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AS 8001-2003

(Incorporating Amendment No. 1)

Australian Standard™

Fraud and Corruption Control



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Australian Standard™

Fraud and corruption control

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PREFACE

A1 | This Standard was prepared by the Standards Australia Committee MB-004, Business Governance.

This Standard incorporates Amendment No. 1 (November 2004). The changes arising from this Amendment apply to the Committee representatives list on the inside front cover of this Standard and the Preface.

The objective of this Standard is to provide an outline for a suggested approach to controlling fraud and corruption within a wide range of entities.

This Standard is part of the Governance series which comprises:

- AS 8000 Good governance principles
- AS 8001 Fraud and corruption control (this Standard)
- AS 8002 Organizational Codes of Conduct
- AS 8003 Corporate social responsibility
- AS 8004 Whistleblower protection programs for entities

This Standard draws on a number of pronouncements and anti-fraud and anti-corruption initiatives developed in Australia and elsewhere including:

- (a) The OECD Convention on Countering Bribery of Foreign Public Officials in International Business Transactions¹;
- (b) The Rules of Conduct to Combat Extortion and Bribery by the International Chamber of Commerce²;
- (c) The anti-bribery provisions of the revised OECD Guidelines for Multinational Enterprises;
- (d) The Foreign Corrupt Practices Act (Cwth);
- (e) The Whistleblowers Protection Act (Victoria);
- (f) The Commonwealth Fraud Control Guidelines;
- (g) ISO 17799, *Information technology—Code of practice for information security management*; and
- (h) Fraud and corruption prevention policies and guidelines used by various agencies in the different levels and jurisdictions of government.

This Standard recognizes that there are general laws in place regulating how to comply with fraud and corruption control. The intention is not to cut across the law, but enhance the legislation. If there is any doubt as to a potential conflict between the law and this Standard, seek professional advice.

This Standard complements existing guidelines produced by IFSA, ASX Corporate Governance Council and suggest the reader follows up these references for guidance as appropriate.

The term ‘informative’ has been used in this Standard to define the application of the appendix to which it applies. An ‘informative’ appendix is only for information and guidance.

1 Effective from 15 February 1999.

2 Adopted 26 March 1996.

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FOREWORD

Recent events within Australia and globally have established a strong nexus between fraud and corruption within entities on the one hand and fundamental governance failure at very senior levels on the other.

Many recent corporate collapses have, as their root cause, a conflict between the objectives of the entity and those of the custodians of the entity's assets and undertaking—the Directors and senior executives. This has given rise to many incidents involving falsification of financial statements, excessive payment of remuneration and a crisis of confidence within global equity markets.

Managing business risk has, for a number of years, been accepted as an important governance issue. By logical extension, controlling the risk of fraud and corruption is a governance issue which must be given due attention by the controllers of all entities. In future, major fraud and endemic corruption within an entity will be viewed as reflective of a failure of the entity's controllers to discharge their governance obligations.

Fraud involving Australian entities

A number of studies and surveys of fraud within the Australian economy have been conducted over the past ten years. The findings of this research³ suggest that:

- (a) Fraud costs the Australian economy at least \$3 billion per year⁴.
- (b) The incidence of fraud within the Australian economy is increasing year by year⁵.
- (c) The financial impact of fraud and corruption on the victims, and in particular, Australian entities engaged in some form of business activity, is steadily increasing.
- (d) The average financial loss associated with fraudulent conduct is increasing.
- (e) The involvement of organized crime in external attack on the financial sector within the Australian economy is increasing. It is apparent also that much external attack on Australian entities is instigated by or at the direction of criminal gangs based in other parts of the world who use well tried and tested frauds against Australian entities.
- (f) Identity theft made possible by the penetration of information technology within the wider community, the pace of business and increased educational standards of the perpetrators, is becoming the most important fraud-related threat within the Australian economy.
- (g) Australian entities are ill-prepared to detect and prevent fraud against their businesses with many having made no progress in developing or implementing any form of fraud control strategy.
- (h) A significant proportion of cases of fraud detected are not reported to the police for investigation.

³ See in particular the KPMG Fraud Survey 2002 released April 2002.

⁴ Australian Institute of Criminology estimate of fraud in the Australian economy (1997).

⁵ Statistics maintained by the Australian Institute of Criminology suggest that the rate of fraud reported to Australian police services per 100 000 head of population has doubled on average every ten years since the mid 1950s.

Examples of fraud types which are common in Australian business and therefore within the intended scope of a fraud control program contemplated by this Standard are:

- (i) Theft of plant and equipment by employees.
- (ii) Theft of inventory by employees.
- (iii) False invoicing.
- (iv) Theft of funds other than by way of false invoicing.
- (v) Theft of cash (particularly in retail or other cash businesses) usually involving some form of concealment, e.g. lapping.
- (vi) Theft of petty cash.
- (vii) Accounts receivable fraud (misappropriation of remittances received by an entity).
- (viii) Credit card fraud (the most common fraud against the banking sector).
- (ix) Lending fraud (loan application made in a false name and supported by false documentation).
- (x) Theft of intellectual property.
- (xi) False accounting (falsification of the entity's accounting system in order to mislead the readers of financial statements in order to obtain some form of improper benefit).
- (xii) Theft of organizational information by employees or external hackers.
- (xiii) Release or use of misleading or inaccurate information for the purposes of deceiving, misleading or to hide wrong-doing.

Australian entities themselves (through their Directors and managers as their agents) sometimes become involved in fraudulent conduct in a number of ways including:

- (A) Material and deliberate misstatement of accounting information for an improper purpose (for example to underpin a share price or to meet profitability or cashflow forecasts).
- (B) Overcharging for goods and services in invoices rendered to customers and clients.
- (C) Taking to revenue remittances received in error rather than allowing a credit to the payer.
- (D) Tax evasion.
- (E) Money laundering.
- (F) Insider trading.
- (G) Otherwise engaging in misleading or deceptive conduct within the meaning of the *Trade Practices Act*.

The reasons for the increasing incidence of fraud are many and varied but there are a number that are of particular note as follows:

- (I) The continual striving for greater efficiencies in business.
- (II) The increasing use and reliance on technology and the associated changes in payment systems and channels. Of particular concern is the ease with which commercial crime can operate globally, access accounts in countries on the other side of the globe and then transfer funds very quickly between accounts in a different jurisdiction with the intention of making it impossible to follow the trail let alone recover any of the proceeds of the crime.
- (III) The 'flattening' of organizational structures.

- (IV) Rapid and continuous changes to business operations.
- (V) The increasing pace of business.
- (VI) The inability of the criminal justice system, the police, the Australian Securities and Investments Commission and other law enforcement agencies and the Courts, to keep pace with the ever-increasing workload and greater complexity of matters reported to them.
- (VII) The accessibility of gambling which has become a significant motivator for employees to commit fraud against their employer.
- (VIII) Greater complexity of business relationships.
- (IX) Changing remuneration and incentive structures and arrangements.

The value to an entity of information held cannot be overstated. The loss of information through unauthorized system access can cause significant damage to an entity and must be treated as a serious threat. Controlling the risk of information theft by unauthorised internal or external access should be a matter of priority for entities which rely heavily on the information held.

Corruption involving Australian entities

A recent survey of corruption in 102 countries around the globe⁶, found that the perceived incidence of corruption within the Australian economy is significant. Australia was ranked 11th of 102 countries surveyed for the *Corruption Perception Index* meaning that Australia was the country with the 11th highest degree of ‘Transparency’—a lower likelihood of corruption within business. This contrasts with the *Bribe Payers Index*⁷ where Australia was ranked first out of 15 countries—Australian entities were perceived as being least likely to pay bribes in foreign jurisdictions.

Corrupt conduct to which Australian entities are subject and therefore within the intended scope of a corruption control program contemplated by this Standard include:

- (a) Payment or receipt of secret commissions (bribes), which may be paid in money or in some other form of value to the receiver (e.g. building projects completed at an employee’s private residence) and may relate to a specific decision or action by the receiver or generally.
- (b) Release of confidential information for other than a proper business purpose sometimes in exchange for some form of non-financial benefit or advantage accruing to the employee releasing the information.
- (c) Collusive tendering (the act of multiple tenderers for a particular contract colluding in preparation of their bids).
- (d) Payment or solicitation of donations for an improper political purpose.
- (e) Serious conflict of interest involving a Director or senior executive of an entity or other entity acting in his or her own self-interest rather than the interests of the entity to which he or she has been appointed (e.g. failing to declare to a Board an interest in a transaction the entity is about to enter into or excessive payment of remuneration to Directors and senior executives).
- (f) Payment of donations to charitable or not-for-profit organizations for an improper purpose (for example to pursue a personal benefit or agenda for an individual within the donor).

⁶ See Transparency International Corruption Perception Index 2002.

⁷ See Transparency International Corruption Perception Index 2002.

- (g) Serious nepotism and cronyism where the appointee is inadequately qualified to perform the role to which he or she has been appointed.
- (h) Manipulation of the procurement process by favouring one tenderer over others or selectively providing information to some tenderers. This frequently involves allowing tenderers to resubmit a ‘non-complying’ tender after being provided with the details of other bids.
- (i) Lavish gifts or entertainment intended to achieve an unstated objective.
- (j) Bribing officials (locally or in foreign jurisdictions) in order to secure a contract for the supply of goods or services.
- (k) Private sector to private sector secret commissions to secure contracts.
- (l) ‘Facilitation’ payments—small one-off payments in cash or in kind intended to secure prompt delivery of goods or services.

Losses associated with the corruption of the procurement process result from reduced competition and the acceptance of below standard delivery of goods and services that would be rejected in the ordinary course.

Private and public sector entities may also suffer loss if the winning tenderer attempts to recover the cost of the secret commission paid or unsuccessful tenderer fees (i.e. fees paid by a winning bidder to losing bidders) by loading the value of the bid either before or after the contract is awarded.

Managing the risks

An entity’s approach to managing the risks of fraud and corruption should be underpinned by an organization-wide policy developed with internal and external consultation with appropriate benchmarking against established best practice prevention programs and standards. It should apply the principles of sound risk management, planning, monitoring and remedial action.

This Standard aims to provide entities with the tools they will need to apply these general risk management principles to the control of fraud and corruption.

STANDARDS AUSTRALIA

Australian Standard
Fraud and corruption control

SECTION 1 SCOPE AND GENERAL

1.1 SCOPE AND APPLICATION

This Standard provides an outline for an approach to controlling fraud and corruption and applies to all entities including government sector agencies, publicly listed corporations, private corporations, other business entities and not-for-profit organizations engaged in business or business-like activities.

While this Standard's intended application is all entities as outlined above, the extent to which it is applied within individual entities will be dependent on the characteristics of each entity in terms of the entity's—

- (a) size;
- (b) turnover;
- (c) business diversity;
- (d) geographical spread;
- (e) reliance on technology; and
- (f) the industry in which it operates.

1.2 OBJECTIVES

The purpose of this Standard is to outline a suggested approach to controlling fraud and corruption 'against' and 'by' entities. It is intended to be useful and effective guidance for entities wishing to implement a fraud and corruption control program.

The Standard proposes an approach to controlling fraud and corruption through a process of—

- (a) establishing the entity's fraud and corruption control objectives and values;
- (b) setting the entity's anti-fraud and anti-corruption policies;
- (c) developing, implementing, promulgating and maintaining a code of conduct;
- (d) fraud and corruption control planning;
- (e) risk management including all aspects of identification, analysis, assessment, mitigation, implementation, communication and monitoring;
- (f) implementation of mitigation strategies for all fraud/corruption risks with immediate focus on the very high/high rated risks—in the meantime, monitor the medium and low rated risks;
- (g) ongoing monitoring and improvement;
- (h) awareness training;
- (i) establishing sanctions for non-compliance with the entity's policies and protocols;
- (j) establishing clear accountability structures;