PERFORMANCE MEASURES AND ACCOUNTABILITY OF OVERSIGHT AGENCIES

Organisation: Police Integrity Commission

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COMPLAINTS NOT AN EFFECTIVE BASIS FOR MEASURING THE INTEGRITY OF A POLICE FORCE OR THE BASIS OF THE PERFORMANCE OF AN ANTI-CORRUPTION AGENCY

Complaints are likely to provide a misleading picture of corrupt conduct

While complaints are readily countable and the number of complaints made or received can be compared from one year to the next, the number of complaints and types of allegations made cannot provide an accurate picture of the amount and nature of corrupt conduct at any one time. Similarly changes in the numbers and nature of complaints do not provide an accurate picture in changes in the amounts or types of corrupt conduct.

Before discussing why this is the case, it is important to recognise that corruption is not a single distinct phenomenon. Corrupt conduct can take many forms ranging from, for example, falsifying statements, to theft of money or exhibits, to unauthorised release of confidential information. Also it is also important to recognise that corrupt conduct tends to occur in secret with few witnesses. As the inaugural Commissioner of the NSW ICAC used to describe it, corrupt conduct is an act undertaken in private by consenting adults. Some forms of corrupt conduct are more likely to be visible than others. For example abuse of force is more likely to be visible than collusion between tenderers.[3]

Corrupt conduct also differs from other phenomena where some portion is hidden. For example, there are difficulties in measuring the amount of crime committed because not all crime is reported. However, most crimes (such as theft, assault) have direct victims. Hence criminologists attempt to measure the unreported portion of crime by conducting 'victimisation surveys' which involve interviewing a representative sample of the population to find out what, if any, crimes they have been subject to within a given period of time. However, it is not possible to do this with corruption, as the potential victims (usually members of the community), are unlikely to know about any corrupt conduct. For example, the potential victims of a corrupt act would be unlikely to know if a public official had been bribed to award a contract to a particular company. Nor would they know if an inspector had been bribed to say that a piece of equipment met safety standards.[4]

The number and nature of complaints received do not provide an accurate picture of corrupt conduct that occurs because, firstly, not all corrupt conduct is going to be the subject of a complaint. At best, complaints received are a biased subset of the types of corruption that occur. Some types of corrupt activities (and no-one knows how many of these there are or how frequently they occur) tend to be carried out in secret with few witnesses. That which is not witnessed cannot be reported and hence, will not be the subject of a complaint. The reported allegations of corrupt conduct are those that are more easily detected and labelled as corrupt. Hence that which is reported is not representative of all the corrupt conduct which occurs. Even corrupt conduct that is witnessed may not be reported for a wide range of reasons (e.g., the witness not considering that it is their responsibility to report, witness not labelling the conduct as 'corrupt', fear of reprisal, belief that nothing would be done about it if it were reported).

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[3] Gorta, A. (2001) Research: A tool for building corruption resistance. In P. Larmour & N. Wolanin (Eds) *Corruption and Anti-Corruption*. Canberra: Asia-Pacific Press. pp. 11-29; Gorta, A. (2006) Corruption risk areas and corruption resistance. In C. Sampford, A. Shacklock, C. Connors and F. Galtung (eds) *Measuring Corruption*. Aldershot, Hampshire: Ashgate Publishing Ltd, pp. 203-219.

[4] Gorta, A. (2006) Corruption risk areas and corruption resistance. In C. Sampford, A. Shacklock, C. Connors and F. Galtung (eds) *Measuring Corruption*. Aldershot, Hampshire: Ashgate Publishing Ltd, pp. 203-219.

Secondly, not all complaints are going to be about corrupt conduct that has occurred. Some complainants may simply be mistaken in what they thought has occurred. Some complaints received might be out of jurisdiction and others may be vexatious.

Thirdly, the numbers of complaints received are affected by factors other than the amount of corrupt conduct that occurs. At the time of the Royal Commission into the NSW Police Service, the number of complaints about police corruption is likely to have risen with the publicity given to the work of that Commission. It would be incorrect to interpret such an increase in the number of complaints at that time to be an indicator that corrupt conduct was on the increase and that the Royal Commission was ineffective because of such an increase in complaints.

Complaints can provide indicators of areas of corruption risk and investigative opportunities. However, there is a danger of not recognising how biased the view of corrupt conduct may be when by relying on an examination of the number and types of complaints received.

Information we would need to evaluate the effectiveness of anti-corruption agencies in reducing corruption

To evaluate the effectiveness of efforts of an anti-corruption agency in reducing corruption, ideally one would want to be able to:

a. measure the amount (and type) of corruption that was actually occurring before the establishment of the anti-corruption agency
b. predict the amount (and type) of corruption that would be occurring (allowing for technological, economic changes and changes in other circumstances) now, had the anti-corruption agency not have been established
c. measure the amount (and type) of corruption that is now actually occurring
d. compare the amount that is actually occurring (c) with the amount that would have been predicted to occur had the agency not been established (b).

While this might be possible for some (small number of) quite specific and more visible forms of corrupt conduct, given the hidden nature of some unknown number of corrupt activities, discussed above, this is not possible in relation to an overall measure of effectiveness or even for most forms of corrupt conduct.

What can be done to support an evaluation of the effectiveness of anti-corruption agencies?

1. Recognise that anti-corruption and integrity agencies are regulatory agencies that impose obligations rather than deliver services in contrast to some other government agencies such as health, education and housing. Hence their performance cannot be measured by customer service surveys and other service delivery measures in the same way as can government agencies that deliver services.[5]

2. Recognise that it will not be possible to have a simple numerical indicator of the performance of the anti-corruption and integrity commissions[6]

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[5] Sparrow, M. K. (2000) *The regulatory craft: Controlling risks, solving problems and managing compliance*; Sparrow, M. K. (2008) *The character of harms: Operational challenges in control.*

[6] Gorta, A. (2006) Corruption risk areas and corruption resistance. In C. Sampford, A. Shacklock, C. Connors and F. Galtung (eds) *Measuring Corruption.* Aldershot, Hampshire: Ashgate Publishing Ltd, pp.

3. Recognise that the amount of corruption (or any harm e.g. fires in a nursing home, terrorist attacks, deaths though treatment of disease) that is prevented is not possible to measure directly.

4. Look instead at what is done to build and sustain corruption resistance. It *is* possible to see and document what active steps an agency (such as the NSW Police Force or the NSW Crime Commission) takes to increase its resistance to corruption, such as, training staff about the corruption-related risks they face in their jobs and how they should manage these risks.[7] It is for this reason that the PIC has dedicated much of its prevention work over the past seven years to examining how the NSWPF and the NSW Crime Commission, identify, manage and communicate its risks of corruption and serious misconduct.

5. Tell 'performance stories' in its Annual and other reports on the problems it has selected to address, why it has selected these particular problems and the effectiveness of its work in relation to these problems.[8]

6. Ensure that other accountability measures remain in place to ensure that the agency's powers are used appropriately.

7. Maintain a watching brief on the performance measures used by other anti-corruption and integrity commissions to learn from them where possible.

203-219. Sparrow, M. K. (2000) *The regulatory craft: Controlling risks, solving problems and managing compliance.*

[7] Gorta, A. (2006) Corruption risk areas and corruption resistance. In C. Sampford, A. Shacklock, C. Connors and F. Galtung (eds) *Measuring Corruption.* Aldershot, Hampshire: Ashgate Publishing Ltd, pp. 203-219.

[8] Sparrow, M. K. (2000) *The regulatory craft: Controlling risks, solving problems and managing compliance*; Sparrow, M. K. (2008) *The character of harms: Operational challenges in control.*