

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Introduction

Many regulatory agencies play an important role in the community, sometimes being responsible for the oversight of contentious community activities. Regulators can provide a means of distancing governments from operational decision making and assure the community that decision makers are independent and expert. Should their work be influenced by staff misconduct they place important parts of public sector activity at risk. This has the potential to disadvantage individuals, regulated activities and the wider community.

The Crime and Misconduct Commission has a statutory responsibility to assist Queensland public sector agencies develop their capacity to investigate, prevent and manage instances of misconduct. Its experience with regulators suggests agencies face varying risks of misconduct according to how they conduct their business and the matter being regulated. The apparent frequency with which regulators came to notice and the Commission's statutory obligations led to its exploration of this matter.

This paper draws on the work of others who have attempted to identify different types of regulator, their enforcement focus and the staff misconduct risks they face. Using data generated by past researchers and information from the Crime and Misconduct Commission it has been possible to suggest the major areas of misconduct risk for regulators, trends in complaints data in respect of them and some strategies to combat the potential for misconduct.

What is Regulation

According to the Independent Commission Against Corruption (ICAC), '[a] regulator is any public official who assesses applications, or performs inspectorial, investigative or other compliance functions.' (1999: p. 4).

The Purpose of Regulation

More specifically, regulatory functions exist to:

- Allocate rights – water rights, for example.
- Certify or licence a product, person, or place.
- Identify an organisation as a certain type – for example, unions and sporting clubs.
- Register – medical practitioners, for example.
- Set industry standards.
- Provide 'protective' social policy –for example, gaming and prostitution.
- Collect taxes, fees or other revenue.

Trends in Regulation

Social and Political

State regulation is increasingly being used to control social institutions. Underlying this trend is the movement by western democracies away from state run bureaucracies to privatised 'service providers' (see Braithwaite 2000). These privatised service providers are controlled by government at 'arm's length' through licensing and regulation. The expansion of the private security industry is an example of this trend.

During the 1980s and 1990s the private security industry experienced substantial growth. The gap between police numbers and private security personnel widened significantly, in favour of security personnel (Prenzler & Sarre 1998). Self-regulation tended to be passive, and civil action against security providers for breaches of contract or duties was expensive and risky for complainants (Sarre 1994). To remedy this situation, licensing procedures were introduced into Queensland in the early 1990s. The *Security Providers Act 1993* specifies licensing requirements and provides for state inspectors to monitor contraventions.

Styles of Regulation

Even though regulation of the sort applied in Australia is utilised by western democracies, regulatory style or practice differs by country. In comparing Australia with the United States we find that the U.S. is characterised by a greater legal and adversarial style of regulation. This equates to, in general, stricter standards, more vigilant investigation and enforcement, and harsher penalties. Japan and Great Britain have typically maintained more benign forms of regulatory practice than either Australia or the U.S. (Grabosky 1992).

The Risks in Performing Regulatory Functions

Regulators are often the public face of organisations, making it important their conduct is lawful and meeting public and not private interests (ICAC 1999). Some work exposes regulators to high risks of work related misconduct and corruption. When there is a combination of high degrees of autonomy and responsibility, and close relationships with private industry, risks are high. For these reasons, identifying specific misconduct and corruption risks and possible preventative strategies is useful.

In 1999 Queensland's Crime and Misconduct Commission (CMC), then the Criminal Justice Commission, surveyed public sector departments.¹ All agencies surveyed had some degree of regulatory responsibility and 96 areas of risk were identified. Of these (initial analysis only):

- 11 were staff related
- 37 were related to the business conducted or the interface the agency had with private businesses
- 15 arose from the organisation/policies of the agency
- 27 arose from the systems/procedures used by the agency
- 17 were information related.

Eleven agencies had their risk of misconduct increased because they were exposed in more than one area. Agencies regulating transport, for example, often engage in cash transactions and deal with sensitive information, frequently under limited supervision. Additionally, many casual staff have access to sensitive information.

¹ Internal CMC Memo 11 October 1999

Part 1

Regulation in Australia: Previous Studies of the Regulatory Function

In the only comprehensive study of Australian regulatory practice, Grabosky and Braithwaite (1986) interviewed the executives of 111 Commonwealth, State, and Local Government agencies. They then grouped each of the agencies according to the nature of the industry being regulated; statutory powers available to the agency; and, typical enforcement practices. They found each agency could be classified according to the following descriptions.²

Regulators that do not Enforce

i) *Conciliators*

These agencies use conciliation or mediation to resolve disputes between competing parties. Governing legislation generally has limited penal provisions, on which agency officials tend not to rely.

The Queensland Land and Resources Tribunal exists, for example, to provide a single forum to deal with resource development disputes and other land management issues. In their own words ‘the Presiding Members of the Tribunal consider the use of alternative dispute resolution procedures, such as mediation, is consistent with the Tribunal’s statutory obligation to “act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before it” (<http://www.lrt.qld.gov.au/LRT/mediation/index.html>).

ii) *Diagnostic Inspectorates*

Diagnostic inspectorates promote industry self-regulation, while providing technical assistance on a ‘professional’ basis. Prosecution is an option, although it is seldom used.

Workplace health and safety regulations are monitored by the Department of Industrial Relations through ‘workplace blitzes’, for example. These ‘blitzes’ involve random audits of targeted industries, and aim to expose common workplace health and safety risks. Once exposed, the Department can prosecute but it will work with industry to develop suitable codes of practice.

iii) *State Government Regulators*

These agencies regulate what are predominantly ‘state government’ functions. They do not actively enforce. The Queensland Board of Senior Secondary School Studies is an example of this type of regulator. It exists to, among other things, develop and approve education programs; issue senior certificates; determine OP scores; and, monitor assessments.

iv) *Accreditation Regulators*

Accreditation gives organisations the authority to offer selected services to the government or community. Accreditation agencies do not actively enforce. As an accreditation agency, the Training Recognition Council exists to register training organisations and accredit courses. The functions of accreditation are much the same as state government regulators, however accreditation bodies deal with private, not public, organisations.

² Grabosky and Braithwaite’s classifications did not include accreditation, licensing, professional licensing, or state government regulator; neither did they group into non-enforcers, enforcers, or licensing.

Regulators that Enforce

v) *Token enforcers*

Token enforcers tend to have limited penalties at their disposal but are likely to actively pursue regulatory violations than are the previously mentioned bodies. When they prosecute, they tend to focus on breaches rules rather than diagnostic issues. Penalties, in most cases, are not severe but the fact that action is taken can have a significant impact on individuals and organisations.

The Medical Board of Queensland may, for example, 'refer matter[s] to a Disciplinary Committee of the board, or deal with the issue as a full board. The board may only deal with a disciplinary matter itself where the likely sanction to be imposed is to provide advice, caution or reprimand, or enter into an undertaking with the practitioner.

(http://www.medicalboard.qld.gov.au/files/complaint_intro.html).

Clearly, the enforcement options open to the board are negotiable, and disciplinary action is limited.

vi) *Modest enforcers*

These bodies undertake more prosecutions that generate greater penalties and exhibit enforcement styles ranging from the unassuming to the punitive. They are the most active enforcers in Australia and violators often face powerful penalty provisions. These regulators also make greater use of alternative means of enforcement – licence suspension, shutting down production, injunctions and adverse publicity. Rather than regulating from 'arm's-length' these agencies work closely with their particular industry.

For example, Queensland's peak regulatory racing bodies – the Harness Racing Board, the Interim Thoroughbred Racing Board, and the Greyhound Authority – are closely involved with their respective industries. (Although recent (i.e., 2001) amendments to the *Racing and Betting Act* require members of the Harness Racing Board, the Interim Thoroughbred Racing Board, and the Greyhound Racing Authority to disclose any personal interests which may conflict with official duties). In addition, public officials have the power to suspend licenses, dissolve and prosecute race clubs, disqualify animals, penalise animal owners and audit accounts.

Regulators that Licence

vii) *Non-professional licensing regulators*

These bodies have the power to issue and revoke licences. They may enforce 'negatively' - by not granting licences or they may recommend prosecution for infringement of licensing rules. Driver licensing is an obvious inclusion in this category.

viii) *Professional licensing regulators*

Professional licensing agencies determine the standards required for professional bodies and license people to practise as professionals. They may also investigate claims of professional misconduct and instigate disciplinary proceedings. Councils and boards conferring some professional status, such as the Queensland Nursing Council, are included in this category. The power of these bodies resides in the fact that individuals and organisations can have their ambitions and actions curtailed should they not conform to the regulator's requirements.

While the above categories of regulator appear valid there are three hybrids that warrant separate mention. In these additional cases, while their various regulatory tasks can be placed in to the above groups, they have operational and geographical characteristics that set them apart.

Regulators Having Multiple Types of Responsibility

Some bodies have a multiplicity of functions requiring them to regulate by a variety of means. This appears to be especially so when the regulator has responsibility over an entire industry rather than an aspect of an industry.

In Queensland, for example, a multitude of regulators oversee the hospitality industry but only one has responsibility for the oversight of gaming. In performing its functions the Office of Gaming may, as a sample, license in the professional and non professional area, be a token or modest enforcer, act as a diagnostic inspectorate, or accredit – each according to the particular client or profession it is dealing with.

Local Government Regulators

These bodies have responsibilities across a wide range of activities. Their regulatory decisions, particularly those relating to licensing and enforcement, impact on businesses and ratepayers. Local governments are unique in that they regulate while operating major commercial and often competitive business units.

Regulators in Rural and Isolated Communities

This group comprises a mix of regulator types distinguished by their geographical location. Remoteness creates situations where the delivery of regulation and the client's responses and freedoms are impacted on by the resources available and the community context in which the service is delivered.

Part 2

The Misconduct/Corruption Risks of Regulators – General

Conditions for Misconduct and Corruption

A simple stylised formula developed by Klitgaard (1991) shows the basic elements of corruption:

Corruption = Monopoly power + Discretion – Accountability – Transparency of decision-making

According to this formula corruption occurs when an official exercising power misuses discretion in situations where accountability and transparency are absent, ineffective or avoided.

The monopoly referred to in the formula is attained when an official or work unit has sole responsibility for providing a service. Discretion is the freedom which is conferred on officials allowing them to interpret regulations. Accountability and transparency of decision-making indicate the extent to which information is shared and control is maintained within an organisation. These catalysts are magnified when pay salaries for officials are low (Rijckeghem & Weder 1997).

The Likelihood of Misconduct/Corruption

Misconduct and corruption risks unique to regulatory agencies relate to the manner in which regulations are enforced and also the nature of the relationship between the agency and the regulated body. Grabosky and Braithwaite (1986) suggest that misconduct and corruption are most likely to arise in agencies that are punitive enforcers, and which also believe that they should have a close relationship with industry. Serious misconduct and corruption in relation to the performance of the regulatory function seldom occurs in non-punitive agencies, or in more punitive agencies which believe in keeping their distance from industry. With punitive enforcement and close ties to industry, there arises both the opportunity and the motivation associated with attempts to corrupt a public official.

Not all regulatory bodies are punitive. Some, such as those licensing, have the power to withhold services – they do not (usually) punish. The motivation to corrupt a public official, or to ‘justify’ the official engaging in corruption or serious misconduct, is dependent on the degree to which services offered by these agencies are exclusive or present a means to secure further advantage. Dog registration, for example, is easily available and there is no major benefit to be gained by making a false registration. Dog registration creates negligible exclusivity for the owner and pecuniary and other advantages in registering a dog are small. By contrast, obtaining a driving licence requires certain skills and knowledge not possessed by everyone and generates opportunities (creating some exclusivity). Car registration, by increasing resale values and affording the owner certain protections, offers pecuniary advantage.

Conflict of Interest and Regulatory Capture

Clearly, depending on the services offered by a regulatory body, misconduct and corruption may be manifested in different ways. Two of the more pervasive misconduct/corruption risks are conflict of interest and regulatory capture.

Conflict of Interest

A conflict of interest arises when personal affairs conflict with an official’s public responsibilities. The conflict may be actual, real or perceived. It could, for instance, be a conflict of interest were a regulator’s pest inspector to formally inspect her brother-in-law’s cattle property. The ability of the pest inspector to impartially carry out her official duties may, in this circumstance, be severely limited.

Regulatory Capture

Regulatory capture describes situations where officials inappropriately identify with the interests of a client industry (see ICAC 1999). A liquor licensing inspector could, after years of contact with people in the industry, begin to favour the wishes of the industry rather than the public interest.

Misuse of Official Information

The risk of ‘improper use of information’ may arise with the regulator’s frequent access to confidential and sensitive information needed to carry out duties. Instances of ‘improper use of information’ may occur, for example, when a developer, because of his personal relationship with a building inspector, obtains official information regarding the future rezoning of a piece of land.

The use of Unlawful Compliance Methods

Unlawful/unacceptable compliance methods are self explanatory and involve regulators employing unacceptable/illegal practices to encourage client conformity. Complaints to the CMC have referred to, for example, misrepresentation, assault and the improper receipt of payments or benefits.

Part 3

Misconduct/Corruption Risks by Type of Regulator:

The Discovery of Misconduct and Corruption

Covert and traditional investigative work has uncovered corruption and misconduct in public sector regulatory bodies. Major investigations by the ICAC have been conducted in the NSW Department of Gaming and Racing (1998) and the Road Traffic Authority (1990). A common factor across regulatory bodies is the apparent ease with which corruption and misconduct may be hidden and sustained.

Conditions Conducive to Misconduct and Corruption

The ICAC's Report on Investigation into Driver Licensing (1990) identified what was a culture of corruption. Corrupt practices and the associated misconduct flourished quite easily because:

- Most of the clients of these agencies were either individuals or small, private businesses
- The regulatory functions were but a small section of a larger organisation
- Those responsible for regulation were given a good deal of responsibility and latitude.

The CMC has found serious misconduct to occur in similar environments and in several cases has noted deficiencies in recording systems, staff supervision practices and in the use and capacity of information technology systems.

A more specific description of corruption risks is presented below, based on the already developed regulatory body categories.

Misconduct and Corruption Risks for Regulators that do not Enforce

i) Conciliators (e.g. Building and Development Tribunal)

The risk of serious misconduct and corruption with conciliators is relatively low. Conciliation is a public affair, and decisions are public knowledge. Controls on conduct and corruption are, to a certain extent, 'built into' the conciliation process. Added to this, members of conciliation tribunals are relatively well rewarded, thus decreasing the motivation to engage in serious misconduct or corrupt activities.

ii) Diagnostic inspectorates (e.g., Department of Primary Industries – pest and diseases)

Because the inspectors working for these bodies have significant latitude, and work closely with industry, there is the potential that they might be 'captured' by the interests of the industry. That these inspectors are usually promoters of self-regulation does, however, reduce the chance that there will be conflicts of interest. Of some concern, is the possibility inspectors might promote self-regulation which inappropriately favours industry.

iii) Accreditation (e.g., Training Recognition Council)

The financial rewards which come from gaining accreditation can be great. The potential for conflicts of interest to arise is offset somewhat by the fact that decisions made by accreditation bodies usually involve a group of people. Still, a decision can be swayed by the vote of just one person, leaving the corrupting influence of a conflict of interest a possibility.

iv) *State government regulators (e.g., Tertiary Entry Procedures Authority)*
The serious misconduct and corruption risks are low in these bodies, because

- They don't prosecute,
- There is usually no/little pecuniary advantage in pursuing corrupt activities.

Misconduct and corruption risks for regulators that enforce

v) *Token enforcers (e.g. Fire and rescue related agencies)*

These bodies, because they work closely with industry and may be punitive in their enforcement strategies, are open to risks of work related misconduct and corruption. An investigation by the ICAC, for instance, into the work of an environmental inspector of the Environmental Protection Agency, found examples of misconduct and corruption. At various times excessive autonomy, regulatory capture, conflicts of interest, and the improper use of confidential information have constituted or contributed to misconduct.

vi) *Modest enforcers (e.g. Queensland Office of Gaming Regulation)*

As modest enforcers are generally proactive in their enforcement strategies, corruption and misconduct risks are moderately high. Powerful oversighting bodies, may, however, balance out these risks. Appeals against decisions of Queensland's Liquor Licensing Division are heard by the Liquor Appeals Tribunal at no cost to the appellant - a constraining influence on ill-disciplined regulatory action.

Misconduct and Corruption Risks for Regulators that License

vii) *Licensing (e.g. Prostitution Licensing Authority)*

The licensing function is susceptible to work related misconduct and corruption because of the high degree of contact that officers have with the public and the advantages to successful applicants. Furthermore, applications are very often decided by an individual officer.

viii) *Professional licensing (e.g., Board of Teacher Registration)*

Employees of these regulatory bodies are usually well-paid professionals. Professional codes of practice along with relatively high levels of remuneration reduce the motivation to engage in misconduct. However, because these employees are professionals associated with the industry they are regulating, regulatory capture is a potential risk.

Misconduct and corruption and risks for regulators having multiple types of responsibility

Some bodies can be identified under more than one category. For instance, Queensland's Liquor Licensing Division both licenses and enforces: it comes under the 'licensing' and the 'modest enforcer' categories.

Although it is usually the case that the responsibilities of licensing and enforcing are divided between separate internal units, work related misconduct and corruption risks may be high should collegial favours occur. Mistakes made in approving a licence by the licensing unit might, for example, be covered up by the investigations unit if licensing breaches are uncovered. This would amount to an 'internal' conflict of interest.

Misconduct and Corruption Risks for Local Council Regulators

Because of the diverse nature of their regulatory and licensing activities, local councils warrant separate mention. Even so, referral can be made to the other categories when we wish to identify the risks presented by different council functions.

Building inspectors have come in for special mention from the ICAC. Their publication 'Accountable Building Inspections: Recommendations for Local Government' (1998b) outlines risk factors and suitable corruption/misconduct prevention strategies.

The work of building inspectors revolves around the inspection and assessment of building construction and land use. The building inspector may undertake site investigation; prepare reports; perform inspections for building certificate applications; make recommendations on legal matters; assess applications to subdivide; and, inspect premises.

As building inspectors are often out of the office working independently, misconduct and corrupt activities may go undetected. Frequent dealings with the same builders or developers allow personal relationships to develop which, if uncontrolled, may compromise professional judgement.

Plumbing and environmental health regulatory functions also generate risks of misconduct and corruption. Environmental health officers have the authority to act for various regulatory authorities and may, as examples, undertake assessments for the Prostitution Licensing Authority, or monitor the conduct of liquor licensees. Environmental health officers are subject to misconduct and corruption risks similar to those faced by building inspectors.

Local councils may also be responsible for assessing and issuing food industry related licences, such as food hygiene licences, footpath dining permits, environmental licenses, and other licences such as those for signs and hairdressing.

Local council regulators may be described as a combination of 'licensing' and 'modest enforcers'. Their misconduct and corruption risks are, therefore, high in all categories.

The ICAC (2001) found that corruption/misconduct risks in local councils were influenced by the level of regional development in which the agency was located, budget size and population density. In metropolitan and coastal regions having regular development, large budgets, and densely populated areas, the risks relate to development applications and rezoning. In rural and regional areas, where developmental activity, budgets and population density are modest, risks often relate to the level of separation between an official's public duties and private life.

Various CMC investigations revealed conflicts of interest may arise when employees take on after-hours private work or have interests in private companies, especially those doing business with council. Outside work may involve preparing technical reports, preparing submissions for council approval (sometimes approval being granted by the document's author) or otherwise exploiting the employee's knowledge of council business.

Misconduct and Corruption Risks for Regulators in Rural and Isolated Communities

Risks are high when an independent agent is appointed to carry out regulatory functions for another body. In country towns there is quite often an 'Office of Rural Communities' or similar agency (in Queensland it is often QGAP). These agencies have powers to collect cash and issue various licences. Isolation and the benefits to a potential complainant of 'staying quiet', may make it difficult to expose misconduct or corrupt practices.

Similar concerns arise with officers performing duties in remote areas on government owned land, parks and reserves. Staff have, for example, authority to regulate access and may collect fees or issue fines. These activities may pose problems for members of the public who cannot easily verify an official's claims about authority, documentation, practices or responsibility. Issues could involve inappropriately issuing an on-the-spot fine or using a false receipt.

A Summary so Far

Table 1

<u>Type of Regulator</u>	<u>Level of Risk</u>	<u>Common Type of Risk</u>
Non-enforcer	Low- med	Conflict of interest Regulatory capture
Enforcer	Med-high	Autonomy Regulatory capture Conflict of interest Improper use of confidential information
Licensing (non-profess)	High	Autonomy Improper use of confidential information Inappropriate enforcement
(professional)	Low-med	Improper use of confidential information Regulatory capture
Multiple functions	High	Collegial favours Inappropriate enforcement Regulatory capture Conflict of interest Improper use of confidential information Inappropriate enforcement
Local government	High	Regulatory capture Conflict of interest Improper use of confidential information Autonomy
Rural/isolated	Med-high	Regulatory capture Separation of private & business interests Isolation Acting for another agency Misrepresentation

Part 4

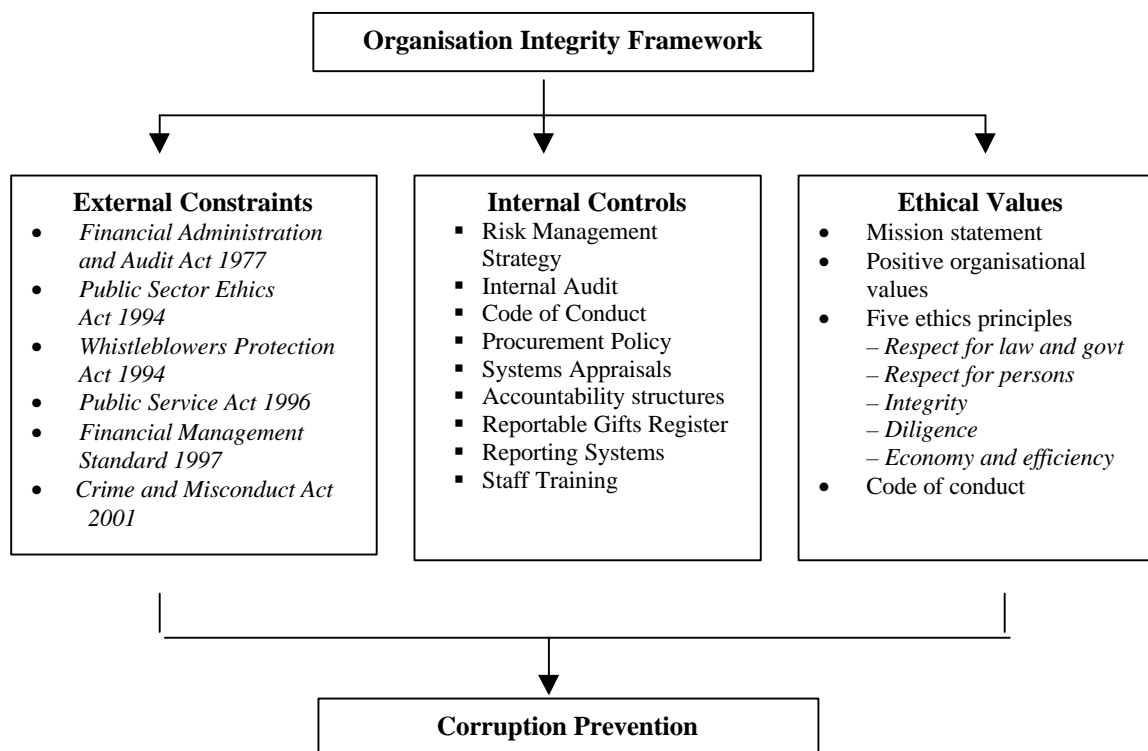
Preventing Misconduct and Corruption

General

The cost of prevention strategies can be weighed against the benefits they bring. Preliminary findings from a recent Queensland Department of Transport study indicate that the cost of managing a detected fraud can amount to over \$300, 000, irrespective of the magnitude of the offence. They have also tentatively identified that \$1 spent on promoting ethical conduct saves the organisation over \$1.80. These hesitant conclusions suggest that the *impact* of misconduct and corruption will play a part in calculations.

The risks of ‘big dollar’ or sensitive industries – gaming, racing, prostitution and liquor – are of obvious concern. Misconduct and corruption within these industries has the potential to enter the broader arena of organised crime. This is also true of local government and licensing – as shown by investigations conducted by the ICAC. Another important area is environmental regulation where inappropriate activities subverting regulation may bring about major environmental disasters.

Overall Prevention Framework



What may help prevent misconduct and corruption is not an array of new strategies but the deliberate and proper application of existing measures that are part of good corporate governance.

An integrated approach to corruption prevention

The CMC proposes that employing an integrated approach requires an agency to:

- Develop an agency-wide policy
- Perform a risk assessment
- Develop accountability structures
- Develop an internal reporting procedure
- Develop an external reporting procedure
- Develop a Protected Disclosures Policy
- Develop a code of conduct and disciplinary standards
- Develop a staff awareness program
- Competent investigators and investigation processes
- Client and community awareness

These ten steps form part of the internal controls and ethical values of an agency sensitive to good corporate governance. They are necessary and not just additional requirements.

Specific/Potential Prevention Strategies

Modified Work Practices

The gaming, racing, liquor, and prostitution industries were identified under the categories ‘modest enforcers’ and ‘licensing’, which gives them a risk rating of medium-high to high in each of the risk categories. Work practices which allow misconduct and corruption to flourish unchecked are an important contributor to this risk. Altering work practices is a major undertaking, but it is a necessary step if misconduct and corruption risks are high and their impact is severe.

The CMC has identified working alone as a major risk in gaming and liquor regulation (see also ICAC 1998). Gaming and liquor licensors have shared clients of long standing, with many pubs and clubs running poker machines. It is important, therefore, that work practices counter the development of inappropriate relationships. Specific actions may include:

- Consistent and comprehensive recording of work activities
- Random checks by supervisors
- Staff rotation policies
- Obtaining independent feedback from industry.

Establishing these types of work practices would be particularly important in rural communities, where inappropriate relationships are a potential problem.

On this note, during 1999-2000 the Queensland Office of Gaming Regulation ‘revamped its regional services in order to provide a stronger presence throughout the state’.³ Regional gaming inspectorates – Cairns, Townsville, Rockhampton, and Bundaberg – have, since this time, acquired greater regulatory responsibilities. Greater regulatory responsibility generates increased misconduct and corruption risks. Under these circumstances personal visits by single gaming inspectors to clubs and pubs are kept to a minimum to reduce the prospect of inappropriate relationships developing.

Altering work practices may also be applicable to agencies including those involved in environmental protection, liquor licensing and local government regulation - where inspectors may be exposed to the same industry players over long periods.

Increased Staff Awareness

The ICAC (2001) found that half the surveyed staff were aware their local council had a gifts and benefits policy or a gifts register. A quarter were aware they could make disclosures in writing, and about 10 percent were aware they could make disclosures anonymously. CMC experience suggests that ignorance of unacceptable conduct, policy, and process increases the chance of, inadvertently or otherwise, engaging in questionable activity or failing to report it.

Training in ethics and ethical decision-making can increase staff awareness. Information sessions and adjustments to management priorities similarly raise appreciation of critical issues.

Enhanced Auditing Practices

In organisations having a hidden culture of misconduct/corruption, exposure could be reliant on information gained from internal control systems and, in certain cases, intelligence work. This may be especially worthwhile in licensing bodies, and local councils.

³ Queensland Treasury Annual Report, 1999-2000.

Similarly, when a code of conduct is limited to a small section of a larger organisation, or not adjusted to accommodate a small/specialist work group, subversion of the code is easier to conceal.⁴ This is especially so when regulators in an agency are physically separate or have high levels of autonomy.

Both the ICAC (2000) and the CMC in 2001 have investigated matters relating to the ‘rebirthing’ of motor vehicles. The work provides examples of inappropriate activities in organisations where the regulators are separately located and operating relatively autonomously. The ICAC recommended that, because of the ease with which wrongful activities may be hidden, auditing measures should be enhanced. These included ‘enhanced random auditing of transactions done by registry managers and others...’, ‘a new audit program...to ensure that...activities are more fully monitored’, and ‘improved management reporting...’.

Despite the potential for loss of staff trust, the ICAC was of the view that more stringent controls were required in order to halt misconduct and corrupt activities. In the Queensland setting, issues of recruitment, access to sensitive databases, staff supervision and the need for speedy service contributed to the risks faced by the regulator.

Preventative measures include establishing independent quality inspection teams, as was done with the NSW Department of Gaming and Racing after an investigation by the ICAC. When inspectors work independently with high degrees of autonomy, an independent team monitoring decisions could act as both a preventer and revealer of wrongdoing. Other bodies which come under the broad level of ‘enforcer’ – e.g., racing control bodies – and those categorised as ‘diagnostic inspectorates’ – e.g., pest inspectors – could also benefit from such a program.

In organisations where risks of misconduct and corruption are not as high, or where the risks are limited, then audit strategies may be less formalised. For example, the improper use of information in ‘diagnostic inspectorates’ could be exposed by acting on a complaint from a client or staff member and initiating an audit.

Specifying Staff Requirements

A confidentiality clause in employment contracts could improve new employee awareness of confidentiality requirements. This could be valuable for any regulatory body.

In local government, ensuring a ‘statement of interest’ is completed by staff whose work may be impacted on by conflicts of interest is important. Binding employees to disclose conflicts of interest encourages employees to critically examine their business dealings in the light of their public responsibilities. Effectiveness would be improved if these statements were randomly audited and properly managed to ensure they were accurate and current. Also necessary are transparent and effective processes for the evaluation of disclosures and the application of remedies.

Targeted Controls in Rural and Remote Areas

Rural areas require special attention, if only because of the practicalities of bringing misconduct and corruption prevention measures to remote places. Using pamphlets and booklets is a reasonable approach where the regulatory function is remote. Hard copy material should not, however, be the sole means of delivering prevention support. Spot audits, timetabled audits and electronic inspections may be necessary to complement other measures, which include client surveys, computer based training, electronic supervisor support and the use of exception reporting techniques.

⁴ Experience suggests organisations which exist *only* to regulate are likely to be under greater scrutiny, both internally and externally, than organisations where regulation is only part of their business. With greater scrutiny comes also a greater staff awareness of what is or is not appropriate conduct.

Part 5 Complaints Data on Regulators and Risk Management

CMC Data

To give support to the misconduct and corruption risks outlined in this report the CMC complaints database was explored. Complaints against a regulatory body from each regulatory category were examined. The results are presented below in table 2.

Table 2. Complaints database analysis

Regulatory body			Complaints	
	Regulatory complaints	Total complaints	Regulatory complaints trend	Corruption risks
Non-Enforcer <i>Conciliator</i> – A health regulator	4	4	Increasing	Improper use of information; regulatory capture
<i>Diagnostic inspectorates</i> – A primary industries regulator	9	17	Decreasing	Conflict of interest; regulatory capture
<i>Accreditation</i> – An education studies regulator	0	0	-	-
<i>State government regulator</i> – A building and construction industry regulator	0	5	-	-
Enforcer <i>Token enforcer</i> – An environmental regulator	8	147	Stable	Regulatory capture; conflict of interest; unlawful compliance methods
<i>Modest enforcer</i> – A racing regulator	8	20	Stable	Conflict of interest; unlawful compliance methods; regulatory capture
Licensing <i>Licensing</i> – a hospitality industry regulator	20	29	Variable	Regulatory capture; unlawful compliance methods; conflict of interest
<i>Professional licensing</i> – A medical staff regulator	0	2	-	-
Local Councils	15	212	Stable	Unlawful compliance methods; conflict of interest

We cannot rely too heavily on the above figures, as it may be that in some areas people are more likely to report misconduct/corrupt activity to the CMC than in other areas. Other factors bearing on reporting rates may include the publicity given to particular events, the perceived jurisdiction of the CMC with regard to the issue at hand, the complainant's knowledge of reporting procedures and the personal motivation of the individual. It is possible too that in rural areas the CMC may be less well known than in the cities.

The proportion of complaints specifically related to regulation may also give an indication of the 'visibility' of the regulatory function when compared to other functions of an organisation. A liquor regulator, for example, had nearly 70 per cent of complaints directed towards regulatory processes. Local councils, by contrast, had fewer than 10 per cent. The regulatory functions in respect of liquor may therefore be proportionally more 'visible' or important to clients than the regulatory function of local councils.

Managing Risks

Table 3 Regulation, corruption risks, and prevention

Authority Type	Risks				Responses by the department to deter corruption	Further opportunities
	Conflict of interest	Regulatory capture	Improper use of information	Unlawful compliance methods		
Non-Enforcers <i>Conciliators</i> (e.g. Health Rights Commission) <i>Accreditation</i> (e.g. Training Recognition Council) <i>State government regulators</i> (e.g. Qld Board of Senior Secondary School Studies) <i>Diagnostic inspectorates</i> (e.g. DPI – pest and diseases)	Low	Low	Low	Low	None/few	Institute an integrated corruption prevention strategy and advance: - Training - Confidentiality agreements - Protective work practices, especially those involving contact between inspectors and industry. - Service level agreements with clients - Audits
	Low	Low	Medium	Low	Confidentiality agreements	
	Low	Low	Low	Low	None/few	
	Medium	Medium	Low	Low	Changed work practices	
Enforcers <i>Token enforcers</i> (e.g. in fire and rescue agencies) <i>Modest enforcers</i> (eg – liquor, racing)	Medium	Medium	Medium	Medium	Alter work practices; training	Institute an integrated corruption prevention strategy and advance: - Training eg enforcement practices, ethical decision making, communication - Staff awareness programs - Protective investigative/work practices, especially those relating to enforcement and contact with industry - Appeals processes for both administrative conduct and decisions - Internal controls and safe decision making processes
	Medium-High	Medium-High	Medium-High	Medium-High	Alter work practices; training	
Licensing Professional licensing (e.g. Board of Teacher Registration) Licensing (e.g. Driver licensing)	Low	Medium	Medium	Low	Confidentiality agreements Audit procedures upgraded – especially IT related; alter work practices; training.	Institute an integrated corruption prevention strategy and advance: - Confidentiality agreements - Audit procedures - Protective work practices - staff training across all areas and especially ethical conduct, ethical decision making, conflict of interest, confidentiality - Staff supervision practices - Confidentiality agreements - Information security systems - Transparency of decision making at all levels - Appeal/review procedures
	High	High	High	High		
Local councils Regulators with multiple functions Regulators in rural/ remote locations (various functions)	High	High	High	High	Alter work practices; training; statement of interest.	Institute an integrated corruption prevention strategy and advance: - All the above incl Councillor training/support

Table 3 above provides a summary of the information presented so far. ‘Conciliators’ and ‘state government regulators’ present the lowest corruption risks across all corruption risk categories. ‘Modest enforcers’, ‘licensing’, and ‘local councils’ present the greatest corruption risks. The nature of these misconduct and corruption risks differs according to whether staff are based in rural or metropolitan regions.

Future strategies

Strategies which may be useful to counter or expose misconduct and corruption include adopting an integrated misconduct prevention strategy and:

- Modifying work practices
- Increasing staff awareness of codes of conduct
- Enhancing audit processes
- Specifying staff requirements in employment contracts and conditions of employment
- Training staff in workplace ethics
- Increasing skills in ethical decision-making
- Using new technology to share information, oversee and support staff and clients
- Using management reports to review and monitor work volumes and identify exceptions
- Finding new ways to monitor staff conduct and performance

These strategies would be suitable, with adjustment, for all agencies depending upon their type of regulation, and corruption risks.

The strategies outlined do not represent heavy amounts of new work. They suggest, instead, that good governance can be achieved by meeting regulatory obligations with innovation and by the constant practical demonstration of a commitment to ethical conduct. In this regard the conduct of managers is vital and a necessary precursor to ongoing excellence.

There is emerging but so far inconclusive evidence that modest and relatively inexpensive generic education and training focussing on ethical decision making produces noticeable positive results. Should this prove to be the case it suggests that staff awareness of ethical issues and the prominence of debates on ethical issues within organisations will limit opportunities for misconduct with regulatory bodies.

Conclusion

This paper does not represent a full exploration of the issues but addresses a number of those of interest to the CMC given its statutory obligation to assist agencies address misconduct. It is evident that research into the misconduct risks of Australian regulatory agencies is not great and that effort has been important but irregular.

Prevention strategies have generally been devised according to risk and are based on an auditing model. It would be helpful to see the effectiveness of prevention strategies based on more stringent objective measures rather than the result of random or targeted audits. Some work is occurring in this field and, while initial results are promising, greater outcome specificity could be enlightening.

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