

IMPLEMENTING CORRUPTION PREVENTION STRATEGIES THROUGH CODES OF CONDUCT

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The concept of a code of conduct, as it appears in corruption prevention strategies, could be viewed as rather misleading. While dealing with conduct in some preferred or pre-emptive sense, these frameworks for “guidelines” bear little resemblance to prescriptive legal codes. In speaking to the International Bar Association meeting on “Transnational Enterprises and International Codes of Conduct”, Professor John Jackson made the following observations,¹ regarding the significance of guideline approaches to corruption prevention:

Since no single agency has a monopoly over code formulation, and since there exists such a wide range of goals and objectives, clearly one danger is the emergence of codes which conflict with each other, either explicitly or implicitly. The different forums for code discussions have different balances of interests ... and respond to different priorities among the goals ... Code formulation often runs around the shoals of fundamental (definitional) disagreements.

The challenge, at least for the near future, is to develop an understanding of policies involved and the design code rules for those portions of those policies which do seem to command agreement or compromise consensus, so that some of the advantages which a code can bring are soon realised. On the other hand, the challenge is also to avoid irreversible commitment to code rule words which could soon be outdated, or which reflect such studied ambiguity in the face of fundamental disagreement that such code words will engender conflict rather help resolve it.

These cautionary comments foreshadow a number of issues which are critical to such “code of conduct” frameworks as a centre-piece of corruption prevention strategies.

Corruption prevention is as much fraught with definitional complexity as the object of its endeavour. The application of notionally consensual prevention methods to control problems which often arise out of loose, low profile property relations tends to overlook the forces at work with commitments to anything but corruption prevention. What are the attractions of a compliance based control strategy, and is compulsion to some extent anti-ethical to a prevention perspective?

1 Jackson, J, “Transnational Enterprises and International Codes of Conduct”, in *Codes of Conduct for Transnational Corporations: Signals of Public Expectations* (Berlin: International Bar Association, 1980) p 1.5.

The language of "guidelines", and more broadly of prevention merits analysis as it is transformed into anti-corruption commitments. The importance of consensus, which formulates the aims underlying this language and these commitments, provides a useful starting point for such an enquiry. This opens out into a consideration of the various structural options which attend on the "code of conduct" approach to corruption prevention. The significance of compliance management methods, and the operations of an independent audit function support particular corruption prevention strategies such as those examined in the following discussion of the labour relations ramifications of code strategies.

THE AIM OF CORRUPTION PREVENTION

Vital though it is to extricate the bad apples from the barrel it is equally important to prevent them from getting into the barrel at all. How is this done? By simply ensuring that the system doesn't allow the rotten ones to get in.²

In this way does the Independent Commission Against Corruption (ICAC) in Hong Kong quaintly identify the structural priority of its corruption prevention department. Its New South Wales counterpart prefers a pathological metaphor to justify its focus on management:

Corruption, in whatever form it takes, is invariably described as a disease or sickness in society. As with many diseases it may be possible to cure after it has been identified, but with no certainty either that the cure is complete or that the disease has not done irreparable damage. Most people would agree that it is better to prevent than to cure.³

Both of these interpretations of the essential connection between corruption and prevention overlook the utility that corrupt practices may offer an organisation beyond the enrichment of individuals. It is assumed that:

If corrupt practices exist within an organisation, its normal operations will undoubtedly be jeopardised ... Corruption prevention is therefore an integral part of good management.⁴

Dogmatic assertions such as this may substitute for the realistic ascription to a uniform commitment to corruption prevention at various levels of management. As Klitgaard points out, for developing economies at least, corruption may provide a "positively useful role".⁵ On the level of management advantage he proposes:

Corruption may have uses within an organisation. If bureaucratic rules are constraining, the organisation may sometimes benefit from the employees corrupt circumvention of the rules. A limited amount of employee theft, embezzlement, misreporting of expenses, kickbacks, "speed money" and so forth may be tactically allowed by top management on the one hand, because controlling these illicit activities would be prohibitively expensive, and on the other hand because such illicit sources of income may in the long run substitute for higher wages. A slush fund within an organisation may function as a contingency fund which top management may flexibly if illicitly allocate to further the organisation's aims.⁶

2 *An Introduction to the Independent Commission Against Corruption* (Hong Kong: ICAC, 1987) p 19.

3 Independent Commission Against Corruption (NSW), "Corruption Prevention Strategy", in *Annual Report to 30 June 1990* (1990) p 1.

4 *Id* at 2.

5 Klitgaard, R, *Controlling Corruption* (Berkeley: University of California Press, 1986) p 30.

Beyond the level of critical analysis, it is necessary for policy designers and implementers to recognise the commercial and organisational adaptations emergent through corrupt practice occurring in certain restrictive market situations. If one views the generation of corrupt relationships in terms of a market model,⁷ particularly where corruption is perceived by those closest to it as a tariff on the transaction of certain restricted products and services, then prevention and control strategies can be designed to confront the users' (and not simply "the controller's") appreciation of corruption. The decision as to whether one selects a corrupt resolution of a commercial option will involve some degree of "cost/benefit analysis".⁸ Corruption control strategies endeavour to influence the cost factor of the equation. Control may also imply the acceptance of some optimum or tolerable level of corruption within particular commercial settings.⁹ In estimating optimal levels, the cost of corruption, as against the cost of its removal on the one hand, can be intersected against measures of social cost and the significance of corruption on the other.

Despite the recognition of the cultural (and even organisational) specificity of corruption:

As a matter of fact most countries and cultures decry most instances of bribery, fraud, extortion, embezzlement, and most forms of kickbacks on public contracts. Over a wide range of "corrupt" activities there is little argument that they are wrong and socially harmful.¹⁰

What remains in dispute is whether, or at least to what extent corruption can and should be prevented and controlled. As Klitgaard reminds us, "blanket statements about the helpfulness or harmfulness of corruption will not aid us in assessing the effects of particular instances we may encounter".¹¹

As a preface to selecting a response to corruption, the economic and social significance of the behaviour in question and the proposed responses require examination. To some degree this can be achieved within a framework of the "costs" of corruption:

Efficiency

- wastes resources
- creates "public bads" as compared with "private goods"
- distorts policy

Distribution

- reallocates resources to those with power to influence

6 Ibid.

7 See Bensen, B L and Baden, J, "The Political Economy of Governmental Corruption: The Logic of Underground Government" (1985) 14 *Journal of Legal Studies* 391-410; Findlay, M, "Corruption Control and Monstering: Government Agendas, Community Expectations and the ICAC Solution" (1991) 2/3 *Current Issues in Criminal Justice* 36-48.

8 Nye, J, "Corruption Prevention and Political Development: A Cost-Benefit Analysis" (June 1967) *American Political Science Review* 427.

9 Klitgaard, above n5 at 24-27.

10 Id at 3-4.

11 Id at 35.

- favours monopoly control

Incentives

- distorts exercise of official discretion
- creates risks
- distorts investment

Reactions

- induces unproductive preventive measures
- contributes to monopolistic market regulation
- promotes “moral panic” threat imagery

Politics

- breeds popular alienation and cynicism
- creates regime instability
- fosters artificial public/private divisioning

THE LANGUAGE OF PREVENTION

Corruption is at its heart an ethical problem.¹² It is addressed in political debate as a moral issue:

The problem with corruption is that it tends to become the Problem of Corruption. Moral issues are usually obscure practical issues, even where the moral question is a relatively small one and the practical matter is very great.¹³

Moving the corruption debate from the level of moralist rhetoric is not assisted by an expansion into the imagery of prevention. There is a sensitive relationship between preventive initiatives and unwarranted intrusions in the name of community protection, which would not necessarily be tolerated within traditional criminal justice control strategies. The language of prevention is as a result often couched in a fashion calculated to avoid the suggestion of overbearing interventionism. Prevention through compliance, through consensus, through solicitation, are central to corruption prevention persuasion:

Successful corruption prevention work will depend much on the co-operation and whole-hearted involvement of the client organisation’s management and staff. This is something which will require nurturing, principally by a demonstration of the contribution the Commission can make by way of its corruption prevention work to good management.¹⁴

The discourse of consensus and compliance as the incentive for prevention not only suggests some of the problems for any associated strategy, it also limits the “community”

12 Noonan, J T, *Bribes* (1984) pp 702-703.

13 Wilson, J Q, “Corruption is Not Always Scandalous” in J A Gardiner and D J Olson (eds), *Theft of the City: Readings in Corruption in America* (1968) p 29.

14 ICAC (NSW), above n3 at 151.

for which it will have relevance. Expectations for agreement with and implication in the prevention of commercial behaviour which is often clandestine and divisive are not always realised in an atmosphere of generous co-operation. Codes of conduct which depend on supportive management, and procedural guidelines for reporting which rely on a path of voluntary communication mean little or nothing to the recalcitrant staff member or the subversive senior officer. By tying prevention to compliance without confronting the utility of violation, or the necessity of eventual compulsion, the language of corruption prevention sits uncomfortably with the hard issues of implementation.

The actual process of defining corruption and reducing its prevention to words is a problematic endeavour. If honest and trustworthy behaviour can be expected as part of appropriate work practice then why is it necessary to emphasise corruption prevention beyond the realm of common sense and corporate decency? The response that statements of standards and obligations enhance clarity and certainty implies an identifiable interest, both individual and organisational, in such understandings. Specifically, as far as the workplace is concerned the translation of expectations about conduct into written rules has a wider purpose than as a statement of their content. Such codes represent a framework around which issues of content can be contested and the responsibilities inferred from them can be contrasted and apportioned.

DEVELOPING CORRUPTION PREVENTION POLICY

To develop and implement an anti-corruption program it is necessary to develop a policy based upon an identification of the indicators of (corruption) activities.¹⁵

Obvious as this sounds, many structural attempts at corruption prevention proceed from a generalised and non-problematic vision of corruption, a commitment to the power of anti-corruption rhetoric, and an absence of developed thought concerning the complexity of implementation issues. The success of prevention programs requires that a particular framework of "corrupt opportunity" be established prior to their specific application as policy options. Such a framework might consider:

Corruption hazards

- sites for corruption
- signs of corruption
- systems comfortable with corruption

Corruption in progress

- corrupt acts and actors
- invitations towards corruption¹⁶
- peer group support, and complicity¹⁷

15 Ward, R H and McCormack, R, *An Anti-Corruption Manual for Administrators in Law Enforcement* (1979) p 65.

16 Manning, P K and Redlinger, L J, "Invitational Edges of Corruption: Some Consequences of Narcotic Law Enforcement" in Rock, P (ed), *Drugs and Politics* (1977) pp 279-310.

- organisational content
- institutional reaction

As Ward and McCormack emphasise in the case of police corruption, "for an anti-corruption policy to be viable and effective, it must be realistic, manageable and continually reinforced".¹⁸ This is even more so for preventive policy, which in practice relies on a general appreciation and acceptance of the utility of compliance, rather than on some token ascription to codes of ethical standards.

As with any policy initiatives which have individual and institutional aims and arms, effective corruption prevention programs evolve through:

- planning and design
- publication
- consultation
- revision
- communication
- modelling and implementation
- monitoring stages

Crime prevention programs sometimes suffer from an under attention to, or ignorance of a vital stage in such a developmental process. For, example if communication and consultation is not attempted at all major levels of an organisation, and the program relies on the trusted transfer of information up through a management hierarchy, then the bottle-neck in such a transfer may not be identified until it is the reason in practice for the policy's failure.

In addition to such internal structural indicators due regard in policy development should be given to significant external influences which can impinge on the operation of policy initiatives. Chin and Benne identify three broad strategies for effecting change in human systems:¹⁹

- Rational — empirical
- Power — coercive
- Normative — re-educative

Underlying the rational — empirical philosophy is the strategy that employees will choose to do what is in their best interest. The measures of such interest are seen to obviously justify such a choice. The power — coercive strategy basically utilises power arising from formal authority to impose and enforce change. As such the policy depends on endorsement from more traditional processes of compulsion and sanction. The normative — re-

17 Baker, T, "Peer Group Support for Police Occupational Deviance" (1977) *15/3 Criminology* at 9-21.

18 Ward and McCormack, above n15 at 65.

19 Chin, R and Benne, K D, "General Strategies for Effecting Changes in Human Systems" in Bennis, W G, Benne, K D and Chin, R (eds), *The Planning of Change* (1969).

educative model relies on a process of participation, collaboration and complicity, to attempt a more long lasting and consensual change. The restructuring anticipated is focussed on a range of behaviours and structures, individual and organisational. These approaches may be combined to the extent that they are obviously not exclusionary. The code of conduct technique fits best within the third model.

CODES OF CONDUCT

Corruption is a product of monopolistic regulation and discretionary benefit allocation, minus accountability. The broadening of accountability (rather than breaking down the monopoly, or the universalisation of the discretion) is identified in prevention strategies as essential to successful corruption prevention:

If monopoly power and discretionary enforcement remain, consumers can expect to pay too high a price. The key ideas regarding underlying conditions might not be capitalism versus state socialism, or the private sector versus the public sector, but rather competition and accountability.²⁰

After all, accountability is one way of generalising organised strategies and structures for the gathering of information. The knowledge and understanding derived from such accountability in process should assist in the assessment of environments for fair competition. Fairness, in turn, will have an effect on corrupt relationships which exist through regulated and monopolistic avenues of opportunity.

Codes of conduct as a structural instrument represent an advertised endeavour to coalesce standards of behaviour in an atmosphere where compromise replaces intimidation. They are formulated in a congruent language where the reality of reward and penalties is kept to the implicit. Codes are also a move away from rule structures which produce monopolistic regulation through a monopolistic application of sanctions, and hence the potential for the process and institutions of prevention and control themselves to become "tools for corruption".²¹ Codes of conduct are first designed to influence attitudes rather than prescribe behaviour. They propound the official morality. They are the mirror against which communities are to be educated towards an anti-corruption consciousness. Leys describes the "line of escape" from corruption as "a nucleus of puritans providing pressure for a code of ethics".²² It is recognised that the formal enunciation of ethics may have an influence on deviant behaviour if the unethical behaviour can be traced to a lack of written policy. At this level the deterrent potential is apparent, and its relationship with compliance is implicit. However, to assume that more "moral" organisations will be an essential consequence of a code of conduct may not be justified. Organisational culture may, if it conflicts with the ethical model, prevail.

20 Klitgaard, above n5 at 67.

21 Nakata, T, "Corruption in the Thai Bureaucracy: Who Gets What, How and Why in its Public Expenditures" (January 1978) 18 *Journal of Development Administration* 104.

22 Ekpo, U, *Bureaucratic Corruption in Sub-Saharan Africa: Towards a Search for Causes and Consequences* (1979) p 150.

As is the case in New South Wales, codes of conduct against corruption are usually reliant on mechanisms for disclosure and guidelines for reporting.²³ Whether these in turn are endorsed by sanctions against failure to report will depend on the wider commitment to legislative frameworks for anti-corruption mechanisms. Codes of conduct are a convenient mechanism for indicating the obligations of administrators in the task of corruption-free government. The purpose designed anti-corruption codes usually operate in addition to more general principles of public service and the professional practice guides such as that issued through the International Institute of Administrative Sciences. Many such codes are an amalgam of work directives, standards of professionalism, and common sense:

Ultimately professionalism in government may mean no more than simply justifying public trust by putting the interests of the citizen and the government above private interests.²⁴

However, no matter to what degree a code of conduct embodies universal, simple values, and strives to embody general consensus, its influence on corruption practice relies on "integrity testing". Corruption and bribery thrives on secrecy and pretence. Corrupt practices may exist behind the veil of a conduct code, as much as they are challenged by it. Complacency can be the consequence of a code which does not in practice command compliance at all levels of organisation.

The discussion of codes of conduct will be rather impotent if it focuses on consensus over content alone, and vice versa. Compliance implies some consideration of implementation. At the level of implementation conflict will arise when determining responsibility for ensuring compliance. To some extent compliance conditions will influence the structure and tone of a code of conduct, as the code will operate to later effect compliance. Even the selection of a code-based policy reveals attitudes to the essentials of enforcement such as compulsion, reward, deterrence, shaming etc.

Once the content of a code is settled, and its consistency with other competing or overriding standards is assured, the task for policy shifts to mechanisms of implementation within the workplace. In industrial terms, these can be considered from two perspectives: how workers and their unions may be expected to react to the introduction of codes of conduct; and the sort of pro-active management strategies needed to overcome the problems likely to be thrown up by adverse reaction from the workforce.

CODES OF CONDUCT AND LABOUR RELATIONS

Those charged with "fighting" corruption and indeed the general public can be forgiven for seeing the issue of corruption prevention in simple terms of right and wrong. Since corruption is a Bad Thing, it is commendable to introduce procedures for identifying and reporting instances of corruption and for preventing such practices occurring or flourish-

23 *Independent Commission Against Corruption Act 1988* (NSW) s11.

24 United Nations General Secretariat, *Crime Prevention and Criminal Justice in the Context of Development: Realities and Perspectives of International Co-operation; Practical Measures Against Corruption*, Eighth UN Congress on the Prevention of Crime and Treatment of Offenders, Havana (1990) p 17.

ing within organisations — so the reasoning goes. As employers, however, public sector managers are compelled to view corruption prevention not just as a societal issue, but as a matter of human resource management and, in so far as unions become involved, of industrial relations.

At one level, the introduction of a code of conduct is an unequivocally positive move for any organisation. No sensible analysis of employee relations can ignore the need for the explicit formulation of the standards which managers expect of their workforce and for the communication of these standards to both workers and supervisors. There can be little doubt therefore that codes of conduct which seek to detail forms of behaviour which are or are not acceptable in the case of particular types of worker can play a very important educative function. Although the virtue of this function is often expressed negatively (“if workers have been told exactly what not to do they can’t turn round later and say they didn’t know”), a more positive rationale would be to highlight the effect that formulating such codes has on management, in that it becomes necessary to address in a very careful fashion what constitutes acceptable practice. Anything which enhances communication between management and labour and which compels a reappraisal of standards, at least if it is well done, is a welcome step forward.

However when codes are used for the specific purpose of combating corruption, difficulties may emerge. It is a truism that corruption within an organisation is likely to be firmly rooted in attitudes and workplace culture. This much has been recognised by the ICAC in New South Wales:²⁵

There are organisational, cultural or systemic factors which inhibit the reporting of corrupt conduct or the timely referral of reports through the appropriate channels to the principal officer. These include:

1. Cultural antipathy to “dobbing in your work mates”.
2. A tendency at all levels of an organisation to accept long standing practices, even where they may involve or facilitate corrupt conduct. Examples include receipt of gifts, entertainment or favours, and procurement and tendering procedures.
3. Immediate supervisor’s possible involvement or association with those involved.
4. Disinclination to report if past experience has shown that “nothing happens” and/or that those who report receive negative treatment, for example being labelled as “troublemakers”.
5. Insulation of principal officer and senior management from level 4 employees.
6. Lack of clear and appropriate rules for referral and/or action where corrupt conduct is suspected.

Baseless complaints made to injure the person(s) implicated or to divert attention may be an additional problem.

Unfortunately the bulk of the ICAC’s public pronouncements suggest a belief that merely by introducing codes results will begin to be seen. It is as if it is thought that a

25 Effective Reporting of Corrupt Conduct Within Government Departments and Agencies, ICAC, Sydney, 1990, pp 1-2.

code *is* compliance, that a channel of communication *is* reporting. Introducing a code is merely the first step: it is at the stage of *implementation* that the task of turning rhetoric into reality becomes more problematic.

The manner of a code's introduction may itself be a crucial factor in determining the likelihood of successful implementation. Broadly speaking, there is a choice here between on the one hand imposing a code from above, and on the other hand negotiating with employees and/or unions over its contents or its introduction. The great danger with unilateral imposition is that it may produce from the workforce a hostile reaction or, worse still, no reaction at all. It is interesting to note in this context that in a recent survey, although 49 per cent of Australian workplaces with more than 20 employees were found to have in place a formal procedure for resolving workplace grievances, 40 per cent reported that these mechanisms were rarely or never used in practice, while only 16 per cent reported regular use. The authors of the survey pointed out that in many instances the relevant procedure had been imposed by senior management or had been formulated through collective bargaining or award negotiations occurring away from the workplace.²⁶ This suggests that informal arrangements worked out between those actually present at the workplace are preferable as a means of dealing with disciplinary matters and other grievances in such a way as to command acceptance and generate regular observance.

The problem in this specific context is that neither the use of informal arrangements nor the sort of compromises which may have to be struck to ensure that a code is accepted and used may be appropriate where corruption is concerned. It can be argued that the very flexibility, deal-making and relaxed attitudes to formal constraints which are best calculated to minimise shop floor hostility and maximise employee co-operation are themselves the classic breeding conditions for corruption in the first place.

Nevertheless, negotiation, compromise and informality may be the lesser evil here. It is simply naive to proceed on the basis that fighting corruption is self-evidently a worthy process, or that introducing a code will strengthen the honest, dismay the corrupt and deter the waverers from slipping into evil ways. Put simply, however "sensible" or "right-minded" observers might view the introduction of codes of conduct, workers and their representatives may well react very differently.

Common sense and some discussion with union officials in the New South Wales public sector about the issues thrown up by current or proposed codes of conduct suggest the sort of difficulties that may be encountered. In the first place, the introduction of a code may be seen, no matter how irrationally, as a pretext for an attack on working conditions. This is especially likely in a climate where (as at present in New South Wales and in most of the rest of Australia) public sector workers feel very much on the defensive in the face of "efficiency" reforms and job-shedding programs. Secondly, there may be a strong suspicion that the entire corruption prevention exercise is more a matter of "do as I say" rather than "do as I do". The belief may exist that while workers are to be targeted by the new mechanisms, supervisors and managers will be subjected to the same restrictions in

26 Callus, R, Morehead, A, Cully, M and Buchanan, J, *Industrial Relations at Work: The Australian Workplace Industrial Relations Survey* (1991) pp 129-132.

theory only and that corruption at higher levels within an organisation will continue unchecked. A variation on this point is the general feeling that workers may have that they are being unfairly singled out in the drive to stamp out corruption. Corruption manifests itself in many areas of society, yet so far as government strategies are concerned almost all attention has been focused on the workplace. Even those investigations which have centred on political corruption have usually involved scrutiny of a public official in relation to the discharge of their duties. Thirdly, there may be a belief among professional employees in particular that ethical standards should not be handed down from senior management, but should be internally generated by the professionals themselves, as the persons best suited to make realistic decisions as to the issues involved.

Most importantly though, the reaction that most Australian employees are likely to exhibit on hearing of a proposal to introduce a code of practice will almost certainly involve asking "what does this mean I can get charged with?". In other words, despite the intention that codes are, to some extent at least, to operate merely as guidelines to which voluntary compliance is urged, workers and unions will inevitably focus on the disciplinary sanctions that may ensue from a breach of the code, furthering the likelihood of a negative or hostile reaction. This reflects a traditional feature of workplace relations in Australia: the failure of many managers to find methods other than intimidation and discipline by which to promote better behaviour, a higher level of morale and greater productivity from their workers.²⁷ Against this background, codes may struggle to fulfil their educative function for workers (and managers) more used to punishment and threats.

This problem is likely to be exacerbated where, as appears to be the case in New South Wales at present, codes are introduced without sufficient thought being given as to the consequences of violation of the standards laid down. One response of course may be that the codes are intended to have no legal effect. But if this is so, unions are likely to respond, why bother introducing it? It is pointless for management to argue that this attitude is misplaced. The fact is that a code of conduct will be of no use whatsoever if it is expressed in such vague and general terms as to give no concrete guidance to employees as to how to behave in given situations. As soon though as a code takes on a more definite cast it will also become apparent that its provisions may be breached from time to time. It is a perfectly legitimate query for workers or unions to explore the consequences. Indeed, in talking to supervisors and middle managers, it is clear that they will tend to view the code in exactly the same light.

There can be little doubt that, at least in Australia, codes of conduct do in fact have the potential to create legal consequences for violators. Even if the relevant code is expressly stated not to have legal force, it is more than likely that external review agencies called upon to determine whether workers have committed offences which would warrant discipline or dismissal will feel impelled to take the code into account in the course of their deliberations. This may happen in one of two ways. A common feature of the statutes which establish the disciplinary framework for public sector workers is the creation of a variety of offences which are described in very general terms, such as "misconduct".²⁸

27 See further Stewart, A, "Workplace Disciplinary Rules and Procedures: Australia", International Labour Organisation research paper, 1991 (on file with the authors).

seem reasonable to suppose that in amplifying the content of this sort of vague standard a tribunal would look to the provisions of the code for guidance. Alternatively, a worker disobeying a specific instruction to abide by the provisions of the code might be charged with failing to obey a "lawful order", the code again being a principal determinant of what may lawfully be ordered.

If this is correct, it becomes apparent that merely by introducing a code, management may effectively be exposing to disciplinary sanctions conduct that was not formerly so exposed. In that light, it would hardly be surprising if workers and unions reacted with some alarm or trepidation. Two comments made by union officials are of some interest in this connection. One asked what "corruption" was supposed to mean. Was it, he wondered, like conspiracy — something you're charged with when they can't prove anything specific against you like fraud or taking a secret commission"? Another pointed out the possible use of disciplinary proceedings triggered by the breach of vague ethical requirements as a pretext for getting rid of staff for extraneous reasons such as personality conflict. It is indeed interesting here to note one provision of the recently revised New South Wales Public Service Personnel Handbook, which requires public servants not to cause their fellow workers or members of the public to take offence or suffer embarrassment. The possibilities of a disciplinary charge predicated on a breach of that particular standard are readily apparent, no matter how fanciful the notion might seem.

Obviously then the educative function of any code of conduct needs to be strengthened by addressing the legal consequences of any "new" ethical standards which are being imposed and by explaining those consequences to the workers affected. This very definitely entails going beyond the practice of having workers sign to say that they have read and understood the contents of the code. Quite apart from the problem of those workers who are illiterate or unable to comprehend what they are reading, it should be obvious that unless accompanied by carefully constructed training and education programs, this will merely be administrative convenience masquerading as communication. More fundamentally, there is a need for a *managerial* strategy which is calculated to secure genuine acceptance by the workforce of ethical and legal norms.

PRO-ACTIVE MANAGEMENT STRATEGIES

The foregoing has endeavoured to emphasise the need for a reality of consensus if a code of conduct strategy is to move beyond good intentions. Essential to the emergence of consensus in a traditional industrial environment, where suspicions surrounding the enunciation of work standards are not difficult to identify, is the need for genuine co-operation. Meaningful guideline strategies for corruption prevention depend on their acceptance at all levels of an enterprise, particularly where sections of the enterprise may be set against prevention for reasons of individual financial gain. Having said this, the importance of managerial initiative beyond the simple imposition of another layer of authority and reporting cannot be over-emphasised.

3 See generally McCarry, G J, *Aspects of Public Sector Employment Law* (1988) chs 6-7.

Model practice commitments from management

Recognising that content is largely agreed at the upper levels of management and that "one on one" channels of accountability are expected, an important method to translate compliance down through an organisation is to initiate the implementation of the code within management. The model relevance of the code at this level may avoid the impression that it is little more than another disciplinary tool designed to unilaterally alter conditions of employment.

Employee motivation

The instructional function of the code is evidenced through modelling as well as through specific awareness programs and retraining. The latter must emphasise the direct utility of the code (and a non-corrupt work environment) in terms of work place priorities. "In this area, precision and subtlety may have to be sacrificed to clarity and enforceability".²⁹

Internal reporting procedures

These procedures are essential for the information gathering, and monitoring stages of corruption prevention. Channels of communication through "one on one" accountability structures help in overcoming the warping influence of organisational culture. A well motivated public service with strong standards of professional integrity can do much to resist the abuse of office so long as its code of professionalism is not distorted by a mistaken sense of solidarity or defensiveness against acknowledgement of professional wrongdoing.

Methods for countering intimidation

Any reporting system depends heavily on the willingness of those who become aware of possible corruption to put their personal security at risk by disclosing information. Harrassment or victimisation of "informants" is plainly then a matter for concern. Whatever the promises of anonymity and confidentiality made to such persons, the risk of their identity becoming known to fellow workers or managers is always likely to be appear considerable to them, regardless of the objective circumstances. Any deficiency then in the arrangements for the protection of "whistleblowers", particularly those who use reporting channels which bypass established hierarchies or lines of authority, may detract significantly from the efficacy of strategies for the reporting of corruption allegations.

At one level this concern can be met by legislative measures to protect such persons, particularly against "retaliatory discharge" from their employment. Although Australia has been slow to recognise this need by comparison with other countries, Queensland at least has begun to move in the right direction.³⁰ However while this sort of initiative may help to correct injustices in individual cases, there is only so much that can be done by external regulation to generate the sort of atmosphere within an organisation that will counter or at least minimise intimidation. Much depends on the design of internal processes. Beyond the level of implementation through example, the effective operation of

29 United Nations General Secretariat, above n24 at 13.

30 See Electoral and Administrative Review Commission (Qld), *Protection of Whistleblowers*, Issues Paper No 10 (1990).

prevention strategies which are not sanctioned must rely on a responsible and specifically accountable structure of accountability. Organisations can be subverted if they operate without clear lines of accountability. Equally, accountability processes can be intimidated if they focus on a vulnerable few. To diffuse responsibility and to avoid the creation of targets in all situations of corrupt opportunity is to counter potential intimidation.

Independent audit function

The debate on this issue is concerned with the necessity of such supervision and its effect on the environment of compliance. Should the audit be favoured, then is it to be internal, external or independent? Operational responsibility for any management audit and integrity inspections can generate jurisdictional contests which extend beyond a concern about corruption. The association between a complaints function and an audit capacity is prominent in corruption prevention policy. The internal and external credibility of the auditors will influence their ability to receive and screen complaints, and provide a supervisory function throughout levels of corruption opportunity and across all positions and managerial relationships within an enterprise. Audit mechanisms can also be applied to the task of exposing the interrelated costs of corruption.

Countering conflicts of interest

An assumption which must underlie the introduction of an anti-corruption code of conduct is that beyond those contradictions which will necessarily arise as part of a prevention perspective, the code of conduct will not itself generate conflicts of interest which cannot be resolved through following the code. Conflicts between official duty and private self interest are at the heart of the need for codes of conduct. However, a realistic prioritising of those forms of self interest which require intervention is necessary if a code is to avoid ridicule. Conflicts which threaten the public good, more than simply the integrity of code policy, are an appropriate focus for regulation. In this respect the criterion for criminalisation of conflicts of interest may be too limiting.

BEYOND THE RHETORIC OF GOOD INTENTIONS

The deterrent effects of investigation and prosecution and the direct incapacitation of wrongdoers by their removal from office and incarceration can reduce corruption in government. Yet virtually all practitioners involved in anti-corruption efforts would concede that, no matter how draconian or rigorously enforced the penal measures may be, no society can realistically punish more than a small proportion of the officials who abuse their position. If the level of integrity in government is to be improved it will be by managerial, administrative, regulatory and reporting mechanisms. No matter how frequently imposed or personally gratifying they are to anti-corruption authorities, penal sanctions can help to achieve honesty in government only in a well-administered and well-motivated organisation.³¹

The thrust of this paper has been to stress the importance of carefully thought out implementation strategies whenever codes of conduct are introduced to help prevent corruption. Merely settling on the language to be used and informing those directly involved of

31 United Nations General Secretariat, above n24 at 9.

the code's existence is not enough. It may sound trite, but the point cannot be over-emphasized: codes do not implement themselves. The overriding objective must be the formulation of processes which will avoid two pitfalls. One occurs where promulgation of the code exhausts all enthusiasm for prevention, management simply sitting back with the satisfaction of a job well done. In that scenario the code can simply become a cover for inaction, allowing corruption to flourish behind the facade of official concern. The second pitfall occurs at the other extreme, where unilateral and heavy-handed action by management creates an industrial battleground over the issue of disciplinary outcomes. These potential problems can only be overcome by a strong commitment to communication at all levels within the organisation as to the policy objectives of the code, the changes it requires to present practices and, perhaps most significantly from the viewpoint of labour relations, the extent to which it will or will not affect the legal and practical norms regulating disciplinary processes and sanctions.

Much of the problems surrounding implementation can be traced to the fact that in most instances both the urge to introduce a code and the creative work on its content are likely to come from persons outside the organisation in question, or at least officials who are above any of the levels of decision-making or performance at which the code will have most effect. This feature can of course be seen as an advantage, in that an externally imposed code is less prone to subversion from the outset by the very practices and people it is seeking to combat. But by the same token, if by the time the code reaches the workplace the only issue is its implementation, the problems described above (inaction at one extreme, industrial confrontation at the other) are more likely to arise. The answer must lie in finding some way of involving those who will be subject to the code during the prior process of formulation. Difficult though it may seem, to some extent at least the independence of the code process must be traded off against considerations of efficacy in implementation. Somewhere there will be common ground between the implementers and those at the workplace who are affected by the code. The trick is to identify that ground without sacrificing the fundamental objectives of the code or of the wider program of corruption prevention of which it forms part: a task that calls for skilful management indeed.