

Corruption and misconduct in local government in Australia: What we know, but have trouble understanding and explaining

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The accountability principles of local government are based on strong financial probity, financial propriety, adherence to conflict of interest principles, and conformance to ethical canons. Accountability can be multi-faceted, as councils seek to achieve diverse social, political, and financial goals for the community benefit. The recent local government investigations in Australia by the anti-corruption bodies underscore the importance of these values as well as culture and ethics.

The words “corruption” and “misconduct” can be used interchangeably in everyday language within Australia, although their specific meanings are quite different. Corruption is generally associated with dishonesty, including dishonesty in public office, whereas misconduct is often associated with ethical misconduct or professional misconduct. These could include breaches of the ethical and professional codes of a professional body, for example misconduct by an accountant or a lawyer. In the context of this article, corruption has been held to mean “dishonest, without integrity, [and] dishonesty especially involving bribery”, whereas misconduct has been defined as “unlawful conduct by an official in regard to his or her office”.¹ Corruption and misconduct within local government can also be associated with the offering and the acceptance of bribes, euphemistically known as “facilitation payments”, notwithstanding that the receipt and the offering of secret commissions are crimes in the Commonwealth and State Crimes Acts, for example sections 176 and 177 of the Victorian Crimes Act (1958).

The following discussion poses the question: Can the avoidance of incompetence, inadequate governance, dishonesty or mismanagement improve the standing and the overall performance of a council? The answer is unequivocally “yes”, yet some councils tolerate these practices.

The context of corruption and misconduct

Misconduct and corrupt behaviours in local government can be perpetrated by the councillors, the leadership team of the council, the staff against the interests of the council, external parties outside of the council, and/or a combination of the four groups.² The question of why does this happen and in what circumstances can it happen, can be an imponderable and potentially unanswerable question. There can be multiple answers, with each of them specific to the organisational culture of the councils in which the behaviours have occurred, rather than having some type of forecasting tool which can predict incidences of corruption.

Gobert and Punch³ stated that there is no “single variable theory of [corruption and misconduct]”, but argued instead for a multi-causal explanation with contingent, situational factors playing an important role in individual cases. The Independent Commission Against Corruption (ICAC 1998) reviewed the literature pertaining to corruption and misconduct, and stated that there are inherent risk factors which can: (1) enable or optimise corruption and misconduct and (2) aid in the perpetration of the corruption and misconduct.

Punch⁴ succinctly summarised the context of corruption and misconduct in the following way:

“The only responsibility of business is to make profit – illegally if necessary, and the business of business is crime.”

Punch noted that [corruption] and misconduct can generally take the form of:

- 1 informal rewards (perks, fiddles and discounts)
- 2 work avoidance or the manipulation of the work situation (late to work, leisure time in the organisation’s time)
- 3 staff deviance against the organisation (stealing, absenteeism and neglect)
- 4 staff deviance for the organisation (bending of the rules, failure to observe health and safety in the interests of enhanced production)
- 5 organisational deviance for the organisation (deception and cunning to achieve informal organisational goals) and
- 6 managerial deviance against the organisation (senior management victimising the organisation in their own self-interest).

He called the first four categories “occupational deviances”, and noted that these categories of deviance had been comprehensively discussed in the literature, for example, Ditton and Henry.^{5,6} His analysis was on the last two categories of “organisational deviance”, which was either for the organisation or against the organisation. He considered that these can occur in circumstances where the:

“organisational climate is created, and [where] a collective deviance is an acceptable answer to the perceived [organisational] dilemmas, and where the organisational culture, resources and facilities are intrinsic to the development of that deviance.”

Punch stated that “influential people utilise their power or resources for ends which some other people define as illicit, and then, not infrequently, employ that power or those resources to protect themselves from the consequences of social control.” He considered that business was criminogenic and the key to “understanding [crime and business] lay in recognising the structure that the business environment gives to misconduct, both in terms of opportunities, and how misconduct is managed.” Punch stated that in order to understand white

collar crime, “it is essential to grasp that the organisation is the weapon, the means, the setting, the rationalization, the offender and the victim.” He argued that he did not believe in a criminological model of fraud that can explain the level of deviance, and concluded that any attempts to explain fraud within such a model “are merely platitudinous generalisations and the complexities [of fraud] are too intricate and the motives too mixed.” He stated that from a societal perspective:

“deviation from the rules within a business organisation requires agreement among managers to deviate [or transgress], the selection of the suitable methods of implementing those decisions, the choice of strategies of defence and concealment, and the inducement for certain people to fill specific roles.”

The Institute of Internal Auditors – Australia (IIA) and the KPMG Fraud Survey⁷ used the term “red flags”, which are a form of organisational indicator, or “early warning signs of possible fraud”. Whilst the term “red flags” has a specific meaning in forensic accounting,^{8,9} the organisational indicators of pathological behaviours by a manager or staff member within an organisation can also include behaviours which are manipulative, unethical, shallow, parasitic, as well as staff bullying, and a desire for power and control.¹⁰ The KPMG Fraud Survey noted that 22% of respondents indicated that the warning signs of possible fraudulent activity were ignored. In most situations, corruption and misconduct requires two parties for a criminal act to be consummated. For example, bribery of a council officer requires the offer of the bribe from one party, and the acceptance by the second party in exchange for the second party doing something for the benefit of the first party. Equally, misconduct and corrupt conduct can occur when councillors use their positions to promote their own self-interests, or the interests of other parties. For example, the Ballarat City Council,¹¹ and/or the

usurping of the planning delegations and powers in the City of Greater Geelong.^{12,13}

Accountability in local government

Accountability in local government has a broader dimension than the private sector. In the private sector, accountability relates to the management of the business entity for shareholder’s interests, as prescribed by the *Corporations Act (2001)*. In local government, accountability can be multi-faceted, as councils seek to achieve diverse social, political and financial goals for the community benefit. The accountability principles of local government are based on strong financial probity, financial propriety,

adherence to conflict of interest principles, and conformance to ethical canons. There are societal norms and expectations that local government is fully accountable for community resources in terms of propriety, probity, legality, financial diligence, efficiency and effectiveness. The ultimate sanction for a council is its dismissal and the appointment of an administrator until the next council elections. For example, Brimbank City Council in Victoria in 2009, and Wollongong City Council in New South Wales in 2008.

There have been a number of reviews into misuse of statutory powers, maladministration, malfeasance and dishonesty in Victoria, which directly

Table 1: Investigation reports into local government in the period 2000– 2009

Jurisdiction	Investigation agency	Number
Victoria	Auditor-General, Victoria	3*
	Local Government Victoria (Department of Planning and Community Development)	8
	Ombudsman, Victoria	9
New South Wales	Department of Local Government, New South Wales	10
	Independent Commission Against Corruption	13
Queensland	Local Government, Queensland	1
	Crime and Misconduct Commission	9**
Western Australia	Department of Local Government and Regional Development	4
	Corruption and Crime Commission	4***
New Zealand	Controller and Auditor-General, New Zealand	6
United Kingdom	Audit Commission, United Kingdom	17
Total number of reports		84

* The reported number of investigation reports excludes consideration of the financial and performance in local government.

** The CMC was established in 1991, and since 2000 has undertaken nine investigations into local government.

*** The Corruption and Crime Commission was established in 2004.

Source: Purcell, AJ *Effectiveness of Audit Committees in Victorian Local Government*. Melbourne: Victoria University (PhD Thesis), 2011, p 53.

impacts upon local government governance.¹⁴⁻¹⁹ These were complemented by similar investigations in New South Wales and Queensland. For example, the New South Wales Department of Local Government,²⁰⁻²⁹ and the Crime and Misconduct Commission.^{30, 31}

Purcell stated that in the period of 1 January 2000 to 30 September 2009 there were 20 inquiries and/or investigations into Victorian councils by the: (1) Auditor-General, Victoria (three investigations); (2) Local Government Victoria (eight investigations); and (3) Ombudsman, Victoria (nine investigations) (see Table 1 on p 36).³² It is suggested that 20 inquiries, and/or investigations in nearly 10 years into 79 councils is statistically insignificant, notwithstanding the importance of the issues raised in the investigations. Given the small number of completed investigations in Victoria, Purcell reviewed another 64 local government inquiry reports which were sourced from New South Wales, Queensland, Western Australia, New Zealand and the United Kingdom to provide a balanced perspective on alleged instances of misconduct and/or corruption (Table 1).

This number was reduced to 43 reports for detailed examination which were selected on the basis of: (1) being based on Westminster style political processes in the different jurisdictions (2) similarities in the ambit of the council's responsibilities and (3) the availability of investigation reports to complement the themes from Victoria of council maladministration, financial mismanagement, corruption and misconduct by councillors and staff, and breaches of statutory powers.

Given the limited research into misconduct or corruption in local government, Purcell developed a taxonomy to provide a mechanism to interpret and provide linkages between the measures of misconduct and/or corrupt conduct, namely: (1) council maladministration (2) financial mismanagement (3) corrupt

Table 2: Summary of local government investigations

Category	Vic*	NSW, Qld and WA**	NZ and UK***	Sub-total
Council governance and maladministration	2	2	6	10
Financial mismanagement	3	3	5	11
Corrupt or unethical conduct by councillors or staff	5	10	2	17
Breach of statutory powers	4	nil	1	5
Sub-total	14	15	14	43

* In relation to Victoria, the investigations reports are from the Auditor-General, Ombudsman, Victoria, and the Inspector of Municipal Administration.

** For local government in New South Wales, Queensland, Western Australia, the investigation reports are from the ICAC, CMC, Corruption and Crime Commission and the Department of Local Government.

*** The investigation reports are from New Zealand and the United Kingdom by the Audit-Commission, United Kingdom and the Controller and Auditor-General, New Zealand.

Source: Purcell, AJ *Effectiveness of Audit Committees in Victorian Local Government*. Melbourne: Victoria University (PhD Thesis), 2011, p 70.

or unethical conduct by councillors or staff and (4) breach of statutory powers.

The breach of statutory powers related generally to breaches of planning powers, and/or inference by councillors in planning decisions, notwithstanding that a council was ultimately responsible for all planning decisions. The number of investigation reports are summarised in Table 2 above.

Whilst the investigation reports from New Zealand, Queensland and the United Kingdom have been included, it was noted that local government in other international jurisdictions can have a different set of responsibilities and accountabilities than Victorian local government. For example, in New Zealand and the United Kingdom, local government is the second tier of government, and in the United Kingdom local government has the responsibilities of the management of community housing, and the localised management of primary and secondary education, which in Victoria are the responsibilities of the State Government.

It is not suggested by this article that all councils are corrupt, engage in systemic misconduct, or even that the allegations in the investigations are proven within any subsequent judicial review process. For example, the allegations into the financial management practices in the Warrnambool City Council,¹⁶ the allegations of misconduct in the Douglas Shire Council,³⁰ and the mismanagement of the funding of a proposed stadium by the Dunedin City Council and the Otago Regional Council³³ were all found to be unsubstantiated. Nevertheless, there are some inherent risks in local government which the councillors need to be aware of in their assessment of a council's risks.

Subtle forms of corruption

From a heuristic perspective, the author was cognisant of some instances of low-monetary corruption pervading some councils, albeit that the public sector generally and local government specifically espouses adherence to ethical values and

codes of behaviours. This can include “gifts” from private companies (ie hospitality and low-level bribery), “grooming” where using one’s position to acquire a pecuniary benefit for family members, receiving monies for board positions and not disclosing the receipt of those monies to the public sector body, and minor credit card abuse. The term “grooming” relates to instances where a current supplier of goods and services to the public sector organisation provides hospitality and/or gifts (ie tickets to corporate boxes at major sporting or cultural events, and expensive alcoholic beverages as part of gift packs), to senior managers of the public sector organisation in order to facilitate “future business”. This is generally given to mean future contracts for goods and services. Grooming is specifically designed to facilitate familiarity and personal indebtedness on the part of the public sector managers receiving the gifts and corporate hospitality. From the perspective of the supplier providing the gifts and hospitality, it is about “relationship marketing” and is a very effective business tactic and a “marketing” expense.

However, from the perspective of the receiver of the gifts, it is more problematic. In the local government and the public sector more generally, the receipt of gifts and lavish hospitality is contrary to an open and transparent procurement process and the principles of probity. Public sector and local government *Codes of Conduct* generally prohibit the receipt of gifts and hospitality above a nominal amount, say \$50. However, such unethical and dishonest conduct persists and is condoned by the senior management in some councils, as they are the ones targeted by the private sector organisations, and are the ones receiving the gifts and hospitality. These lower levels of financial corruption are always specific to the culture of the council, notwithstanding the ethical stance of a council that can be generally espoused, but not always practiced. In both principle and practice, organisational culture is determined and modelled by executive management. If the

executive management of an organisation is dishonest, albeit at a low monetary level, it still sets the tone and the example for all other staff in the organisation.

Another example which can be problematic for councillors and officers is hospitality. Some councillors and senior management can enjoy largesse and hospitality at the expense of the taxpayers, and patronise the most expensive restaurants when a mid-range restaurant may have been more appropriate. Whilst this behaviour does involve some amoral value judgements, there can be a number of people within organisations for a variety of cultural reasons, who do not have the ability to differentiate between the private and the public good. The Crime and Misconduct Commission (CMC), Queensland, Australia defines “reasonable expenditure” in the following way:

“There is no hard and fast definition of ‘reasonable expenditure’.

In general terms, it should be expenditure that can withstand the ‘public disclosure test’ should that ever be necessary. [In relation to corporate credit card expenditure] the cardholder should have no qualms about disclosing the expenditure and being able to defend both its purpose, and the amount spent. The officer should be able to identify the benefit of the transaction for their organisation and show that the claim was reasonable.”³⁴

This definition goes to the heart of the issue of “disclosure” verses “the legitimacy and the appropriateness of the expenditure”. Whilst it is a management decision by the relevant manager and/or the chief executive to authorise the specific expenditure of a subordinate officer, it is important to point out the consequences in terms of community perception of any “dubious expenditure” and its potential to damage the council’s reputation, regardless of whether the allegation has merit or substance.

Another example involves the acceptance of tickets and hospitality by senior executives from a corporate sponsor to attend sports events in the sponsor’s corporate box, and the non-disclosure of the gift/hospitality to the chief executive. This example is further complicated by the fact that the provider of the hospitality can be the same body that provides an organisational assessment upon which the senior executive performance and/or bonuses are assessed and subsequently paid. In this example, both the provider of the hospitality and the councillors and managers accepting the hospitality leave themselves open to accusations of a conflict of interest, and in New South Wales and Queensland, open to investigation by the ICAC and the CMC respectively.

Some insights into unethical behaviours

The preceding analysis provided some examples where misconduct or corrupt behaviours had occurred in local government councils in Australia, New Zealand and the United Kingdom.

It is simple in retrospect to apply some psychological theories to corrupt or dishonest councils and disgraced leaders, yet it is generally impossible to do so whilst a council is in the midst of a crisis.^{10, 35-39} Some staff within councils may have some limited insights, and may have observed various unrelated incidents, but the events and the behaviours may not be in context. Even if some staff can clearly identify the issues, they may be powerless to influence and/or implement changes. Whilst it may be possible to generalise about some indicators of councils sliding into the corruption abyss, it is quite another thing to build a model that accurately predicts that a council will definitely become corrupt. However, the investigation reports into local government in New South Wales, Queensland, Victoria, Western Australia, New Zealand and the United Kingdom, have been accepted as validating evidence of misconduct and/or corrupt behaviours.

Figure 1: The continuum of behaviours



Source: Purcell, AJ *"The Boss is Mad or Bad or Both!" A Discussion of the Organisational Implications*. Melbourne: La Trobe University Graduate School of Management (Masters Thesis), 2005, p 44.

In reality, dealing with people and people-related issues is not a clear and precise science, and can involve the untangling of many interrelated events and external influences. For example, a council could have an over-controlling leader, staff with passive aggressive personalities, staff with narcissistic or histrionic personality disorders, and/or other behavioural traits. The practical solution to solving a myriad of organisational problems based on personality traits can be difficult, due in part to their complexity, and potentially because of their interrelationship with other internal and external influences to the organisation.¹⁰ For example, the council could have some councillors and management with issues associated with narcissism, Machiavellianism, and dysfunctional behaviours.⁴⁰ Further, there could be problems with the dark side of leadership,^{41, 42} trust, toxicity of culture, and conflict and power. These concepts are relevant because they can provide an alternative interpretative lens with which to view the misconduct and/or corruption within local government.

It is suggested that there can be a continuum of behaviours in organisations which can range from "bad" to "ethical and legal conduct", and from "mad" to "rational behaviours" (see Figure 1 above).

The significance of Figure 1 is the implication that it is difficult at a point in time to position where the individual, the group and the organisation are on the continuum of these behaviours, and the

specific and the relative positions on the continuum can change due in part to the dynamics of the interrelationships.

The relevance of emotions in this article is that the literature suggests that emotions in the workplace can affect job performance in either a negative or a positive way. Robbins⁴³ noted that negative emotions can affect the workplace, and that this is one of the reasons why employers seek to reduce emotions in the workplace. He considered that emotions can also enhance performance in the workplace by increasing arousal levels within people, acting as motivators for increased performance, and further argued that the ability of people to manage their emotions in leadership, sales and customer-interface positions may be critical to success in those positions.

In relation to dysfunctional behaviours in organisations, it was noted that behaviours and emotions within an organisation can coexist at a number of levels, namely the individual, the group, the organisation, the market, as well as compliance and stakeholder interactions. Griffin and O'Leary-Kelly considered that: (1) individual dysfunctional behaviours can in part also relate to self-harm or substance abuse and (2) group dysfunctional behaviours can, in part, relate to bullying, discrimination and harassment.³⁶ In relation to organisational dysfunctionality, this can in part relate to the toxicity of culture and low emotional intelligence on the part of the leader. However, the more important consequence of dysfunctionality is the impact it has on the followers in the organisation.^{10, 36, 37, 43, 44}

"It is easy to say that greed is the cause of these problems." Machiavelli saw this nearly 500 years ago when he observed: "of mankind we may say in general they are fickle, hypocritical, and greedy of gain", but knowing the cause of such problems and then finding appropriate solutions appears to be more difficult than we may sometimes think. Such managerial behaviour can be an open secret amongst subordinate staff, yet no subordinate staff member makes a whistle-blower disclosure to the relevant public sector investigating body. Subordinate staff can be aware of the hypocritical differentiation between the espoused rhetoric of the adherence to ethical values, and the practice of organisational largesse.

Why is nothing done? Subordinate staff members know that the practice is morally and/or criminally wrong. Perhaps they are inhibited from complaining by a sense of powerlessness to change the existing organisational and cultural metamorphosis, or maybe by a fear of managerial retribution, or of being ostracised and the inevitable career suicide. It is unfortunately prophetic that having a mortgage, a partner, and dependent children helps focus one's mind on the consequences of whistle-blowing and the ease of turning of a blind eye. The clash between the organisational rhetoric describing ethical and socially responsible behaviour and the actual unethical behaviour of many managers is described by Argyris⁴⁵ as organisational non-verbal messages.

Conclusions

Some examples of imprudent organisational munificence and unethical behaviours were drawn from local government, which is supposed to be an example of unqualified adherence to ethical behaviour and the highest moral standards. In relation to leadership and destructive acts, Mumford, Gessner, Connelly and Clifton⁴⁶ noted that personality influenced "the kind of outcomes people sought when confronted with ill defined problems".

“Personality influence[s] the kind of outcomes people sought when confronted with ill defined problems [and that whilst leaders should be expected to achieve outcomes for the best interests of organisational stakeholders] not all leaders ... are comparable to Christ, Buddha or Mohammed.”

Some of these examples may also resonate with readers working in the private sector, where expenses associated with hospitality and sponsorships are sometimes termed “marketing expenses”, which are ultimately paid for by consumers in the form of higher prices or by shareholders in terms of reduced dividends. In terms of organisational psychology, the undesirable behaviours as evidenced from the corruption and misconduct investigations provide disturbing insights into some aberrant organisational norms modelled and practised by senior management. Such behaviours reflect poorly on managers and the organisation as a whole and provide some rich examples of the Russian proverb: “when a fish smells, it stinks from the head”.

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