



Corruption risks associated with public sector boards

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This information sheet highlights corruption vulnerabilities associated with public sector boards in Victoria. It alerts government departments to opportunities to strengthen their systems and practices to address those vulnerabilities. It also outlines measures to aid the detection, reporting and prevention of corruption which can otherwise lead to waste of public money and resources, undermine people's trust in government, and damage the reputation of the public sector.

Background

In Victoria, more than 3400 public sector entities are governed by boards with a total of about 32,000 board members. Public sector boards perform a vital service to the community in managing a wide range of public assets. These boards vary significantly in type and role. Most board members come from outside the public service and approximately 84 per cent of members are volunteers.

Most Victorian public sector boards are associated with school councils, cemetery trusts and committees of management (COMs) for crown land. Government departments are ultimately responsible for guidance, good practice, monitoring and oversight of public sector boards.

IBAC has conducted research into corruption risks associated with public sector boards. As part of this work, we consulted with government departments and public sector boards, reviewed our investigations and examined relevant public reports. We found that some boards, mostly those composed of volunteer board members, are operating with limited oversight from government departments. This raises concerns that corrupt conduct may not be detected.

Key corruption risks

Corruption risks identified by IBAC in relation to public sector boards include:

Conflicts of interest

To maintain integrity and public trust, it is important that all boards have policies and systems to identify and appropriately manage conflicts of interest. Having a conflict of interest is not in itself corrupt conduct. However, when board members have private interests in the resource or organisation being managed by the board, this could improperly influence, or be seen to influence, their decisions or actions. Integrity issues arise and the potential for corruption exists when there is a failure to properly identify, declare and manage the conflict of interest.

Theft and misappropriation of funds

The most significant risk relevant to small volunteer boards (such as COMs and cemetery trusts) is their vulnerability to theft and misappropriation of funds. Many of these small boards have little interaction with, or active oversight by, their responsible government departments. Many boards struggle to fill board positions and the financial management and governance expertise of members may be limited. All these factors can contribute to the risk of theft or misappropriation of funds.

Bribery and inducements

Members of public sector boards can be susceptible to offers of gifts, benefits and hospitality or even bribes from businesses in return for lucrative contracts or favourable treatment. Board members often have considerable authority to award contracts or allocate funds. These decisions must be made in the best interests of the community and consistent with public sector values and guidelines, with appropriate management of conflicts of interest.

For example, IBAC has completed two investigations into allegations of attempted bribery within cemetery trusts – Operation Wyong and Operation Denmark. Demand for cemetery plots with specific characteristics that meet religious or cultural requirements makes cemetery trusts a potential target for bribery. This is especially so in metropolitan Melbourne, where the number of plots is limited.

Inappropriate practices

Boards are entrusted with public money and assets that should be used only in the public interest. Smaller boards whose members have little experience and oversight from their governing departments are vulnerable to adopting inappropriate practices, which may facilitate and mask corruption.

The Victorian Auditor-General's Office (VAGO) previously identified this as a major concern for cemetery trusts who run a commercial business yet may have little understanding of the governance framework within which they operate. Inappropriate practices identified include providing commissions on cemetery sales, loans to staff and inappropriate use of cemetery assets.¹

Procurement anomalies

Audits are not compulsory for most COMs and cemetery trusts. Anomalies in the procurement process may be noticed if an independent audit of a COM or cemetery trust's finances is conducted. Volunteer boards such as cemetery trusts and COMs for crown land are not bound by the policies and standards of the Victorian Government Purchasing Board, although they are encouraged to use the standards as a guide.²

Many of these boards are located in regional areas where cash transactions are common. There is a risk that boards may approach local vendors with whom they have an existing relationship and pay cash for services. This may help the vendor avoid income tax and proper record keeping. It can also lead to complications during investigations where there are limited records of transactions and poor record keeping, and vendors may be reluctant to assist investigators for fear of being identified as engaging in tax fraud.

Department of Education support and oversight of school councils

The Department of Education has advised IBAC that it recognises the vulnerabilities of school councils and provides support and oversight arrangements to the sector.

In particular, school councils must comply with the *Finance Manual for Victorian Government Schools*, which sets out financial management policies and requirements for schools. The Department's School Council Financial Assurance program reviews the existence and effectiveness of finance-related governance activities undertaken by school councils. The program covers about 450 schools a year through agreed procedures and schools' internal audits.

In addition to financial policies and the audit program, school councils have access to detailed advice and guidance on purchasing goods and services for their school, including step-by-step procurement guidelines.

All school council members, including student members, are offered face-to-face training at the local level. Training is delivered across Victoria by a third-party provider using the Improving School Governance package. The package's five modules (Governance, Finance, Strategic Planning, Policy and Review, and School Council President) improve the knowledge, understanding and skills of school council members, school council presidents and school principals. Other resources available to school councils include a skills and expertise guide and a self-assessment tool.

¹ VAGO, *Review of Major Cemeteries*, July 2006, p13, <www.audit.vic.gov.au/sites/default/files/20060719-Review-Major-Public-Cemeteries.pdf>

² Victorian Government Purchasing Boards website, <www.procurement.vic.gov.au/About-the-VGPB/Scope-of-Policies>

Drivers of corruption risks

Quality of board membership

Availability of skilled volunteers

For corruption to be identified and addressed, government departments responsible for public sector boards rely on board members to identify corruption and report it to the department. For this to occur, board members need to be fully aware of their duties, and understand what constitutes misconduct or corrupt conduct.

Departments may have difficulty attracting volunteer board members with the required skills, knowledge and experience to undertake the governance duties required of them. When board members are inexperienced or have not undertaken appropriate training, they may be less able and less likely to identify corrupt conduct, or apply governance arrangements and other controls that may prevent corrupt conduct from occurring.

Volunteer boards with a reputation for poor governance may fail to attract well qualified people due to potential candidates being concerned that their personal reputation will be damaged if they serve on the board.

Lack of diversity of board members

Boards with greater diversity in age, gender and background are more likely to offer a wider spectrum of views and opinions that can help to minimise the risk of corrupt practices developing.

Victorian Public Sector Commission statistics show that more than half (52 per cent) of cemetery trust board members are 65 or older. One in four (25 per cent) are aged between 55 and 64. Only 11 per cent are 44 or younger. This lack of age diversity may increase the likelihood of corrupt practices occurring.

Lack of support and checks

Limited probity checks for appointments

IBAC found that government departments conduct limited probity checks on appointments to volunteer boards.

While undertaking fewer probity checks may simplify the appointment process for volunteers, it also increases the risk of people with serious integrity issues or criminal histories being appointed to volunteer positions on boards.

Concerningly, no mechanisms are in place to identify if, or when, a board member who has been removed from a board because of corruption or misconduct, seeks appointment to another board.

Training and guidance

Training and guidance for boards is critical to help them identify and report corrupt practices. Government departments offer inductions to new board members when they are appointed, which can include face-to-face training and written materials such as manuals, policies and guidelines.

However, inductions are not always compulsory and for many boards inductions are limited to simply providing appointees with the written material. With limited training frameworks for appointees, it is difficult to ensure they are fully aware of their governance obligations or have achieved the level of competency required.

Oversight

Improved independent oversight and auditing is a key preventative measure when it comes to reducing corruption risks associated with public sector boards. Auditing of public sector boards is also limited. Because of the large number of boards in the Victorian public sector, many government departments restrict their auditing to annual financial returns and appointment processes.

Other structural issues

Understanding of boards' roles

The complex environment in which many boards operate can sometimes lead to board members failing to understand that they are part of the Victorian public sector and as such required to abide by guidelines such as the *Code of Conduct for Directors of Victorian Public Entities*.³ Volunteer board appointees may believe they are performing a community service because they are unpaid, rather than being a member of the public sector with all the requisite duties and obligations. Better education and training of board members to ensure that they are aware of their obligations may reduce the risk of corruption or misconduct occurring.

Election processes

Public sector boards should have fair and transparent election processes in place to reduce the likelihood of corrupt outcomes. The most common method used for appointing volunteer board members is by public election, which may not elicit the most qualified or skilled candidates. Risks can be exacerbated if there are more vacancies than candidates.

For some boards, the only people who attend elections may be board members or candidates seeking appointment. In cases of reappointment, the board can meet without public representation and may vote itself back in for another term. With little independent representation from the community or government department, the election process could be vulnerable to manipulation.

³ Victorian Public Sector Commission, Code of Conduct for Directors, <vpsc.vic.gov.au/resources/code-of-conduct-for-directors/>

Department of Health and Human Services (DHHS) support and oversight of cemetery trusts

DHHS has advised IBAC that it recognises the corruption vulnerabilities of cemetery trusts and has developed measures that support and oversight the sector.

Located within DHHS, the Cemetery Sector Governance Support Program is responsible for administering the *Cemeteries and Crematoria Act 2003* and supporting cemetery trusts in Victoria to meet their governance and operational requirements. The program has developed separate manuals for Victorian Class A and Class B cemetery trusts. The manuals provide information to help trusts understand their obligations under relevant legislation and guide sound governance practices.

Since 2011, the program has worked with training providers and the Cemeteries and Crematoria Association of Victoria to develop a governance and operational training program to support Victorian cemetery trusts.

As of January 2019, about two-thirds (68 per cent) of trusts have had a trust member or non-member trust secretary attend the training.

Provisions made to support better governance of cemetery trusts include:

Conflict of interest

Conflict of interest forms are required to be signed by all applicants seeking appointment to a Class B trust. Once appointed, a trust member must declare that they will advise their Chair and the DHHS Secretary should a conflict arise.

Theft and misappropriation of funds

DHHS provides all cemetery trusts with a fraud and protected disclosure policy. Class A cemetery trusts are required to submit an annual financial report to the department and to act in accordance with the Standing Directions 2018 under the *Financial Management Act 1994*. All Class B cemetery trusts are required to submit an abstract of accounts to DHHS annually.

Bribery and inducements

DHHS has a Performance Audit Program to assess Class B cemetery trusts' compliance with obligations under the *Cemeteries and Crematoria Act 2003*. Audits are conducted by an external provider, with a requirement that any audit findings are reported to DHHS. The audit program has the capacity to include a forensic analysis of any part of a trust's governance, management or operations.

Probity

All Class A cemetery trust applicants are subject to national security and police checks, must also declare any private interest annually once appointed and make a conflict of interest declaration whenever there is a material change in interests.

For Class B cemetery trusts, applicants must also undertake two reference checks before submitting an application to DHHS.

Prevention and detection strategies

Training and support of boards

Government departments are faced with considerable challenges in managing the large numbers of public sector boards they are responsible for. However, ensuring that a greater proportion of board members are adequately trained and provided with the necessary support materials will help raise governance standards and ensure more consistent practice across public sector boards.

In addition to training and support provided by government departments, the Victorian Public Sector Commission plays an important role in providing advice, guidance and support on governance issues, such as codes of conduct and conflict of interest models.

Probity screening and criminal checks for office bearers

Carrying out national criminal checks on all appointees to a board presents challenges. The Appointment and Remuneration Guidelines for Victorian Government Boards, Statutory Bodies and Advisory Committees⁴ exempts departments from having to complete mandatory checks. Although not mandatory, each government department has discretion to complete the checks if it sees fit.

Good practice would be the introduction of a risk-based approach to conducting national criminal checks for office bearers (such as president, secretary and treasurer) on school councils, COMs and some classes of cemetery trusts. This would help address risks to boards because these office bearers are usually directly involved in the handling of finances and payments, and have more power to drive board activities and agendas.

Mandatory notification of suspected corrupt conduct to IBAC

All heads of government departments and agencies must notify IBAC if they have reasonable grounds to suspect that corrupt conduct is occurring or has occurred in their workplace. Boards operating under government departments need to be made aware of this obligation and should have procedures in place to report suspected corrupt conduct to IBAC.

⁴ Victorian Department of Premier and Cabinet, Appointment and Remuneration Guidelines for Victorian Government Boards, Statutory Bodies and Advisory Committees, Policies, <www.vic.gov.au/guidelines-appointment-remuneration>

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IBAC is Victoria's anti-corruption agency responsible for preventing and exposing public sector corruption and police misconduct. We do this by:

- investigating serious corruption and police misconduct
- informing the public sector, police and the community about the risks and impacts of corruption and police misconduct, and ways in which it can be prevented.

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