



NSW Public Sector Ethics Stocktake St James Ethics Centre Report

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1 Summary

This report presents the results of St James Ethics Centre's research project to investigate the ethics issues experienced by NSW public service employees and the ways in which they feel agency policies, systems and other initiatives have been more or less effective in dealing with significant ethical issues. Our research is based on discussions with approximately 220 public servants in interviews and focus groups conducted between April and July 2012. The public servants were generally relatively senior and drawn from approximately thirty agencies. The insight gained into the current public service ethical environment is intended to contribute to the design of the implementation of the recently legislated NSW public sector ethical framework.

1.1 Main ethical issues reported

Listed below are the main areas of 'ethical challenge' reported to us, taking account of the frequency with which the issues were raised and the importance attached to the issues by the public servants who raised them. When considering these issues it is important to bear in mind that:

- These are the issues reported to us, without further investigation by us. Whilst reported by a range of public servants, they were not reported as issues for all agencies we spoke to.
- We found almost uniformly across all the public servants we spoke to a strong commitment to safeguarding and building ethical cultures within their organisations.
- Along with the ethical challenges, we also heard about a range of initiatives in the public service which are building capacity to deal with those challenges (a number of which are reflected in our recommendations).

Pressure on decision making

Many public servants experienced pressure which they felt made it harder for them to fulfil their role of providing frank and fearless advice and to make consistent decisions in their roles and the delivery of services. There were concerns about non-transparent influences, felt directly and indirectly from Ministerial offices and interested parties outside the public service. There were also concerns about an excessive impact of media on policy and determination of work priorities.

Praise and criticism of leadership

Some public servants saw leaders strongly modelling public service values in their leadership and management of agencies. Others saw little evidence of the provision of frank and fearless advice and robust debate, and were concerned that senior leaders were simply responding to directives from above without setting a clear direction for the organisation.

Demoralised by challenges in managing underperformance

Public servants reported obstacles to effective management of employee underperformance: the frequent use of grievance processes and other tactics by staff to obstruct performance management processes; a lack of manager understanding of their performance management responsibilities and a lack of skill to perform those responsibilities; a lack of organisational commitment to confronting workplace cultures which tolerate sustained underperformance.

Challenges to operation of a meritocracy within the public service

Concerns were expressed about favouritism and jobs for mates in recruitment and advancement decisions. We encountered managers who were frustrated by their limited power to advance and reward staff according to merit.

Restructuring fatigue; concerns about public perceptions

Many are insecure and demoralised by organisational change, uncertain over the direction of their organisation and the effect of changes on service provision. Change is also seen to create additional opportunities for unethical behaviour (for example, bias and favouritism in appointments) and perhaps to increase the likelihood that insecure public servants will exploit those opportunities. There are also concerns that the need for organisational change is portrayed as an indictment of current public servants and the work they do, and more generally that the public service is invariably presented negatively in the media leading to low public respect for public servants.

Process and procedure

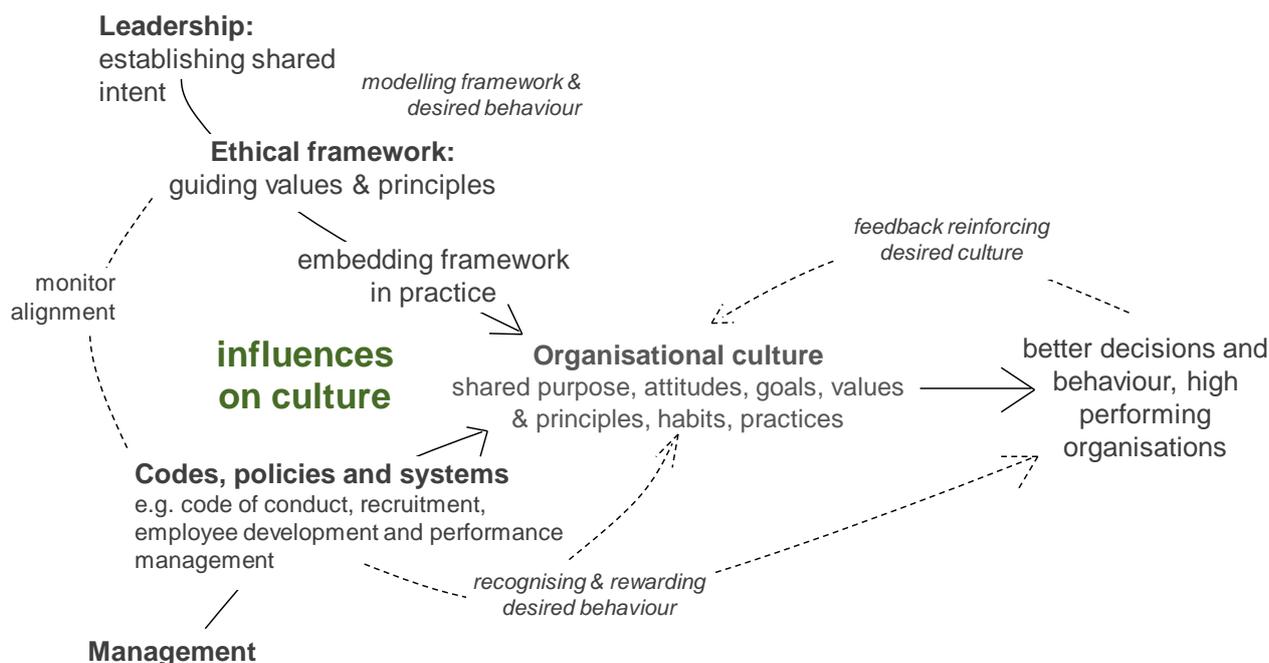
Some saw an excessive focus on following procedure at the cost of maximising effectiveness and efficiency of service delivery. Others supported adherence to process as a bulwark against inappropriate pressure and bias.

A large number of other ethical issues were reported to us, described in section 3 of this report.

1.2 Opportunities for positive change

As one would expect of a complex and diverse public service, the issues faced are complex and diverse and demand a multi-faceted response to change long-standing attitudes and practices in some cases. We encountered some scepticism about the prospect of 'solving' certain issues which are seen to be perennial and deeply entrenched in some agency cultures – or at least of tackling them at a time when people are overwhelmed by organisational change. More hopefully, we encountered a number of recent and ongoing changes in the public service which are helping address the ethical issues reported and which have greatly informed our recommendations.

The following diagram is intended to help convey some of the key elements of building robust ethical cultures. Specific areas of opportunity for positive change identified through our research are then outlined below the diagram, followed by a complete list of our recommendations.



Leadership

Leaders throughout the public service need to find ways to actively exhibit and model organisational values and principles, and to challenge those aspects of existing custom and practice which are targeted for change. Senior staff need appropriate leadership (not just management) training so they are able to build organisations comprised of people who are not simply rule followers but who have the authority and capacity to make good decisions guided by the organisation's ethical framework. Leaders also need to find ways to actively support and affirm their people and the work they do, particularly as they work to implement needed change.

Embedding ethical frameworks

Agencies need to develop strategies to ensure that their ethical frameworks play a practical role in helping guide behaviour and build a high performing public service. They need to identify and remedy those areas where practice within their organisations is out of alignment with agency values and principles. Some positive initiatives already in place in the public service include:

- workshops, role playing and coaching to build communication and performance management skills;
- changes to work practices to encourage openness about work being undertaken by individuals and individual groups, encouraging greater collaboration, knowledge sharing and consistency;

- workplace behaviour workshops tied to agency values and principles;
- training resources for managers;
- award systems to recognise lived values and principles;
- new processes around dealing with grievances and bullying allegations;
- the positive influence of leaders building team practices which embed values and principles.

In general we found a desire and trend to move away from high levels of prescription and towards greater autonomy and capacity to make decisions guided by organisational values and principles. We support the general trend we found to shorter codes and policies, supplemented by linked resources offering more detailed information and guidance when needed.

People recruitment, performance and development

Many reported an inconsistency between an espoused commitment to a merit based public service and practices around the recognition of merit and the management of good and poor work performance. This is a challenging area, measures to consider include:

- increase flexibility to develop, reward and recognise high performing staff exhibiting organisational values and principles;
- achieve greater clarity and understanding of employee function, responsibilities and the way those responsibilities are to be performed, within the framework of the agency's purpose, values and principles;
- build a culture of constructive on the job feedback alongside more formal reviews;
- find ways to demonstrate a commitment across the organisation to responding decisively and appropriately to misconduct and underperformance;
- simplify and shorten job specifications, including a greater focus on functional role and capability requirements over extensive lists of task specifications.

Open, speak up cultures

The building of open, speak up cultures is critical to both (1) embedding organisational values and principles so they make a difference and (2) addressing many of the ethical challenges identified. Key elements of such a culture include:

- licence and skill to discuss difficult and sensitive issues, using the language of values and principles;
- agreement on what the public service and individual agency values and principles mean in terms of expected behaviours in specific work environments and for specific tasks and functions. (These expectations should then be incorporated into individual and team performance and development plans.);
- a culture of internal and external transparency, where information and knowledge is shared where such sharing can contribute to collaboration and pursuit of the purpose of the organisation, unless there is a good reason not to (for example, privacy and confidentiality considerations).

Relationship with Ministerial offices

To help public servants distinguish between appropriate and inappropriate Ministerial office direction and influence, and to better equip them to respond appropriately to the diverse influences on their decision making, we recommend consideration of a number of measures. We propose that agencies and the offices of their Minister(s) agree clear protocols for engagement between them, including in relation to policy development; responsiveness and performance issues; delegations of authority within Ministerial offices and agencies. We propose communication and training to build understanding on drawing the line between responsiveness and politicisation of the public service, as well as understanding of inappropriate political activity by public servants. Opportunities should also be explored to make the reasons for decisions more transparent and to demonstrate that decisions are aligned with agency values and principles, particularly where decisions involve a departure from normal policy and procedure. (This obviously needs to take account of legitimate confidentiality and privacy considerations.)

Public Service Commission role

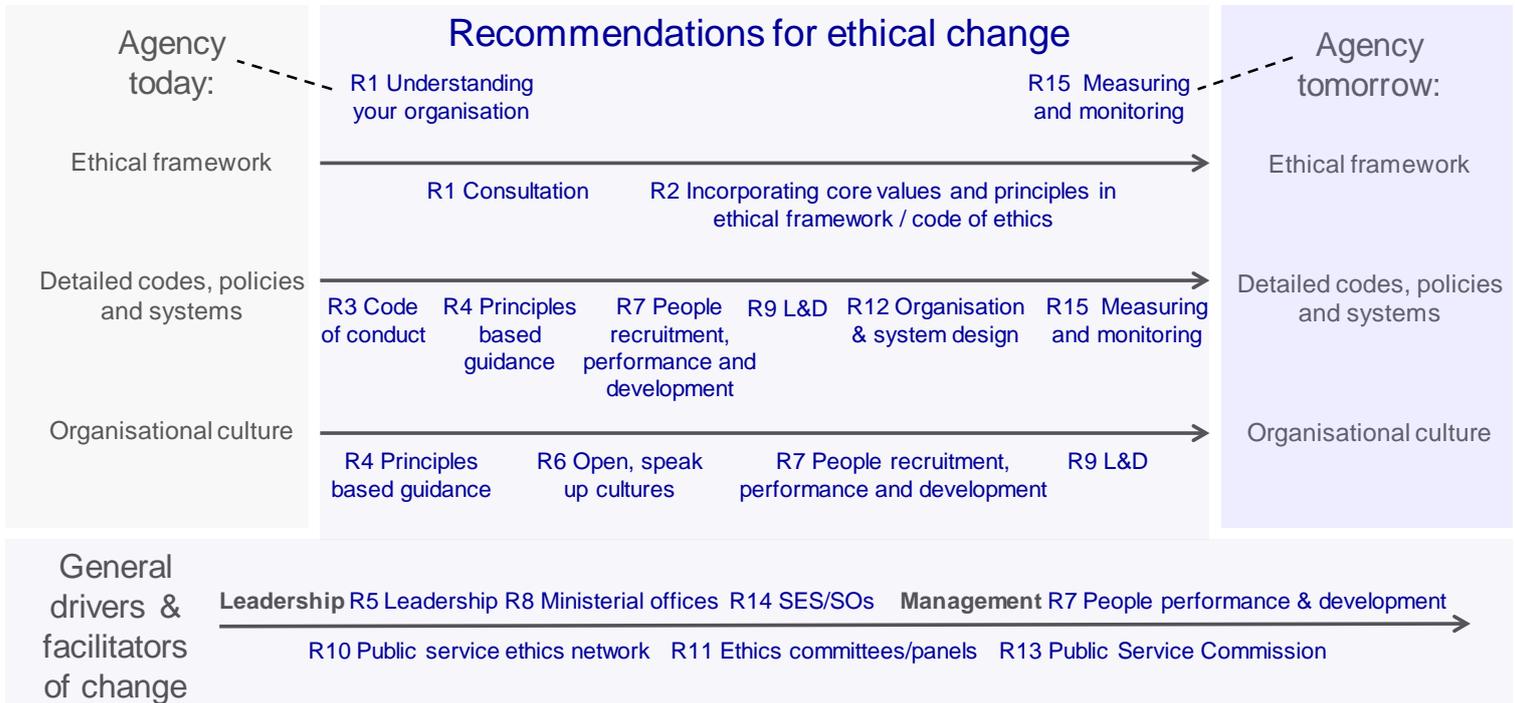
Public servants are hopeful about the role the Public Service Commission can play in helping agencies implement the new ethical framework, as well as supporting them more generally in building ethical organisations and meeting the fundamental challenges they have reported. Specific roles include facilitating the exchange of information about experiences (particularly successful ones) within the NSW public service; promoting dialogue about shared challenges; creating model codes; and contributing to the development of learning and training resources.

Complete recommendation list

We provide below a list of all our recommendations (including the main areas for change already highlighted above). Many of the actions we recommend have already been initiated or implemented in parts of the public service. Not all our 'recommendations' are recommendations for a specific change: some are recommendations for consideration of a particular type of measure and some simply identify important choices that agencies will need to make when revising and implementing an ethical framework. For a complete understanding of the recommendations they should be read in conjunction with the accompanying discussion included in section 7 of this report.

It is important to emphasise that there is not a straightforward mapping from the ethical issues we found to the recommendations we make. As already mentioned many of the issues faced demand a multi-faceted response to bring about change in entrenched aspects of organisational culture. A number of recommendations will typically be relevant to addressing an individual issue, and we refer to some of these connections in our more comprehensive presentation of the recommendations in section 7.

The diagram below is intended to assist understanding of the role(s) which each of the fifteen recommendations ('R1' to 'R15') play in bringing about ethical change in an organisation (refer also the diagram on page 2). Some of the recommendations are directed at particular characteristics of an agency, for example, the way in which its ethical framework or policies and systems may need to be reviewed and developed. Others relate to general capacities and resources of agencies which will be important for bringing about change generally, for example leadership and management capacity, which will be central to effective implementation of a number of the other recommendations. Some recommendations appear in several positions.



1 Understanding and consulting your organisation and stakeholders (section 7.1)

Agencies need to ensure they have a clear understanding of the ethical issues facing their people and the extent to which their organisation lives its espoused values and principles. This report, the State of the Sector Survey and existing agency data can all contribute to this understanding, but agencies will need to assess what further investigation is needed, for example, further internal consultation as well as engagement with external stakeholders such as clients and suppliers. This process of information gathering and analysis needs to be ongoing, and conducted in a consistent way that allows changes and trends to be identified and monitored.

2 Incorporating the legislated core values and principles (section 7.2.1)

The legislated core values and principles for the NSW Public Sector need to be included in the values and principles of individual agencies. We recommend that individual clusters and agencies have the flexibility to retain and develop their own statements of values and principles, provided they incorporate the

legislated values and principles and that any additions are consistent with the legislated values and principles. This is an important part of ensuring that agencies own their ethical frameworks and understand the need to connect them with their day to day functions and operations. Agencies can have distinct identities and still be recognisably a member of a NSW public sector united by core shared values and principles.

3 Codes of ethics and codes of conduct (section 7.2.3)

We recommend that individual clusters and agencies have the flexibility to retain and develop their own codes of conduct (or combined codes of ethics and codes of conduct), provided they are consistent with the legislated values and principles. Given the diversity of ethical issues identified in the public service, and the diverse contexts in which they can arise, agencies should have the flexibility to shape and frame their codes in a way which will best resonate with and engage their people.

Although we do not recommend requiring common codes of ethics and conduct across the public sector, it would be valuable for the PSC to develop a model code of ethics and new model code of conduct which could be adopted or developed by individual clusters and agencies.

4 Greater principles based guidance of behaviour (section 7.3)

Organisations need to balance their reliance on (1) principles and (2) prescription to guide and regulate behaviour. The right balance will vary according to the task or function being performed and the people performing it (and other considerations canvassed in section 6.2). However, we have found in the public service in general a trend away from high levels of prescription and towards greater autonomy to make decisions guided by organisational values and principles. To support this positive trend we recommend:

- shorter codes and policies, supplemented by linked resources offering more detailed information and guidance when needed;
- greater delegation of authority and responsibility to make decisions in accordance with values and principles, and creating conditions and skills for people to exercise this authority responsibly, including open, speak up cultures (see recommendation 6);
- greater internal transparency and sharing of information and knowledge.

5 Leadership (section 7.4)

Leaders throughout the public service need to find ways to actively exhibit and model their agency's values and principles. It is important that senior staff receive appropriate leadership (not just management) training so they are able to build organisations comprised of people who are not simply rule followers but who have the authority and capacity to make good decisions which advance the purposes of their organisation in accordance with its values and principles. Leadership capacity and potential also needs to be given appropriate weight in recruitment and promotion decisions.

Whilst agency shortcomings need to be honestly acknowledged in order that they can be addressed, leaders also need to find ways to actively support and affirm their people and the work they do, particularly as they work to implement needed change.

6 Open, speak up cultures (section 7.6)

An open, speak up culture is critical to both (1) embedding the ethical framework so it makes a difference and (2) helping public servants meet many of the ethical challenges reported. Key elements of such a culture which need to be supported (and if necessary developed) include:

- licence and skill to discuss difficult and sensitive issues, using the language of values and principles. The intention is to create an environment where openness is permitted and expected, and a positive generator of good decisions and innovation;
- an understanding of pressures on ethical decision making and action, and the open exploration of ways to respond to those pressures;
- on the job constructive feedback – positive and negative;
- agreement on what agency values and principles mean in terms of expected behaviours in specific work environments and for specific tasks and functions;
- a culture of internal and external transparency, where information and knowledge is shared where such sharing can contribute to collaboration and pursuit of the purpose of the organisation, unless there is a good reason not to (for example, privacy and confidentiality considerations).

Some examples of measures to nurture open cultures include programs to build skills in 'difficult conversation', using the language of values and principles; regular one on one and group meetings between managers and their reports around work programs and individual projects to discuss progress and share learning; building opportunities for open exchange of information and opinions and development of mutual understanding in and beyond teams.

7 People recruitment, performance and development (section 7.7)

Issues around the recognition of merit and the management of good and poor performance are complex, with some of the challenges involving attitudes and practices which appear deeply entrenched in some workplace cultures. There is no simple fix, but we raise the following measures for consideration:

- increase flexibility to develop, reward and recognise high performing staff exhibiting organisational values and principles;
- increase flexibility to avoid potential distortions created by fixed restructuring rules. (For example, we were told that prohibitions on refilling vacated positions can limit staff movements which would otherwise improve productivity and contribute to staff development with no net increase in staff levels.);
- achieve greater clarity and understanding of employee function, responsibilities and the way those responsibilities are to be performed, within the framework of the agency's purpose, values and principles. This includes agreement of expected behaviours and metrics for assessment of behaviours consistent with values and principles;
- build a culture of constructive on the job feedback alongside more formal reviews;
- develop managers' understanding of their performance development and management role, and build related skills (including to avoid long term tolerance of inadequate performance, which makes later action more difficult);
- find ways to demonstrate a commitment across the organisation to responding decisively to misconduct and underperformance. We were told that often the action taken against staff was cloaked in secrecy, with limited visibility of consequences to other staff. Managers should explore opportunities to appropriately publicise the consequences of unremedied underperformance and misconduct.
- discourage and sanction misuse of performance management, grievance, sick leave and whistleblowing systems, or modify those systems and processes. (Examples of such measures reported to us are described in section 5.4.4 and 5.5.5.);
- simplify and shorten job specifications, including a greater focus on functional role and capability requirements over extensive lists of task specifications;
- remove any inappropriate bias in recruitment processes against job applicants from outside the public service. (The preceding change may, for example, assist in this regard.);
- include outside-group representatives in decision making process for appointments.

8 Relationship with Ministerial offices (section 7.8)

To help public servants distinguish between appropriate and inappropriate Ministerial office direction and influence, and to better equip them to respond appropriately to the diverse influences on their decision making, we recommend consideration of a number of measures.

Engagement protocols

We propose that agencies and the offices of their Minister(s) agree clear protocols for engagement between them, including in relation to policy development; responsiveness and performance issues; delegations of authority within Ministerial offices and agencies; Ministerial office involvement in the making and review of decisions of different types.

Communication and training

We propose increased communication and training on drawing the line between responsiveness and politicisation of the public service, as well as understanding of inappropriate political activity by public servants. For example, training programs could help develop an understanding of the difference between legitimate responsiveness to the government of the day and activity which might threaten the apolitical integrity of the public service. The objective would be to build skills on drawing the line in practical situations, for example, distinguishing between policy marketing and the provision of program information; distinguishing between formal and informal direction from Ministers and their advisors; understanding

policy contestability; avoiding the influence of personal political and policy views and passions; dealing with requests to revise advice.

Greater transparency

Opportunities should be explored to provide greater transparency to demonstrate that senior level decisions are aligned with values and principles, particularly where those decisions involve a departure from normal policy and procedure. This obviously needs to take account of legitimate confidentiality, privacy and other considerations. The objective is to create conditions which support open, constructive dialogue rather than an environment where Ministerial instructions and priorities are simply relayed down an agency hierarchy to be implemented without the opportunity for discussion or consultation.

9 Learning and development approaches (section 7.9)

Clusters and agencies will need to develop their own implementation plans to address the elements of an ethical public service discussed in the preceding recommendations. Specific programs may include leadership, performance management and good decision making programs, workshops and coaching. It will be critical to include learning and development initiatives which are integrated into the day to day operations of agencies and teams (as well as standalone programs).

The appropriate mix of learning and development tools and programs will depend on the different situations, roles and needs of groups within an agency. There are a range of choices to be made in developing specific implementation measures. Will a training program focus on the delivery of information or will it involve interaction with participants? Will the training be online (including social media) or face to face? Will the program be integrated into existing activities of employees or will it be a standalone program? Will the training be delivered direct to the 'end user' or will managers and others be trained to deliver programs to their staff? Will the program have broad application across the agency or will it be directed at specific roles or teams?

A variety of implementation measures and approaches will be needed, and the appropriate mix will need to take into account factors such as different learning styles; different generations; different work locations; different professional and educational backgrounds; different work role situations (counter service, back office, community based, for example).

Implementation strategies will need to address the following:

- securing and communicating commitment from the top;
- making practical connections between higher level values and principles and the way in which the organisation operates and people carry out their day to day. This should include equipping people to work out (and commit to) these connections themselves in their work groups and teams;
- giving people the skills to be more than rule followers, for example, building understanding of the elements of good decision making and capacity to make good, transparent decisions, aligned with the organisation's values and principles;
- combining standalone code of ethics and conduct training with processes which are integrated with day to day work practices. For example, at each team meeting a different team member may be nominated to describe a recent situation in which a particular value or principle has been demonstrated (or was not demonstrated);
- key ethical challenges within the organisation. For example, if some types of conflict of interest are often overlooked or poorly managed, then this may be an area of specific focus or separate training;
- supporting managers and supervisors to lead and facilitate implementation in their teams, for example, building skills and providing resources (presentations, toolkits, case studies) to allow code training to 'cascade' throughout the organisation;
- building open, speak up cultures (discussed in an earlier recommendation);
- alignment with people performance and development (discussed in an earlier recommendation);
- a choice of avenues for raising concerns;
- decision making support facilities;
- monitoring, responding to and enforcing adherence to codes (discussed in a recommendation below).

10 **Ethics network** (section 7.10.1)

We recommend establishing a cross-agency collaboration and support network for ethics across the public service. This would facilitate the exchange of ethics policy, program and other ethics-related resources, activities and ideas. There are existing NSW public service collaborative networks which may provide a model for this.

11 **Ethics committees / panels** (section 7.10.2)

Consideration should be given to the establishment of ethics panels (where they don't already exist) which would take ownership of ethical framework development and implementation; and which are responsible for overseeing, coordinating, measuring and monitoring the effectiveness of the various programs and measures initiated to improve the ethical climate within their cluster or agency. Ethics committees will need to include senior representatives from across the organisation: operational areas as well as some or all of human resources, risk, audit, legal, finance, service and governance functions. Consideration should be given to external as well as internal membership. The role and framework for an ethics panel should take account of the overall governance structure for the agency and existing ethics-related functions allocated to other bodies. An ethics panel need not assume existing ethics-related responsibilities already allocated within a cluster, but may simply assume a more general oversight and coordinating role.

12 **Organisation and system design and alignment** (section 7.10.3)

It is obviously crucial that the articulated purpose, values and principles of an organisation are aligned with other policies, procedures and practices within the organisation. For example, an espoused value of collaboration or teamwork is unlikely to shape behaviour if the practices around employee remuneration, appraisal and development take no account of an employee's demonstration of those values (see recommendation 7 above). Agencies need to critically assess all their systems and policies to check that they are not 'signaling' a demand or tolerance for unethical conduct. Our report includes examples of changes agencies have made to work processes in order to reduce the risk of misconduct.

13 **Public Service Commission** (section 7.10.4)

Public servants are hopeful about the role the Public Service Commission can play in helping agencies implement the new ethical framework, as well as supporting them more generally in building ethical organisations and meeting the fundamental challenges they have reported. Specific roles include facilitating the exchange of information about experiences (particularly successful ones) within the NSW public service; promoting dialogue about shared challenges; creating model codes; and contributing to the development of learning and training resources.

14 **Senior Executive Service and Senior Officers** (section 7.11)

We recommend that the way in which Senior Executives and Senior Officers are engaged and 'deployed' be reviewed. One aspect is the disparity between the practice of SES engagement under contract and Senior Office engagement as permanent employees. We heard a variety of views about the reasons and implications of this difference, and about other differences and similarities between Senior Executives and Senior Officers. A review of the way in which senior staff are engaged may result in some of the differences being removed and/or measures being put in place to mitigate potential negative consequences of these different forms of engagement. Where it is considered appropriate to retain differences in the way senior staff are engaged, the reasons for those differences should be clearly articulated and communicated.

15 **Measuring and monitoring** (section 7.12)

Agencies need to collect and analyse information which tracks the ethical health of their organisation in a way which is relevant to their operations and workforce. They need to monitor current ethical issues facing their people and the extent to which their organisation is living its espoused values and principles. They need to track the impact of initiatives to help embed agency ethical frameworks. Possible metrics and indicators relevant to the ethical health of an organisation include those listed in section 7.12 of this report. Tools to collect relevant data include surveys, interviews and focus groups, covering both internal and external stakeholders. Agency records of complaints, grievances, leave and staff movements are also valuable sources of data.

2 Research project objective, method and limitations

2.1 Objective

Our research aims to contribute to understanding of the following elements of the public service environment which will be critical to the design of the implementation of the legislated ethical framework:

What's out there: What are the ethical issues facing the public service and the ethics policies and systems in place to manage these issues?

What's working and not working: Where are the ethical gaps between policies and systems and actual behaviour and outcomes?

Relationship with agencies: How are the ethical issues, policies and systems and successes and failures related to the different characteristics of agencies?

Remedying the gaps: How can the identified ethical gaps be remedied?

Who's out there: What are the existing human resources across agencies who can inform and participate in the implementation of the ethical framework?

2.2 Method and limitations

This is a stocktake of ethical issues and ethics-related policies and systems across the NSW public service. It explores ethical issues as they are experienced by public servants. The stocktake was conducted through in depth telephone interviews with 63 public servants from 32 agencies as well as 23 focus groups involving a further 160 people. The focus groups included six in regional centres and three with interview participants to discuss our emerging findings and recommendations. The interviews and focus groups were conducted between April and July 2012, and further details are included in schedule 1.

Participants were nominated by senior staff of the nine clusters comprising the public service. At the commencement of the research the Public Service Commission wrote to the Directors General of the nine clusters informing them of the study, requesting their participation and asking them to nominate a person to liaise with the study team. These nominees were in turn asked to nominate suitable people across the cluster in agencies who could represent the range of kinds of public servant activity taking place in the cluster. Our aim was to learn about the range of ethical issues that would be experienced in the range of public service working situations from frontline community workers, police, ambulance staff to teachers and health professionals, policy staff in head offices and officers working in various roles in regional locations and so on. We followed a similar process in agencies' recruitment of participants in focus groups. We found that participants in interviews and focus groups were knowledgeable and forthcoming, and easily able to recognise and discuss the ethical issues they and their colleagues experienced. The interviews were 'open-ended' in that we did not have a fixed structure of specific questions which were asked in all interviews. Rather we invited participants to identify the ethical issues that were significant for them and then explored these and associated issues in interviews which generally lasted more than an hour. Interviews were conducted on the basis that the information provided would be used for our research and report, but that individual interviewees would not (without their consent) be identifiable from our report.

Our assessment of the significance of individual ethical issues for the purpose of this report takes account of the frequency with which issues were raised by participants and also the importance attached to them by participants. For example, how did a participant rank the issue compared to other issues they raised? What was the size of the impact (as assessed by the participant) of the issue on the capacity of public servants to fulfil their responsibilities? It was originally contemplated that our research would also include analysis of data from a broad, sector-wide online survey as well as complaints and misconduct data provided by agencies. However, survey data is now being collected and analysed as part of another

project, and we obtained (limited) complaints and misconduct data from only two agencies, so we have not had regard to these sources of data in this report. As a result, this report discusses significant ethical issues experienced in the public service, but does not address how widespread these issues are across the public service.

We also collected and considered ethics-related policies from 19 agencies across 9 clusters. Our analysis is included in schedule 4. We collected the policies through a combination of searching agency websites for publicly available policies and requesting copies of policies from interviewees. We obtained other information about agency approaches to policy development, design and implementation through the interviews described above as well as eleven more specific 'policy interviews' which concentrated on policy development and implementation.

This description of our approach indicates its strengths and its limitations. The strengths lie in the narratives of the lived experience of public servants that it gives. The narratives, which are usually shared within groups of people within their agency, include an understanding of the issue, its interactions with other elements in each workplace and service delivery situation, and the responses it arouses in the people experiencing them. This has given us vivid case examples of particular ethical issues and in some cases larger case studies of ethical cultures that have developed in sections of the public service. This holistic understanding provides a basis for insight and proposal of developmental and remedial strategies for building ethical culture in the public service context. Most of these strategies are themselves cases reported by participants.

So while offering us a rich source of data on ethical issues and cultures across the public service, our methodology does not give us what might be called a 'representative' view. We did not survey a broad sample of public servants. We relied on a relatively small number of designated people in clusters to identify appropriate participants, and those selected participants were strongly weighted towards more senior public servants. We did not gather data from other stakeholders such as clients, commercial partners and suppliers, Ministerial offices and unions. As a result there was, for example, more limited participation by frontline service staff and therefore perhaps relatively less discussion of issues connected with direct interaction between public servants and clients. This does not mean that our findings are not substantiated. The ethical issues we discuss we heard a number of times in different contexts and some were very widely reported to us. Our research method of gathering and analysing information from a variety of sources has allowed us to identify and achieve a deep and reliable understanding of complex ethical issues faced, and through this understanding gain insight into how ethical issues can be effectively addressed, usually with approaches already in action in the public service.

3 Ethical issues we found

3.1 Overview of ethical issues

We, and the participants in our research, have applied a very broad understanding of 'ethical issue', using the term to refer to a broad range of phenomena which are relevant to action which may be considered ethical or unethical. So we include: conditions which might encourage unethical action, patterns of unethical action themselves, management failures that do not minimise unethical conduct, and so on. Also, in some cases we find it helpful to group issues according to particular public servant roles or public service work situations, where this context provides insight into specific issues.

We group the more significant ethical issues we found under the following headings:

- Relationship of Ministerial offices and the public service.
- Leadership.
- Deficiencies of, and impediments to, management.
- Underperformance and 'time fraud'.
- Management of underperformance.
- Attitude to mistakes.
- Merit-based appointments and favouritism.
- Impacts of restructuring and change on ethical culture.
- Conflicts of interest.
- Professional and commercial relationships, pressure and influence.
- Policies to address conflicts of interest.
- Benefits of close informal relationships (the other side).
- Professional values and public service ethics.
- Dealing with vulnerable clients groups.
- Procedural obstacles to client service and inter-agency collaboration.
- Regional offices.
- Cross cultural opportunities and challenges.
- Generational issues.
- Different educational levels of staff.
- Misuse of ICT: Social media and pornography.

We also include in schedules 2 and 3 longer listings of ethical issues, with an indication of the frequency of reporting of the issues which were raised most often. The categories of ethical issue used in these schedules are generally more granular than the categories listed above, and multiple issues from the schedules may be covered under a single heading in this section 3. Also, not all the issues listed in the schedules are discussed in this section which deals with the issues we have assessed as most significant. Our assessment of the significance of individual ethical issues for the purpose of this report takes account not only of the frequency with which they were raised but also the importance attached to them by participants (taking into account, for example, the participant's ranking of the issue compared to other issues raised by them and the participant's assessment of the size of the impact of the issue on the capacity of public servants to fulfil their responsibilities).

There is significant overlap between some types of issue, and consequently a degree of repetition. There is also a significant element of interpretation in the classification of ethical issues. This arises for a number of reasons. Although there are some well recognised

categories of ethical issue (for example, related to conflicts of interest), there is no generally accepted taxonomy of ethical issues. Also, particular situations reported to us can be interpreted as presenting a range of types of ethical issue. We have therefore included in our reporting of the issues actual descriptions of issues and situations related to us by participants, including the language used by participants. Where similar issues and situations were discussed by several people, the discussion is written in terms reflecting these several discussions.

We include at the end of this section two longer case studies describing instances of poor ethical culture.

When reading this section it is crucial to keep in mind several important riders:

- (1) In this section we are setting out the issues, situations and cases as reported to us, without further investigation of them. Whilst reported by a range of public servants, they were not reported as issues for all agencies we spoke to.**
- (2) Our methodology of posing questions about ethical issues can cause participants (and ourselves as researchers) to focus on negative or challenging ethical features of their organisations, rather than positive features. It is important to emphasise that we found almost uniformly across participants a strong commitment to safeguarding and building ethical cultures within their organisations. In this light participants' identification of a broad range of ethical issues and challenges should be seen as evidence of this commitment.**
- (3) When asked about ethics, people can sometimes respond by relating those issues which they suspect or imagine are prevalent within an organisation, without having direct experience of those issues. (One participant in a review group characterised some of the issues we report as 'public service myths'.) We have taken this potential effect into consideration by taking account of the contextual situation described by participants and whether their experience of the issue was a direct or an indirect (third-party) account.**
- (4) We heard about a range of initiatives implemented or being implemented in the public service which are building capacity to deal with many of the ethical issues reported. A number of these are described in section 5.4, and reflected in our recommendations in section 7.**

3.2 Relationship of Ministerial offices and the public service

The Westminster system of government clearly delineates the roles of Minister and agency, including the following elements of those roles:

- Agencies provide evidence-based advice on what they consider to be in the best interests of Australia.
- Ministers and government determine policy taking account of the advice they receive from agencies, along with other advice and information available to them.
- Agencies efficiently and effectively implement government policy.

But whilst perhaps clear in theory, the application of these principles in practice can create challenges for public servants. Many we spoke to reported experiencing considerable ambivalence, including ethical conflicts, as a consequence of changes in the relationship between Ministers (and their staff) and the public service. These changes have been similar to changes in other jurisdictions across Australia, and indeed in other Western democracies, flowing from a range of factors including increased policy contestability, greater media scrutiny of government and a faster news cycle. These changes have meant that Ministers' offices often have a more direct and immediate involvement in public service decisions and have greater expectations of policy support from public servants, and that lines of authority have become less clear.

This is a complex area for a number of reasons. When public servants refer to involvement of the Minister or the Minister's office, they may be referring to involvement of the Minister or of Ministerial staff or advisors. They may be referring to direct contact or to directives and communications relayed to them via more senior members of their agency. They may be receiving only partial information – for example, a decision without the reasons for that decision. There is also the inherent complexity of the relationship between Government and public service, and of the role of the Minister as a member of the executive branch. For example, it can often be challenging to draw the line between (1) effective implementation by the public service of decisions of the Government of the day and (2) public servants assuming a role of advocating or being seen to advocate a Government position. In our discussions with individual public servants we did not explore all these complexities – nor do we do so in this report. Our objective is to set out the issues and concerns as reported to us, without analysing the particular circumstances of individual cases.

Many longer serving public servants we interviewed reflected on the changes over the past two or more decades. Changes have included the abolition of the Public Service Board and the rise in the size and role of the Ministerial office. The Public Service Board is reported to have offered important training for public servants on topics such as political neutrality and the provision of 'frank and fearless' advice, which was expressed by many participants as currently lacking.

These issues are experienced in a number of ways by public servants. We heard concerns about the capacity of the public service to maintain political neutrality with the appointment of Senior Executives under fixed term contracts which can be terminated without cause; and with a perceived growth in the number of Ministerial staff seeking to influence departmental decisions. While public servants recognise the authority exercised by the Minister and their responsibility to serve the Minister, they feel they encounter conflicts in a number of ways. With the perceived demand for greater support of government policy positions, public servants' confidence in their freedom to provide frank and fearless advice is diminished. Many participants in focus groups across a range of agencies noted that in many contexts of decision making, policy advice and reporting, it is not considered safe to express a 'frank and honest' view and opinions 'were not valued'. For many individuals this was linked to the increasing politicisation of roles following introduction of the Senior Executive Service and the shift away from a public service culture in which frank and fearless advice was accepted, if not encouraged. Frank and fearless advice was seen in one group as '*dead*', in another as '*comatose*'.

A frequently cited ethical issue across many agencies was the political constraints felt by individuals in providing advice. This affects how, and what types of, information can be shared with colleagues, managers and the Minister's office; how that information is used to formulate and frame policy advice and decisions; the types of evidence and data used to support decision making; and the ability to consider and discuss broader implications and long-term consequences in formulating and developing policy.

In many focus groups we heard cases of individuals who found themselves in the position of feeling pressure to write reports and provide advice to senior managers and the Minister's office that they did not believe in, or provide reporting or advice which they felt lacked sufficient supporting evidence. The exigencies of 'getting things done', in providing a determination or advice that was palatable to senior managers or the Minister's office, or that did not contradict existing policy direction, were often cited as pressures on decision-making and constraining individuals' abilities to provide objective and defensible policy and other advice. In several cases individuals reported that they refused to sign reports or requested their names be taken off a report. They recognised this to be potentially 'career limiting' but took the action that they believed was correct and ethically appropriate, citing the 'at least I can sleep at night test'.

Participants reported a number of potential consequences of perceived closer involvement of Ministers' offices in public service decisions and operations. It was reported that these interventions can undermine consistent policy implementation, creating confusion and undermining normal departmental decision making processes. This can occur in case of Ministerial overriding of decisions which have been made through the rigorous application of departmental procedure. One senior public servant we spoke to was outraged when a decision carefully made with colleagues in difficult circumstances was overruled. Other examples of Ministerial interventions were given in relation to decisions about licenses, departmental employment decisions and funding allocation.

Ministerial overriding of decisions which have been made in accordance with departmental policy and process have a number of potential effects where the reasons are unexplained or felt to be inadequately explained:

- It undermines the authority of the Director General: he or she is seen as unable to enforce a practice that is required of their staff: *'If the boss doesn't stand up for it, why should I care?'*
- In the absence of reasons for the intervention, staff may assume the decision has been influenced by personal or political interest.
- It disempowers staff who have been involved in making the decision, who may resent what they experience as the dismissal of their effort and careful work.
- The Ministerial decision is expected to be defended publicly by public servants, putting them in a position they experience as hypocritical.
- It is seen as a sign of disrespect for public servants.

Other areas of concern were also reported. Ministerial staff, and sometimes a departmental staff member with a close relationship to the Ministerial office, are experienced as overly persistent and directive in pursuing particular concerns and policy positions and as overly resistant to alternative views. Ministerial influence was perceived as disruptive and creating anxiety and uncertainty when it appeared to be non-consultative and to be exercised in disregard of other priorities.

Some public servants felt that while they work to develop broadly based, impartial procedures, consistently applied, Ministerial decision making is more political. In many focus groups participants saw Ministerial offices as making hasty and often contradictory policy responses to 'particular publics', such as influential stakeholders who often have high media visibility. Some participants saw this as 'managing what is requested versus managing what is right', with the Minister's office being overly responsive to the 'squeaky wheel' of high profile stakeholder groups as well as influential individuals perceived as having 'the Minister's ear'.

Other reported areas of ethical concern were being required to implement policy considered to be inconsistent and poorly formulated and lacking a sound evidence base; advisory minutes and reports being changed without consultation; and having to explain and defend poorly conceived positions in public.

Most participants who raised these issues recognised a practical reality of political considerations affecting policy outcomes:

That is the reality of working in government sometimes, which can be very frustrating for people at times - when you are very careful about setting up a very fair and equitable process then a bit of noise on talkback radio can change the decision.

We were also told that within the new structure of nine clusters, the relationships of Ministerial office and agency are further complicated where different constituent agencies have different Ministers creating a situation where the Director General may be accountable to one Minister but others in the cluster are accountable to separate Ministers.

Importantly, it was observed that there is wide variation in the way that different Ministers and Ministerial staff and advisors behave and in the relationships that they establish with agencies, and that there are precedents for constructive and mutually respectful relationships. This variation itself was seen as indicating the need for more careful and consistent definition of Minister-agency relationship. In part, the difficulties in the relationship are created by their perceived unpredictability. Many of those we spoke with expressed the hope that the Public Service Commission can play an important role in creating more consistent stable, productive and mutually respectful relationships between Ministerial offices and agencies.

3.3 Leadership

Public servants recognise the crucial role of senior leaders in shaping the ethical culture of their organisations. By inference from what we were told, and as expressed directly by one interviewee, public servants see the need for leaders to provide three main things to support ethical decision making and culture:

- clear policy direction;
- modelling and advocacy of conduct reflecting public service ethical values and principles;
- support and affirmation of the work their staff are performing.

In most cases, but to varying degrees, public servants experience this ethical leadership from their Directors General (DGs) and other senior executives. Generally, participants in focus groups and senior managers in in-depth interviews spoke highly of the leadership culture and approach taken by DGs and other senior executives in cultural change processes, in managing ethically and in instilling and promoting the values of the ethical framework of their organisation. Seen from below, the ethical example shown by senior executives and particularly the DG is crucially important to both morale and belief in the importance of ethical conduct.

However, there are important influences which are seen to weaken leadership and diminish its positive influence. The most important is a challenging relationship between Ministerial office and agency, as discussed above. This earlier discussion reveals a variety of ways in which difficulties in this relationship can undermine the authority of the senior leadership team. From our interviews and focus groups two appear particularly important: the overriding of decisions made in conformity with departmental procedure and policy, and difficulties in giving frank and fearless advice. When DGs and other executives are not seen to be defending an agency position or giving frank and fearless advice, their authority is weakened in the eyes of public servants. This is challenging for leaders as they often feel they are unable to give staff detailed information about the nature and content of their discussions with the Minister's office. A number of senior executives reported frustration with this. They may know the reasons for decisions taken against advice or policy, but feel that they are restricted from discussing this with staff, including where they feel to do so would not demonstrate

support for their DG and Minister. At the same time they feel the need to encourage staff commitment to departmental policy and procedure, and this is difficult to do when there is limited decision making transparency. Many of the ethical conflicts faced by senior decision makers involve reconciling direction from above with offering their subordinates the guidance and support they require to perform their roles effectively. In most instances these two demands are quite compatible, but where they do conflict they arouse deep disturbance.

Restructuring (discussed in greater detail in section 3.9) also creates a challenge for ethical leadership. First, the need for clear communication of intentions and direction is felt strongly, yet the level of communication that public servants experience from their managers does not meet that expectation. This is partly, many staff believe, because their leaders and managers *'don't know what's happening either'*. The whole organisation may already be aware of the restructuring directive, because it was published in the media or passed quickly through the grapevine. Senior management is informed by the media or the Minister rather than by their DG. Senior management will often not be prepared and may not know how they are going to respond to an instruction made in 'blanket' terms with little specific detail: such as 'cut 3% of agency costs', or 'amalgamate this department with that one', or 'privatise that function'. Even if they possess more detailed information, some senior managers reported to us that they were instructed not to give their subordinates this information *'because it will cause stress and insecurity'*. Mostly these managers felt that this lack of communication is likely to cause greater insecurity, and makes planning for change more difficult because the people affected lacked a shared understanding of what is occurring. This was also seen by many as contrary to accepted wisdom about implementing organisational change. Several human resources managers noted that change should be announced clearly and in concrete detail and then implemented quickly once it has been announced. This was not occurring in most of the restructuring situations reported to us.

While we were told of senior leaders who strongly supported staff, affirmed their important role and acknowledged their work performance, we were told of others who didn't. One example reported was of regular newsletter emails sent to all staff that were critical of particular incidents and demanded improved performance. The reporter felt that this conveyed criticism of the current performance of staff in general. More generally, many public servants feel that they are widely criticised in the media with no voices advocating on their behalf.

Positive reports included senior managers who were not only receptive to diverse views and opinions, but who actively solicited and considered alternative viewpoints. Such managers were said to be open to criticism, active in soliciting feedback, accessible to staff and proactive in engaging staff in often difficult conversations. There were also reports of managers who showed awareness of their role in encouraging values-led behaviours and engendering a culture which provides licence and opportunity for sharing of information, raising issues, seeking advice, discussion of 'grey areas' and candid exchange of views. Strategies used include:

- making themselves available wherever possible ('open door policy') to maintain high visibility and presence;
- delegating responsibility wherever possible to broaden accountability and create more collaborative working relationships;
- more formal strategies such as behaviour change programs;
- developing values-based approaches to performance management.

We heard a variety of views about the reasons for and the implications of the differences between Senior Executives and Senior Officers, including differences in their terms of engagement. We heard the following potential reasons for contract engagement of Senior Executives:

- provide greater power to fire individuals for failure to be responsive to the government of the day. Some perceived an inconsistency between this and the notion of a trusted, apolitical public service;

- provide greater flexibility to manage senior staff generally;
- increase the opportunity for senior people to enter the public service from outside the service.

Some were concerned about the consequences of the way in which Senior Executives are engaged and deployed. We were told that Senior Executive movement between agencies, the terms of their engagement and/or the way in which their work objectives tend to be specified can encourage a Senior Executive focus on shorter rather than longer term objectives. Also, staff may be reluctant to raise issues with Senior Executives because they either suspect that the Senior Executive will not be receptive or they know that the Senior Executive won't be around to see difficult changes through.

We were also told that the contract status of Senior Executives makes them more susceptible to inappropriate pressure (although some discounted this effect). A related point was that their contract status can cause Senior Executives to devote excessive energy to cultivating networks which will see their contracts renewed.

3.4 Deficiencies of, and impediments to, management

The middle managers directly supervising teams of staff also have an important role in supporting ethical culture. Although we heard examples of managers who have built teams with high morale and a strong ethical culture, we heard more about deficiencies of middle management. Impediments to strong team management were also a major theme in the research.

A particular management shortcoming reported was the failure to act on poor work performance and certain kinds of misconduct (for example, timesheet misreporting and misstating of travel claims), even when clearly apparent to other members of the work team.

There were several factors reported as making it difficult for middle managers to act in these circumstances. One was the obstacles to management of underperformance discussed in section 3.6, including the risk that the manager will become the subject of a bullying or similar complaint if they institute a performance management process. Being involved in a complaint (even if not substantiated) draws unwelcome attention to the manager and was reported by some to be 'career limiting'. Others said it was a significant consideration in deciding whether to initiate performance management discussions.

Other factors reported were that managers lack an understanding of their responsibility for management of staff performance; or that they lack the skills to manage performance (by, for example, providing early interventions with underperforming staff and providing ongoing feedback on performance).

A lack of communication skills was widely cited as lacking, and in particular the capacity to engage staff in difficult conversations. These include conversations about what a subordinate is actually doing with their time, their work tasks and their behaviour towards others. These discussions, if they occur, are often seen as confrontational rather than part of day to day management. As a result difficult issues go undiscussed and middle managers are unable to offer much needed guidance and to encourage open, speak up cultures.

A result of limited day to day management of performance is that attempts to manage underperformance often occur only when there is a serious and often long standing performance problem. This can mean that attempts to manage performance are seen as punitive. The person whose work is challenged in this way is more likely to feel this as a personal attack. This sense of attack is encouraged by the fact that the person has often worked in the same way for a considerable period of time, and the pattern of behaviour and its associated privileges are considered by the person to be 'an entitlement'. In this case the underperformer may often regard their manager's attention as bullying and grounds for a complaint.

Another weakness of middle management reported is a reluctance or inability to generally oversee the work of staff, making it easy for many staff to avoid accountability. This is (or has

been) the case with the misconduct of some public servants who work independently, such as inspectors working in the field. Difficulty of supervision is also a factor in offices located in regional or rural centres. Both of these situations can allow the development of strong informal networks and work processes which can make management supervision more difficult.

All of these management challenges make the improvement of ethical culture more difficult. When staff see poor performance and minor misconduct go unaddressed, particularly when reported misconduct is not acted on, the value of ethical conduct is diminished in their eyes. The attitude it encourages is *'why bother'*. Many conclude that it doesn't matter if you behave badly, there are no real consequences. Inaction also causes resentment, undermining morale and ethical culture in other ways. The work of underperforming staff is often passed to more dependable workers who then must compensate the others' lack of work. Usually, people reported, the more conscientious workers do not feel acknowledged for this extra effort. As well, the bad behaviour sets a precedent, and, over time, becomes 'normalised' as many we spoke to reported. As this behaviour becomes entrenched it becomes even harder to change.

We were told about training programs introduced to help build communication skills and which were reported to be effective in improving the giving and receipt of constructive feedback between managers and their staff (see section 5.4).

3.5 Underperformance

Public servants at all levels we spoke to are sensitive to underperformance and the ease with which underperformers continue their unproductive behaviour unchallenged. This sensitivity reflects a widespread and strong commitment to providing *'a fair day's work for a fair day's pay'*. This is seen as a basic responsibility of public servants.

The presence of underperformance is experienced as both unethical in itself and as demoralising and exploitative of the more committed public servants who have to take up the slack.

We were told about different types of unproductive behaviour, including practices described as *'time fraud'*:

- Smokers take up to half an hour 'smoko breaks' at regular intervals during the day, and treat this as their right, an entitlement.
- People arrive early at work, say 7.00 am in order to leave at 3.30 pm, and then don't do any serious work until around 9.00 am.
- People are scheduled to leave early for some reason and then take an extra half hour, again as an entitlement for these occasions.
- People make a pretence of working but produce nothing, and also refuse to assist others when they need it.
- Gen Y and Gen X staff in particular spend work time texting and following Facebook and other social media sites.
- People have frequent team meetings in a local coffee bar.
- People take excessive amounts of 'sick leave' combined with pedantic and perhaps exaggerated 'flex time', meaning they are frequently absent from work.

3.6 Management of underperformance

The earlier discussion of the factors impeding middle management action introduced the importance of effective systems of performance management and grievance and complaint procedures to the support of ethical culture. A number of the challenges to ethical culture within the NSW public service appear to emerge from the interconnection of performance management, bullying and grievance practices and procedures. There are a number of related elements including inadequacies of communication and management.

Although we were told of cases of effective performance management, it was generally reported that *'performance management has not taken hold'*. This is reflected in common reactions to performance management: where attempts by managers to 'performance manage' staff are perceived as a 'supervisory attack', preceding a recommendation of dismissal. In many focus groups participants reported that although instances of bullying and harassment certainly exist, accusations of bullying are also a common response to managers' attempts to performance manage staff or to introduce change:

In many cases with bullying and intimidation, it is sometimes used as an accusation in relation to organisational change where people think they are bullied or harassed when it is blatantly not the case.

Even where the complaint of bullying is not sustained, it delays and confuses the performance management process.

(We were also told of cases of bullying behaviour by more senior managers which though well known within the agency were not acted on, although sometimes the person was transferred to another part of the agency.)

Many managers are reportedly deterred from challenging non-performing employees either because of the risk of being the subject of a complaint or due to the manager's lack of confidence in their ability to communicate the issue in a manner that will produce a constructive outcome. Some managers also reported they felt unsupported in these situations due to the 'risk averse' outlook of human resources and/or senior managers.

Many managers also talked about the difficulties and sensitivities in managing underperformance in a way which balances individual needs for support with the impacts of poor performance on colleagues and the overall direction and effectiveness of teams. A number clearly recognise management of underperformance, and staff management in general, as ethical issues, yet do not feel confident to address them.

If it got bad enough I would [commence performance management]. But once you are on that track it may not result in 'good outcomes.' There is a point where there is no return. And sometimes you may find out there are a whole lot of issues impacting the person and their performance.

Grievance procedures, although important to ensure fairness and natural justice, are seen to create potential obstacles to building ethical culture. Several human resources managers saw the process as contributing to the weakness of communication within teams. By requiring an investigation and curtailing routine supervisory communication until it is completed, the grievance procedure limits discussion of ethical issues important to the working group.

The grievance process actually means that team members cannot directly address what is often a relationship issue with the team itself, and that is in many cases the most effective way to deal with an issue. It also means that managers, and their staff, don't actually need to discuss the more sensitive issues. It is deskilling them in terms of their communication skills.

Managers see many difficulties with the grievance process. While they recognise the ethical need for the accountability and natural justice that the procedure offers, the process is seen as a wasteful and disabling distraction. It is wasteful in that it requires a rigorous investigation

which offers little constructive benefit. Several managers (one in particular who carried out an extensive ethical culture change program) report having many harassment claims made against them, none of which were substantiated.

A requirement of confidentiality while performance management and grievance procedures are being undertaken was also reported as having potential negative side effects for ethical culture. Often the requirement of confidentiality means that a manager is not permitted to communicate the actions they are undertaking to other team members, even those who may have reported unsatisfactory conduct. This *'cloak of silence'* does not include the complainant or the person being performance managed, leaving them free to discuss their version of events and motives to other staff members. Many times we heard of frustrations of staff and managers: staff frustrated at not being given clear information and feedback about situations involving management of poor performance and managers' frustration at not being able to disclose relevant information, even in general terms, about the situation. These restraints also make *'the immediate and decisive response'* (that many spoke of as important in supporting ethical culture) more difficult to make.

However, it is important to recognise that a risk averse response to management of poor performance was not universally reported. One human resources manager said they saw no tolerance of underperformance and rather saw a commitment from the public service to wear the legal cost of lengthy processes to manage people out of the organisation where justified, as well as a commitment to training managers in the conduct of performance conversations.

3.7 Attitude to mistakes

The way in which mistakes are dealt with in the public service was seen by many as being important in supporting and encouraging the development of an ethical culture in which people are free to express their thoughts and concerns. Responses to mistakes which are excessively negative and which focus on fixing blame tend to be inhibiting because they suggest that mistakes are *'career limiting'* and discourage openness about things going wrong. Such responses also make it less likely that people will show initiative and experiment, and can feed unproductive competition and blame-shifting within teams.

A concern about reactions to or the consequences of mistakes or poor outcomes meant that in some agencies:

- honest and candid opinions are not encouraged and rarely given;
- there is a *'culture of blame'* which emerges when outcomes do not meet expectations;
- there is a reluctance to notify issues (internally or to the Minister) when they arise;
- people are seen to be arbitrarily punished (or rewarded) in relation to mistakes – or in relation to poor outcomes for which it is felt necessary to assign blame.

Experience of such situations has significant effects on ethical culture. One participant noted:

For people like me, lower down and out of that [senior management] swirl, it [blame] creates a sense of cynicism which I think is also not good in creating ethical behaviour. People like us lose trust in the very highest levels and the basis on which decisions made and who is punished and rewarded – that whole thing is not transparent.'

We also heard of constructive approaches to work problems. One manager reported on one of her fondly remembered former managers:

When something has gone horribly wrong, if the team started blaming, he'd say: 'I don't want to hear blame, only how to fix the problem. And next week we'll hear what went wrong and then correct how to do it better.' He was running an office where you could make mistakes and learn from them without being punished.

Such responses encourage team learning, more open communication and trust and tend to improve the quality of decision making.

An analogous practice has been introduced in Health. Where serious medical mistakes occur there is complete disclosure of the incident and its circumstances made to the patient and relatives, along with information about investigation of the failures underlying the incident and about changes being made as a result. This is a major shift in medical professional practice where non-disclosure and peer protection have been traditional responses to mistakes.

Similarly in one agency a graduated approach is used in managing and educating staff in relation to inadequate or incorrectly handled situations. This approach allows staff to learn from mistakes through a reflective process involving consultation with and feedback from managers.

Rather than simply telling people 'that's wrong' and possibly career ending – there is the opportunity to say it's wrong and find out why.

3.8 Merit-based appointments and favouritism

The making of appointments on the basis of merit is considered important for an ethical and effective public service, but many reported to us that non-merit based considerations frequently play a role in appointment and other workplace decisions. It was reported that merit appointment is frequently overridden by personal preference and a pattern of jobs for mates.

We heard that the 'management' of a recruitment or appointment process to achieve the outcome desired by the controlling party can be achieved in a number of ways. Participants gave the following examples of recruitment and engagement practices which concerned them:

- A merit listing of candidates is carefully developed and then 'fiddled' to have the preferred or pre-determined candidate rise to the top; or people go through the motions of a merit-based selection process and then an appointment is made based on personal preference.
- Human resources officers are presented with appointment decisions with little evidence to substantiate appointment on merit.
- Resources are wasted on a recruitment process when no appointment is made.
- People are 'acting in higher duties' (AHD) for long periods of time, often a number of years when a permanent appointment could be made. Then when the job is advertised, the AHD person does not get the job, raising the questions why, if they did the job capably for five years, shouldn't they keep it?; or if they were inadequate, why did they hold the position for so long? A similar situation exists with people performing well in temporary positions (better than corresponding permanent staff) who are then the first to be 'let go' when funding ceases or when cutbacks are required.
- Staff are retrenched and their positions are filled by contractors at higher cost to the agency. We were also told about unfair treatment of contracted staff, who can be dismissed at short notice.

One public servant reported the significant influence that the Minister's office can have in appointments in the agency, vetting even Level 3 candidates; revising position descriptions; insisting that a candidate be included in a shortlist:

This puts us in a very awkward position

Merit and reward processes also include allocation of workloads, role deployment and education and training opportunities. Where workload allocation is not clearly and transparently explained and discussed with staff, perceptions of favouritism are common, which can be demoralising.

Some managers wishing to recognise and advance strong performers in their teams expressed frustration at their limited capacity to do this.

Securing appointment on merit is not simple. Regulations requiring appointment on the basis of objective merit and procedures designed to ensure this appear to be well defined and unambiguous. On the other hand, there appear to be a great many senior and lower level managers who want to apply different specifications of 'merit'. In many instances the overriding criterion appears to be a desire for someone whose work they know and with whom they know they can work. The line between this kind of preference and an outright 'favouritism' that has little to do with expected work performance is difficult to draw. However, even if a preference for a 'known quantity' is based on considerations of expected work performance, this deprives others of the opportunity to be considered for positions. Perhaps if the relevance of personal connections and knowledge were made more explicit and discussable, outright abuse of the merit appointment process would be less likely.

3.9 Impacts of restructuring and change on ethical culture

The organisational restructuring occurring across most agencies in the NSW public service has a range of effects which influence ethical culture. The threat and actuality of retrenchments creates insecurity and fear. Restructuring disrupts established systems and relationship networks, in some cases increasing opportunities for unethical behaviour. Restructuring can increase workloads and impact on service delivery in ways that concern public servants. The communication of restructuring can explicitly or implicitly involve denigration of the current public service and public servants. In their cumulative effect, these influences appear to be very demoralising for public servants and undermining of ethical culture.

Restructuring involves the reorganisation of work units and of the relationships between public servants. Employees and the administrative units they work within need to rebuild communication lines. There are also changes in reporting, line management and inter-agency responsibilities that directly affect people management, lines of accountability and responsibility and changes in applicable policies and procedures. One respondent described the stress associated with restructuring and its impacts:

They need to stop restructuring. With each restructure working relationships have to be rebuilt, who reports to who and works with who. All those things change and have to be re-established. People have been managing so much change and now have 'change fatigue'. We need to bed the current structure down long enough to rebuild workplace relationships and culture.

As well as the working relationships, restructuring requires the reorganisation and connection of the ICT systems of the newly connected work units. Communication is made more difficult in these transitions by newly joined units being part of different ICT networks. One public servant said it took several days to have ICT malfunctions addressed because there were eight different system providers working in the restructured agency and it took that time to find the responsible contractor able to remedy the problem. He explained that several new systems had been in the process of implementation when the agencies were amalgamated into the new super agency and all were involved in completing the implementation and integrating the systems for the new agency simultaneously.

The pressure of change on top of the regular implementation of new ICT systems creates new corruption risks. A manager described the risk in his agency:

Reforms are under way, but in one area a new computer system is being implemented without checks and balances and it appears that some of the staff may be using information they are gaining from the system to operate an outside business. And Audit can't observe and get into the back end of the system without being noticed, so there is no effective way of checking. Often these things happen when there is significant change happening.

Restructuring also involves the threat and reality of redundancies, creating uncertainty and insecurity, competition for positions and additional ethical issues. Favouritism in making appointments is experienced as more common. Managers said it was more difficult to follow

rigorous process and avoid favouritism and bias in making appointments under the pressure of unusually large numbers of appointment decisions (see section 3.8).

The experience of the restructure also affected participants' attitudes to ethics in general and to the present research. On the one hand interviewees were generally enthusiastic about addressing issues of ethics and associated issues such as performance and workplace morale. On the other hand some people feel overwhelmed by the challenges created by the changes and feel that discussion at this time of improving ethical culture seems inappropriate or premature. Interviewees see staff experiencing insecurity and resentment in the face of changes which may mean loss of jobs. Some opined that discussion of ethics is inappropriate in an environment where they have little influence over their circumstances. They report that a preferable time for discussion of ethical issues and conduct is during a 'consolidation' phase following restructuring. One human resources manager stated:

You can't talk ethics at this phase of our development. We're in the depths of the nasty side of it. ... Only when it's built do you do the engagement piece and bring it out how people are going to work and lead.¹

Many we spoke to also saw structural change itself as involving ethical issues related to the responsibilities of the government to employees. For many, the potential threat to their employment carries with it an ethical obligation on management for clear and timely communication to employees and, where appropriate, consultation about the change process.

The thing with restructures is always keeping people informed and giving people information and keeping them apprised of what is happening.

Restructuring, with its threat of job loss, places people 'in limbo'. Many public servants used that phrase to describe their situation and their uncertainty over their future employment. Often where implementation is slow and with no definite time frames, public servants are left in this 'limbo' for considerable periods of time. Some say that leaving them in this uncertainty is in fact intended by government as a means of encouraging them to seek alternative employment.

Restructuring also involves unpredictable changes in workload, but almost always an increase. The change itself places additional demands on employees. Some managers report that employees must meet the normal responsibilities of their positional role, often with increased work, and at the same time work to carry out the restructuring.

The workload creates resentment about the changes. It involves doing work to make the change as well as the day to day work and that is not taken into account.

Along with increased workloads, job descriptions may not be clearly defined, creating additional stress. Managers also report a pattern of 'change fatigue' and consequent loss of morale, particularly when employees cannot see the functional benefit of change or any improvement in the culture or productivity of their work environment.

A reported consequence of increasing workloads is increasing productivity pressure: the demand to 'get things done' as quickly as possible in work situations that are increasingly resource and time poor, increasing the pressure and decreasing the time frames in which to accomplish tasks.

This is also reinforcing an 'everything has to be done now' culture, people might be poorly behaved in some ways but I just look at the stuff that has to be done...I know this is not my best work but people are calling for it NOW!

¹ Contrary to this, we think that in a time of organisational change it is more important than ever to be clear about the organisation's purpose and guiding values and principles – see section 7.

Another reported consequence of increased workloads and confusion over job roles are declines in service quality. With restructuring, knowledge of required procedures gets lost in the reassignment of duties and staff resources are spread too thinly.

The reported consequences of this are disruption to both the services being provided and the staff left to manage them. In one instance senior law staff were made redundant, leaving an excessive workload to junior staff who lacked the skills to perform the tasks. The stress on staff, who did not feel empowered to seek assistance from more senior managers, was considerable. The person who observed this situation reported it to a senior manager on their behalf. The manager acknowledged the difficulties but believed that he could do nothing. The interviewee told us that with better communication, staff could have prepared a work plan and developed support processes that would have allowed the situation to be managed much better.

Public servants report a lack of consultation or clear communication of the design of restructuring changes. Directives such as 'reduce staff by 3%' require a translation into a changed service delivery structure that is often not provided. The result is that cuts are made without clear understanding of how workloads and services will be changed. The common experience is that positions are cut or assigned for cutting at some future time, without consultation or proposals for how workloads will be redistributed and what tasks will be left undone because of reduced resources. The perceived failure in planning is itself demoralising, but so also is the apparent lack of concern about the delivery of the service. For many focus group participants this is in itself a major ethical issue that is faced on a daily basis in relationships with clients and service providers. This includes strategic shifts in focus in service delivery in which existing clients can no longer be provided with the level of service or types of programs previously considered essential, as well as a general sense that budgetary constraints and employee downsizing are increasingly compromising the ability of people to effectively perform core functions. As mentioned above, many report that multiple restructures and change management initiatives have also caused a loss of clarity of roles and responsibilities with many individuals expressing uncertainty over reporting lines and responsibilities.

Based on what we were told it appears that in many cases conventional maxims for change management (plan the change carefully, communicate it fully and implement it swiftly) are not being followed.

We also heard scepticism about the reality of some costs savings purportedly achieved through restructuring. We were told that when redundancies have occurred and a service delivery crisis has developed, contractors costing 50% more than the staff they replace are employed to fill the gap, eroding or eliminating any intended cost savings. (However, it was generally acknowledged that contractors are usually managed to work more efficiently than the permanent public servants they replace.)

There are other ambiguities about cost savings:

Restructuring is introduced to save money and people look for the savings upfront and don't acknowledge the cost of the change itself. It's not recognising the investment needed to make the change and it's always wanting the dollars now.

Another practice reported is a kind of 're-badging' of public service business units as private, or as an NGO, with their operation continuing to be publicly funded, employing the same staff in the same premises, and with costs actually increased, but with the result counted as a reduction in the size of the public service. Such 'smoke and mirror' strategies are discussed somewhat cynically by the people reporting them, contributing to the demoralisation of the remaining public servants.

A similar situation reported in one focus group relates to the transfer of community services to NGOs. Some public servants managing the NGO contracts complain that their service delivery is more expensive for the outcomes achieved than direct public service provision

would be. Others in the focus group said that the NGOs were new in providing the services and their performance could be expected to improve over time.

It is apparent from these public servant views concerning restructuring that they generally feel mistreated and disregarded in the restructuring process, which they also see associated with a general denigration of the work done by public servants. Many participants expressed significant impacts on morale of the negative images of the public service portrayed in the media. In the face of overwhelmingly negative publicity, public servants feel that their work is not understood and their contribution to the community is not valued. This has significant impacts on morale and in some agencies has been further compounded by Ministerial and senior executive public comment which reinforces negative perceptions of public servants.

It's unfortunate that there have been public statements made about [this agency] where people get ashamed about who they work for – full blown shame. People work harder than people realise.

3.10 Conflicts of interest

Conflicts of interest were raised as a primary ethical issue in many focus groups and interviews. The conflicts of interest identified posed varied challenges to impartiality and objectivity in decision making. They arose in a wide range of situations including in dealings within agencies, with other agencies and with clients, suppliers and contractors.

Often conflicts of interest arise where there is not a proper appreciation of the conflict. An example described to us was a staff worker who called a relative or a neighbour to fix a maintenance problem. In this instance it may be that the priority of effecting the repair outweighed the lack of appropriate procedure, but the concern of the interviewee was that the decision was made without awareness, or disclosure of the conflict.

In another example, a public servant assisted a friend in need in breach of standard procedures, with the assistance of other staff. The public servant had declared her conflict, but neither she nor the other staff recognised the conflict as being relevant in this case.

Such conflicts were reported as being extremely common across the public service and suggest both the need for clear management direction and careful discussion of the ethical issue with staff. Interviewees suggested that the kinds of instances described above were most common among staff with less professional education.

Complex conflicts of interest arise through informal relationships with people who the public servant deals with in their work role. These relationships include colleagues and peers, providers of services to the organisation, recipients of services, and professionals in the same profession who are employed outside the public service or in different parts of it. What makes these relationships complex from an ethical point of view is that they are unavoidable and often legitimately beneficial. This means that one customary way of addressing (managing) conflicts of interest is not feasibly (or ethically) available: the method of prohibition (or close control) of contact. One example is that of art professionals. To be a competent professional they must be active participants in the arts world, attending openings and socialising with particular artists and agents. This enables them to know what's going on, what's in and what's out and what it all means. It also means that they risk a corresponding form of 'regulatory capture', which means that they become acculturated into the mindsets and attitudes of those they are associating with.

Similar issues arise in the medical profession, for example connected with the design of procedures and purchase of equipment, and the public disclosure of medical practices. They also arise in engineering contexts, with the design of bridges and roads, infrastructure maintenance and the administration of related contracts. In these instances close contact and exchange of ideas is both a professional necessity and an ethical risk. Other examples, such as inspectorial and licensing roles (liquor, gaming and racing, fair trading, revenue collection) also require close industry knowledge and hence informal contact but are more manageable by 'contact control' policies.

Other forms of conflict of interest can arise in client service situations where the public servant may direct or encourage delivery of a service in a way which is convenient to them and which does not allow the client to properly exercise their right of choice concerning government services. The opportunity for this can be greater where the client is vulnerable or disabled. Examples arise in home care, public housing and group home situations. The situation will not always involve the pursuit of self-interest by the public servant who may genuinely think the choice they are 'encouraging' is in the client's best interest.

We also heard about the risk of client exploitation. An aged client might be encouraged to change their will to benefit the service provider; or a monetary payment may be solicited or received for favourable treatment.

In relationship management, confidentiality is a central ethical issue, particularly in deciding what information can be disclosed and shared within agencies and with other agencies, suppliers and contractors given requirements for commercial in-confidence. This applies to information about service models, intellectual property, pricing models and service capabilities. Where several agencies are involved it can be a complex matter to determine what information can be shared. Further complexity arises if staff have previously been employed in the commercial sector and have existing relationships with commercial suppliers or contractors. Generally these are explicit conflicts of interest which are well recognised and clearly disclosed, however issues do commonly arise.

In procurement and relationships with contractors and suppliers, rules-based procedures and policies are considered essential to ensure probity. Such procedures provide clear guidance and support consistency in managing purchases and rules for engagement with external parties and inter-agency relations. They typically also define the kinds of information which can be disclosed to third parties. Many participants identified these rule-based systems policies and control measures as essential to ensuring, even '*enforcing*', ethical action and behaviour.

However, we were told about situations where inappropriate rules and processes worked against efficient procurement and achieving value for money – see for example the case study described in section 3.22.2. Situations were also discussed where policies and procedures were either ambiguous and open to variable interpretation concerning what constituted a potential conflict of interest, the type and range of information that could be disclosed, and to whom. In many such situations there was a cultural clash of expectations between public service rules and procedures and private sector practices. One participant described this situation as '*the external haze we operate within*'.

In situations such as these, ongoing communication with managers and colleagues and the capacity to reflect on the decision-making process were regarded as crucial in working through the 'grey areas', and establishing clarity around a consistent and ethical approach. This discussion enabled the development of awareness around the interpretation of policies, personal judgment, assessment of risks and consequences of decisions and recognising the influence of organisational culture. As one participant noted:

Even though there was codification of behaviour, the ethical standards that were established through a collective culture – this is the way we work around here regardless of the codification – that culture can be strong and pervasive and build up over time and be contrary to the codified rules. That happens in all organisations. In asking people to do things they don't agree with there is another power dimension in someone telling you that you have to implement a particular strategy that might be on the edge of ethical standards that have been codified. So I think there is always a grey area which people are operating in.

3.11 Professional and commercial relationships and influence

Conflict of interest is closely associated with the 'capture' of public servants by commercial clients and partners. The report of the Inquiry into the Star Casino used the term 'regulatory capture' to describe the way regulators can be socialised into the mindset of the casino staff whose behaviour they are supposed to be regulating. Through close and routine contact the regulator comes to share the world view of the regulated group. The way the regulated entities operate comes to be viewed as the appropriate way to do things.

Where individuals work closely with external clients, contractors and providers, it is easy to slip into the prevailing mindset and not take proper account of regulations and procedures and broader public interest. There is a *'blurring of the line'* in perceptions of how things should be done.

We work with business shoulder to shoulder in achieving business goals and to grow business and investment in the state. We are very much guided by public sector ethics and behaviours and they are very well documented within my department. Quite clear to all who work there. However it is very different to the culture of business and of the organisations we work with.

In these contexts ambiguity is experienced about the 'public interest test' which should be applied by public servants and the increasing pressure to provide timely, efficient and responsive outcomes that are increasingly measured by performance metrics.

This is particularly challenging when the KPIs are measuring number of jobs created, number of business relationship developed, amount of investment delivered. The frameworks are certainly strong enough but the question is 'is the individual strong enough to work the framework?'

I've certainly seen plenty of examples where that hasn't been successfully managed by the staff and the manager needs to be able to understand where those potential conflicts exist and then have a method of recognising and policing that. And because we operate fairly autonomously, that's not always easy to do. In some of those locations there may be only one or two staff and a great disparity in the levels of staff – a senior staff member and an assistant – no equality there and people may not know what everyone else is doing. Also to some degree because there is a competitive situation in meeting the targets people can be very protective of their client base.

Regulated businesses may have associations with influential people who challenge an inspector's judgement. The inspector and their managers may have difficulty resisting such influence.

For some focus group participants, these broader cultural, commercial and other influences across the public and private sector also extend to cross-cultural international business relationships, which further complicates relationship building and the facilitation of strategic opportunities.

Working with Australian business working [overseas], clients will come to us and say are we expected to give bribes and inducements? How do I answer that question? I would deflect that back to the client but in all of these instances we are trying to assist the business growth and in achieving success in that market there is recognition of the cultural differences and challenges.

Many examples arose in diverse professional contexts. In relation to the world of art, for example, where public servants are curating exhibitions and making grants of funds for cultural purposes, public servants and the recipients of these public resources participate in the same social world. Invitations to parties and inclusion in other events raise issues of conflict of interest that are not easily addressed.

A further example is the influence of medical specialists within hospitals. While their role as the senior professionals in the medical care system was acknowledged, many non-doctors saw them as using power beyond their legitimate sphere of influence. Examples included specialists overriding nurses concerning 'clinical wound treatment', when the latter in fact had more up to date knowledge.

Differentials in power have plagued the relationship of doctors and nurses for years.

In some situations verbal abuse by doctors has created:

toxic workplace relationships which entail poor communication about treatment, low satisfaction and inefficiency ... bullying is a big issue.

Hospital managers find these issues difficult to resolve, because of the shortage of medical specialists and their professional autonomy and self-regulation.

Another instance is where public servants are involved in the development of major projects, and the public-private partnership involves close social and professional contact. There is also frequent movement of people between sectors. Participation in these 'mixed sector' social/professional worlds is both necessary to maintain professional excellence and a challenge to ethical judgement. At one level, these conflicts can be addressed through gift registers and other means of formal disclosure, but the issues are really more subtle. In such close relationships, it is difficult for managers and others external to the relationship to identify when personal, conflicted loyalties are operating. Since the public servant involved is closely acculturated with his private sector peers, it is also difficult for them to recognise whose influence is shaping their decisions.

Living alone in rural communities with the group being regulated imposes even more powerful social pressure. An example is inspectors who live in communities with the people they are regulating. Public servants living in regional and rural communities can become acculturated to them and take on the attitudes and beliefs of those they live among. Where this is resisted public servants can confront more direct forms of social pressure: a challenge in the local pub or discriminatory treatment in the community.

Important elements of dealing with these issues are identifying the decisions which may be affected and ensuring regular, in depth discussion with colleagues about appropriate processes for affected decision making. For example, while decisions about land clearing and other rural development issues are defined by policy, local variations leave room for discretion which is open to personal interest influence. The counterbalance that one manager suggested was regular meeting with colleagues and management to discuss issues, decisions and work practices. He reported that such discussions were often vigorous and were effective in building awareness of this area of potential conflict. He did also make the point that such meetings were becoming more difficult to organise within tightly constrained budgets.

3.12 Policies to address conflicts of interest

In most of these situations there are policies and procedures designed to ensure that decisions are based on objective and public interest criteria. In the majority of cases individuals expressed a clear awareness of the policies and processes relevant to their management of potential conflicts: how they should be navigated and when they should be registered and reported.

In the procurement and purchasing environment, control measures and compliance processes are seen as rigorous and comprehensive. Procurement in particular is considered 'probity rich' with systems regarded as rigorous and effective.

We have rigid processes around probity and how we undertake what we do in terms of tenders and the information that comes out of those tenders.

In procurement there is a uniformly high degree of oversight and probity. There are many reporting requirements to be met and oversight which includes the auditor general, internal audits, risk management reporting, governance committees, fraud and corruption managers and ICAC reporting. The perception in these areas is that there are 'a lot of people looking.' Indeed, in most procurement contexts discussed, detailed policies, control procedures and measures were identified along with a substantial technical infrastructure of online systems using globally benchmarked procurement software, providing audit trails, multi-staged sign-off and regular reports and opportunities for oversight. These systems are regarded as indispensable in:

helping further track, monitor and audit our procurement processes. All our tenders are run through that and many other organisations use it for tender processes.

These policies and procedures also ensure that decisions are based on objective and public interest criteria. However, in focus groups participants from a number of agencies and a range of functional roles identified many 'grey areas' where formal policies and processes did not provide clear guidance. For example, although clear policies exist in relation to interest and gift registers, many individuals found challenges in balancing the need to build relationships with contractors and suppliers and the potential threat of inducement and gaining an inappropriate personal benefit. As one participant noted:

Developing a policy and procedures manual probably doesn't cover all possible permutations – we certainly agree there needs to be a degree of flexibility - you need to vary things to give flexibility, but you need strong leadership - it's a question of culture. If that leadership is consistent then the people who work within that structure can operate within those frameworks and feel comfortable in doing so. It's where the decision making process is not consistent - in cases where one day sign off is given and the next day it is not. That is where the conflict over 'should I or shouldn't I?' is an ethical consideration. It is hard to work within that framework if you don't understand the rules.

In allocating funds for programs one participant noted that:

We can hide behind program eligibility criteria but even then it is not as simple as that e.g. tick that box and that's because there are [xx] or so of us across the network who all interpret the needs of business and make a recommendation to head office. Some make a judgment that the maximum amount should be given to business whereas the judgment of others is to give considerably less. It is not necessarily a level playing field in those decisions – they could be based on location, other priorities etc.

We were also told about some cases where rules and processes were seen to work against efficient procurement – see for example the case study described in section 3.22.2.

3.13 Benefits of informal relationships (the other side)

The 'other side' of these close professional and commercial relationships should also be apparent. The informal, potentially conflict-laden relationships that develop among colleagues and external parties have another aspect which means that they cannot simply be prohibited. For many we spoke to, it is the informal and personal relationships with colleagues that enable them to be effective in their work. It is within these relationships that work issues are discussed and workplace information passed. Arguably, without informal networks of communication and collegial support, organisations would be much less productive. It is also the enjoyment of participating in these informal relationship networks that makes work fulfilling. And likewise, the vitality of this network of constructive relationships shapes the level of creativity and productivity of the organisation itself. It is not surprising that the loyalties created within these networks do also influence appointment decisions and the assignment of tasks that represent opportunities. In some cases, however, where personal ties have become closer, the loyalties may have less to do with professional performance and more to do with that personal relationship. In this, they clearly become unethical. However, where such relationships are transparently disclosed, and decisions follow a legitimate open process

with clear criteria and appropriate checks and balances and which are open to scrutiny by other stakeholders, they can avoid becoming unethical.

Crucial informal networks also extend beyond the boundaries of the organisation. In almost all areas of public service effective service delivery relies on close relationships with stakeholders, including fellow professionals. The quality of these relationships is usually a significant determinant of service effectiveness, in part because it is through this 'community conversation' that service standards and expectations are 'negotiated'.

As well as the exchange of information and perspectives, including information about innovations in the field and emergent state of the art practices, this shared participation in a professional or other community involves much that is akin to 'regulatory capture'. Avoiding decisions which are corrupted by such capture requires open conversation to uncover and disclose such influences and their implications, rather than severing the relationships that produce them.

This 'duality' in professional and commercial relationships means that simple prescriptive rules are insufficient to manage them. As well, an ethical culture requires the guidance of clear values and principles and vigorous discussion of the implications of values and principles for everyday conduct.

3.14 Professional values and public service ethics

In many focus groups we heard of situations in which individuals experienced significant ambiguity in relation to their responsibilities as a professional and their functional agency roles. Professionals, particularly lawyers, teachers, doctors and nurses, often experienced challenges in balancing responsibilities to clients, other stakeholders, agencies and to the public service in general.

In some cases professional ethical obligations and responsibilities to clients (including under professional codes of ethics) were felt to conflict with the requirements of the individual's agency. This is particularly challenging where one's profession (for example, as a psychologist, social worker or lawyer) requires confidentiality, but the public service requires a client information record that is open to a range of other employees.

Professionals are often accountable to two (or more) codes of ethics which may conflict in their requirements. Broader value clashes were also raised in relation to a range of professions including teachers and principals, social workers and nurses in relation to responsibilities to students, clients and patients. The ethical challenges in managing such dual responsibilities, the potential clash between agency and public service values and professional ones was evident in the recurrent use of phrases like '*framing the issue*' and '*positioning the issue*' which we heard used in many contexts. These terms described situations where information and evidence was used strategically to identify and legitimise outcomes which the practitioner sought to achieve for either the agency or the client depending on which role (professional or public servant) was paramount for them at the time.

There are also non-professional situations in which people find it challenging to reconcile competing ethical frameworks. We heard numerous examples of situations where personal values and political perspectives conflicted with agency or public service objectives and priorities, creating ethical conflict for the person involved.

In some cases of this type staff express personal views in ways that suggest that those views constitute an official agency position. An example reported was staff protesting in uniform in breach of the agency code of conduct. Less obvious can be situations where staff present at conferences or make submissions to public inquiries. This ambiguity also occurs when public servants participate in community affairs without making their role as either citizen or public servant clear. Another example is the use of a departmental email address to complain about an issue (as a member of the public).

3.15 Dealing with vulnerable client groups

Many of the client groups which public servants service are vulnerable in some respect, and the power public officials exercise as a result of their position can be used unethically as well as ethically. The source of vulnerability might be physical or mental disability, lack of income, poor English, homelessness or addiction. In different services the challenges are somewhat different.

As with conflicts of interest, this misuse of power can be deliberate or unintentional. One example of deliberate misuse of power was the manipulation of aged people to write wills that gave payments to a public carer, a criminal misuse of their power. One manager was particularly concerned about unintentional misuse of power where a public servant makes decisions on behalf of a vulnerable client, which the public servant assesses to be in the client's best interest. This is a difficult situation. The manager's concern was that the public servant may not have explored the issues and choices carefully enough with the client involved to allow the client to properly exercise their right to choose. In cases like this the clinical supervision meetings offered to counselling caseworkers are of particular benefit. These are areas where subtle discussion and review of actions can make an important contribution to consistent and ethical conduct.

3.16 Procedural obstacles to client service and inter-agency collaboration

In community service agencies a conflict can arise between a commitment to '*person centred thinking*' and systems and policies that seem to obstruct this. In a situation discussed in one focus group, participants were concerned for a client, a woman with several children with no transport and unable to pay for a taxi, who needed to inspect a house she had been offered for rental and return the keys within four hours. One of the workers was in fact driving to the same location yet insurance and OHS requirements prevented her offering the client a ride. Such conflicts are reported to occur routinely in community service areas. The case study in section 5.4.8 is relevant in this context.

There are also obstacles to collaboration between public agencies to efficiently deliver services. One obstacle is complex and time consuming authorisation procedures. Another example that disturbed staff was a prohibition on offering a certain kind of training to staff of another agency because the practices it encouraged might be misapplied.

These kinds of issues can encourage staff with a commitment to 'person centred thinking' to find shortcuts and strategies based on the personal networks that develop between workers. The attitude is:

with the client sitting in front of you look for all the options and you might end up bending the rules and taking a risk to get an outcome, instead of going through the right process which will mean you do nothing. You calculate the risk and the way you can justify it as a 'well-intentioned mistake'. It all depends on your relationship with your manager.

Another person told us:

Person-centred thinking can also mean developing a client service program in collaboration with another agency. Usually this requires authorisation which might take weeks, but the more effective and committed community workers will rely upon their informal relationships, developed over time, with workers from the other agencies. Such practices may stray close to 'conflicts of interest' in terms of the committed relationship developed with the client. The workers involved would certainly claim otherwise and would willingly document their reasons and make their decision making process transparent. In fact, a preferred approach may be the adoption of less prescriptive procedures and allowance for 'ethical conversation' between supervisors and workers to avoid the marginalising of probably more talented community workers. The alternative for many is the demoralisation which leads to patterns of time fraud.

A large number of public servants believe that it is extremely difficult to develop cooperative joint service arrangements with other public agencies, a difficulty which is seen as seriously diminishing service quality.

3.17 Regional offices

Regional offices face many of the ethical 'risk factors' identified above, with high levels of potential, actual and perceived conflicts of interest in particular as staff members live and work in and with small local communities with high visibility. These locations often have long-term employees who have 'entrenched' patterns of conduct, insulation from more formal standards, and a social world where a high proportion of people are personally known (including relatives). These factors contribute to significant ethical challenges around impartiality, equity and transparency in decision-making, service delivery, resource allocation and appointments.

Since staff establish themselves in local communities, they are less likely to be mobile. Many want to stay in a community they have grown up in, and they have sought employment in a government agency because it is local employment. Some may join local agency offices in other centres for shorter periods of time. With these stronger community connections the likelihood that employees will have family, relatives and even partners in the same agency is more likely. These community and family ties mean that public servants working in regional and rural agency offices are more likely to have associated conflicts of interest. From what we heard, many seem less aware of these conflicts and do not find actions favouring relatives and local associates unethical.

One reason for this seems to be that specific knowledge or understanding of a connected person being favoured by a decision can make 'exceptions' seem legitimate. For example, this may help explain tolerance of lateness or absences, where the person making the exception may be aware of family illnesses or other extenuating circumstances. Another factor is that the informal community associations create their own cultural expectations which compete for allegiance with those of a public servant. Rural and regional community cultures are reported to support a more relaxed and casual attitude to work and professional obligations.

With this background, transparency in relationships and knowledge of appropriate boundaries between staff and between staff and community members are key ethical considerations:

Transparency of relationships and disclosure of relationships is crucial. This is problematic in many regional locations for example where staff are part of the community. Small circles, everybody knows everybody. This is often an area of difficulty - staff members live and work with the community. They are known and face-to-face. Change for some people is a real struggle; people should get the opportunity to move but this is difficult for people in regional locations. You become complacent and put yourself and your colleagues at risk.

An important enabler of ethical misconduct is distance from the head office, which has the effect that both oversight and the salience of organisation purpose and procedures are weaker. While there may be compliance with centrally mandated procedures like preparation of work and development plans for employees, compliance is said to be more ritualistic, with a 'tick the box' approach more prevalent.

Partly as a result of the power of local cultural expectations, managers have a more difficult time asserting agency standards and expectations. In a number of interviews the power of the social pressure exerted by local community culture was emphasised to us. Similar to the

difficulties facing local managers are the obstacles of exercising supervision from a distance faced by managers in central offices. We heard concerns expressed that:

small outposts are risky areas and I am wary of them, suspicious of what goes on there. I don't have reliable information and management presence.

and:

The regional areas worry me. Regional pockets are out of sight, out of mind.

The population mix in particular regional locations is also a challenge for some agencies, with some regions having high percentages of non-English speaking background and Aboriginal populations. Some staff may lack skills, awareness and sensitivity in dealing with diverse cultures, and staff drawn from these cultural groups may face challenging conflicts.

A number of managers we interviewed see misconduct occurring in 'pockets' in specific agencies or in specific parts of agencies, with a variety of improper and dysfunctional practices supported by an entrenched culture, ineffective management and limited visibility. The characteristics of regional and rural offices outlined above mean that there can be a significant risk of such pockets developing there.

3.18 Cross cultural opportunities and challenges

In community service agencies the employment of members of a cultural or ethnic group which is strongly represented in the serviced local community can have a number of benefits. It can provide community employment and income as well as increase cross cultural understanding and integration. However, there are challenges to achieving these objectives. We were told that community liaison workers are often recruited at a junior level and are not always given the appropriate training and support required for their role. We were also told of a lack of understanding within agencies of the complexity of cross cultural relationships and the difficulties community liaison workers face as '*members of two worlds*'. The training offered to help staff establish appropriate boundaries is considered inadequate – and often poorly attended.

We have already raised the challenges for public servants living and working in smaller communities. An example is a community worker negotiating payment of arrears with a neighbour who they will also meet at the supermarket and who might call round to discuss the issue at night. The corresponding community pressures on staff who are members of close knit cultural or ethnic groups are even greater.

In one focus group, participants discussed how Aboriginal and other community workers are given separate training in cultural matters. It was suggested that this is a missed opportunity to increase cultural understanding. Non-Aboriginal workers are offered 'cultural awareness training' but this is often instructional rather than interactive. This group of community workers expressed a preference for informal workshops where all community workers would meet to share their stories, perspectives and questions of one another. It was hoped that this would encourage a deeper level of conversation that could help build a more subtle understanding of the complexity of the cross cultural issues.

3.19 Generational issues

There are several ways in which generational differences are seen to be important to the NSW public service, not all of them strictly ethical. Several interviewees reported differences in cultural attitudes and expectations which were reflected in relationship conflicts and diminished mutual respect. The clearest issues were in hospitals where older nurses who had gained positions of power had a characteristic manner of exercising their authority, described by one person as a 'matron rule' process reflecting the military heritage of hospital organisation design. This was a factor producing conflict and disenchantment of younger nurses. Conversely, younger staff had cultural habits such as talking and texting on mobile phones which were experienced as offensive or disrespectful by older staff. One result reported in hospitals and elsewhere was a high turnover of younger public servants.

Another issue which many participants discussed was the aging of the public service population combined with long tenure in positions. The fear is that with high rates of retirement over the next decade there will be a loss of public service cultural knowledge as well as more practical corporate knowledge. One manager reported that he had deliberately recruited new graduates over the past few years and was using a mentoring process to transfer such knowledge. Unlike in hospitals, he reported positive intergenerational relationships and little turnover among new recruits. He did say that in another unit, which had close interdependence with his own, retirements were causing a significant loss of knowledge which required his staff to 'fill the gap' by providing guidance on the requisite procedures.

There are important differences in the age structures of different agencies and sections within agencies. We were told that public servants in regional centres tend to be older. In an agency with an older workforce we were told that longer serving employees can be more 'entrenched' in their work practices and less willing to discuss their work and behaviour. However, divisions of the same agency which recruited recent graduates were seen to have a significantly more responsive and performance oriented organisational culture.

This process of becoming entrenched in habitual work practices is associated with what some called a '*sense of entitlement*'. Through long employment, possibly in the same job role, longer serving public servants come to take for granted the work practices they habitually enjoy. With these practices come certain privileges and expectations, including particular 'entitlements' to, for example, small travel allowance rorts, and 'running their own show' and not having to open their practices to outside scrutiny.

In one agency changes to the complaint review system and an increasing proportion of younger staff were reported to have reduced the 'sense of entitlement' that was associated with long serving employees who had been bypassed for promotion. However, we were told that the increasing youth of the agency meant there was a shortage of more senior staff to provide leadership, and that this was contributing to high turnover among younger and more recently recruited staff.

3.20 Different staff educational levels

Differences in level of professional education are reported to have significant impacts in the ethical awareness and hence conduct of employees. It was reported that in one agency managers had to give more careful attention to the ethical conduct of staff who had TAFE qualifications than they did to social work graduates and others with professional qualifications. Other managers reported that tertiary qualified public servants generally had greater reflective awareness of ethical issues.

3.21 Misuse of ICT: Social media and pornography

Another emergent area of ethical challenge discussed in a number of interviews and some focus groups was the misuse of internet access and social media. Accessing and sharing of pornography emerged as an issue some years ago. Most people discussing it said that their agencies had introduced training and closer supervision to address this issue, and that this area of misuse was being effectively managed. There were still instances where pornography viewing was discovered, and one manager who reported this said these cases were being dealt with more severely since the prohibition on pornography had been well communicated and clear standards established.

There was more concern about how to manage misuse of social media such as Facebook and mobile phone texting, particularly among Gen X and Gen Y staff. The issue here is more one of misuse of work time than concern at the content of communications. One example given of the latter, however, is staff posting critical comment and sometimes confidential information on Facebook sites.

3.22 Case studies of unethical public service cultures

These two case studies illustrate the interwoven dynamics underpinning ethical culture.

The first concerns a regional office of a major state agency, where an unethical culture developed in an environment lacking effective leadership and management. The case shows how a bad ethical culture can develop and be maintained, and also (in section 5.4.1) how remedial action can transform culture positively.

The second example concerns a relatively unsuccessful attempt to transform an unethical culture which demonstrates some common reported features of failure of leadership and management.

3.22.1 An unethical regional workplace culture

This case is reported in broad illustrative detail only, based on interviews with four people involved in various aspects of the situation. It concerns an organisation with an unethical culture, one that was commonly described as 'toxic'. It manifests many of the ethical challenges discussed in the preceding section, illustrating their interplay and the way in which an entrenched negative culture can develop.

The organisation included many employees who had been in the organisation for a long time. Many of the staff knew each other outside work, and carried out community social activities together. Many were also related to one another. All of this created a culture of conflicted loyalties which was reflected in workplace behaviour. Significantly, the staff did not see anything particularly objectionable in their patterns of behaviour. Effectively it had become entrenched as an 'entitlement'.

In the workplace, minor misconduct was common and staff protected one another from challenge by managers. Attendance was poor and reduced work hours common. Many took frequent sick days and some were very lax in their work performance, often refusing tasks that were part of their role (for example, 'I don't work on the front desk').

Management challenges were met with open lies. When one person was challenged for regular lateness, the person stated that they were '*out the back doing photocopying*'. They also enlisted others to support their story. In fact one of the more difficult staff was reported to often be '*out the back photocopying*'.

Management was also lax. Although there were obvious difficulties in challenging unacceptable behaviour, such behaviour had been tacitly accepted over a long time. One senior manager noted that one particular offender had even worked in higher duties for a period.

Through all of this time staff and others outside the agency had been sending (mild according to one report, more serious according to another) pornography and racist material by email. This email network involved half of the local staff as well as a substantial number from other organisations. Again this behaviour was not seen as problematic by staff. It was reportedly viewed as 'office entertainment' which provided a certain level of shared enjoyment.

The situation was eventually challenged seriously. This aroused very concerted resistance. The staff conducted a campaign on social media against management, enlisted union support against 'bullying behaviour'. One person made negative reports about management in the local media and the support of local politicians was called upon. A senior manager said that they had been the target of numerous bullying and harassment complaints, none of which were substantiated.

As part of the concerted action to restore the organisation, the agency undertook investigations and consulted with staff. These efforts uncovered a widespread support for management authority that had been suppressed when the previous culture was dominant. Over a long period the ethical culture is being rebuilt: see section 5.4.1.

3.22.2 Rules, compliance and controls

In one of our focus groups we heard of the challenges of implementing policies, processes and systems focussed on probity in managing compliance and control measures for procurement. This agency was a particular focus following independent investigations and was subject to numerous anti-corruption measures that stemmed from those investigations. The extensive recommendations resulted in a substantial body of anti-corruption and compliance policies and procedures, including the development of an online procurement system and a range of other reporting processes and systems.

The procurement system was much heralded and was seen to offer the potential of addressing systemic corruption, maladministration and numerous deficiencies in probity in expenditure and contracting practices. The procurement process implemented was formally accredited and an external benchmarking exercise also identified the system as being close to world class. However, when it was introduced, the system met considerable resistance from staff, not helped by its hasty and problem filled design and implementation.

This hasty process resulted in the system suffering many glitches including system crashes, which required what its operators termed 'workarounds'. As the name suggests, workarounds involved the performance of certain process steps outside the system. These problems were well recognised prior to implementation but commitments made to the Minister and senior managers required that the system be rolled out regardless. As a 'vanilla system' it was not customised to fit the agency's specific requirements. It did not align with delegation levels and the roles and practices of those using the system. As a result the system was extremely difficult to operate, adding to a pre-existing level of resistance which staff had to a new system.

The focus group which discussed this case included people from all sides of the process, including system designers and people who used the system in their procurement activity. From the perspective of those who designed the system, many of the 'workarounds' resulted from ignorance of how the system worked rather than the limitations of the system itself.

For others involved in compliance, these problems were symptomatic of a broader culture in which failure to take responsibility was the norm. In this instance there was seen to be a failure to take responsibility for making approval decisions. These were delegated to others when the opportunity arose, adding an increasing number of people to the approval process, lengthening the time required for approval without making decisions more dependable. Since there were so many signatures required, each signatory tended to regard their own as relatively unimportant.

Participants in the group agreed that there was an entrenched 'culture of avoidance' which compounded the excessive burden of probity imposed by slavish following by the agency of ICAC recommendations. Both communication and consultation were lacking in the process. There was a lack of consultation about the steps the process required to make it workable and effective and there was a lack of communication around business process changes and the sign-offs they required. Several participants noted the difficulties faced on a daily basis through not knowing that new business processes had been implemented.

Underlying many of the problems was a reliance on compliance with rules rather than applying principles directed at achieving desired outcomes in an appropriate way. The organisation had a strong compliance culture. As one focus group participant noted:

one of the biggest problems in this place is that people are making decisions because they know there is a rule but they don't know what the rule is for.

Another factor underlying these issues is that the implementation and design of the system was driven strongly from the top down. The people in the focus group more closely involved with system development and operation were not aware of any consultation with the people who would actually use the system. This compounded the technical problems with the system

already known prior to implementation and contributed to four main problems that participants saw with the roll out:

- technical issues with the software used which should have been fixed prior to implementation;
- little or no consultation concerning design and implementation;
- an uncritical response to ICAC recommendations;
- inadequate training of the people who were to use the system.

As a result, field and operational staff experienced extreme frustration implementing systems and processes that they didn't understand in terms of both their purpose and how they operated. Operators faced the anxiety of '*breaking a rule that we didn't know about*', making more understandable the practice of delegation and adding people to the approval chain.

Another constraint created by overreliance on rules was the restriction on contact with suppliers. Service delivery staff expressed frustration at being constrained and '*hamstrung*' in not being able to talk with suppliers to gain basic information for their purchasing decisions. Compliance with probity requirements to avoid a conflict of interest had higher priority. Several spoke of the common practice of using contractors to undertake necessary due diligence and obtain information about suppliers and contractors; a practice one participant referred to as '*outsourcing our responsibility*'.

This '*culture of risk aversion and avoiding responsibility*' extended to, and was perhaps created by, senior executives of the organisation. Many instances were cited where suppliers have been paid tens of millions of dollars yet haven't delivered to specification, within budget or met required KPIs. Staff reported numerous conversations with senior managers in which they alerted them of these instances, but the senior managers were not prepared to take the action needed to bring these suppliers to account. Examples were given of projects that were running significantly over budget and facing cost and delivery blowouts which were not being proactively managed. Participants believed that senior managers failed to report these events because of a '*fear of delivering bad news above*'. Such inaction had ramifications down the line with staff seeing inaction and fear of higher level retribution and '*shooting the messenger*' rather than tackling the problem.

4 Ethics policies we found

4.1 Introduction and terminology

We collected and considered ethics-related policies from 18 agencies across 9 clusters. Our analysis is included in schedule 4. We collected the policies through a combination of:

- searching agency websites for publicly available policies;
- requesting copies of policies from interviewees.

We obtained other information about agency approaches to policy development and design through:

- 11 'policy interviews' which had a particular focus on policy development and/or implementation, with people nominated as having responsibilities connected with these areas;
- policy related information gathered from the other interviews.

In this report we use the term 'policy' to cover a range of different types of documents used within agencies to regulate and guide conduct and the way the agency fulfils its functions – extending, for example, to standards of behaviour, codes of ethics and/or conduct and statements of purpose, values and/or principles. To help navigate the different ways in which key ethical policies are described, in the following policy discussion and analysis we use the terms 'code of ethics', 'code of conduct' and 'combined code of ethical conduct' in the following way:

- A code of ethics sets out an organisation's higher level ethical framework: it typically states the purpose of the organisation and the values and principles to be observed in the pursuit of that purpose (although it won't necessarily use the terms 'purpose', 'value' or 'principle').
- A code of conduct is more detailed and prescriptive, often dealing with a range of specific issues and situations and stating applicable mandatory rules.
- A combined code of ethical conduct combines both of the preceding types of code in a single document.

4.2 Types of policies relevant to ethics; issue coverage

Generally the agencies we encountered have both a written code of ethics and a more detailed code of conduct. Most often these are combined into a code of ethical conduct.

There is a good level of understanding of the relevance of a wide range of policies and practices to ethics, for example, that ethics is not just about bullying and harassment and bribery and corruption (for example), but extends to the way that clients are treated and to the way that staff are developed and reviewed (for example).

In the following table we provide a general indication of the extent to which agency policies covered a number of ethics-related topics, based on the agencies we looked at for this purpose (see schedule 4), and taking account only of the policies they provided and the publicly available policies which we were able to locate.

The detail in which these topics were covered in the policies we looked at varied significantly between some agencies. Also, many issues were addressed in both a code of conduct (or ethical conduct), as well as in more detail in a specific policy. In relation to conflicts of interest, we have already discussed some of the policy challenges in section 3.12.

Topic	Extent of coverage
Competence, due care, quality	High
Conflicts of interest	High, in codes of ethical conduct and often in detail in specific policies
Consequences of breach	High
Fairness and honesty; integrity	High
Gifts, benefits, entertainment	High, in codes of ethical conduct and often in detail in specific policies
Health and safety, drugs and alcohol	High, though generally not in detail in codes of conduct
Lobbying	Low
Outside employment and other activities	High, in codes of ethical conduct and sometimes in detail in specific policies
Procurement, partners	Medium, though generally not in detail in codes of conduct
Public comment	High
Political participation	High
Public interest primacy	High
Respect	High
Responsibility, accountability	High
Responsive to government	Medium - High
Service	High
Use of agency resources	High
Use of information; confidentiality	High
Use of technology	Medium – High. (Though often not provided, we expect that most agencies have more detailed policies on internet and social media etc.)
Value and efficiency	High
Whistleblowing, reporting	High
Workplace behaviour, harassment, bullying, discrimination	High

4.3 Consolidation of policy

Clusters are at various stages in a process of consolidating policies across agencies within the cluster. There are two elements to this:

- Clusters are assessing where it is appropriate to have a single policy for the cluster, and where differences between agencies demand different policies. Often it is considered that codes of ethics and conduct should be uniform across a cluster, with supplementation where necessary to deal with particular features of particular agencies.
- Some clusters are focussing on revising policies at the level of the principal department, taking account of what's out there in the cluster. The extension of these policies to other agencies in the cluster will be a future step.

Given the relatively recent establishment of the clusters and some ongoing adjustments to cluster composition, we often encountered a focus on the consolidation and amalgamation of existing policies rather than a more general review process. This process tends to be more administrative than investigatory and consultative. This is discussed further in section 5.

Example: One cluster is in the process of developing a combined code of ethical conduct which will apply across all its agencies. This code is being developed based on a number of codes in use in specific agencies in the cluster. Although they are aiming for a single code, they expect that other more specific resources (for example, additional policies and/or training programs) will be needed to take account of specific agency needs.

Example: One cluster said they were looking at ways in which they could reinforce core values and principles to apply across the cluster whilst also allowing individual agencies to foster their own sense of identity which they consider to be a strong, positive motivator for some of their staff. This may mean there are multiple codes of ethical conduct across the cluster.

4.4 Policy and process design approaches

Amongst the people we spoke to there is strong support for a move to shorter and less detailed and prescriptive policies. This is particularly the case in relation to codes of conduct, although in some cases it is an approach being taken to all policies and other resources developed to guide behaviour and operations. This move is underway in many clusters, although in some cases it is being delayed due to the policy consolidation process mentioned earlier.

Reasons given for this trend were varied although often connected. They included:

- Shorter documents mean people are more likely to read the policy and be able to keep the key points and issues in mind. Policies should include the key information and principles, with links to more detail for people to follow up if needed.
- A principles based approach is more likely to motivate compliance than a prescriptive approach where the rules may seem more arbitrary.
- Prescription doesn't work. One person suggested a positive correlation between the level of ethical misconduct and the length and prescriptiveness of policy. In some cases increased prescription seems to have been a reaction to high levels of ethical failure (rather than playing any role in causing the failure).
- A principles based approach helps encourage individual decision making capacity and helps develop accountability, responsiveness and collaboration.
- A principles based approach is more effective at changing culture.
- A focus on detailed policy and process prescription creates inefficiency. Staff lose focus on maximising delivery of service and value.
- A principles based approach is more conducive to pro-ethics/values behaviour change strategies which are more effective for most than anti-corruption/misconduct compliance approaches.

- Longer, more detailed policies make it very unlikely that staff will understand the full coverage of a policy – at best they might recall a couple of areas covered. Policies should be framed so users will keep the important things in mind.
- Staff are very time poor and don't have time to go through a detailed 60 page policy and then find the specific situation they are interested in is not dealt there anyway. Staff want shorter policies.
- Staff are frustrated by constant changes to policy and procedure which are updated in a vain attempt to keep up with every new situation that arises.
- Codes of ethics and conduct should convey the essence of how we would like staff to behave – coupled with resources and training to help groups fill out what the principles mean in practice for them.
- Shorter, less prescriptive policies are more suited to younger generations of staff, who are more used to learning according to principles rather than by rote.

There were contrary views:

- Some concerns were expressed that less detailed and prescriptive policies make it more difficult to investigate and enforce compliance. Some thought that there would always be a need for the more prescriptive requirements to deal with the small percentage of staff intent on being unethical. (Others disagreed: one person noted that he had not come across a case of serious misconduct which would not clearly breach his agency's one page statement of principles of conduct. A number also said that the requirements of the consciously unethical few should not wholly drive the policy approach for the rest. This misses the opportunity for policy to play a practical role in guiding behaviour, rather than being something that is turned to after the event when things have gone wrong.)
- We need the detail in codes and policies to set detailed expectations. For example, we need to be clear about what values and principles mean. We can't assume a consensus on what integrity looks and feels like and means in terms of behaviour.
- Some suggested that many staff would prefer more detailed guidance about how they are expected to perform their roles, rather than needing to apply more general principles or standards. One agency noted that some staff regularly ask for policies to be updated and extended to deal with new situations.

A number of factors were also identified which could make agencies gravitate to more prescriptive approaches, particularly in circumstances of stress:

- Management falls back on rules since they are seen to be easier to implement and administer.
- Introduction of new rules and regulation is seen as the easiest visible response when something has gone wrong.
- As mentioned above, many staff seem to want rules.
- Many are risk averse and think that rules and process are more effective at managing risk, or personal risk at least.

Whilst most supported shorter, less detailed and prescriptive policies, they also thought it very important that these shorter policies be supplemented by other sources of guidance where it is required, for example practice or guidance notes or other more detailed supplementary policies. Some said it was important to develop toolkits and other resources to equip managers to communicate policy requirements. Some also said that advice or decision support resources were important, noting that they field many enquiries about the application of policy to particular cases. This additional guidance (along with training and other embedding strategies) was considered important to allow people to connect values and principles with specific expected behaviours relevant to their roles.

Some people made it clear that their support for a principles based approach did not mean there shouldn't be a range of non-negotiable requirements about the way people do their jobs.

Some people also mentioned the challenge of making policies accessible and engaging, for example, by including 'war stories' and case studies. This was more often raised as an important part of the strategy for communication and implementation of policy.

There was a concern voiced about policy being developed for policy's sake. It was felt that there should always be a clear reason for producing a policy, for example, policy shouldn't simply replicate the requirements of other instruments such as awards.

4.5 Policy development approaches and challenges

As mentioned above, policy revision and development approaches tend at the moment to be more administrative than investigatory and consultative, with a focus on the consolidation and amalgamation of existing policies. Although the consolidation process often involves some consultation (for example, with legal, human resources, key representatives of operational areas, unions), at this time there is not much evidence of active broader consultation across clusters and agencies. However, there is recognition that this may be needed in the future, for example to address apparent clashes of purpose or value between different agencies within a cluster.

In many cases draft policies are posted on intranets or made available for general comment in other ways, but it was felt that this was typically ineffective to draw considered feedback from a broad range of staff.

In some cases input on draft policy is sought from the Ombudsman and/or ICAC.

Some specific issues and examples related to policy development reported to us were:

- 4.5.1 We were told that the departmental values which were included in an agency's code of ethics were essentially those prescribed by the Minister at the time. However, it was felt that this was not inappropriate given that those values were a response to some undesirable features of the department's culture we had been identified through a thorough investigation of that culture.
- 4.5.2 We were told about a policy development process where the policy owner is typically human resources (though it may be audit or another function in some agencies). Human resources would aim to develop an initial draft policy addressing shortcomings of previous version. First round consultation with the legal and audit functions follows. The policy is then sent to a broader audience for comment – for example, the policy may go to specific operational people for input on specific areas. The policy then goes to the Executive for comment and initial endorsement, before circulation to outside bodies as appropriate (for example, unions) and posting on intranet for general internal comment.
- 4.5.3 Frustrated staff felt that policies were continuously updated on an ad hoc and non-consultative basis to respond reactively and ineffectively to specific incidents.
- 4.5.4 A cluster comprising a number of previously unconnected agencies is grappling with reconciling an apparent clash of purpose and values between agencies.
- 4.5.5 One small agency went through an extensive consultative process to identify core values and principles. Separate workshops and consultation at more senior and junior levels produced largely consistent outcomes, which were fed into a new ethical framework. The key elements of the framework were publicised on internal stationery, posters and banners used for staff events. Along with staff training and embedding in team procedures, individual staff were regularly publicly recognised for their embodiment of agency values.

An effective approach to ethics-related organisational policy development will depend on a range of factors, including the subject matter of the policy, the organisation developing the

policy and whether the policy is a new policy or a revision of an existing policy. However, there are a number of development principles which it is important to take into account.

Where a policy is being revised, the extent of the policy development process will obviously depend on the scope of the revision. Often it will be appropriate to make a minor update to a policy following a limited policy development and consultation process. However, it is important to have regard to the cumulative effect of multiple minor updates and changes. Over time 'patched' policies can lose their conceptual structure and coherence and begin to appear ad hoc and arbitrary, as well as becoming increasingly inaccessible. All policies should be subject to periodic comprehensive review.

It is also important to reflect carefully on whether a change in policy is actually warranted in the particular case. For example, rather than revising a policy to deal specifically with a particular recent situation of misconduct, it may be more effective to communicate separately why the misconduct was in breach of existing policy, and perhaps consider a separate guidance note or training initiatives to build a better understanding of existing policy.

Where a new policy is being developed or an existing policy is being significantly revised, it is important that there is consultation with those affected. The process and timing for consultation can vary, but it needs to be designed so that there is a real opportunity for stakeholders to contribute to policy content. One approach is to develop a small policy development working group, with representatives of some though not necessarily all stakeholders. This group can develop an outline of the policy or a full policy draft, which is then circulated as part of the consultation process. The mechanisms for consultation need to be tailored to elicit active two-way engagement with stakeholders. Mere posting of a draft on the intranet is not sufficient for substantive consultation. In some cases specific focus groups and workshops may be appropriate to help facilitate productive discussion of key issues and choices. Multiple rounds of consultation in different forms and with different stakeholders may be useful at different stages of the development process. The development and consultation process needs to address not only the content and form of codes and policies but also the ways in which those codes and policies can best be communicated and embedded in the operations of the agency (see section 5). In designing the consultation process it is important to bear the end result in mind: codes and policies which are appropriate to the agency and which are owned throughout the agency.

Policy development should obviously also aim to draw on the experiences of other NSW agencies and other private and public sector organisations, and an evolving understanding of different pathways to behavioural change (see, for example, the references included in section 6.5).

The policy focus of our research has been on codes of ethics, codes of conduct and other ethics-related policies. In an important sense though all policies are 'ethics-related'. It is crucial that the articulated purpose, values and principles of an organisation are aligned with all policies, procedures and practices within the organisation. Agencies need to critically assess all their policies to check that they are not 'signaling' a demand or tolerance for unethical conduct. We were told about a policy writing principle in one agency which requires key relevant ethical considerations to be identified in all policies to ensure that ethics is 'woven into the framework' of the agency's policy and procedures.

4.6 Currency of policies

Most of the ethics-related policies analysed have been revised within the last three years, or are in the process of being updated (refer schedule 4). However, we have not been able to systematically assess how extensive the revision process has been. In many cases we were told that the revision process for a policy was relatively minor or 'administrative' and did not involve any sort of broad consultative process. Some other comments concerning policy revision and updating were:

- Revisions in some cases simply consist of the addition of new rules because someone has raised a new situation not specifically covered by current policy; or because someone has done something wrong and has argued they didn't know it was wrong.

- Some said the need for approval by multiple stakeholders makes it too hard to update policies, meaning many are out of date.
- Some were frustrated by how quickly policies were changing.

4.7 Comparison of policy and process

We set out below our findings from our consideration of specific ethics-related policies we collected across 18 agencies (as set out in schedule 4), including taking into account our findings concerning ethics issues faced in the public service (section 3) and the information we were given concerning different workforce characteristics of agencies. Although we tentatively identify some potential connections between policy, ethical issue and agency characteristics, these need to be treated with caution given:

- In many cases we were not able to access all relevant policies for an agency.
- Our consideration of policies has focused on particular aspects of the policies, rather than being an exhaustive review of policies.
- Generally we have not been able to take account of the extent to which current policies differ from the policies they have replaced. For example, policy characteristics may be both caused by, and/or a cause of, ethical issues prevalent in a particular agency.
- Our findings concerning ethical issues are based on a qualitative rather than quantitative methodology (see section 2.2).

4.7.1 Principle and prescription

Generally we found the policies were drafted to make clear the values and principles which guided the formulation of the more specific policy requirements, particularly in relation to combined codes of ethical conduct. For some topics such as conflicts of interest and gifts and benefits there was a higher level of prescription, particularly in specific policies addressing those topics. However, even in those cases there was generally a clear statement of the underlying reasons for imposing the relevant requirements. This does not mean that each prescriptive requirement was accompanied by a statement of underlying principle; often the policies or policy section simply began with a statement of relevant organisational purpose, values and principles, tying them to the general subject matter and purpose of the policy or policy section.

4.7.2 Accessibility and clarity

We found a high level of clarity and accessible language used in the policies we considered.

There was mixed use of examples to help communicate policy content. However, we are aware that for some shorter policies which did not use examples there was accompanying communication and training programs which did make use of case studies to aid understanding.

There was mixed use of links to alternative sources of more detailed information. Where links were included, this was unobtrusive in some cases but in others it tended to disrupt the flow of the policy and potentially obscured key messages.

There was a wide variety of policy formats. Some were extensively designed to aid reader engagement and understanding, others were much more basic and/or formal. In some cases the key policy content followed several pages of information concerning the origins and status of the policy, which may have been better placed elsewhere. (Note however that the form in which we read policies may not have been the form in which they were made available to staff.)

In most cases the policies tended to be framed in positive rather than prohibitive terms i.e. focussing on positive expected behaviours rather than prohibited conduct. But there were also more negatively-framed policies.

4.7.3 Length

There were very significant differences in the length of similar policies of different agencies. However care needs to be taken in drawing conclusions from this. In some cases agencies with a shorter combined code of ethical conduct, for example, had a larger number of separate policies on specific issues. Also, some of the longer policies were made longer largely as a result of the inclusion of extensive practical examples.

Generally we did not find that longer codes of ethical conduct covered a broader range of topics than shorter codes – rather they tended to cover similar topics in greater detail, often as mentioned with the use of practical examples.

It's also important to caution against excessive reliance on page length as the basis of comparison given differences in factors like text font size and text density on each page. (A word count analysis would have provided another relevant measure.)

4.7.4 Topic coverage

As outlined in section 4.2, there was a high level of coverage of 'common' ethical policy topics. However, the detail of coverage of specific issues varied significantly, both within similar policies and also as a result of some agencies having specific policies on specific issues.

4.7.5 Relationship between policy characteristics and issues faced

We make the following observations about potential connections between the policy characteristics discussed above and the ethical issues reported to us and described in section 3.

The characteristics of policies in an agency may be both an *effect of* as well as a *cause of* ethical issues prevalent in the agency. We were told of cases where more detailed and prescriptive policies have been a response to identification of significant ethical issues. However, these cases were balanced by at least one instance where we were told that the agency has moved towards shorter and more principles based policy because of frustration with the limited impact that a more prescriptive approach has had on entrenched ethical challenges.

In some cases policies in an agency have clearly been affected by specific types of issues identified in those agencies. However, we are unable to generalise about the form that the policy response has taken. In one case we are aware a particular type of concerning workplace behaviour had a direct impact on the reframing of the agency's core values. However, this was not accompanied by the inclusion of extensive additional detail in relevant policies, rather much greater emphasis was placed on other measures (for example, training programs) to build understanding of the issue.

Our interview and focus group samples were not large and diverse enough to allow us to investigate correlations between the balance of principle and prescription and the level or types of issues we found in different agencies. Even with access to broader survey data this will be difficult because of the high level of appeal to principle we found across the agencies we considered and the need to assess the extent to which current policies differ from the policies they have replaced (in order to distinguish between policy characteristics being an *effect of* or a *cause of* ethical issues prevalent in a particular agency).

4.7.6 Relationship between policy characteristics and agency workforce characteristics

From our policy analysis (schedule 4) we were unable to identify correlations between different policy characteristics and agency workforce characteristics. We note however the following potential connections which were raised in interviews:

- Generational composition of agencies may affect the balance of principle and prescription, and the extent to which more prescriptive policy requirements are accompanied by the rationale for those requirements. For example, the attitudes of

younger employees and the method by which they have been previously educated may make them more resistant to prescriptive approaches than older employees.

- Generational composition of agencies may affect topic coverage, for example, a younger workforce may lead to greater focus on drug and alcohol issues.
- Staff with less formal education may be more comfortable with prescription than principle. (Note it may be possible to change this through appropriate learning and development programs.)
- There may a tendency for greater prescription where there is a higher risk of loss if things go wrong, for example, where lives are at stake. (This is not to suggest that a prescriptive approach is more effective at managing risk in such cases.)

4.7.7 Legislated core NSW public sector values

Our policy analysis was not designed to assess the extent to which the legislated core values and principles are already embodied in existing policy. However, based on the analysis of policies we did undertake, we consider that existing agency statements of their purpose, values and principles are generally consistent with the legislated core values and principles. Having said that, there is considerable variety in the language and terminology used by different agencies in describing their values and principles as well as considerable differences in emphasis, and there are many additional values and principles identified by agencies as defining their core commitments.

4.7.8 Relationship to the Model Code

In only a small number of cases were we able to discern significant similarities in format, structure and/or wording between the codes of ethical conduct we considered and the model code included in the chapter 8 of the Personnel Handbook. However, the range of topic coverage of most codes of ethical conduct included those topics covered in the model code (other than lobbying).

4.7.9 Other policies

It's important not to lose sight of the policy and process challenges which exist in areas which are less directly ethical areas, even though they clearly raise many complex ethical issues. For example, although the 'ethics policies' we considered tended to be more principles-based than prescriptive, this may not be the case in relation to other more operational policies and procedures where (as described in sections 3.16 and 3.22.2) we sometimes encountered frustration with 'bureaucratic' and/or 'inefficient' policy and process.

4.8 Sample codes

We include below links to a selection of codes which convey some of the variety we encountered.

NSW Police Force Standards of Professional Conduct

http://www.police.nsw.gov.au/_data/assets/pdf_file/0009/87993/SPC_Conduct_2008_INTRA_NET_230608.pdf

Education and Communities Code of Conduct

<https://www.det.nsw.edu.au/media/downloads/about-us/how-we-operate/code-of-conduct/codeofconduct-guide.pdf>

Housing NSW Code of Conduct and Ethics

<http://www.housing.nsw.gov.au/NR/rdonlyres/B0322BBE-095E-4FAF-AABA-D29B9ADB3CAE/0/CodeofConductandEthics.pdf>

Department of Community Services Code of Ethics

http://www.community.nsw.gov.au/docswr/_assets/main/documents/codeconductethics_pol.pdf

NSW Health Code of Conduct

http://www.health.nsw.gov.au/policies/pd/2012/pdf/PD2012_018.pdf

Office of State Revenue Code of Conduct

<http://www.osr.nsw.gov.au/lib/doc/factsheets/code.pdf>

State Property Authority Code of Conduct

http://www.lpma.nsw.gov.au/_data/assets/pdf_file/0003/161661/CODE_OF_CONDUCT_POLICY_September_2011_FINAL.pdf

5 Embedding strategies and systems we found

5.1 Introduction

Whilst there is a general recognition of the need to make an ethical framework something which is lived in an organisation, in many cases the 'implementation' of codes of ethics and conducts is limited.

Many times we heard that staff know about codes of ethical conduct because compliance with it is a term of their employment; or because they are required to sign it. Or a manager may be required to sign a confirmation that they have explained the code to the staff member. In one case communication of codes has (so far) been limited to placement on the intranet. One comment was that staff may have read the code three years ago, but it will now be forgotten. In some cases training is offered but is optional.

These approaches are perhaps mirrored in some views expressed about the attitudes which many staff have about a code of ethics: that it's all 'motherhood statements'; or that 'it's only relevant if I get into trouble'.

Partly the shortage of implementation / training programs seems to be a consequence of the current focus on working out what frameworks and codes should look like in the new clusters – there is a reluctance to expend a lot of energy on frameworks and codes which may be changing. Some programs previously in place have been suspended. Also, it should be borne in mind that where we spoke to people at the cluster level, they may have not been aware of all the implementation programs and measures which are in place within individual agencies and sub-agency groups.

Importantly, the foregoing should not suggest that we did not encounter many programs and initiatives which represent substantial investments of creativity and resources towards making the stated values and principles of an organisation lived values and principles which guide day to day operations and the way people do their jobs. Some of these are described in the following sections, in particular section 5.4.

The lack of ethics implementation in some agencies should also not suggest that there is a lack of understanding of the importance of implementation. The same people who told us that little is being done currently in their agencies also often told us that there is a need to develop programs which will allow their codes of ethics and conduct to drive behavioural change.

5.2 Types of implementation measures

Some different types of implementation measures and programs for codes of ethics and conduct we encountered were:

- workshops designed and run by internal agency learning and development staff; or designed and run by external training providers;
- off the shelf and customised eLearning programs;
- large group presentations;
- resources and toolkits to help managers and supervisors lead ethical conduct conversations within their teams;
- training provided as part of induction programs;
- Director General emails to all staff making connections between cases of misconduct and breaches of codes (or, less often, between cases of good conduct and adherence to codes);
- staff information bulletins including war stories about things going terribly wrong (and suggestions about how to avoid them);
- regular award giving for staff who embody the agency's values.

5.3 ELearning

When discussing ethics training and other learning and development programs many people said they felt that online learning did or should play an important role. Some advantages of eLearning mentioned were:

- efficiency – particularly in large agencies;
- ability to reach remote staff;
- ability to track completion of training.

(We also heard that eLearning needs to be accompanied by other programs, for example face to face programs which help build practical skills to raise and discuss relevant ethical issues.)

Although we heard a lot about the promise of eLearning, we heard few testimonials to it having been implemented really well. (People felt it can be done well, they just haven't seen it yet.) Most who were working on developing or revising online programs said that they would benefit greatly from greater support from people with expertise in the design and implementation of online learning.

Example: One agency developed content for code of conduct training, with design input from an external provider. For specific EEO and bullying training they purchased off the shelf content from the external provider. The programs include integrated check learning questions and a quiz at the end.

Example: NSW Health incorporates the Health Education and Training Institute (HETI), which has a focus on clinical and non-clinical education and training. HETI intends to play a leadership role in e-learning and will establish standards and guidelines for the state. HETI is partnering with Health Support Services to support state-wide e-learning initiatives.

Example: One agency is developing eLearning programs internally using Adobe Captivate.

5.4 Case studies of ethical culture change

5.4.1 A regional office

A group of disaffected staff subject to performance issues lodged a series of complaints of bullying and harassment by their managers (see also the case study in section 3.22.1). As part of this some participated in a Facebook campaign to draw attention to their concerns publicly and to gain wider support from other staff. There were other indications of discontent including misuse of time and absenteeism and reportedly low morale. Whilst poor management was acknowledged, it was reported that the bullying complaints were a response to demands that improvements be made in work performance. The campaign gained significant attention and support from other colleagues, the union and other the media.

A further issue occurred within a few months of the original campaign, where a large proportion of staff in the region were found to be involved in sending inappropriate emails.

An investigation was undertaken involving interviews with the key people involved in the bullying and harassment allegations, resulting in a report and recommendations. In a second stage, meetings were held with all staff in the relevant offices and a summary of the report was discussed and made available. These discussions clarified many of the issues for many who had been sympathetic to the campaign, reducing the level of discontent. A third stage addressed the underlying management issues. This was to have all managers in the affected area participate in a day and a half workshop addressing communication issues and skills around giving and receiving feedback in relation to performance. The workshop was followed by a one hour coaching session by an external coach (and additional sessions if desired).

According to the managers responsible, the workshops and coaching sessions had a number of beneficial effects. The workshops established the understanding that performance feedback could include positive and constructive recognition of strengths and

accomplishments. They gave managers communication strategies, clearer ideas of how to proceed, greater confidence and also a sense of responsibility for their role in guiding employee performance. The workshops introduced another change. It initiated discussion between managers about staff performance and related issues, leading into a conversation which included all staff. Matters previously 'undiscussable' were now being talked about creating a climate where managers could now address performance issues.

With this foundation, performance conversations were again being held with staff, identifying and planning to address development needs as well as recognising strengths. With these agreements in place, and with a much wider range of workplace issues becoming open for discussion, it is reported that performance has improved along with morale, satisfaction, cooperation and other positive cultural features of the work environment. The program has yet to be evaluated systematically for its impacts.

The program was considered a success and led to the program, with its communication workshops, coaching and the performance conversations, being introduced across all managers in the agency. Performance management processes had been in place for several years but it had not gained traction. Now, with this foundation of more active communication, it had become a key management tool.

5.4.2 A regulatory agency

A new manager found his agency staffed by inspectors who worked independently of one another, and to a significant extent from management, were possessive of their work, disclosing little about it, and with entrenched work practices that were not open to examination. The manager perceived that this was a climate that could support corruption and other unethical conduct, or at least make it very difficult to discover if it were occurring.

The manager decided on a systematic approach involving leadership training, a redesign of the working environment and closer relationships with stakeholders.

The first element of the program was to focus on systemic issues in the marketplace rather than discrete and separate risks. The manager established policy priorities addressing selected systemic issues and communicated these clearly to both inspectors and the regulated community. Over time and in combination with other program elements, this approach led to a more open, constructive relationship with the regulated community and greater consistency in the actions of inspectors. This also included wider communication of the findings of investigations and greater explanation of penalties and the reasons for them.

A second plank in the program was to refine the code of conduct and draw out in greater detail what it meant for the role of compliance officers. This was done through team discussion of work practices and an exchange of knowledge and insights. As well as improving work practices, this mutual accountability produced greater consistency in their inspection procedures. This awareness and establishment of effective performance standards was achieved through imaginative workshop training, such as the use of role plays with professional actors portraying typical inspection situations which were used to discuss the ethical issues inspectors face. The manager reported that many officers found the workshops quite challenging to entrenched attitudes and practices which they were unused to reflecting on.

A third plank was to change the managerial and collegial relationships among compliance officers. First it was emphasised that assignments were not 'possessed' by the officers. They were the agency's assignments and officers were simply responsible for working on them. As well, the level of communication with colleagues and management was enhanced through two-weekly team meetings in which officers discussed their assignments and gained feedback from colleagues. On alternate weeks, all officers had one-on-one meetings with their oversight manager.

Quarterly meetings of the entire group have been used to report progress on all three levels. Members of the regulated community have participated in some of these events, where they give frank views about the regulator's performance.

Although the manager described this as a 'work in progress', significant changes have been achieved in performance, levels of staff skill, staff morale and, as mentioned above, in the openness of relationships with the regulated community. A by-product has been a greater capacity for the agency to work with other regulators, as staff now see the (obvious) broader benefit in cross-agency work in improving regulatory effectiveness.

The next stage in this process will be to turn the largely internal reporting process 'inside out' – much more information about regulatory activities will be published online. Businesses will be told about the core elements of routine investigation procedures, and will be invited to give feed-back about this information. The results of all targeted compliance activities will also be reported, although in some instances it will be necessary to de-identify some aspects of the data.

5.4.3 Health workshops and training

Most of the people we encountered in interviews and focus groups indicated that codes of conduct and policies were generally ineffective because they remained only a piece of paper that floated in a desk drawer (or on an intranet). Codes are generally not remembered in detail, are not referred to in decision making and are not taken into account in everyday working practice. When they are displayed prominently they do have significantly greater impact.

This general lack of attention does not mean that the codes are violated in everyday conduct, simply that they do not exercise a great influence upon it. The issue that is widely recognised is that codes, by themselves, are '*not embedded*' into everyday working practice. In one of the Health services visited a program is being implemented to combat this.

Health services are described as high stress environments, with many sources of potential and actual conflict between different staff groups who depend on one another in their routine work performance. A product of unresolved conflict is reduced morale and work satisfaction, high levels of interpersonal friction, mistakes and reduced work performance. All of these are exacerbated by budgetary and resource pressure. It was reported that

stressful reactive behaviours can become the norm in many areas

and that

In each of these situations we generally target the individual not the whole culture, whereas it's the culture that is setting those expectations. And this makes it hard to set standards for what is reasonable in the workplace. It's within the overall culture that we are responsible for setting these standards.

To counteract the influence of this wider culture and establish desired standards of conduct within the health service, a program of workshops is being implemented which brings teams together to discuss the values and behaviours of the health service. The aim of the workshops is to embed the code of conduct. In the workshops, participating staff are asked to discuss how the values and behaviour statements in the Code apply to their working relationships and their conduct in the course of their duties. This leads to a shared understanding and agreement on the behaviours that staff can expect from one another. Often from these workshops action plans are developed to improve the team's working relationships and functioning.

In addition to these workshops a key component of the culture change is a training strategy to enable employees to manage conflict early in the conflict cycle. Although there has been no formal evaluation, early feedback shows significant positive changes in behaviour and morale have occurred in the teams that have participated in the program so far.

We heard feedback from some participants in the program. They were very positive about the benefits and its effects on their team. It was said to have resolved several long-term

conflicts and challenged behaviours that had been disruptive in the team for some time. They also regarded their manager highly in part because they introduced the program in the team.

Others in the focus group including trainers who conducted the program expressed frustrations which may highlight some of the difficulties in conducting such a program on a wide scale. They reported a lack of engagement in the program from many senior managers who complained of '*training fatigue*' and lack of time. The trainers also reported challenges in justifying such a program in the context of activity based funding which require clear measures of organisational and cultural change. As well, it was recognised that such a program may in fact increase the number of complaints because it increases awareness of workplace issues and empowers staff to challenge them.

5.4.4 Grievance procedures and performance management

In one agency a significant change was made in how bullying and harassment was dealt with due to the high correlation between allegations of bullying and harassment allegations and performance related issues. After investigation, many cases of alleged bullying and harassment were identified as performance management issues rather than actual cases of bullying and harassment. Under the former process bullying and harassment was dealt with under grievance procedures that meant that managers dealt with it at a unit level. This was both time consuming and did not involve a formal independent investigation. After 2009, bullying and harassment reporting was moved into a disciplinary process with the major change being that formal complaints required that a threshold of evidence be met. This change was also consistent with how the agency handled complaints in other areas. The threshold of evidence might include a trail of emails, a timeline or file notes. (Under the previously applicable grievance procedures this threshold of evidence wasn't required.)

This was reported to us as a very positive change that has enabled the agency to better pick up those complaints that are genuine and has resulted in staff who are better educated about what constitutes bullying. Also, the requirement that there is a minimum level of evidence for those to come forward places an onus of responsibility on those making the claim. However, it was recognised that the risk in this approach is that:

it can be a double-edged sword – if you go too far the other way people may not report.

5.4.5 Other complaints management processes

There are a number of agencies who have made significant changes to complaints management procedures. One agency has an interdisciplinary team that can meet within 24 hours to address a complaint, and conduct a risk assessment and prepare an action and investigation plan.

Another agency has tightened their complaints and professional standards breach processes. The review panel includes senior agency leaders and is well resourced with external legal advice. These changes were considered very positive:

A very transparent process. It's done wonders for morale because [staff] now trust in natural justice. It's changed the way it works. It used to be that those with friends were never touched, only those in the field.'

5.4.6 Professional standards and staff management

To better manage staff performance and professional standards, an agency established a professional standards committee, which is chaired by the executive director and has a number of members on the board of management. The committee meets weekly and managers send through any issues and other information such as reports of breath test analyses and excessive sick leave. Decisions and action taken are reviewed. There is a high visibility in the unit of the committee and its function, providing a transparent and accountable process for the review of decisions.

5.4.7 Clinical supervision

In one of the focus groups there was discussion at some length of the way in which clinical supervision was supportive of community workers facing difficult ethical decisions in the field. Group supervision gave them an opportunity to discuss decisions in depth, to draw on others' experience and to gain support in dealing with situations that are particularly stressful. These discussions were also helpful in addressing particular dilemmas, where program guidelines conflicted with client needs and where personal values and departmental procedures conflicted. People in the group reported how these conversations made decision making more transparent and improved their quality and consistency between workers.

Although not directly applicable to other situations, perhaps the '*clinical supervision model*' could be modified to assist managers generally to conduct similar kinds of reflective ethical conversations.

5.4.8 Increasing client focus

An agency has introduced a program to focus community worker attention on the client: a program called 'client centred thinking'. The program has ethical and service delivery benefits. It emphasises the importance of client choice, independence and sense of self-worth, and aims to support client resourcefulness. It encourages cross agency collaboration and increasing client access to the range of services, networks and supports available in their local community, whether provided by government or not. Instead of providing a packaged service to a list of clients on a waiting list, the focus shifts from programmed services to the client's needs and choices, and providing tailored solutions with immediately available community resources. The program was reported as having had a positive effect on ethical climate. Details of the program and its emerging results were provided by the agency:

Ways we changed the culture of the agency:

- *To encourage this new 'person centred' thinking, consultants came to the agency to teach staff at all levels, about person centred thinking and how this would apply to their work. Staff and managers attended training together and then staff were supervised by their managers to run 'person centred meetings' for clients, develop 'person centred plans' and have 'future planning' meetings with clients and families using a person centred approach.*
- *In addition to this training, changes were made to the structure of some of our teams who work directly with clients and families. Specifically, geographical teams were formed which were collaborative (multi-disciplinary), with a manager overseeing the team, with an emphasis on wrapping services (internal and external to government) around clients and families. The premise is that a team gets to know a client and a family as person/people within a community. The team understands the formal and informal supports and services available to families in that locality. Managers can also ensure that clients get access to the services (internally) in a planned and timely way.*
- *Meetings across the region were also held over a 2 year period, where the 'person centred' vision was explained.*

Change takes time, but what I am seeing so far is:

- *'What does the client want?' is becoming the first question we ask at an individual level and a team level.*
- *Individual staff members are more likely to work with other services in the client's community – we don't just concentrate on working within our own agency*
- *Less staff are seeing that 'government has the answers', and more staff are thinking about clients and families having many resources beyond our agency.*

- *Managers of front line staff are getting to know individual families well and provide services as needed by the client, rather than letting waiting lists mandate when a person gets a service.*
- *In our recruitment of staff, questions have a person centred focus (we want to employ people who think the way the agency does).*
- *We are less likely to make decisions 'for' people.*

6 Some key choices in policy design, development and implementation

In this section we analyse and explore some of the key challenges to be addressed, and the key choices to be made, in implementing the new ethical framework across the NSW public service. These issues came up regularly in interviews and focus groups, although not always in the terms in which we will describe and analyse them. An understanding of these challenges and choices forms the foundation for a number of our recommendations in section 7.

6.1 Background: St James Ethics Centre's understanding of ethical organisations

As background to our discussion of key challenges and choices, we outline very briefly our understanding of key elements of ethical organisations, based on our prior experience and prior primary and secondary research.

6.1.1 Some essential ingredients of ethical organisations

Like society, organisations need a basic structure of rules and regulation, but it is important to be aware of the limitations of rules based compliance in managing risk. An important limitation is that we can't regulate and supervise everything, due to considerations of practicality and cost. Another is that if we do attempt to rely too heavily on prescriptive rules to regulate conduct, people can lose their capacity to make responsible decisions. After ticking all the internal and external regulatory boxes, they fail to ask the question, and/or lose the skill to answer the question: Is this a sensible / responsible / good thing to do?

With this in mind organisations need to establish the following conditions to help its people make good decisions and act responsibly:

- People have a shared, practical understanding of the organisation's purpose, values and principles.
- People are given delegated authority and responsibility to pursue the purposes of the organisation in accordance with its values and principles.
- The organisation supports an open, speak up culture where people are able to raise and discuss issues, challenges and alternative ways of doing things using the language of the organisation's values and principles.

6.1.2 Role of ethical leadership

Leadership plays a crucial role in creating and sustaining ethical organisations. It hardly needs stating that leaders and managers need to model organisational values and principles to avoid cynicism about the organisation's commitment to them. In addition leaders and managers need to nurture the elements of ethical organisations identified above. They need to work to build a shared understanding of the organisation's purpose, values and principles. They need to create an environment in which individuals are given the authority – and the skills – to be more than simply rule followers, to be decision makers with the capacity to pursue the purpose of the organisation in accordance with its values and principles.

6.1.3 The value of building ethical organisations

The above elements of ethical organisations and leadership are crucial to the development of high performing organisations with a sustainable capacity for long term meaningful impact. An excessive focus on compliance and surveillance, fraud and corruption, misses this opportunity.

6.2 Balancing principle and prescription; brevity and comprehensiveness

As described in section 4, we encountered a general preference for shorter codes of ethical conduct framed in terms of core values and principles to be pursued and followed, rather than longer more prescriptive documents. It's important to appreciate what's at stake in choosing between these different approaches.

6.2.1 Potential reasons for principles and brevity

- Values and principles offer understanding of why people are expected to behave in certain ways, and hence provide greater motivation for people to behave appropriately.
- Practically we can't have rules for everything.
- Practically people can't keep long codes and policies in their heads.
- If we are predominantly rule followers we can lose the capacity to think about and choose the right thing to do.

6.2.2 Potential reasons for rules and comprehensiveness

- Fairness demands clarity about behavioural expectations. People may have different understandings of what integrity demands, for example. Rules are more objective, and better at achieving consistency of behaviour across an organisation.
- Values and principles are harder to investigate and enforce than rules. It can seem easier to manage compliance with rules than adherence to values and principles.
- Following rules is easier than making decisions.
- A greater reliance on principles over prescription can create more room for rationalisation of unethical behaviour.
- Rules don't require the 'imposition' of values and principles.

6.2.3 The right balance

It is important to have both principle and prescription to guide and regulate, in an appropriate balance. In assessing the right balance and the competition between the considerations outlined above, it is important to take account of the following:

- It is crucial that people understand how they are expected to behave and perform their jobs. But this does not require that they be given a raft of rules about how they should act in every situation. Instead they need to be supported to develop a practical understanding of the organisation's values and principles and the capacity to work out what the implications of those values and principles are for their roles. This support can be provided by, for example, effective people performance and development; open workplace cultures where groups and teams discuss what behaviour is appropriate in specific situations and roles.
- It is important to understand that some people will prefer prescriptive rules and process, for example because this is seen to be simpler or easier to manage; or because this is seen as an important device to resist improper influences on decision making. We therefore need to build people's understanding of the elements of good decision making and their capacity to make good, transparent decisions, aligned with the organisation's values and principles.
- We can communicate rules in a way which links them to the organisation's values and principles. For example: 'we respond to client enquiries within one day because we value service'.
- A guiding framework of values and principles is not inconsistent with providing extensive more specific guidance (including prescription) about what those values and principles mean in different situations.

- Short codes of ethics can be accompanied by practice and guidance notes, toolkits and other resources which people can readily access when they need them.
- We can develop investigation and enforcement skills more suited to a less prescriptive regulatory environment. (One experienced risk management officer told us they had not yet come across a case of misconduct which was not clearly inconsistent with a recently adopted one page code.)
- We can resist the idea that it is not legitimate for organisations to have and declare guiding values and principles.

6.2.4 Balancing outcomes and process

The contrast between principle and prescription is very similar to the distinction often drawn between the pursuit of outcomes and adherence to process. One common criticism of public sector agencies generally is that they can become bureaucratic and process bound, losing sight of their purpose. As in the case of the principle versus prescription distinction, a balance is needed between attention to outcome and process, and the considerations mentioned above are also important for assessing an appropriate balance between outcome and process.

6.3 Balance between umbrella and customised policies

As described in section 4, clusters and agencies are grappling with the question of where it is appropriate to have a single policy for the cluster, and where differences between agencies demand different policies. Obviously considerations differ according to the type of policy being considered, and the diversity within different clusters and agencies.

6.3.1 Potential reasons for greater uniformity

- Agencies all serve the public of NSW, so a common understanding of public service and common standards should apply across the public service.
- There are many shared challenges which lend themselves to shared solutions.
- It's important when there is considerable movement of people across agencies (and clusters).
- It's a more efficient way of developing policy and implementation strategies and tools.
- The public reasonably expects consistency across their varied dealings with the public service.

6.3.2 Reasons for greater customisation

- Cluster and agency leaders and senior executives need to have the capacity to lead and shape their clusters and agencies. They need to own their guiding frameworks and codes. This is consistent with the responsibility given to them for the performance of their clusters and agencies.
- Individuals often identify as part of an agency, not a broader public service. For example: *I work on the ferries*. This can be both positive and negative.
- There are vast differences between clusters and agencies and their people.
- Customisation is needed to make higher level values and principles real.

6.3.3 The right balance

In balancing the considerations outlined above, it is important to take account of the following:

- Building and sustaining commitment to the purpose, values and principles of the public sector as a whole does not preclude individual clusters, agencies and groups retaining and developing individual identities and working out in their own way what the shared purpose, values and principles mean in their own worlds. For example:

- Whilst bearing a distinct identity, a particular agency can still be recognisably a member of a NSW public service united by core shared values and principles.
- Individual agencies can frame and develop shared values and principles in a way which connects most effectively with their context and people, and modify and develop more generic resources made available to them.
- It's important to recognise that implementation of an ethical framework in even a single organisation needs to have regard to the different situations, roles and needs of smaller groups and individuals within that organisation.

6.4 Balancing focus on ethical failure and ethical success; and on grades of ethical failure

A focus on dealing with cases of ethical failure, and in particular on serious misconduct like fraud and corruption, can mean that less energy and resources are devoted to strategies which focus on the positive encouragement of good conduct and on responding to more 'routine' failures to live values and principles (for example, failure to show respect to colleagues and clients). Whilst it is obviously important to respond vigorously to ethical hotspots and put out ethical fires, it is critical to recognise that other approaches are also needed both to support good conduct and also as part of managing the risk of the more serious misconduct itself. Some relevant considerations are:

- Although less serious, widespread 'routine' misconduct can be as damaging or more damaging than less common cases of serious fraud and corruption.
- Positive pro-ethics approaches can be more effective for many people than more negatively oriented campaigns.
- An over-emphasis on serious misconduct can make people think that ethics is only relevant to misconduct of that type and that it is less likely that they will be caught for acting unethically (since the only cases of misconduct they see being acted on are the less frequent cases of serious misconduct).
- Patterns of minor ethical failure which are tolerated can easily lead to serious misconduct.
- Cultures where good conduct and poor conduct is routinely discussed, evaluated and responded to are cultures in which individuals are less likely to think that scrutiny of their own behaviour is unjustified or arbitrary.

6.5 Walk the talk or talk the walk

There is broad agreement that espousal of organisational values and principles by organisations and their leaders means little if the leaders are not seen to embody those values and principles. At best people will stop listening, but often they will also use the perceived hypocrisy of their leaders to licence misconduct of their own.

Another point sometimes made is that a focus on getting the talk right (even with accompanying consistent behaviour) gets things the wrong way around. It is suggested that the focus should instead be on making clear the required behaviours within an organisation and enforcing those requirements. The suggestion is that it is changes in behaviour which lead change in attitude and organisational change rather than a change in rhetoric. In this context appeals are sometimes made to psychological and brain research which suggests that in many cases the reasons given for action follow rather than lead the processes which cause the action.²

² See, for example: **Darnton, A, J Elster-Jones, K Lucas and M Brooks 2006.** Promoting Pro-Environmental Behaviour: Existing Evidence to Inform Better Policy Making, Chapter 1: Theory. – (Defra Central Analytical Directorate). **Knott, D , S Muers and S Aldridge 2008.** Achieving Culture Change. The Prime Minister's Strategy Unit. London: Cabinet Office. **Michael S. Gazzaniga 2005.** Forty-five years of split-brain research and still going strong. *Nature Reviews Neuroscience*; 2005: 6, 653-659.

This idea that we need to pay careful attention to setting behavioural expectations does not of course mean that it is redundant to have an ethical framework which explains why those behaviours are expected and which serves as a succinct statement of principles which can help people recall behavioural expectations and help them assess what behaviour is appropriate in novel situations. There are a number of practical lessons. Organisations need to take care to communicate and implement their ethical frameworks in a way which makes clear the connection between (1) espoused values and principles and (2) day to day roles, activities and conduct. They also need to ensure that their policies and systems are aligned with their espoused values and principles in a way which encourages, recognises and rewards behaviour which is consistent with those values and principles.

7 Opportunities for change and recommendations

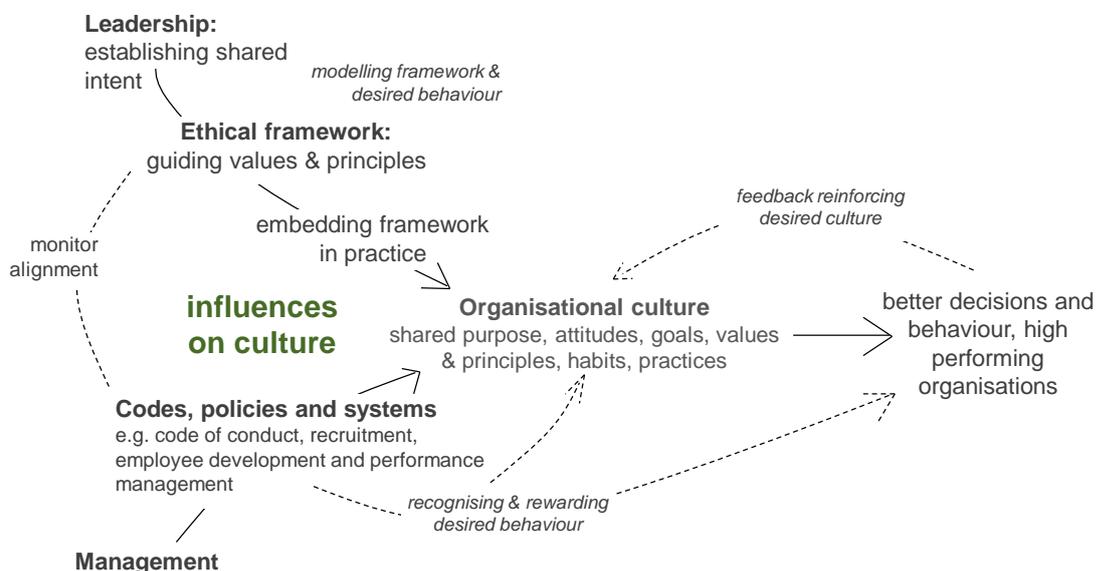
Addressing the ethical challenges we found will require a multi-faceted approach and a recognition that where significant cultural change is required, this will take a number of years to achieve. One obstacle will be the scepticism we have heard from a wide range of participants about the likelihood of change given either the intractability of the problems faced or a suspicion that the needed changes will simply be talked about rather than implemented in a practical way. In this context the Public Service Commission (PSC) has a crucial role to play in signalling commitment to long term change, and guiding and supporting the implementation of that change. For example, the PSC can facilitate the sharing and further development of programs and initiatives which are already achieving success in specific parts of the public service, and which are aligned with many of our recommendations.

Some public servants pointed out that it is difficult to tackle ethical challenges at a time when people are overwhelmed by organisational change. Indeed some thought that a preferable time for discussion of ethical issues and conduct is during a 'consolidation' phase following restructuring. Contrary to this, we think that in a time of organisational change it is more important than ever to be clear about the organisation's purpose and guiding values and principles. As well as adversely impacting those who may lose their jobs, organisational restructuring can take a heavy toll on the morale and motivation of those who remain. It is crucial that the reasons for the change are communicated, along with a clear vision for the future of the organisation and of the role of its people in securing that future.

We provide below a list of all our recommendations. Many of the actions we recommend have already been initiated or implemented in parts of the public service. Much of what we have to say repeats what people have identified to us as important areas of past, present or future change.

Not all our 'recommendations' are recommendations for a specific course of action: some are recommendations for consideration of a particular type of measure and some simply identify important choices that agencies will need to make when revising and implementing an ethical framework. For this reason a number of 'recommendations' are in large part a discussion of considerations which agencies will need to take into account.

It is important to emphasise that there is not a straightforward mapping from the ethical issues described in section 3 to the recommendations we make. As already mentioned, many of the issues faced demand a multi-faceted response to bring about change in entrenched aspects of organisational culture. Accordingly the ethical challenges we found cannot typically be 'solved' by a single initiative but will require a range of measures to build and support the core elements of an ethical organisation. As a result several recommendations will typically be relevant to each challenge, and we refer to some of these connections in our presentation of the recommendations below. The following diagram is also intended to help convey some of the interconnections between the different measures we recommend.



The diagram below is intended to assist understanding of the role(s) which the recommendations (7.1 to 7.12) play in bringing about ethical change in an organisation (refer also the diagram on page 2). Some of the recommendations are directed at particular characteristics of an agency, for example, the way in which its ethical framework or policies and systems may need to be reviewed and developed. Others relate to general capacities and resources of agencies which will be important for bringing about change generally, for example leadership and management capacity, which will be central to effective implementation of a number of the other recommendations. Some recommendations appear in several positions.



7.1 Understanding and consulting your organisation and stakeholders

Clusters and agencies need a clear understanding of the ethical issues facing their people and the extent to which the organisation lives its espoused values and principles. This report can be part of the development of this understanding, but obviously more will be required to develop a clear picture of challenges and attitudes within specific agencies. Also, our enquires have been purely internal (refer section 2.2), and engagement with external stakeholders is critical. For example, do **clients, suppliers and others** think that an agency exhibits its stated values and principles in its dealings with them? This process of information gathering and analysis needs to be ongoing, and conducted in a consistent way that allows changes and trends to be identified and monitored.

Existing agency data (for example, about complaints, grievances, sick leave levels, staff movements) is a valuable source of understanding about the agency. Other potential tools include surveys (including the current *State of the Sector Survey*), interviews and focus groups, involving both internal and external stakeholders. In section 7.12 we discuss a range of specific metrics and tools which can help assess current attitudes and practices as well as the impact of different programs and initiatives over time.

It is also important to examine the alignment of values and principles with policies and processes across the organisation. Some important aspects of alignment are addressed in other recommendations below (for example, concerning people performance and development).

In building this organisational understanding it will be necessary to take account of variation within clusters and agencies along different dimensions. It is important to recognise, for

example, that organisations may comprise a number of quite different cultures. Relevant dimensions may include:

- differences in workforce composition, for example, generational, educational, professional;
- differences in staff function and role, for example, over the counter staff, policy development, in the field;
- differences in division or agency function and purpose, for example, differences between a more business development focus and a more environmental protection focus;
- differences in history, for example, where agencies have previously operated under different clusters or principal departments.

The understanding gained of agencies – including of the differences and areas of potential conflict identified – can then feed into agency processes for reviewing their core purpose, values and principles and related codes of ethics and conduct. It is important that new and revised frameworks and codes are developed in a consultative way with this organisational understanding so that they are authentic and recognised and owned throughout the relevant agencies. This consultation needs to be substantive with active two-way engagement with relevant internal and external stakeholders. Also, this consultation needs to extend to the way in which codes and policies can be best communicated and embedded in the operations of the agency (discussed further in later recommendations). **Example:** The framework development and implementation process described in section 4.5.5.

7.2 One sector, distinct agencies

7.2.1 Incorporating the legislated core values and principles

The legislated core values and principles for the NSW Public Sector obviously need to be included in the values and principles of individual agencies. One option is for all agencies to adopt as their values and principles *only* those values and principles stated in the legislation, perhaps in a format prescribed by the PSC. **However, we recommend that individual clusters and agencies have the flexibility to retain and develop their own statements of values and principles, provided they incorporate the legislated values and principles and that any additions are consistent with the legislated values and principles.** This is an important part of ensuring that agencies own their ethical frameworks and understand the need to connect them with their day to day functions and operations. Agencies can have distinct identities and still be recognisably a member of a NSW public sector united by core shared values and principles.

This would allow agencies to, for example, supplement the legislated framework with additional values. Or they may include additional principles to help convey the way in which core (and other) values are expressed in a particular agency context. **We recommend however that all frameworks include at a minimum the legislated core values and principles, following their wording used in the legislation.**

Accommodating the development of agency specific ethical codes is not to downplay the importance of building a shared understanding of what it is to be a NSW public servant and encouraging greater collaboration and breaking down silos within the sector. This can still be achieved whilst allowing individual agencies to work out what the shared legislated framework and their other identifying values and principles mean in their particular worlds.

7.2.2 Naming the ethical framework of an agency

In the public and private sector the guiding values and principles of organisations go by a variety of descriptions, for example, 'our ethical framework'; 'our code of ethics'; 'our vision and commitments'; 'our compass'; 'our core values'; or simply 'our values and principles'. Even if the specific expression of values and principles differs between clusters and agencies, we recommend **consideration of a common terminology for the naming of statements of values and principles across the sector** so that, for example, any internal or external stakeholders can ask of any agency what are your (for example) 'commitments'.

7.2.3 Codes of ethics and codes of conduct

It is routine and valuable for statements of values and principles (also often called codes of ethics) to be supplemented by more detailed codes of conduct. Often both types are included in a single document, called for example a 'code of ethical conduct' (which can help users understand that more detailed rules and guidance are part of the practical implementation of higher level values of principles within an organisation). However, even where they are included in a single document, it is important to maintain the distinction between (1) the values and principles and (2) the more detailed rules and guidance.

As in the case of statements of values and principles, the question arises whether a common code of conduct should be prescribed to apply across the NSW public service. Again **we recommend that individual clusters and agencies have the flexibility to retain and develop their own codes of conduct, provided they are consistent with the legislated values and principles.** Given the diversity of ethical issues identified in the public service, and the diverse contexts in which they can arise, agencies should have the flexibility to shape and frame their codes in a way which will best resonate with and engage their people.

Although we do not recommend requiring common codes of ethics and conduct across the public sector, we do think **it would be extremely valuable for the PSC to develop a model code of ethics and new model code of conduct which could be adopted or developed by individual clusters and agencies. This could include the identification of some minimum mandatory inclusions and other requirements to be followed by all public sector codes.**

7.3 Greater principles based guidance of behaviour

Organisations need to balance their reliance on (1) principles and (2) prescription to guide and regulate behaviour. The right balance will vary according to the task or function being performed and the people performing it, including the specific considerations canvassed in section 6.2. However, we have found in the public sector in general a trend away from high levels of prescription and towards greater autonomy to make decisions guided by organisational values and principles. To support this positive trend we recommend:

- Shorter codes and policies, supplemented by linked resources offering more detailed information and guidance when needed.
- Greater delegation of authority and responsibility to make decisions in accordance with values and principles, and creating conditions and skills for people to exercise this authority responsibly, including open cultures where people have the licence and skills to speak up and have tough conversations, using the language of values and principles. (Measures to help achieve this are discussed in sections 7.6 and 7.9.).
- Greater internal transparency and sharing of information and knowledge (discussed further in section 7.6).

When striving for the right balance between principle and prescription in the guidance and regulation of behaviour, we recommend the following principles be observed:

- Where there is prescription, it is important that users of codes and policies have an understanding of the organisational values and principles which have guided the development of the prescriptive rules – so that users understand why the rules are there.
- Short codes of ethics and conduct help people keep key things in mind. They can be linked to more comprehensive and detailed practice and guidance notes, toolkits, support lines and other policies and resources which people can readily access when they need them.
- There is a choice between prescribing mandatory rules and providing guidance as to the types of behaviour, decisions and actions which will demonstrate the organisation's values and principles. Where discretion is granted, be clear about the way it is to be exercised and where appropriate recorded.

- Even where mandatory rules are appropriate, ensure that there is a process for seeking approval for departure from their requirements where application of the rules is considered inappropriate in a particular situation.
- Codes should be clear that their intention is not to put in place rules that will govern every situation that may be encountered. Emphasise the need to apply the organisation's values and principles in all the diverse situations encountered.

We acknowledge concerns raised by some that prescriptive detail is needed for the purpose of enforcement against persistent or serious wrongdoers, including one concern that this is a 'legal requirement'. We recommend that these concerns be explored further, including potential solutions which avoid a default to greater prescription. For example, a performance development and management system (see section 7.7) which involves the articulation of more specific behavioural expectations for particular roles may provide the basis for enforcement without the need to include those specific behavioural requirements in general policy.

Example: A number of the sample codes and policies listed in section 4.8 provide examples of positive efforts to achieve an appropriate balance of principle and prescription, taking account of these sorts of considerations.

Ethical impact: Principles based regulation of behaviour has a broad range of potential impacts relevant to the ethical issues reported to us by public servants. It gives public servants both the authority and the responsibility to perform their roles in a way which advances the purpose of their agency and which is consistent with the agency's values and principles. It makes it more difficult for public servants to try to justify unethical conduct by appealing to longstanding custom and practice in their organisation or by exploiting rules and procedures in contravention of their intended purpose. However it is important to appreciate that the positive impact of greater principles based regulation of behaviour relies on effective embedding of values and principles within organisations, including helping employees build their capacity to be decision makers rather than simply rule followers.

7.4 Leadership

To state the obvious, leaders must be seen to embody their organisation's espoused values and principles. Where leaders are not seen to embody organisational values and principles, people will not only stop listening but often they will also use the perceived hypocrisy of their leaders to licence misconduct of their own. Leaders throughout an organisation must find ways to actively exhibit and model values and principles which challenge those aspects of existing custom and practice which are targeted for change. It is important that senior staff receive appropriate leadership (not just management) training so they are able to build organisations comprised of people who are not simply rule followers but who have the authority and capacity to make good decisions which advance the purposes of the organisation in accordance with its values and principles. Leadership capacity and potential also needs to be given appropriate weight in recruitment and promotion decisions.

Specific measures to help embed organisational values and principles are discussed in other recommendations, but some examples of specific ways in which leaders can demonstrate their commitment in practice to those values and principles include:

- decision making which is demonstrably guided by agency values and principles. For example, where decisions depart from normal practice and procedure, it is important that those decisions be explained. Whilst privacy, confidentiality or other considerations may mean that a full explanation cannot be given, there should be a consistent level of transparency sufficient to build trust and to prevent cynicism that stated values and principles will be dispensed with when convenient;
- asking their reports "What would you need to see me do to make you believe that I have really signed up to these values and principles?"
- using the language of values and principles. For example, delegations of decision making authority and responsibility should expressly refer to organisational values and principles;

- supporting and participating in ethics-related learning and development;
- being bound along with all public servants within an agency by the codes of ethics and conduct of that agency. (Senior executives may also assume additional obligations under other codes and policies.)

Whilst agency shortcomings need to be honestly acknowledged in order that they can be addressed, leaders also need to find ways to actively support and affirm their people and the work they do, particularly as they work to implement needed change. Many people we spoke to felt disillusioned by what they felt to be constant negative media coverage of the public service, a lack of community respect for the public service and/or the feeling that there is no one to defend them. Some people also felt that the main rationale being given for current public service changes was that their organisation in its current form was completely inadequate. Certainly it is important for an organisation and its people to recognise their shortcomings, but equally it is crucial that the organisation and its people have an understanding of their capacities and that they have the confidence that they can be a part of the plans being implemented to build a more efficient and effective organisation.

The discussion of the terms of engagement of senior executives and officers in section 7.11 is also relevant to the building of leadership capacity in the public service.

Ethical impact: Leadership was a significant discrete ethical issue reported to us. It's important to also recognise that ethical leadership (at multiple levels throughout agencies) is fundamental to addressing virtually all of the ethical issues reported to us: commitment to ethical behaviour within an organisation requires visible commitment of leaders to ethics.

7.5 Embedding an ethical framework

The following recommendations deal with a variety of overlapping areas which need attention in order for the sector values and principles to play a practical role in helping build and guide a high performing public service. Whilst we focus in these recommendations on measures directed at public service employees, it will also be important to consider the ways in which it is appropriate to communicate and extend them to external suppliers, contractors and partners.

7.6 Open, speak up cultures

An open, speak up culture is critical to both (1) embedding the ethical framework so it makes a difference and (2) helping public servants meet many of the ethical challenges reported in section 3. Key elements of such a culture include:

- licence and skill to discuss difficult and sensitive issues, using the language of values and principles. The intention is to create an environment where openness is permitted and expected, and a positive generator of good decisions and innovation;
- an understanding of pressures on ethical decision making and action, and the open exploration of ways to respond to those pressures;
- on the job constructive feedback – positive and negative;
- agreement on what agency values and principles mean in terms of expected behaviours in specific work environments and for specific tasks and functions. (These expectations should then be incorporated into individual and team performance and development plans.);
- a culture of internal and external transparency, where information and knowledge is shared where such sharing can contribute to collaboration and pursuit of the purpose of the organisation, unless there is a good reason not to (for example, privacy and confidentiality considerations).

Some examples of measures to nurture open cultures include:

- programs to build skills in 'difficult conversation', using the language of values and principles (see also section 7.9). **Example:** Staff engagement and management training and coaching measures described in the case study in section 5.4.1;

- regular one on one and group meetings between managers and their reports around work programs and individual projects to discuss progress and share learning. **Example:** Interactive training to encourage discussion of the practical implications of codes for specific work areas; work process change to transform managerial and collegial relationships – see the case study in section 5.4.2. Meetings on decision making process and work practices to help build consistency and manage conflicts of interest, as described at the end of section 3.11;
- building opportunities for open exchange of information and opinions and development of mutual understanding in and beyond teams, for example, encouraging communication and information sharing not only between those collaborating on specific projects, but between those who would benefit from knowledge sharing with others working on other projects or in other parts of the agency’s operations. See, for example, the case study in section 5.4.2, and the health staff workshops described in 5.4.3.

Ethical impact: Encouraging open, speak up cultures is an important element of dealing with most of the ethical issues reported to us, including in particular those related to pressures on decision making, management of underperformance and favouritism. Open cultures also bring a range of more general organisational benefits, such as:

- maximising access to different perspectives, experience and knowledge to improve the quality of decision making and service delivery;
- improving collaboration and coordination, avoiding business and information silos and the hoarding of information as a perceived source of power;
- improving employee engagement and morale;
- clearer responsibility for agreed behaviours consistent with values and principles;
- reducing the risk of misunderstanding the motivations of others leading to workplace dysfunction.

7.7 People recruitment, performance and development

As outlined in sections 3.4, 3.5, 3.6 and 3.8 issues around the recognition of merit and the management of good and poor performance are multi-faceted, with some of the challenges involving attitudes and practices which appear deeply entrenched in some workplace cultures. There is no simple fix for these issues and challenges (which are not unique to the NSW public service), but we raise the following measures for consideration:

- increase flexibility to develop, reward and recognise high performing staff exhibiting organisational values and principles;
- increase flexibility to avoid potential distortions created by fixed restructuring rules. (For example, we were told that prohibitions on refilling vacated positions can limit staff movements which would otherwise improve productivity and contribute to staff development with no net increase in staff levels.);
- achieve greater clarity and understanding of employee function, responsibilities and the way those responsibilities are to be performed, within the framework of the agency’s purpose, values and principles. This includes agreement of expected behaviours and metrics for assessment of behaviours consistent with values and principles. Regard may be had to feedback from clients and colleagues, for example;
- team performance indicators can be appropriate in order to encourage teamwork and group responsibility for behaviour of individual team members;
- build a culture of constructive on the job feedback alongside more formal reviews;
- develop managers’ understanding of their performance development and management role, and build related skills (including to avoid long term tolerance of inadequate performance, which makes later action more difficult);
- find ways to demonstrate a commitment across the organisation to responding decisively to misconduct and underperformance. We were told that often the action taken against

staff was cloaked in secrecy, with limited visibility of consequences to other staff. Managers should explore opportunities to appropriately publicise the consequences of unremedied underperformance and misconduct. **Example:** The induction sessions of one agency included information about the number of people who had left the agency due to underperformance or misconduct;

- discourage and sanction misuse of performance management, grievance, sick leave and whistleblowing systems, or modify those systems and processes. **Example:** change to grievance and complaints management procedures described in sections 5.4.4 and 5.5.5;
- simplify and shorten job specifications, including a greater focus on functional role and capability requirements over extensive lists of task specifications;
- remove any inappropriate bias in recruitment processes against job applicants from outside the public service. (The preceding change may, for example, assist in this regard.);
- include outside-group representatives in decision making process for appointments.

We recognise that this is a very challenging area, as mentioned a number of times requiring a significant change in existing culture in many workplaces. The choices and considerations to be balanced include:

- In order to increase flexibility to develop, reward and recognise high performing staff, managers may be granted greater autonomy to hire and promote staff. However, this may increase the risk of nepotism. Also the objective measurement of appropriate behaviour can in some cases be more challenging than the measurement of work outputs and outcomes. This can mean that there is increased management discretion in the assessment of employees, again meaning there is an increased risk of nepotism.
- In appointment decisions it is appropriate to take account of direct experience of a candidate's work performance and fit with organisational values and principles. However, to reduce the risk of favouritism these considerations need to be made explicit in the recruitment process and considered alongside other measures of candidate merit. Involvement of outside-group representatives in appointment decisions can help in this context.
- Whilst it is important to develop metrics to help assess more rigorously the demonstration of values and principles in behaviour, care should be taken to limit the risk of distorting behaviour or of unduly restricting behaviour. It is important to reward innovation including new ways in which staff can advance the long term interests of the organisation in accordance with its values and principles.
- It is important to link performance to remuneration, advancement and recognition. These rewards can be a strong motivator provided there is trust in the fairness of the performance review system. Short and long term rewards need to be balanced, with over-emphasis on short term rewards typically posing a greater risk of distortion of behaviour.

7.8 Relationship with Ministerial offices

To help public servants distinguish between appropriate and inappropriate Ministerial office direction and influence, and to better equip them to respond appropriately to the diverse influences on their decision making, we recommend consideration of a number of measures.

7.8.1 Engagement protocols

We propose that agencies and the offices of their Minister(s) agree clear protocols for engagement between them, including in relation to:

- policy development;
- responsiveness and performance issues;
- delegations of authority within Ministerial offices and agencies;
- Ministerial office involvement in the making and review of decisions of different types.

This is not intended to create bureaucratic obstacles to open communication, but it is important to be transparent about how the Minister's objectives and decisions will be communicated. Achieving this clarity will require the involvement of both Ministers and agencies. One person we spoke to recommended examining Western Australian requirements for a written agreement to be entered into by the agency head and relevant Minister(s). There is also potential for the Public Service Commission to play a role in formulating a standard or model protocol.

It was also suggested to us that codes of conduct for ministerial advisors would provide greater clarity of the role, authority and responsibility of people connected with Ministerial offices.

7.8.2 Communication and training

We propose increased communication and training on drawing the line between responsiveness and politicisation of the public service, as well as understanding of inappropriate political activity by public servants. For example, training programs could help develop an understanding of the difference between legitimate responsiveness to the government of the day and activity which might threaten the apolitical integrity of the public service. The objective would be to build skills on drawing the line in practical situations, for example, distinguishing between policy marketing and the provision of program information; distinguishing between formal and informal direction from Ministers and their advisors; understanding policy contestability; avoiding the influence of personal political and policy views and passions; dealing with requests to revise advice.

7.8.3 Greater transparency

Opportunities should be explored to provide greater transparency to demonstrate that senior level decisions are aligned with values and principles, particularly where those decisions involve a departure from normal policy and procedure. This obviously needs to take account of legitimate confidentiality, privacy and other considerations. The objective is to create conditions which support open, constructive dialogue rather than an environment where Ministerial instructions and priorities are simply relayed down an agency hierarchy to be implemented without the opportunity for discussion or consultation.

7.9 Learning and development approaches

Clusters and agencies will need to develop their own implementation plans to address the elements of an ethical public service discussed in the preceding recommendations and elsewhere in this report. Specific programs may include leadership, performance management and good decision making programs, workshops and coaching. It will be critical to include learning and development initiatives which are integrated into the day to day operations of agencies and teams (as well as standalone programs).

Implementation strategies will need to address the following:

- securing and communicating commitment from the top (discussed in section 7.4);
- making practical connections between higher level values and principles and the way in which the organisation operates and people carry out their day to day. This should include equipping people to work out (and commit to) these connections themselves in their work groups and teams;
- giving people the skills to be more than rule followers. Build understanding of the elements of good decision making and capacity to make good, transparent decisions, aligned with the organisation's values and principles;
- combining standalone code of ethics and conduct training with processes which are integrated with day to day work practices. For example, at each team meeting a different team member may be nominated to describe a recent situation in which a particular value or principle has been demonstrated (or was not demonstrated);

- key ethical challenges within the organisation. For example, if some types of conflict of interest are often overlooked or poorly managed, then this may be an area of specific focus or separate training;
- supporting managers and supervisors to lead and facilitate implementation in their teams. For example, building skills and providing resources (presentations, toolkits, case studies) to allow code training to 'cascade' throughout the organisation. Ensuring appropriate weight is given to leadership (and not just management) development;
- building open, speak up cultures (discussed in section 7.6);
- alignment with people performance and development (discussed in section 7.7);
- a choice of avenues for raising concerns;
- decision making support facilities;
- monitoring, responding to and enforcing adherence to codes (discussed in section 7.12).

The appropriate mix of learning and development tools and programs will depend on the different situations, roles and needs of groups within an agency. There are a range of choices to be made in developing specific implementation measures. Will a training program focus on the delivery of information or will it involve interaction with participants? Will the training be online (including social media) or face to face? Will the program be integrated into existing activities of employees or will it be a standalone program? Will the training be delivered direct to the 'end user' or will managers and others be trained to deliver programs to their staff? Will the program have broad application across the agency or will it be directed at specific roles or teams?

A variety of implementation measures and approaches will be needed, and the appropriate mix will need to take into account factors such as different learning styles; different generations; different work locations; different professional and educational backgrounds; different work role situations (counter service, back office, community based, for example).

The PSC will need to consider what guidance and resources it can provide to clusters and agencies to assist their development of implementation strategies. This will encourage understanding of the shared core values and principles of the NSW public sector, and can also contribute to the efficiency and effectiveness of embedding across the sector.

Example: The learning and development initiatives described in sections 5.2, 5.3 and 5.4 illustrate the diversity of current programs in the public service.

7.10 Ethical infrastructure and support

7.10.1 Ethics network

We recommend establishing a cross-agency collaboration and support network for ethics across the public service. This would facilitate the exchange of ethics policy, program and other ethics-related resources, activities and ideas. There are existing collaborative networks which may provide a model for this. (One participant mentioned the collaborative model of the Corruption Prevention Network.) In our research we have encountered many engaged public servants who could seed this new ethics network (or 'values network'). A simple initial step would be to approach participants for their consent to inclusion of their details in an ethics contact list to be shared with other interested people in the NSW public sector. The Public Service Commission could play a lead role in facilitating the development of this sort of network.

7.10.2 Ethics committees / panels

Given the ethical challenges faced in the public service and the many components of an effective strategy to meet those challenges (including the need for change of embedded attitudes and cultures in some cases), it is important to consider the allocation of responsibility for the ethical health of clusters and agencies. In an important sense responsibility for ethics

is shared by all public servants. However, the disparate nature of the challenges identified means that consideration should be given to the establishment of ethics panels (where they don't already exist) which would take ownership of ethical framework development and implementation and which would be responsible for overseeing, coordinating, measuring and monitoring the effectiveness of the various programs and measures initiated to improve the ethical climate within their cluster or agency. Some considerations:

Cluster or agency panel?

Should a panel be established at a cluster or agency level?

Composition of panel

Who should be on the panel? It is crucial that there is demonstrated commitment to ethics from the top. Ethics panels will need to include senior representatives from across the organisation: operational areas as well as some or all of human resources, risk, audit, legal, finance, service and governance functions. Consideration should be given to external as well as internal membership.

Panel authority and responsibilities

What will the panel's responsibilities be? The panel may have general responsibility for the implementation and ongoing reinforcement and review of organisational values and principles. Specific types of responsibility may include advice and education, monitoring, investigation, evaluation, review and reporting. For example, the panel may monitor and evaluate the types of issues and grievances being reported, and the way in which reports are responded to and investigated.

Place in agency governance structure

The role and framework for an ethics panel should take account of the overall governance structure for the agency and ethics-related functions allocated to other bodies. An ethics panel need not assume existing ethics-related responsibilities already allocated within a cluster, but may simply assume a more general oversight and coordinating role. In any case it will be important to specify the panel's decision making authority: Where will the panel have advisory, support and monitoring responsibilities, and where will it have direct investigation and decision making responsibilities?

7.10.3 Organisation and system design and alignment

It is obviously crucial that the articulated purpose, values and principles of an organisation are aligned with other policies, procedures and practices within the organisation. For example, an espoused value of collaboration or teamwork is unlikely to shape behaviour if the practices around employee remuneration, appraisal and development take no account of an employee's demonstration of those values (see section 7.7).

Agencies need to critically assess all their systems and policies to check that they are not 'signaling' a demand or tolerance for unethical conduct. We heard numerous examples of changes agencies have made to work processes in order to reduce the risk of misconduct. In investigation, procurement and law enforcement functions we heard about measures including rotation of roles, swapping of work partners, changes to procedures for allocation of jobs and clients and increased requirements for transparency. We were also told about policy writing guidelines being developed to ensure that ethics is 'woven into the framework' of policy and procedures, so that key relevant ethical considerations are identified and communicated.

7.10.4 Public Service Commission

In the preceding recommendations we have made specific mention of a number of areas in which the Public Service Commission can play a role in helping agencies implement the new ethical framework, as well as supporting them more generally in building ethical organisations. These include facilitating sharing of information about experiences (particularly successful ones) from within the NSW public service; promoting dialogue about specific shared challenges; creating model codes; and contributing to the development of learning resources. Many we spoke to expressed a great interest in whatever practical guidance and support the Commission is able to provide.

7.11 Senior Executive Service and Senior Officers

We recommend that the way in which Senior Executives and Senior Officers are engaged and 'deployed' be reviewed. One aspect is the disparity between the practice of SES engagement under contract and Senior Office engagement as permanent employees. We heard a variety of views about the reasons and implications of this difference, and about other differences and similarities between Senior Executives and Senior Officers (some noted below). A review of the way in which senior staff are engaged may result in some of the differences being removed and/or measures being put in place to mitigate potential negative consequences of these different forms of engagement. Where it is considered appropriate to retain differences in the way senior staff are engaged, we think the reasons for those differences should be clearly articulated and communicated.

7.12 Measuring and monitoring

We have already addressed in section 7.1 the importance of clusters and agencies having a clear understanding of the ethical issues facing their people and the extent to which the organisation lives its espoused values and principles. This understanding needs to be maintained and monitored over time, including to identify current needs and to track the impact of initiatives to help embed agency ethical frameworks. Tools to collect relevant data include surveys, interviews and focus groups, covering both internal and external stakeholders. Agency records of complaints, grievances, leave and staff movements are also valuable sources of data.

Agencies need to explore ways in which they can collect and analyse data which is relevant to their operations and workforce. One agency reported that they use a 'mystery shopper' approach where they hire people to use the agency's services and report their customer experience. Another agency described their analysis of survey data and leave and grievance records to build an understanding of the relationship between lived values and workplace behaviour. They have found, for example, that in their agency higher perceived levels of respect in the workplace correlated with lower levels of sick leave and fewer grievances. The same agency compared their levels of sick leave (including psychological sick leave) to industry benchmarks.

Possible metrics or indicators relevant to the ethical health of an organisation include:

- staff grievances and customer complaints – level and type;
- time to deal with grievances and complaints, and proportion found to be substantiated;
- level of adverse comment and overturning of decisions by review tribunals;
- sick leave – levels and type;
- aggregate staff appraisal 'ethics scores';
- staff movement within agency; level of internal promotions;
- staff movement – into and out of public service;
- level and nature of reported misconduct, concerns raised, resolution;
- productivity measures;
- staff engagement and their assessment of importance and embedding of values;
- other stakeholder perceptions.

Interpretation of these metrics can be challenging. For example, increases in reported misconduct can reflect higher levels of awareness of types of misconduct and of responsibility to report rather than higher levels of misconduct. Changes in people performance and development management can create short term increases in leave and grievances. However, it is important to begin to measure these metrics on a consistent basis so they can be monitored for short and long term trends.

Schedules

Schedule 1: Interview and focus group overview

Interviews

Cluster and Agency	No. of interviewees
Attorney General & Justice	5
NSW Police Force Corrective Services Juvenile Justice Employee Relations Unit	Details removed to ensure anonymity of participants
Education & Communities	4
TAFE and Community Education Learning & Development Audit Directorate Employee Performance and Conduct	Details removed to ensure anonymity of participants
Family & Community Services	8
Aging Disability and Home Care Aboriginal Housing Housing Industrial Relations Strategy Housing Reform and human resources	Details removed to ensure anonymity of participants
Finance & Services	12
Office of State Revenue Fair Trading Land & Property Public Works NSW Procurement People & Workplace Governance and Regulation Policy and Executive Services Audit Branch Registry and Administration HR Policy and Support	Details removed to ensure anonymity of participants
Health	9
Ministry of Health Local Health Districts Illawarra Shoalhaven Health district Sydney Health District Health Western Sydney Health Central Coast Western NSW Local Health District Clinical Ethics Human Resources	Details removed to ensure anonymity of participants
Premier & Cabinet	7
Environment and Heritage Local Government Parks & Wildlife Corporate Services Corporate Governance	Details removed to ensure anonymity of participants

Trade & Investment, Regional Infrastructure & Services	8
Regional Infrastructure and Services Primary Industry Office of Water Art Gallery of NSW Division of Resources and Energy Industry, Innovation and Investment Office of Liquor, Gaming and Racing Finance, Strategy & Operations	Details removed to ensure anonymity of participants
Transport	5
Transport for NSW STA Roads & Maritime Services HR & Business Services	Details removed to ensure anonymity of participants
Treasury	2
Audit People and Development	Details removed to ensure anonymity of participants
Total: 60 interviews	22M, 38F

Meetings with oversight agencies

Agency	
Independent Commission Against Corruption	1
Auditor General	1
Ombudsman	1

Focus groups

Cluster	Agency / Agencies	Description	Number of participants	Location
Attorney General & Justice	Courts & HO	Representatives from Court Services, Supreme Court, Sheriff's Office, Reporting Services Branch	9	Sydney
Education & Communities	Public Schools	Details not provided. Principally non-school based.	8	Sydney
Education & Communities		Representatives from Procurement, Policy and Reform, Audit Directorate, Systems and Practice, WMSI, TAFE and ACE Boards Secretariat	8	Sydney
Family & Community Services	Community Services	Directors, managers and officers from Metropolitan Central Region, Metropolitan West Region and Metropolitan South West Region	10	Sydney
Family & Community Services	Western Region	Regional Exec. Officers, Managers, Clerks, Social workers from Home Care Accommodation Respite ADACC Aboriginal Housing	7	Dubbo
Family & Community Services	Head Offices	Managers, Project Officers Payroll officers Directors from NSW Businesslink Ageing, Disability and Home care and Housing	8	Sydney
Family & Community Services	Housing	Managers, Region Director Officers, from Operations, finance, Head Office, Metro and Newcastle	8	Sydney
Finance & Services	Fair Trading	Directors, managers, inspectors, lawyers, officers from Fair Trading's investigations, policy and legal areas	11	Sydney (Parramatta)
Regional (various agencies)	Regional Coordination Division	Representatives from Planning & Infrastructure, Education, Trade & Investment, Family & Community Services, Aboriginal Affairs, Ageing, Disability & Home Care, Housing	10	Gosford
Health	Ambulance Services	Directors, managers, paramedics, chaplain, from Professional Standards, Patient safety, Healthy workplace strategy	9	Sydney
Health	Central Coast Local Health District	Representatives from Local Health Districts	6	Gosford
Health		Nurse Supervisors, Matron, Professional Standards from Dubbo hospital	7	Dubbo

Health	Ministry of Health	Managers and officers from Workplace Planning, Health Protection, Aboriginal Health, Mental Health, Perform Evaluation, Health Services	9	Sydney
Premier & Cabinet	Environment & Heritage	Representatives from Environment and Climate Change, National Parks and Wildlife Service, Heritage Office	10	Sydney
Trade & Investment	Arts & Culture	Representatives from Arts NSW, Museum of Applied Sciences, Australian Museum, Art Gallery of NSW, State Library NSW and Sydney Opera House	8	Sydney
Trade & Investment	Finance, Strategy & Operations	Directors, Managers Lawyers from compliance, Corporate Services	8	Orange
Trade & Investment	Gaming & Racing	Directors, Managers, Project Officers from Licensing Compliance, Planning Perform Strategic Engage. Inspection	10	Sydney
Trade & Investment	Primary Industries	Directors, Scientists Veterinarians Managers From Animal welfare Biosecurity Community Involvement	8	Orange
Trade & Investment	Resources & Energy	Representatives from Industry Innovation and Investment, Division of Resources and Energy	9	Sydney
Transport		Representatives from RailCorp, Country Rail Infrastructure Authority, Transport Construction Authority	13	Sydney
Total: 20				

The 3 'review and input groups'

Clusters represented	Agencies represented	Number of participants
Attorney General & Justice	NSW Police Force	1
Education & Communities	Employee Performance and Conduct Learning & Development	2
Family & Community Services	Housing Ethics and Performance	2
Finance & Services	People & Workplace Office of State Revenue Land & Property	4
Health	Ambulance Services	1
Premier & Cabinet	Corporate Services Environment Local Government Ombudsman	5
Trade & Investment	Office of Water	1
Transport	Transport for NSW RailCorp	3
Treasury	Audit	1
Total	20 participants over 3 groups	

Schedule 2: Main ethical issues experienced frequency counts

This table records the number of times specific types of ethical issue were reported to us, aggregating:

- The number of interviewees who reported the issue.
- The number of focus group participants who reported the issue either on forms completed by them at the commencement of the focus group or during focus group discussions.

The categories of ethical issue listed in the table are generally more granular than the categories used in section 3 of this report, which often encompass a number of categories listed below. Also, not all the issues listed in the table are discussed in section 3.

The issue frequency counts need to be treated with caution for the following reasons:

- There is a significant element of interpretation in the classification of ethical issues. Although there are some well recognised categories of ethical issue (for example, related to conflicts of interest), there is no generally accepted taxonomy of ethical issues. Also, particular situations reported to us may have been interpreted as presenting a range of types of ethical issue. There is also overlap between some types of issue.
- We have applied a very broad understanding of 'ethical issue', using the term to refer to a broad range of phenomena which are relevant to action which may be considered ethical or unethical. So we include, for example: conditions which might encourage unethical action, patterns of unethical action themselves, management failures that do not minimise unethical conduct, and so on.
- There is potential double counting of interviewees who also participated in focus groups.
- There is imprecision in the calculation of the number of individuals who raised issues during focus group discussions, including the risk of double counting the same person raising an issue both in focus group discussion and in a form they submitted.
- The counts do not take account of the importance attached to the issues by interviewees and focus group participants.

Code	Reported ethical issues, challenges, contexts	Focus Groups	Interviews	Total instances
5,6,7	Difficulties in response to / management of poor performance: problem with system, employee response or managers	18	19	37
18	Pressure on good decision making from commercial interest groups	27	6	33
1	Pressure from Minister's office	20	12	32
46	Resisting bias in decision making	13	15	28
29	Affirming public service values/ ethics framework	13	14	27
17	Poor performance	8	18	26
8	Challenges to meritocracy: too often 'jobs for the boys'; non-transparent process for promotion, work allocation	11	14	25
25	Bullying	7	18	25
30	Inappropriate use of public sector assets/time	9	15	24
39	Constraints on giving 'frank and fearless advice'	9	14	23
21	Pressure on good decision making from personal value clash with agency/department values/policy	14	8	22
3	Senior people resisting improper pressure (from Minister's	13	7	20

Code	Reported ethical issues, challenges, contexts	Focus Groups	Interviews	Total instances
	office or elsewhere)			
34	Lack of respect between colleagues	11	9	20
42	Pressure on objective decision-making from personal relationships or agency/department politics	6	13	19
2	Senior people succumbing to improper pressure (from Minister's office or elsewhere)	9	9	18
13	Conflict of interest: personal interest	13	5	18
37	Inaccurate timesheet and flex sheet recording	7	11	18
10	Demoralised by restructuring	5	12	17
22	Lack of community respect for public sector	10	6	16
56	Offers of gifts, entertainment, incentives, inducements and requests for favouritism	3	13	16
72	Managing confidentiality, commercial in confidence information and competitive neutrality with contractors, suppliers, and business partners and other agencies	7	9	16
63	Challenges in balancing/managing community expectations in decision making and expectations of outcomes	7	8	15
19	Pressure on good decision making from unions	0	14	14
41	Under-delivery of services – services not meeting client/public needs	7	7	14
64	Challenges in providing consistent advice to the public	5	9	14
76	Lack of consultation with staff on decisions which affect them	1	13	14
4	Senior people modelling public service values and principles generally	4	9	13
12	Risk aversion: excessive focus on rules and process	4	9	13
27	Toxic pockets: regional, remote	1	12	13
52	Challenges of information disclosure with other agencies/roles and clients/services/public	11	2	13
59	Pressure on good decision making due to difficulties in reporting up the line - 'bad news'	6	7	13
67	The imperative 'to get things fixed' quickly without due diligence, due consideration of outcomes and impacts	9	4	13
70	Pressure on good decision making from external stakeholders	2	11	13
73	Lack of leadership in addressing issues	4	9	13
31	Failure to report breaches/non-compliance	7	5	12
66	Lack of honesty and openness in withholding information from colleagues for fear of consequences	6	6	12
35	Lack of respect between agencies	3	8	11
57	Balancing legislation and rule based processes with broader ethical considerations and decision making process	5	6	11

Code	Reported ethical issues, challenges, contexts	Focus Groups	Interviews	Total instances
58	Withholding information to avoid discussion and raising of ethical issues	4	7	11
69	Lack of consistency in agency/department policies - policy on the run	4	7	11

Schedule 3: Ethical issues listing

This table lists the ethical issues reported to us by one or more interviewee or focus group participant. It needs to be treated with caution because there is a significant element of interpretation in the classification of ethical issues. Although there are some well recognised categories of ethical issue (for example, related to conflicts of interest), there is no generally accepted taxonomy of ethical issues. Also, particular situations reported to us may have been interpreted as presenting a range of types of ethical issue. There is also overlap between some types of issue. We have also applied a very broad understanding of 'ethical issue', using the term to refer to a broad range of phenomena which are relevant to action which may be considered ethical or unethical. Finally it's important to recognise that the fact that an issue is included in this list does not give an indication of the importance attached to the issue by interviewees and focus group participants.

Code	Ethical issues, challenges, contexts
1	Improper pressure by Minister's office
2	Senior people succumbing to improper pressure (from Minister's office or elsewhere)
3	Senior people resisting improper pressure (from Minister's office or elsewhere)
4	Senior people modelling public service values and principles generally
5	Difficulties in response to / management of poor performance: problem with system
6	Difficulties in response to / management of poor performance: problem with employee response
7	Difficulties in response to / management of poor performance: problem with managers
8	Challenges to meritocracy: too often 'jobs for the boys'; non-transparent process for promotion, work allocation
9	Challenges to meritocracy: limited capacity to reward for merit
10	Demoralised by restructuring
11	Encouraged by restructuring
12	Risk aversion: excessive focus on rules and process
13	Conflict of interest: personal interest
14	Conflict of interest: conflict of duty
15	Withholding relevant information - internal
16	Improper disclosure of information
17	Poor performance
18	Pressure on good decision making from commercial interest groups
19	Pressure on good decision making from unions
20	Pressure on good decision making from perceived loyalties to colleagues
21	Pressure on good decision making from personal value clash with agency/department
22	Lack of community respect for public sector
23	Abuse of power: over staff
24	Abuse of power: over clients
25	Bullying

Code	Ethical issues, challenges, contexts
26	Harassment
27	Toxic pockets: regional, remote
28	Toxic pockets: other
29	Affirming public service values/ ethics framework
30	Inappropriate use of public sector assets/time
31	Failure to report breaches/non-compliance
32	Failure to keep true and accurate records of meetings
33	Portraying individual views as an official position
34	Lack of respect between colleagues
35	Lack of respect between agencies
36	Failure to investigate allegations of misconduct of staff
37	Inaccurate timesheet and flex sheet recording
38	OHS breaches
39	Constraints on giving 'frank and fearless advice'
40	Pressure on good decision making in mixed professional roles
41	Under-delivery of services – services not meeting client/public needs
42	Pressure on objective decision-making from personal relationships or agency/department politics
43	Pressure to change recommendations or findings
44	Challenges in sharing information between agencies
45	Lack of responsibility between shared agency outcomes
46	Resisting bias in decision making
47	Contradictory policy directions
48	Framing issues for favourable outcomes. Pressure to provide policy advice to support desired.
49	[Issues 48 and 49 merged.]
50	Report outcome changed and remaining signed
51	Using agency/department status to drive personal agenda
52	Challenges of information disclosure with other agencies/roles and clients/services/public
53	Implementing policy that lacks sound evidence base
54	Inconsistency between agency and departmental policy
55	Failure to take responsibility for policy that results in adverse outcomes
56	Offers of gifts, entertainment, incentives, inducements and requests for favouritism
57	Balancing legislation and rule based processes with broader ethical considerations and decision making process
58	Withholding information to avoid discussion and raising of ethical issues

Code	Ethical issues, challenges, contexts
59	Pressure on good decision making due to difficulties in reporting up the line - 'bad news'
60	Decision made without considering all options
61	Strategic interpretation of statutes that do not achieve ethical outcomes
62	Challenges in objectively handling public complaints and communicating, informing the public about decisions/policy and confidentiality of information
63	Challenges in balancing/managing community expectations in decision making and expectations of outcomes
64	Challenges in providing consistent advice to the public
65	Inconsistencies/failure/poor documentation of decision-making processes
66	Lack of honesty and openness in withholding information from colleagues for fear of consequences
67	The imperative 'to get things fixed' quickly without due diligence, due consideration of outcomes and impacts
68	Challenges of justifying decisions with colleagues/staff due to confidential information
69	Lack of consistency in agency/department policies - policy on the run
70	Pressure on good decision making from external stakeholders
71	Lowest cost/higher value conflict in procurement and contracting and service delivery
72	Managing confidentiality, commercial in confidence information and competitive neutrality with contractors, suppliers, and business partners and other agencies
73	Lack of leadership in addressing issues
74	Implementing policy decisions contrary to recommendations made
75	Decisions made in self-interest at the expense of public interest
76	Lack of consultation with staff on decisions which affect them
77	Control and compliance systems do not support demands of service delivery
78	Lack of resources committed to training and development
79	Inappropriate relationships with clients

Schedule 4: Policy analysis

We collected and considered ethics-related policies from 19 agencies across the 9 clusters. We collected the policies through a combination of searching agency websites for publicly available policies and requesting copies of policies from interviewees. The policies collected are set out in the table below, with notes on various characteristics of the policies. When considering the information provided it is important to bear the following in mind:

- In many cases we were not able to access all relevant policies for an agency.
- Our consideration of policies has focused on particular aspects of the policies, rather than being an exhaustive review of policies.
- Although we include a 'last review date' as recorded on the policies, this does not indicate the extent of the review / revision at that time.
- The detail in which topics were covered in the policies we looked at varied significantly between some agencies, and this is not reflected in our topic analysis. Often issues were addressed in both a code of conduct (or ethical conduct), as well as in more detail in a specific policy.
- There is a degree of subjectivity in the assessment of (1) the balance between principle and prescription; (2) the extent of the linking of principle and prescription; and (3) accessibility. Also, the appropriate balance between principle and prescription will depend on the subject matter and users of the policy (see discussion in section 6.2 and 7.3 of the report). The appropriate form and extent of linkage between principle and prescription will depend on similar considerations. For example, a significant degree of detailed procedure and prescription may be appropriate for conflict of interest requirements in some contexts. In relation to accessibility, the appropriate format and language for a policy will obviously vary with the purpose and audience for the policy.

Cluster	Agency	Document category	Document title and comments	Balance principle & prescription	Consistent, linking of principle & prescription	Accessible, clear	No. of pages [excl title contents back pages]	Similar to Model Code of Conduct (in terms of style, form, not coverage)	Last review date
Attorney General & Justice	Police	Ethical framework / Code of ethics Code of conduct Combined codes of ethics and conduct	Standards of Professional Conduct (Combined statement of values and code of conduct and ethics) Accessible, practical. More detailed content closely aligned with values and principles – and document structured to make this connection clear. Customised to Police.	High principle	High	High	2 + 6 = 8 (reduced from 23 pages in 2006)	Low	2009
		Conflict of interest	Brief section in Professional Standards (above). Guidance in 'PSC Police weekly case studies (not provided / reviewed). Separate policy not provided for review.						
		Use of agency resources	Use of Resources Policy	Mixed	High	High	4		2008
		Gifts and benefits	Receipt of Gifts and Benefits Guidelines	Mixed	High	High, practical examples	11		2011
		Workplace behaviour; bullying and harassment	No separate policy provided. Some coverage in Professional Standards (above).						
		Reporting concerns	Reporting Corruption (note there are likely to be other reporting corruption resources available in addition to the document reviewed)	Low	Low	Mixed	3		2009
		Other notable documents, resources	NSW Police Force Guidelines for Local Corruption Resistance Planning. Personal Use of Social Media Policy and Guidelines Secondary Employment Policy NSW Police Force Drug & Alcohol Policy Key roles of / interaction with Police Integrity Commission and Ombudsman.						2012 2011 Unknown 2007 (under review)
		Topic coverage	Listed topics not covered in documents obtained or provided: Lobbying. Procurement. Public comment. Political participation. Responsive to government.						

Cluster	Agency	Document category	Document title and comments	Balance principle & prescription	Consistent, linking of principle & prescription	Accessible, clear	No. of pages [excl title contents back pages]	Similar to Model Code of Conduct (in terms of style, form, not coverage)	Last review date
Education & Communities	Education & Communities	Ethical framework / Code of ethics Code of conduct Combined codes of ethics and conduct	Code of Conduct incorporating Statement of Ethics We were told this had been significantly shortened, and that investigators have found it more difficult under this shorter 2009 code. Includes cross-extensive references to other policies / resources.	High prescription	Mixed	High	36	Low	2009
		Conflict of interest	Coverage in Code of Conduct						
		Use of agency resources	Coverage in Code of Conduct						
		Gifts and benefits	Coverage in Code of Conduct						
		Workplace behaviour; bullying and harassment	Coverage in Code of Conduct						
		Reporting concerns	Coverage in Code of Conduct						
		Other notable documents, resources	Private and Secondary Employment Guidelines Statement of Business Ethics Community Use of School Facilities Corruption Prevention Procedures Pecuniary interest register and policy linked to Code. All SES and senior officers must submit statements of pecuniary interest.						Unknown Unknown 2009 2006
		Topic coverage	Listed topics not covered in documents obtained or provided: Procurement.						

Cluster	Agency	Document category	Document title and comments	Balance principle & prescription	Consistent, linking of principle & prescription	Accessible, clear	No. of pages [excl title contents back pages]	Similar to Model Code of Conduct (in terms of style, form, not coverage)	Last review date
Family and Community Services	Aging Disability and Home Care	Ethical framework / Code of ethics Code of conduct Combined codes of ethics and conduct	Code of Conduct (including 'Our Values') 2010 revision – addressed some specific issues needing updating; reframed to get away from prescriptive to more principled approach. Shorter: objective that it be read. Drafted internally, broad internal consultation.	High principles	High	High	12	Low (some similarities e.g. decision making)	2010
		Conflict of interest		High prescription re disclosure requirements	High	High	13		2008
		Use of agency resources	Coverage in Code of Conduct						
		Gifts and benefits	Gifts, benefits and bequests	High prescription	Mixed	High	5		2011
		Workplace behaviour; bullying and harassment	Dignity and Respect – Anti-Bullying, Discrimination, and Harassment Policy Detailed – but supplements more general material included in Code of Conduct	Mixed	Mixed	Mixed	30		2010
		Reporting concerns	Coverage in Code of Conduct						
		Other notable documents, resources	Private Work Policy Secondary Employment Striving for Excellence Policy and Procedures Ethics and Standards Unit Faircall whistleblower fraud and corruption reporting hotline for ADHC staff						2012 2010 2009
		Topic coverage	Listed topics not covered in documents obtained or provided: Nil.						

Cluster	Agency	Document category	Document title and comments	Balance principle & prescription	Consistent, linking of principle & prescription	Accessible, clear	No. of pages [excl title contents back pages]	Similar to Model Code of Conduct (in terms of style, form, not coverage)	Last review date
Family and Community Services	Aboriginal Housing Office	Ethical framework / Code of ethics Code of conduct Combined codes of ethics and conduct	Code of Conduct and Ethics We were told this had been significantly shortened, and that investigators have found it more difficult under this shorter 2009 code. Includes cross-extensive references to other policies / resources.	Medium – high principle	High	High	9	Low	2011
		Other notable documents, resources	Statement of Business Ethics						
		Topic coverage	Listed topics not covered in documents obtained or provided: Nil.						
We did not access other policies and resources for Aboriginal Housing Office.									

Cluster	Agency	Document category	Document title and comments	Balance principle & prescription	Consistent, linking of principle & prescription	Accessible, clear	No. of pages [excl title contents back pages]	Similar to Model Code of Conduct (in terms of style, form, not coverage)	Last review date
Family and Community Services	Housing	Ethical framework / Code of ethics Code of conduct Combined codes of ethics and conduct	Code of Conduct and Ethics Good use of practical examples. Good use of links.	Medium – high principle	High	High	16	Low	2009 / 2012 (multiple versions available)
		Other notable documents, resources	Statement of Business Ethics Job Information Kit (guide for job applicants)						Unknown 2009
		Topic coverage	Listed topics not covered in documents obtained or provided: Nil.						
We did not access other policies and resources for Housing.									

Cluster	Agency	Document category	Document title and comments	Balance principle & prescription	Consistent, linking of principle & prescription	Accessible, clear	No. of pages [excl title contents back pages]	Similar to Model Code of Conduct (in terms of style, form, not coverage)	Last review date
Family and Community Services	Community Services	Ethical framework / Code of ethics Code of conduct Combined codes of ethics and conduct	Code of Conduct and Ethics Good use of practical examples.	Medium – high principle	High	High	20	Low	
		Other notable documents, resources	Statement of Business Ethics						
		Topic coverage	Listed topics not covered in documents obtained or provided: Procurement. Responsive to government. Lobbying.						
We did not access other policies and resources for Community Services.									

Cluster	Agency	Document category	Document title and comments	Balance principle & prescription	Consistent, linking of principle & prescription	Accessible, clear	No. of pages [excl title contents back pages]	Similar to Model Code of Conduct (in terms of style, form, not coverage)	Last review date
Finance & Services	Office of State Revenue	Ethical framework / Code of ethics Code of conduct Combined codes of ethics and conduct	Code of Conduct (includes statement of OSR Values and statement of commitment – personal and professional behaviour) Many links to other information and resources.	Medium – high principle	Medium - high	High	13	Low	2010
		Conflict of interest	Conflict of interest policy	Mixed	High	High	4		
		Use of agency resources	Coverage in code of conduct						
		Gifts and benefits	Gifts, benefits and hospitality	Mixed	High	High	3		2012
		Workplace behaviour; bullying and harassment	Dignity and respect	Mixed	High	High	7		
		Reporting concerns	Coverage in code of conduct						2012
		Other notable documents, resources	Alcohol and drugs in the workplace Governance and risk Fraud Prevention Strategy Managing sick leave Secondary employment Recruitment and selection practices Grievance resolution EEO management plan Resolving discrimination in a diverse workplace						
		Topic coverage	Listed topics not covered in documents obtained or provided: Lobbying						

Cluster	Agency	Document category	Document title and comments	Balance principle & prescription	Consistent, linking of principle & prescription	Accessible, clear	No. of pages [excl title contents back pages]	Similar to Model Code of Conduct (in terms of style, form, not coverage)	Last review date
Finance & Services	Land and Property Information	Ethical framework / Code of ethics Code of conduct Combined codes of ethics and conduct	Code of Conduct (includes pillars, principles and specific standards of behaviour). Links to other policies and resources	Medium – high principle	Mixed	Mixed	15	Medium	2010
		Conflict of interest	Conflict of interest policy	Mixed	Medium	Medium	7		2009
		Gifts and benefits	Gifts, benefits and hospitality	Mixed	Medium	High	2		2009
		Other notable documents, resources	Higher duties and temporary appointments – policy and guidelines						
		Topic coverage	Listed topics not covered in documents obtained or provided: Procurement.						

Cluster	Agency	Document category	Document title and comments	Balance principle & prescription	Consistent, linking of principle & prescription	Accessible, clear	No. of pages [excl title contents back pages]	Similar to Model Code of Conduct (in terms of style, form, not coverage)	Last review date
Finance & Services	State Property Authority	Ethical framework / Code of ethics Code of conduct Combined codes of ethics and conduct	Code of Conduct (includes statement of Corporate Values and principles of personal and professional behaviour) Links to other policies and resources	Medium – high principle	Mixed	Mixed	13	Low-Medium	2011
		Topic coverage	Listed topics not covered in documents obtained or provided: Procurement, Lobbying.						
We did not access other policies and resources for the State Property Authority									

Cluster	Agency	Document category	Document title and comments	Balance principle & prescription	Consistent, linking of principle & prescription	Accessible, clear	No. of pages [excl title contents back pages]	Similar to Model Code of Conduct (in terms of style, form, not coverage)	Last review date
Health	Ministry of Health	Ethical framework / Code of ethics Code of conduct Combined codes of ethics and conduct	Code of Conduct including core values and principles Moving towards a more code of ethics, principles based approach. Previous code much more dense, prescriptive.	High principle	High	High	9	Low	2012
		Conflict of interest	Conflicts of Interest [and Gifts and Benefits] Many examples.	Mixed	High	High	19/28		2010
		Use of agency resources	Coverage in Code of Conduct						
		Gifts and benefits	[Conflicts of Interest and] Gifts and Benefits	Mixed	High	High	10/28		2010
		Workplace behaviour; bullying and harassment	Coverage in Code of Conduct, and see prevention and management policy below						
		Reporting concerns	Public interest disclosures	High prescription	Mixed (note: lots of procedures)	Mixed	26		2011
		Other notable documents, resources	Open disclosure (communicating with a patient about a patient related incident) Prevention and Management of Workplace Bullying 2011						
		Topic coverage	Listed topics not covered in documents obtained or provided: Responsive to Government. Lobbying. Procurement.						

Cluster	Agency	Document category	Document title and comments	Balance principle & prescription	Consistent, linking of principle & prescription	Accessible, clear	No. of pages [excl title contents back pages]	Similar to Model Code of Conduct (in terms of style, form, not coverage)	Last review date
Health	NSW Ambulance	Ethical framework / Code of ethics Code of conduct Combined codes of ethics and conduct	Code of Conduct including core values and principles (Adopted NSW Health Code: see analysis above) (Separate Ambulance Service Code of Conduct also online – 48 pages, 2007 – relationship between codes not clear on face of documents)						
		Conflict of interest	Conflicts of Interest – Disclosure of Pecuniary Interests (Ministry of Health policy also adopted – see above)	High principle	High	High	2		2007
		Use of agency resources	Coverage in Code of Conduct						
		Gifts and benefits	[(Ministry of Health policy also adopted – see above)						
		Workplace behaviour; bullying and harassment	Preventing and Managing Workplace Bullying	Mixed	High	High	15		2009
		Reporting concerns	Coverage in Code of Conduct						
		Other notable documents, resources	Professional conduct guidelines (Criminal traffic offences; Misconduct; Unsatisfactory Performance) 2006						
		Topic coverage	Listed topics not covered in documents obtained or provided: Responsive to Government. Lobbying. Procurement.						

Cluster	Agency	Document category	Document title and comments	Balance principle & prescription	Consistent, linking of principle & prescription	Accessible, clear	No. of pages [excl title contents back pages]	Similar to Model Code of Conduct (in terms of style, form, not coverage)	Last review date
Premier & Cabinet	Premier & Cabinet	Ethical framework / Code of ethics Code of conduct Combined codes of ethics and conduct	Code of Conduct Contains two similar though different sections on ethical decision making	Mixed	Mixed	Mixed.	23	Some sections are similar.	April 2011
		Conflict of interest	Coverage in Code of Conduct						
		Use of agency resources	Coverage in Code of Conduct						
		Gifts and benefits	Coverage in Code of Conduct						
		Workplace behaviour; bullying and harassment	Harassment and Bullying-Free Workplace – Policy and Procedures	Mixed	Mixed	Mixed.	6		2008/9
		Reporting concerns	Public Interest Disclosures – Policy and procedures	High prescription / procedure	Low	Mixed	17 (excl. appendix)		2011
		Other notable documents, resources	Grievance Resolution – Policy and Procedures EEO Management Plan Fraud and Corruption Control Policy and Strategy Complaint Handling Policy Guidelines for Handling Complaints NSW Government Lobbyist Code of Conduct						
		Topic coverage	Listed topics not covered in documents obtained or provided: Nil.						

Cluster	Agency	Document category	Document title and comments	Balance principle & prescription	Consistent, linking of principle & prescription	Accessible, clear	No. of pages [excl title contents back pages]	Similar to Model Code of Conduct (in terms of style, form, not coverage)	Last review date
Premier & Cabinet	Environment and Heritage	Ethical framework / Code of ethics Code of conduct Combined codes of ethics and conduct	Code of Ethical Conduct	High principle	High	Mixed	18	Some sections are similar.	2009
		Conflict of interest	Coverage in Code of Conduct						
		Use of agency resources	Coverage in Code of Conduct						
		Gifts and benefits	Policy and Guidelines for the Acceptance of Gifts and Benefits by DECC Staff	High prescription	High	Mixed	6		2007
		Workplace behaviour; bullying and harassment	Coverage in Code of Conduct						
		Reporting concerns	Public Interest Disclosures Policy and procedures	High prescription / procedure	Low	Mixed	15		2011
		Other notable documents, resources	Respectful Workplace: Policy and procedures for addressing workplace issues and formal grievances Statement of Business Ethics						
		Topic coverage	Listed topics not covered in documents obtained or provided: Procurement.						

Cluster	Agency	Document category	Document title and comments	Balance principle & prescription	Consistent, linking of principle & prescription	Accessible, clear	No. of pages [excl title contents back pages]	Similar to Model Code of Conduct (in terms of style, form, not coverage)	Last review date
Trade & Investment, Regional Infrastructure & Services	DTIRIS	Ethical framework / Code of ethics Code of conduct Combined codes of ethics and conduct	Code of Conduct [Appears to cover all constituent agencies of Trade & Investment.]	Mixed	Mixed	Mixed	17	Some sections are similar.	2012
		Conflict of interest	Coverage in Code of Conduct [Also 2010 Industry & Investment Conflicts of interest policy]						
		Use of agency resources	Coverage in Code of Conduct						
		Gifts and benefits	Gifts and benefits policy [maintain register for gifts and benefits. In some cases similar registers within agencies. Issue whether secondary employment register will be at agency or umbrella level. Practical issue with DG approval for 8,500 people.]	High prescription / procedure	Low	Low	7		2011
		Workplace behaviour; bullying and harassment	Coverage in Code of Conduct [Also 2010 Industry & Investment Bullying and harassment prevention]						
		Reporting concerns	Internal Reporting – Public Interest Disclosures	High prescription / procedure	Low	Mixed	10		2011
		Other notable documents, resources	Use of Employer Communication Devices Social Media Policy Complaints handling policy and procedure Code of Conduct For members of advisory committees/boards, contractors and consultants to the NSW Department of Trade and Investment, Regional Infrastructure and Services						
		Topic coverage	Listed topics not covered in documents obtained or provided: Procurement.						

Cluster	Agency	Document category	Document title and comments	Balance principle & prescription	Consistent, linking of principle & prescription	Accessible, clear	No. of pages [excl title contents back pages]	Similar to Model Code of Conduct (in terms of style, form, not coverage)	Last review date
Transport	Transport for NSW	Ethical framework / Code of ethics Code of conduct Combined codes of ethics and conduct	Code of Conduct	Mixed	Mixed	Mixed	9	High	2011
		Conflict of interest	Conflicts of Interest Policy	Mixed	High	High	6		2012
		Use of agency resources	Coverage in Code of Conduct						
		Gifts and benefits	Incorporated in Conflicts of Interest Policy above.						
		Workplace behaviour; bullying and harassment	Harassment, Discrimination and Workplace Bullying Policy	High principle	High	High	5		2012
		Reporting concerns	Coverage in Code of Conduct.						
		Other notable documents, resources	Complaint Management Policy Drug and Alcohol Policy Managing Unsatisfactory Performance Policy Statement of Business Ethics						
		Topic coverage	Listed topics not covered in documents obtained or provided: Nil.						

Cluster	Agency	Document category	Document title and comments	Balance principle & prescription	Consistent, linking of principle & prescription	Accessible, clear	No. of pages [excl title contents back pages]	Similar to Model Code of Conduct (in terms of style, form, not coverage)	Last review date
Transport	RailCorp	Ethical framework / Code of ethics Code of conduct Combined codes of ethics and conduct	Code of Conduct Safe, clean and reliable passenger services	High principle (with some areas of prescription)	High	High; good use of examples	28	Low	2012
		Conflict of interest	Coverage in Code of Conduct						
		Use of agency resources	Coverage in Code of Conduct						
		Gifts and benefits	Coverage in Code of Conduct						
		Workplace behaviour; bullying and harassment	Coverage in Code of Conduct						
		Reporting concerns	Coverage in Code of Conduct.						
		Other notable documents, resources	Use of Authorised Discretion Policy Just Culture Policy Drug and Alcohol Policy RailCorp Business Ethics						
		Topic coverage	Listed topics not covered in documents obtained or provided: Nil.						

Cluster	Agency	Document category	Document title and comments	Balance principle & prescription	Consistent, linking of principle & prescription	Accessible, clear	No. of pages [excl title contents back pages]	Similar to Model Code of Conduct (in terms of style, form, not coverage)	Last review date
Transport	Road & Maritime Services	Ethical framework / Code of ethics Code of conduct Combined codes of ethics and conduct	Code of Conduct and Ethics	Mixed	Mixed, lacks clear statement of values and principles.	Mixed. Cases studies helpful, though perhaps too 'directive'. Format needs attention.	25	Low	2011
		Conflict of interest	Coverage in Code of Conduct						
		Use of agency resources	Coverage in Code of Conduct						
		Gifts and benefits	Coverage in Code of Conduct						
		Workplace behaviour; bullying and harassment	Coverage in Code of Conduct						
		Reporting concerns	Public Interest Disclosures - Internal Reporting Policy & Procedure	High prescription / procedure	High	Mixed, good use of examples	24		2012
		Other notable documents, resources	Commitment to Service Statement of Business Ethics NSW Maritime Corruption Prevention Strategy						
		Topic coverage	Listed topics not covered in documents obtained or provided: Procurement.						

Cluster	Agency	Document category	Document title and comments	Balance principle & prescription	Consistent, linking of principle & prescription	Accessible, clear	No. of pages [excl title contents back pages]	Similar to Model Code of Conduct (in terms of style, form, not coverage)	Last review date
Treasury	Treasury	Ethical framework / Code of ethics Code of conduct Combined codes of ethics and conduct	Code of Conduct (Treasury Procedure Document 4.1)	High	High, through statement of values and principles at beginning and some linking in body.	High.	8	Low	2012
		Conflict of interest	Coverage in Code of Conduct						
		Use of agency resources	Coverage in Code of Conduct						
		Gifts and benefits	Code of Conduct refers to "tpd-4-21 Acceptance of Gifts and Benefits dnd.pdf". Not publicly accessible online.						
		Workplace behaviour; bullying and harassment	Coverage in Code of Conduct						
		Reporting concerns	TPD 4.12 Public Interest Disclosures Internal Reporting Policy. The policy is lengthy but includes important information to be considered by a person considering a disclosure.	Mixed, as expected given procedural elements.	Mixed, as expected given procedural elements.	High given level of detail.	14		2011
		Other notable documents, resources							
		Topic coverage	Listed topics not covered in documents obtained or provided: Nil. Some coverage in code of conduct is limited, though there may be more detailed coverage in other documents we did not access.						

Code of Conduct and Ethics for Public Sector Executives

Cluster	Agency	Document category	Document title and comments	Balance principle & prescription	Consistent, linking of principle & prescription	Accessible, clear	No. of pages [excl title contents back pages]	Similar to Model Code of Conduct (in terms of style, form, not coverage)	Last review date
All	All	Ethical framework / Code of ethics Code of conduct Combined codes of ethics and conduct	Code of Conduct and Ethics for Public Sector Executives Coverage: "Executives holding positions covered by Schedules 3A and 3B of the <i>Public Sector Management Act 1988</i> ." Note: "Executives are also to comply with the requirements of their own agency's Code of Conduct." (Version: December 1997. Amended February 2009 (section 12A inserted))	High principle. (Although wording is often on its face prescriptive, the performance of the obligations imposed typically requires application of principle and discretion.	High	Mixed; language clear.	15	Low	Amended 2009
		Topic coverage	N/a as Senior Executives also bound by codes of agencies .						