ibac independent broad-based anti-corruption commission
Victoria

# Corruption risks associated with major transport infrastructure projects

February 2023

**Acknowledgement**

IBAC acknowledges the Traditional Custodians of the lands on which we work and pays respect to Elders past, present and emerging. We recognise and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of Victoria.

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# Contents

# Contents

# Abbreviations

| Acronym/Term | Explanation |
|---|---|
| **COI** | conflict of interest |
| **DoI** | Department of Investigation (New York City) |
| **DOPI** | declaration of private interest |
| **DTP** | Department of Transport and Planning |
| **DTF** | Department of Treasury and Finance |
| **ELCA** | entity-level controls assessments |
| **HVHR** | high value, high risk |
| **IT** | information technology |
| **ITC** | incentivised target cost |
| **LXRP** | Level Crossing Removal Project |
| **MLP** | market-led proposal |
| **MRPV** | Major Road Projects Victoria |
| **MTIA** | Major Transport Infrastructure Authority |
| **NSW ICAC** | New South Wales Independent Commission Against Corruption |
| **PARIC** | Program Assurance Risk and Integrity Committee |
| **PDA** | program delivery approach |
| **POC** | procurement oversight committee |
| **TEI** | total estimated investment |
| **VAGO** | Victorian Auditor-General's Office |

# Chapter 1

Overview

# Overview

**This report identifies the current and emerging corruption risks and issues associated with the procurement processes and construction of some major infrastructure projects in Victoria. It explores the causes of these risks, the factors that increase the risk of corruption in this sector, and opportunities to prevent and detect corruption, for consideration by public sector agencies that manage major infrastructure projects.**

The 2022/23 Victorian state budget allocated $3.5 billion to public transport services and infrastructure, including $383 million to operate new infrastructure built under the state's multi-billion-dollar Big Build initiative, which includes the following major transport infrastructure projects:[1]

- North East Link (primary package - tunnel) ($14 billion)
- Level Crossing Removal (Over $17.6 billion. In 2022, the Victorian Government announced plans to remove a further 25 level crossings by 2030)
- Metro Tunnel ($12.4 billion)
- West Gate Tunnel ($10.2 billion)
- Major Road Projects Victoria ($6.9 billion)
- future major projects including the Melbourne Airport Rail (between $8–13 billion), the Suburban Rail Loop (between $130–200 billion) and the Western Rail Plan (likely to be over $2 billion).[2]

Because of the size and complexity of this sector, the important role it plays in providing necessary infrastructure to Victorians, and the considerable public funds required to build these major projects, IBAC has undertaken research into the corruption risks that could affect major Victorian infrastructure projects. This research focused on major transport infrastructure projects, because transport is the focus of the state's Big Build initiative.[3]

The Victorian community expects major infrastructure projects to be managed with integrity to provide assurance about the management of public funds and to minimise the risks of corruption.

Corruption risks in major infrastructure projects can be difficult to detect, due to the high cost and large size of major projects, the complex nature of planning and procurement, commercial arrangements, and engagement between market participants and other stakeholders. To examine the corruption risks in major infrastructure projects, IBAC consulted with the Major Transport Infrastructure Authority (MTIA), which is responsible for planning, managing and building a significant number of transport infrastructure projects for Victoria. Although the MTIA's projects are all transport-related, the findings in this report could apply to any major infrastructure projects.

IBAC's research has identified several corruption risks that could affect major infrastructure projects. This report describes these risks and a range of strategies to help prevent corruption. The risks and drivers identified in this report do not apply to all major infrastructure projects all the time, and the report does not assess the corruption that could be occurring across the major projects sector.

1 Department of Treasury and Finance 2022, '2022-23 State Capital Program', website, Melbourne, viewed 18 October 2022, **www.dtf.vic.gov.au/2022-23-state-budget/2022-23-state-capital-program**

2 Department of Treasury and Finance 2019, *2019–20 State Budget*, DTF, Melbourne, **www.dtf.vic.gov.au/previous-budgets/2019-20-state-budget**.

3 Victorian State Government 2022, 'Victoria's Big Build: Road and rail projects to transform how you travel', web page, Melbourne, viewed 13 October 2022, **www.bigbuild.vic.gov.au**.

Major infrastructure projects have three general phases during their lifespan:

1. Planning – the initial development of the project concept, feasibility assessment and approval through to the awarding of contracts and initial procurement
2. Construction – the construction of the project, as well as procurement of labour, materials and services to achieve this
3. Management – the ongoing operation and maintenance of the infrastructure once completed.

Each of these phases has its own particular corruption risks. Some activities are undertaken in more than one phase, such as procurement, which occurs in all three phases. However, to contain the focus of our strategic assessment, we narrowed its scope to the second phase: the construction of the significant major projects being overseen by the MTIA.[4] Nevertheless, the insights and risks that we identified will be of interest to all public bodies undertaking major capital works across all sectors.

Our research shows that some of these corruption risks arise from the unique nature and complexity of major infrastructure projects. Related causes include delivery pressures as well as the outsourcing of work to many layers of subcontractors. It is important that public bodies understand the corruption risks of these projects, and their causes, so that they can tailor strategies to detect and prevent corruption.

In developing its findings, IBAC consulted with the MTIA and local and interstate integrity agencies and experts, and reviewed intelligence, investigations, complaints, and notification data, as well as other public reports and information. Through this research, IBAC observed that public bodies, particularly the MTIA, are already taking steps to mitigate many corruption risks.

The following integrity measures taken by the MTIA are some good examples of the Four Lines of Defence against fraud and corruption (as described in Box 1):

- risk-based pre-employment screening
- risk-based contractor and supplier due diligence checks
- declarations and management of private interests and conflicts of interest
- integrity training
- integrity awareness campaigns, including a whistleblowing hotline
- gifts, benefits and hospitality, and outside business event registrations and checks
- data analytics program for fraud and corruption control
- internal and external probity and assurance regimes.

## Box 1: The Four Lines of Defence

The Institute of Internal Auditors Australia promotes the Three Lines of Defence, commonly used by public and private sector bodies to manage risk. These can be summarised as:

- first line of defence – management control of risk
- second line of defence – risk control and compliance oversight functions established by management
- third line of defence – independent assurance, such as internal audits.[5]

Many public bodies now refer to a 'fourth line of defence', being external bodies that provide independent assurance – such as auditors, regulators, parliamentary committees, and integrity agencies such as IBAC.

4 Major Transport Infrastructure Authority 2021, 'About the Major Transport Infrastructure Authority', web page, Melbourne, viewed 13 October 2022, **www.bigbuild.vic.gov.au/about/mtia**.

5 Institute of Internal Auditors Australia 2019, 'Three Lines of Defence Model to be reviewed', web page, Sydney, viewed 13 October 2022, **www.iia.org.au/news-media/announcements/2019/07/30/three-lines-of-defence-model-to-be-reviewed**.

## Key findings

### Major infrastructure – context

- Although major infrastructure projects face the same corruption and fraud risks faced by other public sector agencies, the consequences are often higher due to project size, complexity and expenditure.
- Risk levels can fluctuate at different project stages, demanding regular risk assessments, continuous monitoring, and well-coordinated, regular and targeted monitoring and audits.
- The pressure to complete major projects, as well as the high number of major projects currently being built across Australia, are creating a unique high-pressure environment, with resourcing and staffing constraints.
- The various contracting methods used in the construction industry (including public–private partnerships, alliance contracting, and other collaborative contracting methods) are all ways of undertaking complex projects, and have inherent risks for business planning, management, construction and completion. Although these methods have varied risks and benefits, we did not find that one is less or more susceptible to corruption than the others. While these methods can be susceptible to the same types of corrupt practice, the added availability of information through a collaborative, open book relationship provides better opportunities to counter the risks.
- Poor management of a project's more complex aspects could increase corruption risks by reducing transparency. For example, projects that require regular liaison with more than one level of government, and the need to coordinate with existing transport infrastructure, pose complex scenarios involving many stakeholders as well as challenges for delivery and assurance.

### Key corruption risks

Key corruption risks that major transport infrastructure projects are susceptible to during procurement and construction include:

- fraud, collusion and bribery inside a contracted or subcontracted organisation (such as a principal contractor, subcontractor or advisor)
- contractor and subcontractor fraud (for example, false claims and billings)
- favouritism and fraudulent recruitment practices. An emerging type of corruption risk is payroll fraud in the construction workforce, conducted through labour hire companies, and potentially enabled or supported by other illegal activity.

## Corruption drivers

Factors that can contribute to corruption in the sector include:

- high value and complex projects, processes and operating environments
- high-level political, performance and economic pressures to complete projects
- depth and breadth of market participants and supply chain involved – for example, conflicts of interest arising from a relatively small number of major contractors able to compete for state infrastructure projects, and a global shortage of technical experts.

## Detection and prevention

- Centralised and coordinated risk assessment, detection and prevention measures, and data collection and analysis between projects are essential to countering risks.
- An essential element of stronger integrity frameworks and corruption controls for agencies that oversee major projects is the sharing of information between integrity officers and those responsible for leadership and governance. This helps support a corruption-aware culture when backed by a comprehensive and robust integrity framework.
- Certain contract management methods – such as alliancing and other forms of collaborative contracting where there are typically open book commercial arrangements and auditing in place – can increase transparency of project expenditure and knowledge-sharing, and therefore mitigate some corruption risks.
- Developing a culture of integrity across entire projects and an organisation is vital in major infrastructure agencies, due to their high levels of exposure to the private sector and the use of contractors. This includes developing awareness of the public sector standards among third parties, such as construction partners and suppliers, and working to align private sector standards with the Victorian Government's Supplier Code of Conduct.[6]
- In the most successful cases, the culture and expectations of public sector integrity will extend to project partners and suppliers. There are opportunities for public bodies to mandate minimum contracting clauses that protect the public sector from corrupt practices and encourage ethical practices. Examples include requiring project partners and suppliers to have robust fraud control frameworks, targeted ethical training, and transparent procurement and subcontracting arrangements.

6 Buying for Victoria 2020, 'Supplier code of conduct', web page, Melbourne, viewed 13 October 2022, **www.buyingfor.vic.gov.au/supplier-code-conduct**.

## Methodology

This report includes information drawn from IBAC's consultations with the MTIA. IBAC initially held discussions with the MTIA Director-General and the chief executive officer of each of the MTIA's project offices. IBAC then conducted a workshop with MTIA executive managers to discuss perceived risks and contributors to corruption. Our report would not have been possible without the information gained from the workshop and consultations with the MTIA.

IBAC also consulted Victorian and interstate integrity agencies.

In addition, sources for this report include an analysis of IBAC intelligence, complaints and notifications, as well as a review of academic literature and reports from interstate, Commonwealth and international bodies.

## Scope

This report focuses on the **construction of, and procurement in, major transport infrastructure projects** and highlights some risks during project initiation and planning.

The major infrastructure projects undertaken by other state building authorities, such as the Victorian School Building Authority and the Victorian Health Building Authority, were not examined as part of this report. However, allegations received by IBAC about these authorities informed our assessment. For this reason, the report's findings, including the corruption risks and potential prevention and detection strategies identified, are likely to be relevant to all agencies undertaking major infrastructure projects, not only those building transport infrastructure.

# Chapter 2

Background

# Background

**Major infrastructure projects are a mainstay of Victoria's economy. As of May 2022, Victoria had committed to investing $184 billion in public sector capital projects, a net increase of $40 billion from the previous year.[7] Around 70 % of this investment is devoted to transport infrastructure.[8]**

This trend is reflected interstate and overseas and is also a response to Victoria's projected population growth and economic development, which is forecast to increase despite the effects of the COVID-19 pandemic.

There is no clear government-wide definition of a major project or a major transport infrastructure project. However, based on a range of current and previous policies from the Victorian Government – including the High Value High Risk (HVHR) Framework[9] – and the Commonwealth, IBAC has adopted the following definition for the purposes of this report:

> A major transport infrastructure project is a transport project with a total estimated investment of more than $100 million for the provision of public infrastructure, and any related ancillary services which involve private investment or financing.

Transportation infrastructure projects currently dominate Victoria's major projects sector, and are likely to continue to do so, due to major spending on several once-in-a-generation projects like the Suburban Rail Loop. The total estimated investment (TEI) in the Victorian transport infrastructure sector was $76.6 billion in 2022, compared to $23 billion for major infrastructure projects in other sectors.[10]

Overall, Victorian major projects are performing well compared with projects in similar economies, with lower cost and completion date overruns. In a benchmarking study completed by the Office of Projects Victoria, 117 major projects in Victoria were compared with 379 large-scale transport and social infrastructure projects in 14 OECD nations.[11] Victorian projects had average cost overruns of 4%, compared with 59% for the OECD sample. Around 28% of Victorian major projects had completion date overruns, compared with 32% of projects in the OECD sample.[12]

Compared with projects in other sectors in Victoria though, transport projects have higher costs and greater likelihood of changes in scope. In a recent report by the Victorian Auditor-General's Office (VAGO), transport projects had the highest average and median TEI: $1.6 billion and $383.8 million per project respectively. They also had the highest average increases in TEI and the largest number of attested changes in scope.[13]

7 Victorian Auditor-General's Office 2022, *Major Projects Performance* (audit report), VAGO, Melbourne.
8 Victorian Auditor-General's Office 2022, *Major Projects Performance* (audit report), VAGO, Melbourne.
9 Department of Treasury and Finance 2018, 'HVHR Project Assurance Framework: High Value or High Risk Overview and Factsheet', PDF, Melbourne, viewed 14 October 2022, **www.dtf.vic.gov.au/sites/default/files/2018-05/HVHR%20Project%20Assurance%20Framework%20Factsheet%20%28May%202018%29.pdf**.
10 Victorian Auditor-General's Office 2022, *Major Projects Performance* (audit report), VAGO, Melbourne, p 12.
11 Parliament of Victoria 2021, *Report on the 2021–22 Budget Estimates*, Public Accounts and Estimates Committee, Melbourne, p 78; Boston Consulting Group and Office of Projects Victoria 2021, *International Major Infrastructure Projects Benchmarking Review: Final Report*, OPV, Melbourne.
12 Parliament of Victoria 2021, *Report on the 2021–22 Budget Estimates*, Public Accounts and Estimates Committee, Melbourne, p 78; Boston Consulting Group and Office of Projects Victoria 2021, *International Major Infrastructure Projects Benchmarking Review: Final Report*, OPV, Melbourne.
13 Victorian Auditor-General's Office 2022, *Major Projects Performance* (audit report), VAGO, Melbourne.

Despite the high level of public infrastructure spending and development in Australia and worldwide, the construction industry is experiencing resourcing shortages, particularly in essential technical areas. In 2021, Infrastructure Australia estimated that the peak of demand for skills in the infrastructure sector was 48% higher than supply.[14] This has reduced competition in a market that is dominated by a relatively small pool of construction conglomerates, and in a sector that has been identified as having high corruption risks.[15] In 2011, Transparency International's Bribe Payers' Index rated 'public works contracts and construction' as the most corrupt of 19 sectors assessed.[16] A 2014 PwC report concluded that engineering and construction had the highest rate of bribery and corruption of all sectors experiencing economic crime. It found that 'the nature of the construction industry, where the procurement of goods and services and the selection of contractors and suppliers on large-scale projects may be decided or influenced by individuals within an organisation, provides a number of opportunities for corruption and bribery'.[17] In Australia, alleged fraud and corruption in the construction industry led to the establishment of four royal commissions between 1982 and 2014.[18] Combined with the effects of the COVID-19 pandemic, the current market conditions and high level of public expenditure have had flow-on effects to corruption risks, which are detailed in this report.

## The phases of a major project

Once the government, or its stakeholders (including private entities), has identified the need for a project, each major project goes through three main phases. As detailed in Figure 1 on page 21, these are planning (or preparation), construction, and management. Each stage has its own particular risks to integrity. This section explains these phases, and some known integrity risks at each phase.

### Planning

Careful planning is essential to maximise the public benefits of infrastructure projects and to avoid corruption. Planning involves project appraisal, design, and budgeting. Large-scale public investment in infrastructure can be vulnerable to corruption, such as bribery, policy capture, abuse of function, and trading in influence.[19] Influence by vested interests in decision-making during planning can lead to excessive infrastructure and to projects that drain public resources and fail to meet government and community expectations.

Projects are therefore ideally the product of planning and assessment that are detailed, independent, systematic, evidence-based and government-led, followed by a review to determine whether they will proceed. Although this may seem like common sense, some major transport infrastructure projects have previously received government approval without submitting adequate business cases.[20] Of 32 projects larger than $500 million that federal and state governments across Australia have committed to since 2016, only eight had a business case either published or assessed by a relevant infrastructure body at the time funding was allocated.[21]

14 Infrastructure Australia 2021, 'Infrastructure Market Capacity', PDF, Canberra, viewed 13 October 2022, **www.infrastructureaustralia.gov.au/sites/default/files/2021-10/Infrastructure%20Market%20Capacity%20Report%20211013_0.pdf.**

15 Emslie, O 2021, 'Rise of transport megaprojects adds to Australian taxpayers' risk of paying too much', *The Conversation* (17 May), **https://theconversation.com/rise-of-transport-megaprojects-adds-to-australian-taxpayers-risk-of-paying-too-much-160459** .

16 Transparency International 2011, 'Bribe Payers Index 2011', web page, Berlin, viewed 13 October 2022, **www.transparency.org/en/publications/bribe-payers-index-2011**.

17 PwC 2014, 'Fighting corruption and bribery in the construction industry', web page, viewed 18 October 2022, **www.pwc.com/gx/en/economic-crime-survey/assets/economic-crime-survey-2014-construction.pdf**

18 Brown, J & Loosemore, M 2015, 'Behavioural factors influencing corrupt action in the Australian construction industry', Engineering, *Construction and Architectural Management*, vol. 22, no. 4, pp 372–389, **http://www.emerald.com/insight/content/doi/10.1108/ECAM-03-2015-0034/full/html**.

19 Organisation for Economic Co-operation and Development 2016, '*Integrity Framework for Public Infrastructure*', PDF, Paris, viewed 13 October 2022, **www.oecd.org/corruption/ethics/Integrity-Framework-For-Public-Infrastructure-Brochure.pdf**.

20 Batrouney, H 2018, 'Missing evidence base for big calls on infrastructure costs us all', *The Conversation* (10 July), **https://theconversation.com/missing-evidence-base-for-big-calls-on-infrastructure-costs-us-all-99080.**

21 Terrill, M 2021, 'Of Australia's 32 biggest transport projects, just eight had a public business case', *The Conversation* (7 September), **https://theconversation.com/of-australias-32-biggest-infrastructure-projects-just-eight-had-a-public-business-case-166847.**

A thorough business case backed by rigorous and independent analysis and assessment is necessary to balance the propensity of governments to make overly optimistic promises. Infrastructure projects can be visionary and economically invigorating, and therefore politically appealing. Yet over-optimism has sometimes led governments to plan poorly and in a short-sighted manner. Numerous Olympic Games host cities, for example, have constructed wasteful infrastructure that has been delayed, suffered cost overruns, or taken years to pay off, while being under-used. Montreal's Olympic stadium notoriously took 30 years to pay off, and continues to cost taxpayers in repairs, including three roof replacements.[22] Some past business cases in Australia have been based on modelling that included assumptions that were poorly supported by research and analysis. For example, over-optimistic traffic modelling for Brisbane's Clem7 tunnel led to a $121 million out-of-court settlement, after it attracted only one-third of projected users in its first month of operation in 2010, and low patronage thereafter.[23]

## Box 2: MTIA insight – business cases

All MTIA projects require business cases. These include risk registers that must be developed and completed to secure funding. Project planning phases typically take many months.

During a project's **planning** phase, the government conducts feasibility and needs assessments, and analyses investment options, including market-led proposals from the private sector (see Box 3). This determines whether government will form a partnership with a private entity to construct the project and, if so, what type of contract will be used.

The Office of Projects Victoria, an administrative office in the Department of Treasury and Finance (DTF) acts as an independent advisor on project delivery. Meanwhile, DTF is also responsible for assessing major projects, particularly those of high value and high risk (see Box 4), from the business case stage and throughout the project.[24]

22 Sturmer, J, Armitage R, & Stein, L 2021, 'Olympic cities can become multi-billion-dollar graveyards for white elephants after the Games', *ABC News* (7 August), **www.abc.net.au/news/2021-08-07/what-japan-learned-from-olympic-white-elephants/100329488**.

23 Wiggins, J 2016, 'RiverCity IPO investors secure $121m in successful Clem7 class action', *Australian Financial Review* (1 June), **www.afr.com/markets/equity-markets/rivercity-ipo-investors-secure-121m-in-successful-clem7-class-action-20160601-gp8qu4**; Atfield, C 2017, 'Gap between Brisbane tunnel expectations and reality continues to widen', *Brisbane Times* (9 March), **www.brisbanetimes.com.au/national/queensland/gap-between-brisbane-tunnel-expectations-and-reality-continues-to-widen-20170309-guuj75.html**.

24 Department of Treasury and Finance 2020, 'Gateway key decision points, guidance and template', web page, Melbourne, viewed 13 October 2022, **www.dtf.vic.gov.au/gateway-review-process/gateway-key-decision-points-guidance-and-templates**.

## Box 3: Market-led proposals

Market-led proposals (MLPs) are unsolicited proposals from the private sector to develop infrastructure in exclusive partnership with the government for a community purpose. Although MLPs have been used as an alternative to traditional, government-initiated procurement, particularly in large-scale infrastructure and urban-renewal projects, they are commonly less common among Victorian transport infrastructure projects.

Between 2001 and 2016, about $11 billion of transport infrastructure was commissioned through market-led proposals. Over that period, Victoria led the country in commissioning MLPs, which comprised one-sixth of the value of all major projects being undertaken in the state.[25] However, the only example of an ongoing MLP in Victoria at the time of this report is the West Gate Tunnel Project.

Australian state and territory governments have assessment processes to determine whether an MLP has sufficiently unique properties that demonstrate the advantage of a private sector proposal over a government-led competitive process.

In August 2021, the Victorian Government published revised guidelines for MLPs, setting out a three-stage process in which the DTF assesses whether a proposal meets government objectives to deliver benefits for Victorians, achieve value for money, and provide a compelling justification to support any exclusive negotiation.[26] In conjunction with the revised guidelines, the government also defined priority sectors, in which MLPs were encouraged. These currently include health, social and community infrastructure, but not transport infrastructure.

The involvement of private interests, along with governments' growing need for private investment to support their projects, has meant that the business case and needs assessments for a major project can be at risk when there is opaque decision-making.[27] Previous examples of a PPP and MLP where VAGO found that business cases were flawed, or where either the assessment of those cases or the modelling was insufficiently comprehensive or transparent, include the East West Link and the West Gate Tunnel respectively.[28]

The Victorian Government now endeavours to avoid risks arising from over-optimism on MLPs by no longer relying on bidders making revenue assumptions.

25 Terrill, M, Emslie, O & Fox, L 2021, *Megabang for Megabucks: Driving a Harder Bargain on Megaprojects*, Grattan Institute, Melbourne, **https://grattan.edu.au/report/megabang-for-megabucks/.**

26 Department of Treasury and Finance 2021, 'Market-led Proposals Guideline', PDF, Melbourne, viewed 13 October 2022, **www.dtf.vic.gov.au/sites/default/files/document/Market-led%20Proposals%20Guideline.PDF**.

27 Woodcock, I et al. 2017, *West Gate Tunnel: Another Case of Tunnel Vision?,* RMIT University and University of Melbourne Centre for Urban Research.

28 Victorian Auditor-General's Office 2015, *East West Link Project* (audit report), VAGO, Melbourne, **www.audit.vic.gov.au/report/east-west-link-project**; Jacks, T 2021, 'Infrastructure Victoria abandons contentious East West Link', *The Age* (19 August), **www.theage.com.au/national/victoria/infrastructure-victoria-abandons-contentious-east-west-link-20210818-p58jw7.html**; Victorian Auditor-General's Office, *Market-Led Proposals* (audit report), VAGO, Melbourne, **www.audit.vic.gov.au/report/market-led-proposals**; Woodcock, I et al. 2017, *West Gate Tunnel: Another Case of Tunnel Vision?,* RMIT University and University of Melbourne Centre for Urban Research.

## Box 4: High value, high risk projects and processes

High value, high risk (HVHR) projects in Victoria are subject to DTF's HVHR Project Assurance Framework.[29] A project is classified as HVHR if it is a budget-funded project that is:

- considered high risk using DTF's risk assessment tool
- considered medium risk using the risk assessment tool and has a TEI of between $100 million and $250 million
- considered low risk using the risk assessment tool but has a TEI of more than $250 million, or
- identified by government as warranting the rigour applied to HVHR investments.

The HVHR Framework includes a review and advice process undertaken by DTF to check that projects are aligned to planned budgets and timelines, and that business cases and procurements are sound. DTF reviews business cases submitted by departments and advises government at important stages of the project.

### Construction

As part of the planning stage, decisions are made on the most suitable contract type. A traditional design-and-construct contract can sometimes be used (see Table 1), in which either the government or an appointed managing contractor oversees the project. However, depending on a project's size, cost, complexity and type, as well as the government's appetite for risk, other models may be used including public–private partnerships and collaborative contracts, such as alliance contracting. All these factors inform the ultimate choice of contract type. Once parties have agreed to terms, contractors proceed to complete the project 'deliverables'. Project managers will finalise programming and scheduling, as well as risk management and procurement strategy plans.

Different contract types operate internationally and in Australia. In broad terms, contracting arrangements can be divided into traditional, PPP and collaborative types, as detailed in Table 1. Generally, traditional models rely on fixed-price arrangements made between owners and contractors. PPPs also can involve fixed prices but involve a private legal entity assuming responsibility for the project including the subsequent maintenance and operation of the asset. Meanwhile, collaborative contracts forge closer, horizontal relationships between owners of the infrastructure (the government) and contractors, in which risks are shared and rewards vary based on performance. All state construction projects are bound by probity standards in the *Project Development and Construction Management Act 1994* (Vic), Ministerial Directions for Public Construction Procurement, and VGPB guides. PPP contracts must also comply with probity standards set out in the Partnerships Victoria Requirements and alliance projects with the Victorian Alliancing Policy.[30]

29 Department of Treasury and Finance 2021, 'High Value High Risk Framework', web page, Melbourne, viewed 13 October 2022, **www.dtf.vic.gov.au/infrastructure-investment/high-value-high-risk-framework**.

30 Department of Treasury and Finance 2016, '', PDF, Melbourne, viewed 13 October 2022, **www.dtf.vic.gov.au/sites/default/files/2018-05/Partnerships-Victoria-Requirements-November-2016.pdf**, p 17.

**Table 1: Typical contract types for major infrastructure projects**

| Contract type | Definition |
|---|---|
| **Traditional design-and-construct contract** | The public sector project client engages a contractor. The contractor is paid a lump sum and takes on legal responsibility for the project's design and construction (D&C). The contractor then chooses subcontractors to deliver the project. |
| **Managing contractor** | The public sector client appoints a contractor as a project manager, who may then engage subcontractors, via competitive tender, and in consultation with the client, to undertake the design and/or construction. The client and contractor negotiate a fixed lump sum and periodic payments for their services and to reimburse the managing contractor for their payments to subcontractors and consultants. The managing contractor may also receive incentive payments for achieving cost, time and targets. In contrast to traditional D&C models, a managing contractor has less autonomy than a D&C contractor and is not exposed to the higher risks of a D&C contractor, who may be liable for liquidated damages if they fail to complete work on time. |
| **Public–private partnership** | The public sector body selects a legal entity, or special-purpose vehicle, created to manage the financing, design, procurement and construction of a project. This legal entity largely assumes the risk to government and often earns profit after completion, for example through tolls or by operating the infrastructure on behalf of the government, which makes periodic payments to the private partner based on the availability of the infrastructure. |
| **Collaborative contract** | The public sector body contractor and designer agree to collectively share project risks and returns, usually during the D&C. The government reimburses the direct costs of the designer and contractor and pays them a margin. Two prominent forms of collaborative contracting are incentivised target cost (ITC) and alliance.<br>Under an ITC, the contractor works with the public sector project owner to develop a design and budget. The contractor is reimbursed for its work costs and recieves a share in savings but may also involve deductions for cost overruns.<br>Alliance agreements resemble an ITC contract, although alliance partners are bound to additional agreements to share information openly. The resultant 'no-blame' and 'open-book' culture reduces the likelihood of litigation against other partners and avoids adversarial behaviour, while encouraging best practice. |

### Public–private partnerships

Until the introduction of collaborative contracts around fifteen years ago, public–private partnerships (PPP) were the leading form of project delivery that governments and the private sector adopted for sharing risks and benefits in providing public infrastructure and using private sector expertise and capital. In contrast to a traditional design-and-construct contract, a PPP can take on higher risks throughout the design, construction and operation of an infrastructure project.

According to the DTF, a PPP project is defined as one in which:

- the government contracts the private sector to design, build, finance and maintain infrastructure on its behalf
- the PPP asset is handed back to government at the end of the contract period
- payment is based on the services provided, and is conditional upon meeting performance standards
- there is a private finance element, and clear and enforceable allocation of risk.[31]

31 Department of Treasury and Finance 2017, 'Partnerships Victoria: Excellence in Public Private Partnerships', PDF, Melbourne, viewed 14 October 2022, **www.dtf.vic.gov.au/sites/default/files/2018-02/Partnerships-Victoria-Excellence-in-public-private-partnerships.pdf.**

Two broad parameters can be used to define a PPP: the function that the private sector fulfils, and how the government pays the private sector partner (or partners).

The private sector can be contracted to carry out various functions for the project, including design, build, rehabilitate, maintain or operate. To do so, the private party typically creates a PPP company, or special-purpose vehicle, that allows assets and liabilities linked to the private provision of services for the project to be segregated.[32] PPPs are also characterised by a service contract, under which the government pays the private sector to build provide related services over a specified period in return for financing the project, the provider will recoup costs – from users or from the government – by operating and maintaining the infrastructure for a certain time.[33]

PPPs have a long history of use by governments needing additional capital investment to commence and complete large-scale public projects. PPPs offer the advantages of private sector expertise and capital, transfer of risks to the private sector, a contract workforce and – in the case of built, owned, and operated projects – the prospect of reduced government obligation to maintain the infrastructure. Therefore, getting value for money from PPPs – as the experiences of OECD countries have demonstrated – depends on the ability of government agencies to manage them strategically and effectively.[34]

**Collaborative contracts – alliance**

The alliance form of collaborative contract has proved popular when projects involve complex scope definitions and stakeholder issues. Alliances provide significant benefits by offering greater sharing of risks and financial reward. Alliance partners are reimbursed by the government, as project owners, for their direct costs. Perhaps most importantly, partners share additional, key performance indicator-related payments that share gains and losses between all members of the alliance. Gains will increase profits for all partners, and losses can mean that partners will lose their share of profits.

Because the key performance indicators in an alliance contract are based on whole-of-project results, partners are encouraged to seek cost, time and quality gains for the entire project, not simply for their own scope of work.[35] This often involves a 'no-blame, open-book' culture, where partners are free to inspect and query the processes of other partners in the interest of improving overall project management, without fear of litigation if a partner breaches contractual conditions or is negligent. Additionally, alliance participants are subject to independent audit reporting to government, to ensure their compliance with conditions and performance measures.

Overall, alliance contracts lead to greater collaboration than traditional procurement methods. Additionally, alliance contracts have benefits for integrity, because partners can be more transparent about identifying and countering shared risks of corruption and fraud. However, alliance contracting can bring risks of higher costs, due to the lack of fixed contract prices and, depending on the procurement approach, the use of benchmarking as opposed to competitive tender processes, in addition to standard exposure to time and cost overruns.[36]

32 World Bank PPP Knowledge Lab 2021, '**PPP contract types and terminology**', web page, Washington, viewed 13 October, **www.ppp.worldbank.org/public-private-partnership/finance-structures-ppp** .

33 Office of the Victorian Government Architect 2021, 'Chapter 5: Procurement of buildings and infrastructure', *Government as Smart Client*, Office of the Victorian Government Architect, Melbourne, **www.ovga.vic.gov.au/chapter-5-procurement-buildings-and-infrastructure**.

34 Organisation for Economic Co-operation and Development 2022, 'OECD recommendation on principles for public governance of public-private partnerships', web page, Paris, viewed 13 October 2022, **www.oecd.org/governance/oecd-recommendation-public-privatepartnerships.htm**.

35 Infralegal 2021, 'The Alliance PPP delivery model', web page, Sydney, viewed 14 October 2022, **www.infralegal.com.au/public-private-partnerships/the-alliance-ppp-delivery-model**.

36 Parliament of Victoria 2021, *Report on the 2021-22 Budget Estimates*, PDF, Public Accounts and Estimates Committee, Melbourne, **https://www.parliament.vic.gov.au/images/stories/committees/paec/2021-22_Budget_Estimates/Report/PAEC_59-12_2021-22_Budget_Estimates.pdf**.

## Box 5: MTIA insight – alliance contracting

The sharing of information is integral to alliance contracts, which apply to most of MTIA's projects. In an alliance contract, partners follow an 'open-book' policy – they query and monitor processes and information used by other partners. Alliance partners are also subject to independent reviews. Sharing information in this way helps set the tone for proactively and collaboratively identifying and managing risks. Whereas other methods of management may inherently discourage project managers from divulging their risks to partners – to avoid being blamed for poor performance, for example – an alliance encourages partners to not only identify risks but to also share lessons learned.

Although the alliance contract remains popular, being used in many MTIA projects, different infrastructure projects will continue to use other partnership types – such as traditional contracting and PPPs – depending on the project, economic and market conditions at the time. However, elements can be added to some of these contracts to promote better transparency and 'open-book' sharing; for example, by using an incentivised target cost regime within a PPP.

### Conclusion

PPPs and collaborative contracts involve complex project management methods that have inherent risks for business planning, construction and completion. While the different types have varied risks and benefits, we made no definitive finding that one is less or more susceptible to corruption. Each method (traditional, PPP, collaborative contracting) is vulnerable to corruption.

## Management

Once a project has been completed, management of the new infrastructure can either be handed over to the government or, in a minority of cases, continue under private operation. When the management of transport infrastructure is outsourced, private operators are compensated either by tolling or by payments from government based on the availability of infrastructure. The management phase includes operation and monitoring and evaluation to determine infrastructure availability.

## Victorian context

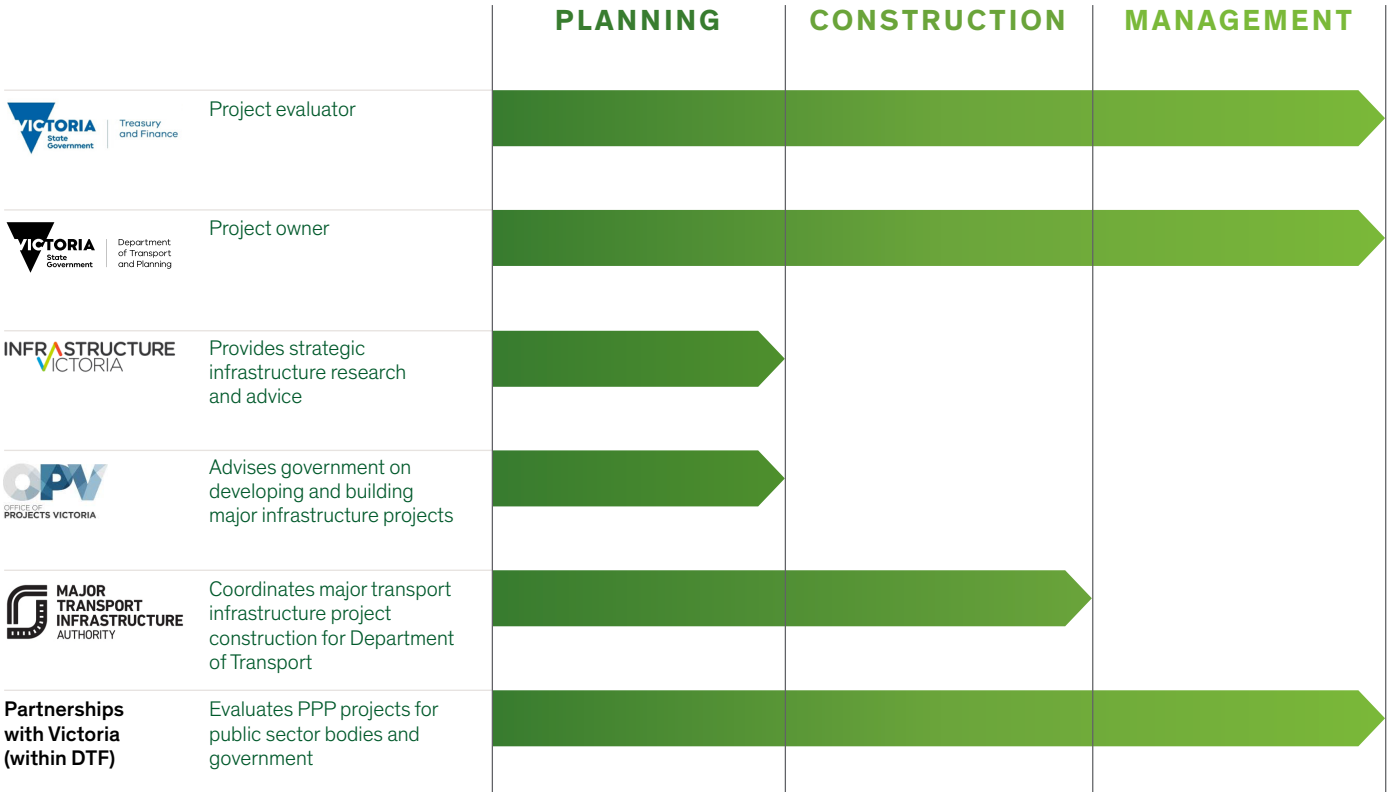
The MTIA is one of several agencies and departments that manage different aspects of the planning, assessment and construction of major infrastructure projects. Its roles in these phases are complemented by the functions of various government agencies.

Public sector major infrastructure projects are assessed by DTF, with guidance from Infrastructure Victoria and OPV, to help align projects with the state's long-term infrastructure requirements. The Department of Transport and Planning (DTP), as owner of the transport infrastructure business cases and project scopes, oversees major transport infrastructure projects in planning and construction through the MTIA. This allows the functions of planning, funding, strategic advisory and delivery to be separated.

Other departments that have similar arrangements and oversee major infrastructure projects in their portfolios include the Department of Education (through the Victorian School Building Authority) and the Department of Health (through the Victorian Health Building Authority).

The shared supervision by Victorian public bodies and agencies reduces the risk of corruption – including collusion – that can result from poor planning justification, lack of competition, and lack of transparency in tender information. An important contribution that these bodies can make to counter corruption is to make information, such as tendering information, public.[37] On the other hand, shared supervision can only be effective with clear communication and coordination between the public bodies and agencies responsible.

### Figure 1: Victorian public bodies and agencies involved in major transport infrastructure projects




37 Terrill, M, Emslie, O & Fox, L 2021, *Megabang for Megabucks: Driving a Harder Bargain on Megaprojects*, Grattan Institute, Melbourne.

**Table 2: Organisational roles in the major infrastructure project sector**

| | Definition |
|---|---|
| **Department of Treasury and Finance** | Identifies and assesses infrastructure projects for high risk, high value, or combinations of both. |
| **Partnerships Victoria** | Advises government on the appropriate frameworks and contractual relationships between the private and public sectors to build and manage public infrastructure through PPPs. |
| **Department of Transport and Planning** | Operates and coordinates Victoria's transport networks and the creation of new transport infrastructure. It owns the business cases and sets the scopes for the transport infrastructure projects. |
| **Infrastructure Victoria** | Researches and publishes long-term infrastructure strategies, so that political or private opportunism does not override the public benefit to be gained from long-term urban and regional planning strategies. |
| **Office of Projects Victoria** | Independently advises on project delivery, and provides oversight and assurance to the major infrastructure projects portfolio. |
| **Major Transport Infrastructure Authority** | Manages the delivery of major transport projects. This includes undertaking project planning related activities on behalf of DTP, coordinating major construction activities and managing network disruptions to keep people moving during major works. Provides central coordination, advisory and facilitation in managing tender processes. Liaises between the private sector and government, communicating public sector requirements and clarifying tender document requirements throughout the bidding phase, ensuring a competitive, value-for-money process. |

## Department of Transport and Planning

The DTP is responsible for operating and coordinating Victoria's transport networks and for creating new transport infrastructure (the latter through the MTIA and more recently, through the Suburban Rail Loop Authority). At the time of this report, it was overseeing the construction of $80 billion worth of projects (including those being coordinated by the MTIA) as part of the Victorian Government's investment in major transport infrastructure and smart technology.[38]

The MTIA Director-General reports to the Secretary of the Department of Transport and Planning.

## Major Transport Infrastructure Authority

The MTIA was established as an administrative office effective from 1 January 2019, in relation to DOT (now DTP) under section 11 of the *Public Administration Act 2004* (PAA), with a primary responsibility to coordinate major transport infrastructure projects in Victoria through its five project offices.[39] A central coordinating office provides opportunity for shared risk identification and management across the project offices' portfolio of works, including visibility of the contract-management models and the performance of construction partners across Victoria's Big Build. The MTIA advised that its focus on delivery – although it does do project planning, including business case development on behalf of the DTP – mitigates significant corruption risks from competing interests that can arise from being involved in both project planning decisions and construction, as well as other functions related to project assessment and approval.

38 Department of Transport and Planning 2021, 'Our projects', web page, Melbourne, viewed 14 October, **www.transport.vic.gov.au/our-transport-future/our-projects**.
39 Department of Transport and Planning 2022, 'Governance', web page, Melbourne, viewed 12 December, **www.transport.vic.gov.au/about/governance**

Major projects agencies such as the MTIA have existed since 2003 in Australian jurisdictions but have not been subject to investigations or detailed assessment by integrity agencies. However, MTIA projects have been a major focus of VAGO audits since the MTIA was established.[40]

### MTIA – governance and guidance

As a public sector entity, the MTIA is governed by the following key legislations:

- the *Public Administration Act 2004* (Vic) – promotes standards of good governance, public service conduct and integrity in the Victorian public sector.
- the *Financial Management Act 1994* (Vic) – provides for the financial administration and accountability of the public sector and for annual reporting to parliament by departments and public sector bodies
- the *Project Development and Construction Management Act 1994* (Vic) – guides public construction procurement
- the *Public Interest Disclosures Act 2012* (Vic) (PID Act) – protects people who make disclosures – about corrupt or improper conduct – from detrimental action or reprisals.

MTIA employees are also bound by the Code of Conduct for Victorian Public Sector Employees, which sets out the standards of behaviour expected of public sector employees.[41] Additionally, the MTIA and its employees meet the definitions of a public body and public officers under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) and are therefore within IBAC's jurisdiction.[42]

## Box 6: Ministerial Directions for Public Construction Procurement, and related guidance

Ministerial Directions for Public Construction Procurement prescribe the principles and procedures that public sector agencies must follow when procuring public construction works and services, including for major infrastructure projects.[43]

Alongside directions for conducting tenders, establishing panels, and contracting requirements, the directions specifically define probity requirements for public sector agencies and their contractors, including the application of public sector values and auditable and transparent tender- and contract-management processes.[44] Where projects exceed $10 million or are complex or high risk, the responsible agencies must also prepare a probity plan that covers probity responsibilities, risks and related management strategies.[45]

The DTF-issued Guidance for Public Construction Procurement in Victoria offers non-mandatory advice additional to the Ministerial Directions and Instructions.[46] This includes a range of documents providing probity-related guidance, including applying public sector values, identifying and managing conflicts of interest, and managing probity in public construction procurement. Although these documents provide guidance to achieve best practice, they are not mandatory for public sector agencies to implement.

40 Victorian Auditor-General's Office 2021, *Major Projects Performance* (audit report), VAGO, Melbourne, **www.audit.vic.gov.au/report/major-projects-performance**; Victorian Auditor-General's Office 2021, *Major Infrastructure Program Delivery Capability* (audit report), VAGO, Melbourne, **www.audit.vic.gov.au/report/major-infrastructure-program-delivery-capability**; Victorian Auditor-General's Office 2020, *Follow up of Managing the Level Crossing Removal Program* (audit report), VAGO, Melbourne, **www.audit.vic.gov.au/report/follow-managing-level-crossing-removal-program**; Victorian Auditor-General's Office 2019, *Melbourne Metro Tunnel Project – Phase 1: Early Works* (audit report), VAGO, Melbourne **https://www.audit.vic.gov.au/report/melbourne-metro-tunnel-project-phase-1-early-works?section=**.

41 Victorian Public Sector Commission 2015, 'Code of Conduct for Victorian Public Sector Employees', PDF, Melbourne, viewed 14 October 2022, **www.vpsc.vic.gov.au/wp-content/uploads/2015/03/VPSC_Code_VPSE_WEB.pdf;** *Public Administration Act 2004* (Vic) ss 7, 61.

42 *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 6.

43 Department of Treasury and Finance 2019, 'Ministerial Directions and Instructions for Public Construction Procurement', web page, Melbourne, viewed 14 October 2022, **www.dtf.vic.gov.au/public-construction-policy-and-resources/ministerial-directions-and-instructions-public-construction-procurement**.

44 Department of Treasury and Finance 2018, 'Probity requirements (Direction 4.1)', web page, Melbourne, viewed 14 October 2022, **www.dtf.vic.gov.au/ministerial-directions-and-instructions-public-construction-procurement/probity-requirements-direction-and-instruction-41**.

45 Department of Treasury and Finance 2018, 'Managing probity in Public Construction Procurement (Direction 4.2)', web page, Melbourne, viewed 14 October 2022, **www.dtf.vic.gov.au/ministerial-directions-and-instructions-public-construction-procurement/managing-probity-public-construction-procurement-direction-and-instruction-42**.

46 Department of Treasury and Finance 2022, 'Guidance for Public Construction Procurement in Victoria', web page, Melbourne, viewed 18 October 2022, **https://www.buyingfor.vic.gov.au/guidance-public-construction-procurement-victoria**

### MTIA project offices

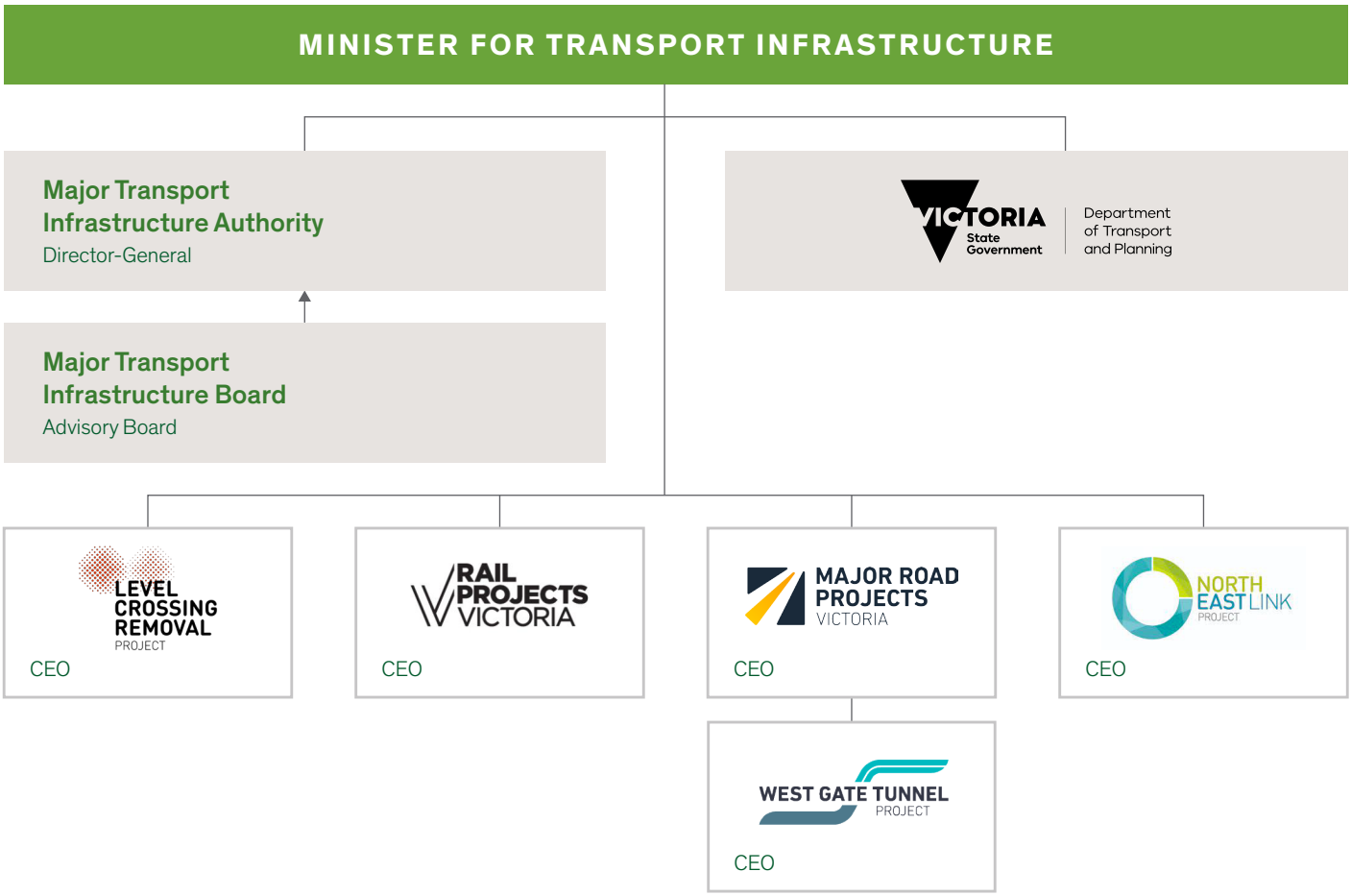
As shown in Figure 2 (below), the MTIA oversees five major transport project offices:

- Level Crossing Removal Project
- Major Road Projects Victoria
- North East Link Project
- Rail Projects Victoria
- West Gate Tunnel Project

The MTIA is led by a Director-General and has an advisory board, the Major Transport Infrastructure Board, to oversee it and provide governance.

The MTIA, alongside the DTP, coordinates major construction activities and disruptions across the entire transport network.

**Figure 2: Major Transport Infrastructure Authority's projects and structure**




These five project offices have a combined TEI of more than $61 billion – a significant proportion of Victoria's Big Build of 165 major road and rail projects.[47] Table 3 describes these five project offices and their structure.

47 Victorian Government 2021, 'Big Build – About Us', web page, Melbourne, viewed 14 October 2022, **www.bigbuild.vic.gov.au/about**.

Table 3: Description of MTIA project offices[49]

| Project office | Description | Total estimated investment | Contracting arrangements | Examples of contractors |
|---|---|---|---|---|
| **Level Crossing Removal** | Removing 110 level crossings across metropolitan Melbourne by 2030 and carrying out other rail network upgrades such as the Geelong Fast Rail, new train stations, track duplication and train stabling yards. | More than $17.6 billion | Alliance | McConnell Dowell, Fulton Hogan, Laing O'Rourke, John Holland |
| **North East Link** | Linking Melbourne's freeway network between Greensborough and the Eastern Freeway, including overhaul of the Eastern Freeway, building Melbourne's first dedicated busway and the North East Trail walking & cycling paths. | More than $14 billion | Various: PPP for the primary package, including tunnelling; alliance contracts for secondary packages, such as freeway upgrades | Spark Consortium (Webuild, GS Engineering and Construction, CPB Contractors, China Construction Oceania, Ventia, Capella Capital, John Laing, DIF and Pacific Partnerships) |
| **West Gate Tunnel** | Constructing an underground alternative to the West Gate Bridge, connecting Melbourne's western suburbs to the central business district | $10.2 billion | PPP | CPB Contractors, John Holland (CPBJH JV) |

49 Victorian Government 2021, 'Big Build – Rail Projects Victoria', web page, Melbourne, viewed 14 October 2022, **www.bigbuild.vic.gov.au/about/mtia/rail-projects-victoria**; Victorian Government 2020, 'Big Build – Media Release, 17 December 2020: $3 billion to build better roads and create local jobs', web page, Melbourne, viewed 14 October 2022, **www.bigbuild.vic.gov.au/news/major-road-projects-victoria/$3-billion-to-build-better-roads-and-create-local-jobs**.

Table 3: Description of MTIA project offices[48] (continued)

| Project office | Description | Total estimated investment | Contracting arrangements | Examples of contractors |
|---|---|---|---|---|
| **Rail Projects Victoria** | Planning and constructing metropolitan and regional rail projects, including:<br>• the Metro Tunnel<br>• the Melbourne Airport Rail<br>• Regional Rail Revival – a program to upgrade every regional passenger rail line in Victoria<br>• Sunbury Line Upgrade – increasing capacity and ability to operate more modern trains on the Sunbury Line<br>• Western Rail Plan – creating a faster, high-capacity rail network to serve Melbourne Airport, the Geelong Fast Rail and other parts of western Melbourne and regional Victoria. | More than $30 billion | Mixture of design-and-construct contracts, alliances and PPP (Metro Tunnel) | CPB Contractors, John Holland, Bouygues Construction, Coleman Rail, Lendlease, Downer, McConnell Dowell |
| **Major Road Projects Victoria** | Constructing various road projects around metropolitan Melbourne and regional Victoria, including road building and widening, bridge construction, and freeway upgrades, including the Monash Freeway Upgrade, Citylink Tulla Widening and the Princes Highway Upgrade | $6.9 billion | Various: collaborative incentivised target cost (ITC) contracts, and design-and-construct contracts | CPB Contractors, Decmil, Fulton Hogan, McConnell Dowell, Seymour Whyte, BMD |

48 Victorian Government 2021, 'Big Build – Rail Projects Victoria', web page, Melbourne, viewed 14 October 2022, **www.bigbuild.vic.gov.au/about/mtia/rail-projects-victoria**; Victorian Government 2020, 'Big Build – Media Release, 17 December 2020: $3 billion to build better roads and create local jobs', web page, Melbourne, viewed 14 October 2022, **www.bigbuild.vic.gov.au/news/major-road-projects-victoria/$3-billion-to-build-better-roads-and-create-local-jobs**.

### Contractors and contractor management

In each of the MTIA's projects, contractors manage the project and construct the infrastructure. The largest of these construction companies and builders are commonly referred to as **Tier 1 contractors**, who can bid for and take on the largest infrastructure projects, valued in the hundreds of millions, and even billions, of dollars. A Tier 1 company is often regarded as capable of independently completing a project or contract worth $1 billion.[50]

**Tier 2 contractors** focus on mid-sized infrastructure projects, generally valued in the tens of millions of dollars. Tier 2 contractors undertake contracts up to $500 million in value.[51] Meanwhile, **Tier 3 contractors** (and below) typically work on smaller contracts and can be part of the supply chain for larger projects.[52]

Due to their greater size and experience, Tier 1 contractors are more likely to have established and skilled integrity, risk and audit functions, compliance with ISO standards[53] for management and probity, as well as regular ethics training for staff. On the other hand, smaller companies may have more direct oversight over risk and integrity matters due to their leaner management hierarchy.

Public sector standards of ethical behaviour are passed on to contractors through mechanisms such as the Victorian Government's Supplier Code of Conduct, contractual provisions requiring compliance with legislation, regulations, and other probity or integrity practices determined by the state. All forms of public procurement, for example, must abide by directions from the DTF as well as the Victorian Government's Supplier Code of Conduct. Although the state does sign an overall agreement with the lead contractor as project partner, subsequent commercial and construction activity with subcontractors is required to be handled with probity, and according to public sector standards. The Code of Conduct states the government's expectation that all existing and new suppliers will comply with its requirements to report misconduct, unethical behaviour or suspected corruption.[54]

These expectations also apply downward along the entire supply chain. There is an expectation that contractors will communicate the Code of Conduct to their related entities, subcontractors and suppliers. Among other requirements, participants agree not to enter improper commercial arrangements with other contractors, subcontractors or suppliers. Nor should they seek to influence, or accept incentives to be influenced in, contract decisions.[55] Project partners must report fraud or corruption related to state projects to the MTIA. Depending on the contractual clauses applied, instances of fraud, collusion or dishonest conduct could constitute a probity event requiring reporting and remedial or a major project default[56] which may have commercial consequences.

50 Terrill, M, Emslie, O & Fox, L 2021, *Megabang for Megabucks: Driving a Harder Bargain on Megaprojects*, Grattan Institute, Melbourne
51 Terrill, M, Emslie, O & Fox, L 2021, *Megabang for Megabucks: Driving a Harder Bargain on Megaprojects*, Grattan Institute, Melbourne
52 Victorian Auditor General's Office 2021, 'Major Infrastructure Program Delivery Capability', PDF, Melbourne, viewed 14 October 2022, **www.audit.vic.gov.au/sites/default/files/2021-08/20210818-Major-Infrastructure.pdf.**
53 ISO standards are published across many fields and topics by the International Organization for Standardization, an independent non-government organisation, comprised of a range of national standards bodies (including from Australia).
54 Buying for Victoria 2020, 'Supplier Code of Conduct', web page, Melbourne, viewed 14 October 2022.
55 Department of Treasury and Finance 2018, 'Probity requirements (Direction 4.1)', web page, Melbourne, viewed 14 October 2022
56 Department of Treasury and Finance 2018, 'West Gate Tunnel Project Agreement', PDF, Melbourne, viewed 14 October 2022, **www.dtf.vic.gov.au/sites/default/files/2018-01/West-Gate-Tunnel-Project-Agreement.pdf**.

## Previous investigations and audits

IBAC has conducted only a small number of investigations into major projects (infrastructure and non-infrastructure related). While not specifically related to major projects, IBAC's Operation Fitzroy investigated corruption of procurement related to infrastructure for the transport sector and provides a case study of some risks and opportunities for prevention and detection. IBAC's investigations into the then Department of Transport and Public Transport Victoria revealed corrupt management of tenders and contracts, undeclared conflicts of interest, and siphoning of public monies into entities owned by public sector employees. IBAC also found that poor procurement controls and training had enabled this to occur.[57]

VAGO's previous audits into major projects-related agencies, including the MTIA and the former Major Projects Victoria, revealed shortfalls in strategic planning, leading to critical resource shortages, but did not draw any adverse conclusions relating to integrity.[58]

## Allegations received by IBAC

### Terminology

IBAC receives 'complaints' from the public and 'notifications' from public sector agencies. A complaint or notification may include more than one allegation, each of which is individually assessed.

This report assessed summaries of allegations received by IBAC. IBAC notes that there are limitations with the use of these examples, including:

- allegations are unsubstantiated at the time of receipt
- allegations can be incomplete, lack detail, come from an anonymous source, or may not individually name the subject of the allegation
- allegation data is not a comprehensive or reliable indicator of the actual prevalence of activities, or the risk-mitigation practices and compliance activities already in place.

Despite these limitations, analysis of allegations can assist in identifying trends or patterns and provide practical examples of identified trends.

57 Independent Broad-based Anti-corruption Commission 2014, *Operation Fitzroy* (special report), IBAC, Melbourne, **www.ibac.vic.gov.au/investigating-corruption/IBAC-examinations/operation-fitzroy.**

58 Victorian Auditor-General's Office 2015, *Follow up of Managing Major Projects*, VAGO, Melbourne, **www.audit.vic.gov.au/report/follow-managing-major-projects**; Victorian Auditor-General's Office 2021, *Major Projects Performance*, VAGO, Melbourne.

### Allegation trends

To date, IBAC has received a very low number of allegations of problems in major infrastructure projects, compared with allegations regarding other parts of the public sector. Between 1 July 2018 and 31 December 2021, IBAC received 20 complaints and notifications comprising 40 allegations directed at either an employee or delivery contractor of the MTIA. Fourteen allegations were received in 2019, with a further nine allegations received in 2020 and 17 allegations in 2021. Most of the allegations were received as complaints under the IBAC Act and include 13 allegations passed on as a notification by the MTIA to IBAC under section 57 of the IBAC Act.

Allegations received by IBAC relating to major projects have included:

- executive leaders allowing small circles of their associates to influence procurement processes
- public sector employees not declaring significant personal relationships with individuals involved in projects
- contractors paying bribes to manipulate the management of projects.

All allegations received by IBAC are categorised according to a Behaviours and Activities Model. These allow IBAC to monitor allegation trends and observe the functions that are the subject of complaints, and to characterise the types of misconduct that are alleged. Not all allegations made against the MTIA have progressed to being investigated, and those that lack substantiated evidence are closed.

The three most common types of allegations received concerning the MTIA or its delivery contractors relate to procurement and purchasing (selection process); procurement and purchasing (contracts management); and recruitment and promotion. Allegations include those made against MTIA principal contractors, MTIA projects and their contract management activities, as well as those made against MTIA employees.

At the time of this report, IBAC had not substantiated any allegations of corruption related to current major transport infrastructure projects in Victoria.

## Managing and overseeing major transport infrastructure projects – interstate and internationally

It has become the norm for governments to establish a range of bespoke agencies to manage transport infrastructure projects. This provides the benefit of having specialised agencies and staff with the skills necessary for constructing and monitoring these projects.

Australian transport infrastructure agencies, and infrastructure agencies more broadly, have not been subject to any large-scale integrity agency review to date. However, government audits have exposed problems such as inadequate compliance with gateway review requirements and have called for better documentation of activities and decision-making, and greater transparency and public reporting.[59]

Internationally, there have been well-documented investigations into corruption in the construction industry, including in Canada, where collusion occurred between private organisations, members of government, and organised crime figures.[60] Recommendations from that investigation included the creation of an independent authority to oversee the awarding of public contracts, and providing better protection for whistle-blowers – controls that have been put in place in Victoria. Yet international integrity agencies have not yet focused closely on integrity in transport infrastructure agencies. Audits have nonetheless emphasised the importance of reporting and transparency in major programs and have recommended that major project and infrastructure organisations examine their own, and their contractors', cultures and behaviours, to allow a clear line of sight from the working level up to decision-makers, as well as to the wider public.[61]

59 NSW Auditor-General 2016, *Managing unsolicited proposals in NSW* (audit report), NSW Auditor-General, Sydney, **www.audit.nsw.gov.au/sites/default/files/pdf-downloads/2016_Mar_Report_Managing_unsolicited_proposals_in_NSW.pdf**; NSW Auditor-General 2017, *NorthConnex* (audit report), NSW Auditor-General, Sydney, **www.audit.nsw.gov.au/our-work/reports/northconnex**.

60 CBC News 2015, 'Charbonneau commission finds corruption widespread in Quebec's construction sector', *CBC News* (24 November), Montreal, **www.cbc.ca/news/harbo/montreal/harbonneau-corruption-inquiry-findings-released-1.3331577**.

61 UK National Audit Office 2018, *Projects Leaving the Government Major Projects Portfolio* (audit report), UK NAO, London, **www.nao.org.uk/wp-content/uploads/2018/10/Projects-leaving-the-Govenment-Major-Projects-Portfolio.pdf**.

# Chapter 3

## Key corruption risks in major transport infrastructure projects

# Key corruption risks in major transport infrastructure projects

## Corruption risks in major transport infrastructure projects vary according to a mix of factors, such as project phase, uniqueness, complexity, size, scale, cost, market participants, supply chain and stakeholders involved.

Other factors that can influence or mitigate the risk include the type of contracts used, and the presence of a coordinating overseeing body and existing frameworks.

Table 4 below provides a non-exhaustive list of the most common and acute corruption risks in the infrastructure sector, particularly during the construction phase, and gives examples of how risks and main actors can vary throughout a project's phases.

**Table 4: Examples of corruption risks by project phase and likely main actors**

| Phase | Examples of risk | Main Actors | | | | | |
|---|---|---|---|---|---|---|---|
| | | Government ministers | Public officials | Procurement officers | Private consultants | Contractors | Subcontractors |
| **Planning** | • Political influence and lobbying by private firms<br>• Underestimated costs and overestimated benefits | ✓ | ✓ | | ✓ | | |
| **Construction** | • Manipulation of pre-qualification process to eliminate competitors<br>• Bribery to obtain a main or sub-contract procurement award<br>• Collusion between contractors and subcontractors (with or without the client's knowledge) to divert project funds<br>• Fraudulent claims through false invoicing and false reporting of labour | | ✓ | ✓ | ✓ | ✓ | ✓ |
| **Management** | • Bribery of certifying engineers and monitoring and evaluation officers to overlook breaches of quality or the use of sub-standard materials<br>• Falsification of documentation, such as service usage reports or maintenance certificates | | ✓ | | ✓ | ✓ | ✓ |

Many of the corruption risks apparent in major transport infrastructure project organisations resemble those encountered by smaller organisations. However, the primary differences for major projects are their size, scale and cost, which can obscure instances of corruption. For example, while an instance of significant fraud and corruption in a small to medium organisation might involve a significant sum of money and therefore be easier to detect, the same type of incident in a larger organisation could be harder to detect among a range of similar and possibly larger transactions.

Higher levels of interaction with the private sector require public sector agencies that manage major projects to also manage a higher level of fraud and corruption risk than that encountered by smaller public sector bodies. This is mostly due to the large amount of public money being spent on construction and infrastructure services provided by the private sector, and often by subcontractors, who are further removed from interactions with, and scrutiny by, government.

This chapter identifies the key risks of corruption in major transport infrastructure projects, for consideration by:

- public sector employees involved in the construction (including procurement) of major infrastructure projects
- public sector employees responsible for designing or implementing integrity frameworks and risk management plans
- infrastructure project owners, funders and contractors.

Procurement and contractor fraud can carry more risk during the construction phase and vary with different types of procurement and supply chain used. Furthermore, procurement risks can have serious flow-on effects. The mere perception of fraud and corruption at the procurement phase can erode trust in government transparency. This can then worsen conflicts of interest risks in the industry, if the already small market for construction jobs tightens even further when lack of trust in government procurement processes dissuades contractors from tendering for government contracts.

The next section discusses the risks inherent in the procurement phase.

## Procurement fraud

Procurement fraud is a complex and broad category covering a range of illegal activities that can occur in both the planning and construction phases. Fundamentally, it involves deliberate deception intended to influence any procurement process, to make a financial gain or cause a loss.[62] It can be perpetrated by internal employees and external contractors, and it can be difficult to both detect and measure.

Procurement is vulnerable to external influences. For this reason, discussions between the project owner and potential suppliers should be limited by strict probity controls. There are different types of procurement that can be undertaken in the construction phase. For simplicity, these are:

- **construction-related services** – including technical advisory, construction and project management
- **construction works** – civil works for roads, bridges and railways, as well as architectural and design services
- **general goods and services** – for example, legal advisory services, commercial advisory services, assurance services, and strategic advisory services.

62 UK National Fraud Authority 2011, *Procurement Fraud in the Public Sector*, PDF, UK NFA, London, viewed 14 October 2022, **https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/118460/procurement-fraud-public-sector.pdf**.

Procurement of construction-related services and construction works is governed by the *Project Development and Construction Management Act 1994* (Vic). The procurement of general goods and services is governed by the Victorian Government Purchasing Board policies under the *Financial Management Act 1994* (Vic). Suppliers and providers under both regimes are covered by the Victorian Government Supplier Code of Conduct.[63]

Corruption risk can be affected by the type of procurement undertaken. For example, construction works procurements are low volume but high value, in a tight market in a sector currently facing falling productivity and profitability, escalating prices in supply chains, workforce shortages, and project delays. Construction-related services, on the other hand, while lower in value than construction works, can be niche or highly specialised (for example, rail engineering design services), where the number of market participants is small, and therefore presenting a higher risk of conflicts of interest. The construction sector is also generally perceived as at higher risk of corruption, partly due to its reliance on significant subcontracting in comparison with other general goods and services procurement. For general goods and services, procurements are of lower value but higher volume, and have different supervision than procurements related to HVHR construction projects.

### Table 5: Comparison of procurement types by volume and value

| Procurement type | Volume | Value |
|---|---|---|
| **Construction works** | Low | High |
| **Construction-related services** | Medium | Medium |
| **General goods and services** | High | Low |

Procurement fraud is a particular risk where there is lack of transparency or governance of the processes for assessing and reporting on the levels of performance and value for money actually achieved. A 2014 report by PwC found that the owners of major infrastructure projects may have difficulty establishing objective, defined criteria to determine the best contractor or supplier for the work required. Accordingly, this increases the risk of individuals – both inside and outside the public body – influencing procurements.[64]

Procurement fraud can take many forms, but a major risk involves public sector employees or employees of contractors having secondary business interests or links that are undeclared or unmanaged. This applies particularly to construction procurements, because the construction sector undertakes significant subcontracting, and its supply chain can be long and opaque. This fraud can effectively occur via 'double dipping' into project funding, for example where a public official receives both a public sector salary for managing or overseeing the project, and money as a supplier building the infrastructure.

The businesses set up to receive contracts may also be in a family member's or other associate's name, making this difficult to detect through traditional audit and detection methods. Although IBAC has previously investigated instances of this type of conduct in other parts of the public sector,[65] this type of fraud is a particular risk for major infrastructure projects, because more public sector employees come directly from the private sector to manage infrastructure projects, and there is a risk that they will not declare or manage conflicts of interest.

63 Goods and services procurements (which include services indirectly related to the delivery of works, including legal advisory services, and commercial advisory services) must follow the probity rules outlined in the goods and services policy guide. These include:
- ensuring market equality, including early market engagement and market research
- consistent and transparent processes
- identifying, managing and resolving conflicts of interest
- engaging a probity practitioner – such as a probity advisor or probity auditor – where high-risk or complex projects are involved.

Meanwhile, construction procurement must follow similar requirements regarding probity. See Buying for Victoria 2020, 'Construction procurement rules', web page, Melbourne, viewed 14 October 2022, **buyingfor.vic.gov.au/construction-procurement-rules**; Buying for Victoria 2021, 'Probity in procurement – goods and services procurement guide', web page, Melbourne, viewed 14 October 2022, **buyingfor.vic.gov.au/probity-procurement-goods-and-services-procurement-guide**.

64 PwC 2014, 'Fighting corruption and bribery in the construction industry: PwC's 2014 Global Economic Crime Survey', PDF, Sydney, viewed 14 October 2022.

65 For example, Independent Broad-based Anti-corruption Commission 2020, *Operation Betka: An investigation into alleged corrupt conduct by a former contractor to the Department of Education and Training* (report), IBAC, Melbourne, **www.ibac.vic.gov.au/docs/default-source/special-reports/special-report---operation-betka---may-2020.pdf**.

Other examples of procurement fraud, particularly when procuring construction-related services, are:

- public sector employees **varying purchase orders** to keep below a delegation level, or sharing invoices across several cost centres to avoid fraudulent purchases being detected
- **splitting contracts** into multiple jobs. This can be done to keep the contract within the delegation amount of the public sector employee so that they can control who it is awarded to
- public sector employees creating or approving **false invoices** for work not delivered.

Procurement fraud can result from a desire to obtain a financial benefit for either the individual committing the fraud or an associate. This means that procurement fraud is often also carried out alongside other forms of corrupt conduct, such as deliberately not declaring conflicts of interest or deliberately misusing public sector information.

Misuse of information during major infrastructure projects can have negative financial consequences for public sector agencies and, in turn, for the broader Victorian community. For example, public sector employees could leak information, such as tender information or bids received, to contractors or suppliers during procurement, making procurement processes less competitive and less trusted. In an IBAC survey of suppliers to state and local government in Victoria, approximately one-third of respondents stated that they were discouraged from tendering for work due to concerns about corruption.[66] IBAC was informed during consultations that some contractors believe that tenders are often already decided by public sector agencies before they are advertised, particularly for Tier 1 contracts, noting the limited pool of suppliers available to undertake such large contracts.

IBAC has previously reported that the leaking of information to benefit associates is a major corruption risk for the public sector, particularly during procurement.[67] Due to the high value and number of procurements required to build major infrastructure, this risk is particularly relevant for major projects, noting that these are delivered by Tier 1 contractors. Greater awareness and implementation of best practice information management and security as well as procurement, and reporting procurement suspected to be corrupted due to information misuse, could reduce this risk.[68]

There are fraud risks with each type and stage of procurement. Public sector agency attitudes towards the risk for each stage can vary. IBAC's assessment of public sector supplier attitudes showed that the stages of procurement that are the easiest to corrupt are the business case, assessment and decision-making, and contract-management stages.[69] The budgeting, advertising and contract-evaluation stages were viewed as corruptible to a lesser degree. A study by the New South Wales Independent Commission Against Corruption in (NSW ICAC) showed that while suppliers were more concerned about fraud at the early stages of procurement, public sector agencies were more concerned about the risks at later stages.[70] This suggests that public sector agencies are more focused on external corruption of procurement, which could limit their ability to detect fraud committed by employees.

Differences in risk perception can also exist between public agencies and suppliers. Of four procurement methods considered by NSW ICAC – direct negotiations, non-tendered quotations, tenders, and panel contracts – suppliers considered the first two more vulnerable to corruption than public sector agencies did.[71] Regular reviews of project risk can take account of changes in risk and prevent gaps emerging in risk perception.

66 IBAC conducted a survey of Victorian suppliers to state and local government in 2015–16, which found that 38% of respondents believed that it was typical or very typical for public sector officials to give suppliers unequal access to tender information. IBAC 2016, *Perceptions of corruption: Survey of Victorian Government suppliers* (research report), Melbourne, **www.ibac.vic.gov.au/docs/default-source/research-documents/survey-of-victorian-government-suppliers.pdf?sfvrsn=dc276e75_19**.

67 Independent Broad-based Anti-corruption Commission 2020, *Unauthorised Access And Disclosure of Information Held By The Victorian Public Sector* (research report), IBAC, Melbourne, **www.ibac.vic.gov.au/docs/default-source/research-documents/unauthorised-access-and-disclosure-of-information-held-by-the-victorian-public-sector.pdf**.

68 Independent Broad-based Anti-corruption Commission 2020, *Unauthorised Access And Disclosure of Information Held By The Victorian Public Sector* (research report), IBAC, Melbourne

69 Independent Broad-based Anti-corruption Commission 2016, *Perceptions of corruption: Survey of Victorian Government supplies*, IBAC, Melbourne.

70 Independent Commission Against Corruption (NSW) 2011, *Corruption risks in NSW Government Procurement: Suppliers perception of corruption* (report), ICAC, Sydney, **https://www.icac.nsw.gov.au/ArticleDocuments/232/Corruption risks in NSW Government procurement - Suppliers perception of corruption.pdf.aspx**.

71 Independent Commission Against Corruption (NSW) 2011, *Corruption risks in NSW Government Procurement: Suppliers perception of corruption* (report), ICAC, Sydney.

## Collusion and bribery in procurement

Collusion in procurement, including bid-rigging or bribery, is often the most difficult risk to detect and prevent in major projects. In most cases, collusion requires a person with either influence or access to information *from inside* the public sector body overseeing the project. This person will then work with one or more individuals who could be internal or external to the public body, resulting in collusion often occurring in conjunction with other types of corruption, such as nepotism and fraud.

Bribery can take many forms. The best-known form of bribery involves the use of payments, such as:

- **Facilitation payments** – These are usually small bribes, also known as 'speed' or 'grease' payments, which are made to secure or speed up a routine action to which the payer has a legitimate entitlement.
- **Contract bribes** – These can be single or regular payments and can be for the purpose of either obtaining or retaining a contract. Rebates and discounts are commonly used as incentives for business and increased sales. However, these may also be provided to public officers responsible for making decisions on procurement, resulting in benefits to that person.
- **Kickbacks** – These are a form of negotiated bribery in which a commission is paid to the bribe-taker in exchange for services rendered.
- **Charitable bribes** – These are donations that can be used to buy influence, resulting in future decisions that benefit the donor financially or in some other way.

Collusion in procurement is also a major internal risk, due to the current small and densifying construction market, which is dominated by a handful of conglomerate companies. High levels of public-private sector exchange increase the likelihood of conflicts of interest. The lack of competition and the increased demand for contractors due to the high number of projects underway also raises the risk of collusive practices, typified by market-sharing, bid-rigging and price-fixing.[72]

There is also the risk of external collusion between contractors, subcontractors and their associates. For example, these individuals can request bribes and rig bids. Bid-rigging is a form of collusion in which bidders for a contract decide between themselves which bidder should be successful in the tender, and then draft their bids accordingly. Forms of bid-rigging include:

- **Bid rotation** (also known as collusive tendering) – This occurs when a cartel of two or more competitors agree not to compete genuinely with each other and allow cartel members to rotate the 'winning' of tenders. Cartel members can agree on how they will each respond to tender requirements to favour another bid. In some cases, members will **suppress bids** by not tendering for a particular contract, or **withdraw bids** at a certain point to allow another member to 'win'.[73] Other cartel members can then compensate these members for 'losing' by sharing profits or by employing them as subcontractors.
- **Complementary bidding** (also known as 'protective', 'courtesy' or 'shadow' bids) – These bids seek to appear as genuine bids, but only to lend credibility to a tender process. Ultimately, complementary bids aim to 'lose' to a predetermined 'winning' bid, either by submitting a higher price or by putting forwarding **non-conforming bids** designed to appear inferior to the winning bid.[74] As in bid rotation, 'losing' bidders are often compensated through profit-sharing or hiring.
- **Cover pricing** or **cover bidding** – This occurs when a group of cartel members agree among themselves to bid above a certain price to allow another member to win by submitting a lower bid.[75]

In 2019, the UK Competition and Markets Authority investigated several office fit-out companies that had colluded to submit cover bids for 14 contracts with a variety of clients.[76] The breach of competition law led to three company directors being disqualified. The investigation was among many that the Competition and Markets Authority and its predecessor had undertaken in the construction sector.

72 Emslie, O 2021, 'Rise of transport megaprojects adds to Australian taxpayers' risk of paying too much', *The Conversation* (17 May), Melbourne.
73 Australian Competition & Consumer Commission 2021, 'Cartels', web page, Canberra, viewed 14 October 2022, **www.accc.gov.au/business/anti-competitive-behaviour/cartels/bid-rigging**.
74 International Anti-Corruption Resource Centre 2021, 'Guide to combating corruption and fraud in development projects', web page, viewed 14 October 2022, **guide.iacrc.org**.
75 Australian Competition & Consumer Commission 2019, *Cartels deterrence and detection – a guide for government procurement professionals*, ACCC, Canberra, **accc.gov.au/system/files/1646_Cartels deterrence and detection-a guide for government procurement professionals_FA.pdf**.
76 Competition and Markets Authority (United Kingdom) 2019, 'Design, construction and fit-out services: director disqualification', web page, London, **www.gov.uk/cma-cases/design-construction-and-fit-out-services-director-disqualification**.

Cartels can represent a relatively small number of companies. However, they can also be broader in scale when collusive companies divide larger markets or product lines. At higher levels, cartel behaviour can involve anti-competitive behaviour, which involves bid-rigging, but also other types of behaviour, such as:

- **market sharing** – where competitors agree to divide a market to shelter each other from competition
- **price fixing** – where competitors agree on a pricing structure, instead of competing with each other
- **controlling output** – limiting the amount of goods and services available.[77]

Collusion and bribery are often enabled by the abuse of, or undue influence over, public sector decision-making, or by the misuse of information by public sector employees managing the project. For example, public sector employees could award contracts to friends and family members or could leak bids so that friends and family can submit a lower bid to win a contract.

Collusion and bribery in procurement can be mitigated through a wide range of corruption-prevention controls. These include procurement, probity and supplier due diligence frameworks and approval processes; declarations of conflicts of interest and of gifts, benefits and hospitality; registration and review processes; data analytics, including the analysis of suppliers to detect any connections with public sector employees; and robust panel evaluation and review processes.

## Contractor fraud

Contractor fraud and corruption can take many forms. Contractor fraud can be committed independently by delivery partners' employees, contractors, or subcontractors, or through collusion with public sector employees or between contractors and subcontractors. Risks can arise when power is concentrated in a small group of head contractors.[78] Although subcontractors can commit fraud against lead contractors, the problem can also work in the other direction, when head contractors sign contracts with public sector agencies and have subcontractors complete the work at a lower cost. Some lead contractors could then refuse to pay subcontractors and seek to pocket public funds themselves. Alternatively, risks can be monopolistic when contractors collude to prevent competition.

Some of the problems previously encountered by the industry include:

- **Submitting false claims** – This can involve inflating costs for materials and/or time. Contractors can also try to conceal or exaggerate what is being paid to their subcontractors. For example, an apprentice's work could be inflated in price to match that of a more experienced labourer, enabling contractors to pocket the difference. Payments can be claimed for work not done or for work outside the agreed scope of the project. Contractors can collaborate to put pressure on project managers to approve claims to extend the project. This type of fraud can take place at any level of the contractor hierarchy.
- **Cost variation** – When a contractor fraudulently wins a contract as the lowest-price bidder, but then manipulates and submits change orders or contract variations (often in collusion with a public sector employee) that authorise amendments to project scope and costs, or to the schedule of values that itemises each project work item. Subsequent cost increases can recompense the contractor for the cost of lowering their initial bid. Risks can arise if these mid-project variations are not scrutinised to the same degree as initial contracts.

77 Australian Competition & Consumer Commission 2021, 'Cartels', web page, Canberra, viewed 14 October 2022, **www.accc.gov.au/business/competition/cartels#bid-rigging**.
78 Paten, A 2017 'The Sub-Contractor Scam: 'Certified Fraud'', *Sourceable* (15 February), **https://sourceable.net/the-sub-contractor-scam-certified-fraud**.

- **Substitution or diversion of materials** – This involves contractors illicitly varying the materials used or the services rendered, often using false invoicing to conceal their activities. Using cheaper materials allows a contractor to increase their profits. Materials can also be over-ordered and then transferred to another project that the contractor is working on. This can be particularly difficult for public sector agencies to detect if the works are being undertaken at a different location from the public sector employees overseeing the project.
- **Diverting lump sum costs to time and material cost** (or 'double dipping') – This occurs when a contractor separately invoices, as time and materials, a work item that is already covered by a lump sum payment.
- **False representation –** A generic term for any instance of a contractor intentionally misleading a project owner. This could involve falsifying contracts, faking compliance documents, or using undocumented labourers.

Other types of procurement-related fraud that are not necessarily within IBAC's jurisdiction, but that could result in defrauding of project workers, subcontractors or the supply chain using government funding, include:

- **Sham contracting** – Where companies categorise workers as subcontractors to avoid paying tax, superannuation and leave entitlements.[79] Companies can sometimes coerce employees into submitting to this practice; however, employees sometimes choose to be recategorised this way to avoid paying tax.
  - In March 2022, the Labour Hire Authority began investigating alleged sham contracting, including the underpayment of overtime and other allowances, on the West Gate Tunnel Project.[80] This followed claims made by workers and the Australian Workers Union that a concreting plant subcontractor hired by John Holland and CPB had hired workers through a New South Wales company using a process that an internal investigation discovered involved irregular employment practices. The subcontractor had failed to detect the corruption due to deficient supervision.
- **Phoenix operators** – Those who use bankruptcy provisions to deliberately liquidate companies to write off payments owed to employees and contractors, while transferring assets to new companies to continue business.[81]
- **False accounting** – Involves contractors splitting orders to circumvent procurement approval thresholds, which – in the context of major infrastructure projects – would generally be under $250,000 and $50,000 thresholds.

79 Australian Building and Construction Commission 2019, 'Sham contracting, web page, Canberra, viewed 18 October 2022, **www.abcc.gov.au/news-and-media/industry-updates/building-code-2016/sham-contracting**

80 Johnston, M and Rooney, K 2022, 'Authority to probe dodgy labour deals for West Gate Tunnel', *Herald Sun* (7 March), **heraldsun.com.au/news/victoria/authority-to-probe-dodgy-labour-deals-for-west-gate-tunnel/news-story/ef5dd0e546b16cd6df750d2988850310?btr=d1ac4be33ed764fe19884c0dbf95b5c0**.

81 Oliver, D 2016, 'Tackling corruption is not as simple as ABCC', *Sydney Morning Herald* (19 October), **smh.com.au/opinion/tackling-corruption-is-not-as-simple-as-abcc-20161018-gs538z.html**.

There can also be a higher risk of payroll fraud in the construction sector, whose large workforce includes itinerant subcontractors, and in which certain types of fraud, such as timesheet fraud, can be easily hidden. Contractors located at project sites can be the source of asset fraud, which is the theft or misuse of state assets for private endeavours. In Victoria, there have been substantiated cases of asset fraud committed by contractors engaged under Victoria's Big Build. In a 2020 example, a Lendlease foreman was found guilty of obtaining financial advantage by deception and defrauding $160,000 from Victoria's Caulfield to Dandenong level crossing removal project. The foreman had demanded that workers pay him part of their wages in exchange for time off on days that they were being paid to work and had paid 25 workers more than $70,000 to work on the private property of the foreman's supervisor.[82] Previously, in 2019, other contractors were found guilty of stealing copper from the project and selling it for their own financial benefit. It was also alleged that the subcontractors had claimed pay for shifts never worked.[83]

Project-level fraud by construction contractors is a serious risk, because the sums of money or material involved are relatively small – in the context of major projects – and therefore potentially harder to detect. Public sector bodies overseeing major projects must be aware of these risks and put control measures in place. Such measures might include supplier due diligence frameworks, contract performance frameworks, financial claims audits, and analysing data to detect cost anomalies.

## Recruitment favouritism and fraud during construction

Recruitment fraud, involving favouritism, nepotism or cronyism undermines the merit-based and competitive processes of the public sector. Public sector agency probity checks, recruitment policies, standards and processes assist in ensuring the integrity of appointments. However, lapses in vigilance can increase vulnerability to such risks, with significant and adverse consequences.

IBAC's Operations Lansdowne and Esperance both involved instances of transport sector employees using improper influence to recruit people they had previously worked with. In Operation Lansdowne, a V/Line executive general manager employed a former colleague as a consultant, even though probity checks had not been completed on the consultant, who was unqualified for the role and had not produced evidence of his qualifications.

In the context of transport infrastructure projects, recruitment of subject-matter experts can present a higher risk than the typical public sector recruitment, due to a niche and small market for such individuals. A higher number of senior public sector employees involved in major infrastructure projects (for example, engineers, surveyors, project delivery) come from industry and have deep industry connections. This can pose integrity threats, such as dilution of public sector understanding, familiarity bias, and conflicts of interest.

External threats include public sector candidates and contract and subcontract tenderers and job applicants committing **résumé fraud** by falsely claiming to hold qualifications and to have experience.[84] The high number of major infrastructure projects currently underway across Victoria, and Australia more broadly, also makes employment or contracts in the sector more attractive. Candidates may seek to collude with public officials or employees of contractors to provide fake references to support their claims. The increased demand for the specialised skills needed for major infrastructure projects could lead to inadequate resourcing and diminish the quality of the infrastructure that is eventually built.

82 Australian Associated Press 2020, 'Corrupt $185,000-a-year skyrail supervisor who paid tradies for shifts they never worked and then demanded they hand over half their pay on 'cheese days' is jailed', *Daily Mail* (14 August), **dailymail.co.uk/news/article-8625705/Corrupt-skyrail-supervisor-Kory-Oxley-jailed.html**.

83 Jacks, T 2019, 'Cashed-up sky rail managers on $200k allegedly ordered sophisticated rorts', *The Age* (9 July), **theage.com.au/national/victoria/cashed-up-sky-rail-managers-on-200k-allegedly-ordered-sophisticated-rorts-20190709-p525iw.html**.

84 Victorian Ombudsman 2017, '*Report into allegations of conflict of interest of an officer at the Metropolitan Fire and Emergency Services Board*', VO, Melbourne, **https://assets.ombudsman.vic.gov.au/assets/Reports/Parliamentary-Reports/1-PDF-Report-Files/Report-into-allegations-of-conflict-of-interest-of-an-officer-at-the-Metropolitan-Fire-and-Emergency-Services-Board.pdf**.

Another risk related to employment practices, which was previously revealed by IBAC, is the '**recycling**' of employees with problematic disciplinary or criminal histories that should otherwise preclude them from employment. These employees can be hired through their contacts, given the significant subcontracting and long supply chain arrangements in the construction sector, and might not disclose previous disciplinary or criminal investigations into their conduct. This can lead to risks of misuse of public funds and reputational damage to public sector agencies.[85] The risk of recycling can increase when complaints about such employees, and the reporting and supervisory processes that enable complaints to be made, are not observed or taken seriously.[86]

Public sector recruitment panels should make selections based on merit. However, panel processes can be corrupted when employees:

- make a long-term temporary appointment to evade a competitive merit-based process
- restrict advertising timeframes to limit who can apply
- write selection criteria to favour a certain applicant
- appoint panel members who can be influenced to select a favoured candidate
- conceal negative referee reports from the rest of the selection panel
- appoint a fellow employee, who is a friend or family member, to a more senior position than their current role, without declaring a conflict of interest.[87]

The use of recruitment agencies by public sector agencies can increase corruption risks, including the circumvention of merit-based selection and probity processes. These risks can be mitigated, however, by managing contracts and their terms effectively. Over recent decades, the public sector has relied increasingly on alternative forms of employment, including greater use of contractors, consultants and recruitment agencies.[88]

During consultations, IBAC heard that although more appointments to major infrastructure projects were previously made through recruitment agencies – due to the high number of roles to fill – this was less common now. The MTIA is staffed predominantly by Victorian Public Service employees, with recruitment agencies now being rarely used.

**Undeclared secondary employment** represents a risk because it can introduce new conflicts of interest for an employee and their organisation. There is a risk of public sector employees setting up their own businesses to receive contracts for major infrastructure project work, using information they have gained from their public sector roles. This is both a recruitment-related and procurement fraud-related risk, and for this reason is discussed again here. More complex cases of corruption can involve a form of **'double dipping'**, where public sector employees or contractors establish a company and then use a recruitment agency to source contractors from that company.[89]

## Box 7: MTIA insight – fraud and corruption risks in recruitment

The MTIA attempts to prevent recruitment fraud by completing due diligence checks of its preferred candidates (for example, identity checks, qualifications checks, police checks, referee checks, misconduct checks). It also strengthens probity in its recruitment and selection process, requiring staff involved in the recruitment, selection and approval process to declare any conflicts of interest, and requiring all recruitment by the business to be managed and overseen by the human resources team. When recruiting for a senior position, a declaration of private interests is required before the appointment is finalised.

Other measures include raising awareness of the MTIA integrity hotline and public-interest disclosure protections.

85 Independent Broad-based Anti-corruption Commission 2018, *Corruption and misconduct risks associated with employment practices in the Victorian public sector* (research report), IBAC, Melbourne, **www.ibac.vic.gov.au/publications-and-resources/HTML/corruption-and-misconduct-risks-associated-with-employment-practices-in-the-victorian-public-sector**.

86 Independent Broad-based Anti-corruption Commission 2018, *Corruption and misconduct risks associated with employment practices in the Victorian public sector* (research report), IBAC, Melbourne

87 Independent Commission Against Corruption (NSW) 2018, 'Corruption prevention advice: Recruitment and selection', web page, Sydney, viewed 14 October 2022, **icac.nsw.gov.au/prevention/corruption-prevention-advice-topics/recruitment-and-selection**.

88 Independent Broad-based Anti-corruption Commission 2018, *Corruption and misconduct risks associated with employment practices in the Victorian public sector* (research report), IBAC, Melbourne

89 Independent Broad-based Anti-corruption Commission 2018, *Corruption and misconduct risks associated with employment practices in the Victorian public sector* (research report), IBAC, Melbourne.

# Chapter 4

Drivers of corruption

# Drivers

**The key risks of corruption in major transport infrastructure projects are not unique to the sector. However, the scale and potential consequences of the risks are unique, due to these projects' size and high cost to the public purse. As a result, it is particularly important to examine the factors that contribute to corruption in major infrastructure projects, so that people overseeing such projects (transport or non-transport) will be alert to the factors that may increase corruption risks for their own projects.**

## Complex systems, processes and operating environments

Project complexity can increase corruption risks, particularly when combined with delivery pressures. For example, projects that require ongoing liaison with more than one level of government, and the need to coordinate with existing transport infrastructure, pose complex scenarios with numerous stakeholders, transaction chains and delivery-and assurance-related considerations.

The complicated nature of **coordinating** new transport infrastructure projects with existing networks necessitated the creation of the MTIA and its reporting line to the DTP. Although some projects can benefit from the presence of similar projects or lessons learned from past projects, others are genuinely bespoke and involve unique and complex processes. Future transport infrastructure such as the Melbourne Airport Rail Link and the Suburban Rail Loop will further broaden the requirements for coordination between projects.

The **involvement of many government departments** can also introduce complexity into project processes. This can benefit integrity depending on how it is managed. If responsibilities in a project are poorly defined, this can lead to accountability gaps. On the other hand, if control of different components of a project is managed well between different entities, this can create better distributed control and accountability, preventing one area or department from managing – and potentially manipulating – the whole process.

Public sector operating environments and **internal project processes** can be difficult to navigate, particularly for employees coming from the private sector. This can be a real problem in government procurement processes. The risk of corruption may increase if ex-private sector employees are under-prepared because of insufficient training, as delivery pressures can increase the temptation to bypass established public sector procedures (intentionally or unintentionally).

Fundamentally, each public sector agency involved in an infrastructure project must always consider **the complex environment** in which it is operating. All project managers generally consider the cost, time and quality, technical aspects and design of the projects for which they are responsible. For major transport infrastructure projects, there is also, at times, an increased focus on the political, environmental, social, market and legal factors that could affect, or be affected by, the project.

However, the effect of complex systems, processes and operating environments as a driver of corruption risk appears to be lessened by coordinated training and awareness. During consultations for this project, the MTIA stated that its integrity and procurement training for employees is both comprehensive and widely completed across the entire agency, so that public sector obligations, fraud red flags and necessary actions are well understood.

### Box 8: MTIA insight – managing risks to integrity

The MTIA centrally manages risks to integrity across its five project offices. Integrity policies, training and awareness activities, including integrity tools, are developed and coordinated by the integrity function in the Office of the Director-General, and then implemented by each project office.

The benefits of a centrally coordinated integrity function include efficiencies for training and awareness activities, consistency of integrity messaging and policing and central collation of integrity related datasets (for example, GBH offers, private interests declarations, fraud incident reporting, referrals from regulators etc), enabling an MTIA-wide strategic analysis and management of integrity risks to be undertaken. Additionally, the integrity function undertakes an MTIA-wide data analytics program for fraud and corruption control where it interrogates transactions across all project offices.

### Box 9: MTIA insight – accumulating and sharing project expertise

The MTIA has progressively shortened its project timelines, and this can increase pressure to deliver. Totally new MTIA projects, such as the removal of the first level crossings, took several years from planning and construction to completion and certification. Similar removals can now be completed in a much shorter time, due to evolved and more mature operations including established processes to identify and deal with risks.

MTIA projects no longer need to start from scratch, because controls and assurance processes are already in place in the MTIA's five project offices. All project offices have access to established frameworks and processes (for example, procurement, contract management, project delivery, risk, assurance, integrity, communications and engagement). New projects can also use existing enterprise systems for financial and risk management. Overall, these improvements in expertise can reduce the pressures of project delivery and the associated corruption risk.

## Pressure to complete projects

Large infrastructure projects can be subjected to political, performance and economic pressure to complete particular phases throughout their lifespan. These pressures can occur at different points in the construction phase and include tight completion schedules and elements of the project being in many locations (for example, removing level crossings or building new train lines). The need to hire and train new staff, and establish project offices and processes, can compound the pressure. Responding to these difficulties can increase individuals' workloads and stress, in turn increasing corruption risks by tempting them to cut corners to 'get the job done'.

With greater experience, project timelines do shorten, and delivery pressure does decrease, as noted by the MTIA (see Box 9 below). With coordination and a mutual commitment to sharing information, projects can benefit from lessons learned on other projects. However, rapid starts can still pose risks, particularly for bespoke projects needing to establish processes for risk identification, which take time to develop. Fast-moving projects that do not have the advantage of established project offices and risk assessment and monitoring capabilities might have to simultaneously monitor risks and complete project stages while still setting up control environments.

## Conflicts of interest due to reduced availability of contractors and specialist resources

The relatively small number of major contractors able to compete for state infrastructure projects, alongside a global shortage of technical experts, has increased integrity risks for public sector infrastructure agencies. Infrastructure Australia estimates that, of 50 public infrastructure occupations, 34 are potentially in shortage, with demand for labour and skills projected to be 48% higher than supply in 2023.[90] Increases in the number of projects currently underway nationwide, particularly along the eastern seaboard, combined with the relatively low number of available workers, has led to an overall shortage of suitably trained workers. This has complicated recruitment for Victorian agencies, as well as for contractors, because of the limited pool of providers working across many projects. In turn, this increases competition for securing such resources (which could lead to negative behaviours) and could present a higher risk of conflicts of interest prevailing. However, this should not necessarily increase risks that arise from these conflicts of interest if declarations are made and managed well.

## Box 10: MTIA insight – mitigating the risk of unmanaged conflict of interest

The MTIA has a range of processes and measures to prevent and detect the risk of unmanaged conflicts of interest. These include:

- mandatory declaration of conflicts of interest on commencement
- requiring employees in high risk roles to complete a declaration of private interest (DOPI) form on commencement, and annually thereafter
- requiring staff to complete a conflicts of interest declaration when involved in transaction-specific activities such as procurement, contracting, panel assessments (including for recruitment) and other commercial activities
- requiring prospective suppliers and partners to confirm any conflicts of interests embedded in tender documents and commercial contracts
- using probity advisors and probity auditors for material and high risk procurements
- analysing and matching data both within and between supplier and employee records including monitoring of contract related datasets
- offering an integrity hotline that staff, contractors, suppliers and the public can access to report integrity problems (the MTIA Integrity Hotline is on the external Big Build website, on MTIA intranet sites, and is communicated to key construction partners)

90 Infrastructure Australia 2021, 'Infrastructure Market Capacity', PDF, Canberra, viewed 13 October 2022.

Governments are being repeatedly drawn into partnerships with the same private organisations that are frequently bidding and winning contracts due to lack of competition. Simultaneously, the lack of robust post-separation employment policies across the Victorian public sector, and higher salaries offered in the private sector, have led to a regular flow of public sector employees to the private sector. The reverse also occurs. This can lead to familiarity between these contractors and public sector employees, which can then raise the risk of mismanaged conflicts of interest that can lead to collusion.

## Lack of integrity frameworks for contractors

Integrity frameworks play an important role in enabling public and private organisations to define, identify and respond adequately to fraud and corruption. As public sector organisations increase their collaboration with the private sector through major infrastructure projects, they depend heavily on industry participants meeting a commensurate level of integrity and standards. Yet while public sector bodies have increasingly developed and implemented these frameworks, private sector organisations' focus on integrity can vary, and often depend on an organisation's size and resources, with larger organisations more likely to have the resources to devote to integrity.

The public sector's increased reliance on a relatively small market of private infrastructure expertise heightens its exposure to contractors able to influence prices, whether legitimately or through collusion. Public sector bodies need to make sure that contractors have corruption control measures in place, including instilling appropriate integrity standards in further procurement and contracting. A smaller pool of contractors may mean that public sector bodies are pressured to award contracts to suppliers who may have inadequate integrity frameworks and corruption controls.

Government guidelines for construction standards and compliance are generally robust and broadly applied. For example, the Department of Treasury and Finance operates a Construction Supplier Register to list pre-qualified builders and other construction-related services that have demonstrated the necessary expertise, management systems and financial capacity to undertake works or construction-related services for Victorian Government construction projects.[91] Meanwhile, Victoria's DTP is one of the state and territory agencies that administers the national civil contractor system for suppliers of works and construction services that specialise in civil construction – including roads and bridges – and related areas.[92]

Although contractors must pass through a national pre-qualification system for non-residential building to qualify for the Construction Supplier Register, the system does not assure integrity compliance. Rather, it focuses on contractors' technical capabilities and financial capacity at the time of application, as well as contractors' performance during, and at the completion of, the contract, and in reviews at other times.[93] To qualify and remain on the list, contractors must demonstrate competence in specific areas such as quality management, contract administration, and occupational health and safety.[94] The system permits contractor mobility across state and territory borders, providing certainty and consistency in the construction procurement industry and for its clients, and information-sharing on contractor performance between participating agencies.[95] However, the pre-qualification criteria do not cover ethics and integrity, leaving responsibility for compliance to the client and individual contractors.

91 Department of Treasury and Finance 2022, 'Government pre-qualification registers', web page, Melbourne, viewed 14 October 2022, **www.dtf.vic.gov.au/public-construction-policy-and-resources/government-pre-qualification-registers**.
92 Austroads 2022, 'National Prequalification', web page, Sydney, viewed 14 October 2022, **https://austroads.com.au/infrastructure/national-prequalification**.
93 Australian Procurement and Construction Council 2019, 'National Prequalification System for Non-residential Building (NPS) – Guidelines', PDF, Canberra, p 3, viewed 14 October 2022, **https://9104f275-f216-4fd2-9506-720eb252b4fc.filesusr.com/ugd/e62cfd_a77f2b0c64014ed1999ab72900370952.pdf**.
94 Australian Procurement and Construction Council 2010, 'National Prequalification System for Non-residential Building (NPS) – Contractor Performance Report' PDF, Canberra, viewed 14 October 2022, **https://9104f275-f216-4fd2-9506-720eb252b4fc.filesusr.com/ugd/473156_3c1e7338a0d749d8972a67e97a9c4618.pdf**.
95 Australian Procurement and Construction Council 2019, 'National Prequalification System for Non-residential Building (NPS) – Guidelines', PDF, Canberra, viewed 14 October 2022.

Although public sector bodies, through the DTF's Supplier Code of Conduct, have set out minimum standards for contractors applying for public sector contracts, along with requirements to report corruption, and communicate these requirements to subcontractors, these can be overlooked. How integrity is dealt with by lower-tier contractors, and among subcontractors, has a major implication for the assessment of integrity risk for projects. There are therefore opportunities to embed integrity frameworks and corruption controls more firmly in these requirements.

Integrity frameworks are vital to reduce the likelihood of market exploitation and corruption. However, establishing a framework can be a large undertaking for smaller organisations lacking personnel and financial resources to commit to their development, implementation and maintenance. Some larger Tier 1 companies have already provided public evidence of integrity frameworks, in the form of leadership statements and codes of conduct. But although lead contractors, who are often drawn from the small pool of Tier 1 contractors, have the resources and experience to identify and respond to integrity risks, subcontractors at lower levels may lack awareness or visibility of these risks. As discussed in Box 11, developing strong relationships between project owners and contractors can assist in maintaining awareness and control of risk across projects.

## Box 11: MTIA insight – relationships with contractors

The MTIA has fostered relationships and established controls with many contractors, including placing 'back-to-back' obligations on subcontractors that match those of head contractors. Although the MTIA noted that it has strong processes at the project level – particularly under alliance and collaborative contracting – to manage relationships with principal contractors, managing relationships with the subsequent levels of subcontractors can be more difficult, as there is no direct access to the commercial arrangements, further removing public sector project managers from these subcontractors.

In road construction, Major Road Projects Victoria (MRPV) has implemented a new program delivery approach (PDA), which incorporates a streamlined procurement and delivery model using five panels that align project complexity and risk with contractor capability and capacity. The PDA also involves collaborative contracting that has a two-stage (development and delivery phases) open-book incentivised target cost (ITC) arrangement, which reimburses direct costs and includes cost and non-cost incentives.

The PDA combines elements of both design-and-construct and alliance contracting to give MRPV greater control to use, and transact directly with, lower-tier contractors. Meanwhile collaborative contracting helps improve project results through collaboration, increased transparency and joint identification and management of risks while giving incentives for good performance in a constrained market.

The PDA can improve strategic collaboration and bring a more sustainable contractor and design market, among other benefits. It can also offer additional transparency and gives the MRPV a channel through which to gain awareness of any integrity problems in such subcontracts. Regardless of the size of their organisation or their project, panel members are subject to annual due diligence checks, and an independent auditor provides assurance over the accuracy and validity of reimbursable costs under the contract, including any pain/gain share and performance payments between MRPV and its contractors.

## Land-use and planning decisions

Major infrastructure projects can require significant land and can increase or decrease the value of that land and surrounding areas. Such changes in land prices can be considerable, and in turn raise corruption risks by influencing decisions about the type and location of changes in land use. An example of how this can result in corruption was seen in IBAC's Operation Sandon, which investigated allegations of improper influence by developers and lobbyists on councillors and members of parliament over a lucrative land-use decision.[96] Although this proposed change in land use was not strictly for a major infrastructure project, Operation Sandon showed how decisions involving changes in land use and planning can increase corruption risk.

Information on the location of future transport infrastructure is valuable and could be misused to generate profit. Accordingly, decisions involved in planning transport infrastructure are subject to rules and guidelines that apply to all public and private sector individuals involved in the planning and construction of infrastructure projects. In 2019, Queensland's then-minister overseeing the Cross River Rail Project was replaced because she had failed to formally disclose the purchase of an investment property – which was located near the project – to the Queensland Parliament within the required timeframe.[97]

## Box 12: MTIA insight – land-use and planning decisions

Land-use and planning risks are mitigated because the MTIA is separated from planning decision-making for future projects.

The MTIA has no legal authority to purchase land, and therefore works on land acquisition in partnership with the DTP. Although the DTP receives the MTIA's advice, land acquisition decisions remain the DTP's responsibility. Other government bodies, including the Valuer-General of Victoria and the Victorian Government Land Monitor, also provide due diligence to support government property transactions.

While noting the above, MTIA acknowledges that conflicts of interest on land-use and planning decisions are nonetheless a risk. The MTIA mitigates this by screening employees' links to land holdings to identify potential conflicts.

96 IBAC, 2022, *Operation Sandon*, **www.ibac.vic.gov.au/investigating-corruption/IBAC-examinations/operation-sandon**.

97 Bavas, J 2019, 'Jackie Trad stripped of Cross River Rail after Gabba investment property controversy', *ABC News* (6 September), **www.abc.net.au/news/2019-09-06/jackie-trad-gabba-house-investment-wont-face-corruption-probe/11392024**.

## Lack of strategic focus and commitment to integrity from senior executives

Compared to other employees, senior executives have greater opportunities for corruption, particularly collusion, due to their decision-making roles, access to information, and influence. Conversely, they are responsible for building a culture of integrity and for making sure that their agencies' integrity frameworks are implemented and reviewed.

A recent IBAC investigation into a public body in the transport sector demonstrated the risks that arise when senior leaders and managers do not provide required information on conflict of interest declaration forms and avoid scrutiny while associating with contractors, misusing information, and colluding to influence procurement processes. The investigation highlighted how the high level of trust invested in leaders can be abused in ways that are not as easy to detect as abuses by lower-level employees.

IBAC's investigation also revealed how serious deficiencies in developing a culture of integrity can be traced back to significant failures of leadership. Organisations, or parts thereof, that are highly technical need to balance the development of technical competence among its leaders with the ability to communicate and collaborate with other parts of the organisation, to meet the organisation's goals and instil a public sector culture that values integrity.

Leaders have a disproportionate effect on the ethical conduct of their organisations, including that of their staff. Integrity failures in an agency can cause deep and enduring damage to both reputation and morale. If it endures, this damage can lead to attitudes of indifference towards due process and may stunt the growth of a culture of integrity.

Creating a robust culture of integrity requires tailored training for executives that identifies the pressures under which they work, as well as resources on which they can draw for support. As a group, but also as individuals, leaders should be involved in crafting and reinforcing integrity statements for the organisation and its component groups. Statements should unequivocally state zero tolerance for unethical conduct and should be exemplified by the leaders' own behaviour.

### Box 13: MTIA insight – creating a commitment to integrity

Integrity is a core value of the MTIA. The MTIA Leadership Integrity Statement says that MTIA executives must display, model and support ethical conduct.[98] Also, the MTIA Ethical Behaviours Statement sets out the standards of behaviour expected of all who work at the MTIA.

Meanwhile, the MTIA Integrity Awareness e-learning program is mandatory for all existing staff (executives, Victorian public sector employees, and agency hires, or contractors engaged for more than three months). It is also included in the induction program for new staff, so that all staff understand the expected standards of behaviour, the Victorian Public Sector Commission Code of Conduct, and their role in the MTIA Integrity Framework – including their obligations to identify, declare and manage conflicts of interests and report any breaches of integrity.

98 Major Transport Infrastructure Authority 2022, 'MTIA Leadership Integrity Statement', web page, Melbourne, viewed 14 October 2022, **bigbuild.vic.gov.au/about/mtia/governance/leadership-integrity-statement**.

# Chapter 5

Prevention and detection strategies

# Prevention and detection strategies

**IBAC has identified several potential measures to help prevent corruption in major projects, especially in agencies seeking to strengthen their corruption control frameworks. Although these strategies have been identified by examining major transport infrastructure, they may also be relevant to other types of major projects.**

This chapter sets out some prevention and detection strategies under the Four Lines of Defence. This corruption and fraud control model is well established in public and private organisations. It is particularly relevant to major infrastructure projects because their unique risks demand close coordination and integration of responsibilities for information collection, assessment, prevention and detection. It helps prevent corruption by setting out clear and unambiguous responsibilities for leaders and managers at each level of a project group, as well as in relevant departments and agencies.

The following is not an exhaustive list, and not all measures will be suitable for all projects. It is the responsibility of each agency to conduct corruption prevention strategies that are adapted to its risk profile and operating environment.

## First line of defence – management controlling risk

The first line of corruption defence centres on the efforts of business units and their managers to control risk. Managers are responsible for maintaining effective internal controls and executing risk detection, assessment, and management procedures on a day-to-day basis in their work units. This establishes the base for subsequent lines of defence. Additionally, it underpins an organisation-wide culture in which people are made aware of, and become more resistant to, corruption through training, good leadership and management examples, and good processes.

### Box 14: MTIA insight – internal management controls

All MTIA business systems, business processes, projects and programs operate with controls, including, at a minimum:

- due diligence processes (for example, pre-employment screening, third-party checks, validation of inputs)
- delegation of authority to approve expenditure or hiring decisions to appropriately trained financial delegates
- separation of roles and delegations, including multiple officer checks at significant control points
- documentation and record-keeping that demonstrates the transparency of processes
- physical and system controls to identify and prevent misuse or misappropriation of MTIA project resources, including assets, data and information held in MTIA's IT systems
- robust legal frameworks to govern commercial relationships with third parties, including the management of confidential information and intellectual property
- clearly specified line-management accountability for preventing fraud and corruption.

In line with better practice, the MTIA separates its finance, human resources, procurement and contracting functions within each project office and has instituted hard and soft controls within its enterprise systems.

## Pre-employment screening and controls

Employment screening is an important first-line barrier that helps deter unsuitable applicants from entering an organisation and helps set expectations of integrity among employees. Control measures for recruitment risks can include police checks, and applicants submitting discipline, complaint, and criminal histories, and statutory declarations during the recruitment process. While the risk remains that a small number of employees, even those without a history of complaints or poor discipline, will be dishonest in these declarations, a statutory declaration provides increased assurance for public sector agencies and a possible course of action should dishonesty be proven.

The collection and sharing of such information across the public sector remain important for agencies in assessing the risk of applicants, including identifying roles and individuals of concern and limiting the potential for problematic individuals to re-enter the public sector from the private sector. Public sector agencies could seek permission from applicants to share this information within the public sector as part of the application process.

A risk-based recruitment process, involving pre-employment screening, is important for validating a candidate's qualifications and previous work experience. Risk-based methods involve undertaking risk assessments to identify and rank an agency's most likely compliance risks, and then adopting controls, policies and procedures to minimise or eliminate those risks.

Additional corruption controls during recruitment can include:

- active consideration of conflicts of interest, and requiring their disclosure and management at different stages of the recruitment and hiring processes
  - explicitly requiring selection panel members and approving delegates to withdraw where there is an actual or perceived conflict
  - prohibiting staff from participating in a selection process if a friend, relative or associate is an applicant
- using independent panels to evaluate and assess processes and candidates, and/or requiring selection panels to include independent members
- requiring potential candidates to declare any associations with hiring staff or staff of the business area undertaking the recruitment
- requiring preferred candidates to declare their private interests before appointment
- undertaking robust referral checks and open-source checks to corroborate information
- providing more targeted training to employees involved in recruitment activities, using specific case studies of recruitment fraud
- for employees moving from the private to the public sector, focusing training on the development of public sector values.

### Box 15: MTIA insight – pre-employment screening

In the MTIA, each project office undertakes its own recruitment, with some differences in process. All offices must comply with the Victorian Public Sector Commission's guidance and directives for pre-employment screening, including:

- checking police record
- verifying proof of identity
- verifying qualifications
- completing a misconduct declaration and consent form
- completing referee checks.

Pre-appointment MTIA screening checks are conducted in addition to project office requirements for all preferred candidates for certain positions to complete conflict of interest declaration and declarations of private interest and probity (DOPI). MTIA project offices also have the discretion to apply risk management and undertake additional checks above the minimum mandated requirements. The MTIA draws guidance for this from the DTP Pre-Employment Screening Checks Policy and the Victorian Public Sector Commission's best-practice recruitment processes.

## Due diligence checks of suppliers and program partners (third parties)

Contractors and other suppliers can bring corruption risks that can harm an organisation's reputation and performance if not detected at an early stage. It is important that project managers are aware of these risks and develop strategies to manage them, particularly with Tier 2 and 3 contractors, who are quite often engaged via subcontracting arrangements with the principal contractors.

Due diligence involves confirming important facts and assessing risks, generally relating to a proposed contract or course of action. Due diligence checks of third parties need to be undertaken before forming a business relationship, and at major points of change during the life of the relationship.

### Box 16: MTIA insight – construction panels

MTIA project teams have established several panels for contracting construction services.

MRPV, for example, has established five contractor panels for different tranches of construction, design and specialist work.[99] The panel categories are determined by project value and complexity and are open to new applicants at least each year. Applicants must pre-qualify through the VicRoads Prequalification Scheme and must comply with the panel's requirements.

The panels expedite procurement and allow contractors to compete for projects of a size and complexity consistent with their capability at both individual and organisational levels. Financial due diligence checks of panel members are undertaken annually, and contracted members are assessed under the contract-management framework.

Examples of due diligence efforts can range from using existing data on the third party held by the project management office, to employing information brokers to undertake open-source background checks or, where the third-party risks are deemed high, appointing investigators to undertake forensic assessments.

At a minimum, the following should be considered when undertaking third-party due diligence checks:

- knowledge of the third party and environment in which it operates (that is, effective risk identification and assessment processes in place)
- sufficiently robust checks that are proportionate to third-party assessed risks, and using a good balance of independent and objective evidence to validate third-party assertions or submissions
- documentation of due diligence efforts undertaken, including any red flags noted
- ongoing checks as circumstances warrant to confirm the suitability of third parties, in addition to checks conducted before forming a business relationship
- transparency of checks to third parties to facilitate efficient gathering of required information and to provide the third party with notice of the project manager's commitment to managing integrity and corruption risks.

99 Major Road Projects Victoria 2021, 'Program Delivery Approach', web page, Melbourne, viewed 14 October 2022, **www.roadprojects.vic.gov.au/about/program-delivery-approach**.

Public sector agencies can also promote integrity by encouraging contractors to report fraud and corruption and to adopt integrity statements and frameworks, and by promoting such actions publicly. In early 2022, the ACT Integrity Commission appealed directly to construction businesses that had tendered to the ACT Government to share information regarding suspected corrupt conduct.[100] Integrity statements and codes of conduct can include specific references to:

- having zero tolerance for any form of bribery or corruption, including facilitation payments
- managing gifts and hospitality with integrity
- avoiding actual, potential or perceived conflicts of interest
- having effective and ethical business relationships with subcontractors and other third parties
- maintaining independence and avoiding any anti-competitive conduct
- using third-party internet employment portals, which can provide opportunities to screen potential contractors for integrity compliance. Some sites contain examples of pre-qualification questionnaires that require suppliers to complete anti-bribery and corruption declarations [101]
- encouraging business-driven integrity, which can be an effective method to influence both the demand and supply sides of corruption.

Public sector agencies can also work with business groups to encourage and recognise responsible business conduct in infrastructure projects. Forums such as Business 20 (B20), the business counterpart of the Group of Twenty (G20), have promoted business integrity by recognising private sector compliance efforts, encouraging self-disclosure, and supporting collective action by businesses.[102]

## Box 17: Hong Kong Independent Commission Against Corruption's Integrity Charter

Increasing transparency by self-regulation is one method that integrity agencies and infrastructure-related authorities have encouraged private industry partners to adopt.

In September 2021, the Hong Kong Independent Commission Against Corruption (ICAC) launched its Integrity Charter in conjunction with public sector and private industry, to promote integrity management in the construction industry.[103] Compliance with the charter is mandatory for admission to the approved list of public works contractors. However, the Hong Kong ICAC has also offered contractors incentives such as increasing business competitiveness as a motivation to sign up to the charter.

The charter has three components: an integrity policy that companies are encouraged to implement, integrity training that can be provided by Hong Kong ICAC, and optional integrity risk management. To comply, a company must implement an integrity policy and arrange for a senior manager to attend ICAC integrity training each year.[104]

The Hong Kong ICAC website provides information on subscription to the charter, a sample integrity policy, and links to integrity training.

100 PS News 2022, 'Integrity watchdog has ears to the ground', web page, Canberra, viewed 14 October 2022, **https://psnews.com.au/2022/03/02/integrity-watchdog-has-ears-to-the-ground/?state=aps**.

101 LendLease 2016, 'IR and Code Compliance provisions for tender questionnaire (LLE503A)', DOC, Sydney, **gateway.icn.org.au/project/get-attachment/110889/lle503a-grep-vendor-prequalification-questionnaire-docx**.

102 Allens Linklaters 2014, 'Anti-corruption reforms: a view from the B20 Australia', web page, Melbourne, viewed 14 October 2022, **www.allens.com.au/insights-news/insights/2014/07/anti-corruption-reforms-a-view-from-the-b20-australia**; Basel Governance 2017, 'Promoting Integrity by Creating Opportunities for Responsible Businesses', web page, Basel, viewed 14 October 2022, **www.baselgovernance.org/publications/promoting-integrity-creating-opportunities-responsible-businesses**.

103 Hong Kong ICAC 2021, 'Press release: Integrity Charter launched to promote integrity management in construction industry', web page, Hong Kong, viewed 14 October 2022, **www.info.gov.hk/gia/general/202109/24/P2021092400471.htm**.

104 Hong Kong ICAC 2021, '**Integrity Charter Subscription Guidelines**', PDF, Hong Kong, viewed 14 October 2022, **cpas.icac.hk/UPloadImages/InfoFile/cate_43/2021/4a5cbc80-7999-4e60-9328-7259b04e3869.pdf**.

## Regular declarations, and management of conflicts of interest and private interests

As stated earlier, conflicts of interest can pose a serious risk to major infrastructure projects, given the high proportion of employees who have transferred from, or maintain links to, the private sector. Some conflicts cannot be practically avoided and therefore need to be declared and managed appropriately. Section 7(b)(iv) of the *Public Administration Act 2004* requires public sector employees to avoid real or apparent conflicts of interest. The Victorian Public Sector Commission Code of Conduct (clause 3.7) reinforces this, citing the need to avoid actual, potential and perceived conflicts of interest.

The Victorian Public Sector Commission recommends the following strategies to manage a conflict of interest and resolve the conflict in favour of the public interest:

- the employee's involvement in the matter is restricted
- an independent third party is used to oversee some, or all, of the processes associated with the matter
- the employee removes themselves or is removed from the matter
- the employee relinquishes the private interest that creates the conflict
- the employee may resign if the private interest cannot be relinquished or if the conflict cannot be managed via one of the other strategies.[105]

Importantly, conflicts must – once declared – also be recorded, to transparently document the issue and its management. Agencies can develop their understanding and assessment of risks by better linking procurement and COI/DOPI data to make risk assessment and management more consistent and accessible. Agencies can also increase the likelihood of detecting anomalies by improving data collection and analytical capability, including by digitising their COI and DOPI processes. Records of declarations should be maintained in a central register.

Employees often have private interests that could conflict with their public duties – or be perceived to do so. To deal proactively with potential conflicts of interest, full disclosure of such interests and duties is considered best practice, particularly for executive officers and officials with financial delegations.

Typically, a declaration of private interests must be completed on appointment, when circumstances change, or when requested by a department or agency's integrity unit. Matters that should be disclosed include pecuniary interests, non-pecuniary interests (for example, associations or affiliations), criminal proceedings or convictions, and civil probity matters.

### Box 18: MTIA insight – managing conflicts of interest

In compliance with the DTP's policy on conflicts of interest (COI), the MTIA has mandated that:

- new staff must complete the COI declaration form on commencement
- a mandated cohort (that is, senior technical specialists and executives, staff with delegations of at least $50,000, contractors undertaking executive work for the MTIA, independent members of the MTIA board, and other employees in higher-risk areas) must complete a declaration of private interests (DOPI) form before appointment, and annually thereafter
- staff must complete a COI declaration when involved in transaction-specific activities such as procurement, contracting, panel assessments (including for recruitment) and other commercial activities.

The MTIA is strengthening its COI management framework and has put in place an online system to collate, identify, review and manage COI risks arising from staff's declarations of private interests more efficiently. The annual DOPI process is centrally administered by the integrity function, which also undertakes certain integrity checks on a sample of submissions, such as open-source checks and checks against other internally held datasets to corroborate information declared. To ensure consistency in the identification, assessment and management of conflicts of interest, the Program Probity function in the Office of the Director-General reviews each of the annual DOPI submissions. Each year, around one-third of MTIA staff are subject to the annual DOPI process.

105 IBAC 2019, *Managing corruption risks associated with conflicts of interest in the Victorian public sector*, IBAC, Melbourne, **www.ibac.vic.gov.au/docs/default-source/research-documents/managing-corruption-risks-associated-with-conflicts-of-interest-in-the-victorian-public-sector.pdf**.

### Robust processes for preventing corruption

Instances of corruption often stem from poor observance of corruption-prevention processes. An essential element of first-line defences against corruption is the establishment and adherence to common and well-understood processes, automation of processes to enforce consistency and compliance, and digitisation of data capture to enable auditing and analysis. Key corruption prevention processes include:

- frequent management reviews
- separation of duties, so that no one person has control over an activity from beginning to end
- setting and enforcing segregation, delegations and permissions through hard controls or system controls
- documenting decision-making, including clear audit trails.

Additionally, centralising the processing of different functions, such as human resources and payroll, in accessible platforms can allow regular and collaborative auditing for more accurate tracking of payments and allowances against actual staff activities, movements, promotions and departures.

### Box 19: MTIA insight – centralised data

MTIA has central online registers administered by its integrity function, to record:

- gifts, benefits and hospitality provided by external parties
- attendance at outside business events by staff
- private interests declared by staff
- integrity training completed by staff.

MTIA also has centralised systems for:

- contract management, which is integrated with its financial system and with its project management system
- payroll
- onboarding and offboarding employees.

The centralisation of these processes and data allows for more efficient reviews and analysis as part of MTIA's fraud control and corruption control activities.

Additional procedural measures to control or mitigate risks can involve:

- claim and invoice validation checks to prevent forwarding and receipt of invoices and payments by the same, or related, entities.[106] Documentary substantiation of expenses claimed and matching of invoices and receipts with approved purchase orders, also serves this function
- data analytics that, when paired with automated systems, can match invoice details with vendor, purchase order and employee details to detect discrepancies and possible fraud[107]
- information security, which can include email security measures and security measures to detect and prevent unauthorised changes of details linked to invoices and supplier accounts
- regular and random reviews, approvals and audits, which can be conducted by line managers, in conjunction with reviews and internal audits of expenses by compliance and program-assurance teams.

The production and management of data through these processes can lead to risk if information is not safeguarded and managed correctly. In addition to basic information-management controls, measures to counter these risks include:

- physical security to limit access to systems
- user security, including passwords and multi-factor authentication
- system logging and tracking with monitoring and management
- vulnerability assessments, including penetration testing and phishing simulations.

## Second line of defence – management and executive supervision

The second line of defence consists of management-led risk-control and compliance supervision. This includes measures that provide higher-level strategic monitoring and that improve the processes and controls in the first line of defence. An integrity framework, organisation-wide production and analysis of integrity-related information, and regular analysis and reports on the effectiveness of risk assessment and management, are all important elements of the second line of defence.

### Integrity frameworks

Integrity frameworks provide the conceptual and practical basis for organisations to communicate organisation-wide expectations on integrity and roles and responsibilities, to better manage integrity risks, and detect, expose, deter and prevent fraud and corruption. Such frameworks underpin the development of preventative rules and processes and organisation-wide integrity cultures that begin with leadership and involve all employees. An integrity framework coordinates and implements actions across the four lines of defence and is an important part of a public sector agency's overall corruption-control system. The AS 8001:2021 Fraud and Corruption Control Standard states that an overall fraud and corruption control system controls organisational actions against internal and external fraud and includes codes of conduct, and disciplinary and operational procedures relevant to fraud and corruption risk.[108]

106 Independent Commission Against Corruption (NSW) 2014, 'Safeguarding Public Money: the importance of controlling invoice payments', PDF, Sydney, viewed 14 October 2022, **www.icac.nsw.gov.au/ArticleDocuments/232/Safeguarding public money, The importance of controlling invoice payments.pdf.aspx**.

107 Organisation for Economic Co-operation and Development 2019, 'Analytics for integrity: Data-driven approaches for enhancing corruption and fraud risk assessments', PDF, Paris, viewed 14 October 2022, **www.oecd.org/gov/ethics/analytics-for-integrity.pdf**.

108 Standards Australia 2021, 'AS 8001:2021 – Fraud and Corruption Control', web page, Sydney, viewed 14 October 2022, **www.standards.org.au/standards-catalogue/sa-snz/publicsafety/qr-017/as--8001-colon-2021**.

For infrastructure agencies, integrity frameworks must consider and manage risks associated with third parties, such as private sector partners and suppliers in their organisational actions.

Ideally, integrity frameworks should be iterative and participatory, so that feedback from employees, contractors and suppliers is reviewed, along with risk assessments, and leaders continuously monitor and support benchmarks for organisational integrity and culture.[109] IBAC's 2019 review of state government integrity frameworks in 38 agencies found that several agencies could have improved their integrity frameworks by monitoring and testing integrity awareness among staff, and proactively auditing areas of high risk, including by using data analytics to identify such areas.[110]

Regular reviews not only assist in updating risk registers and refining risk assessment and management, but also provide up-to-date learning and training material. A participatory and collaborative approach, involving communities of practice (as detailed in Box 20), can bring integrity practitioners together with subject-matter experts from finance, procurement, human resources and other management areas to improve collaboration and preparedness against corruption risks.[111]

## Box 20: MTIA insight – integrity framework

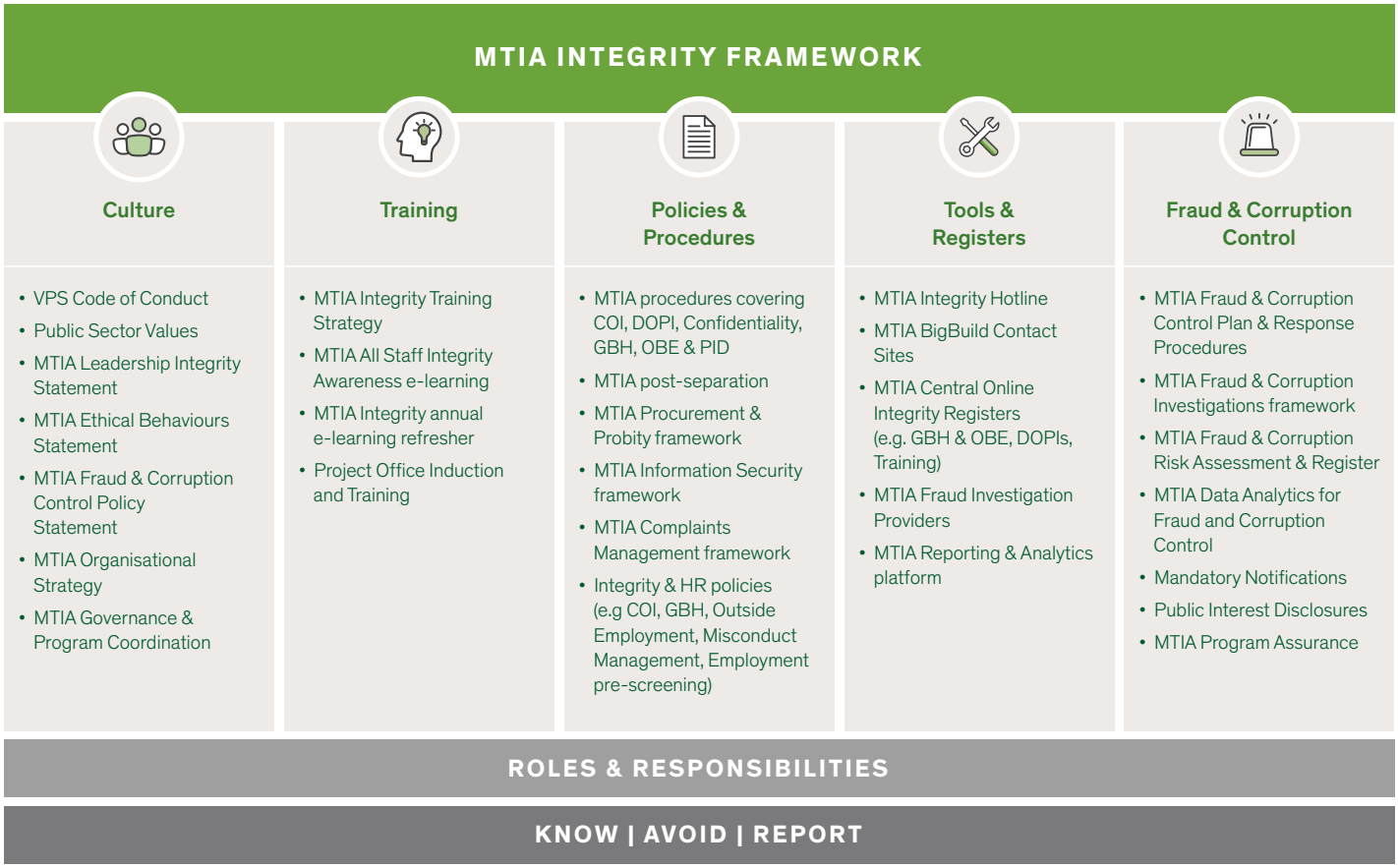
The **MTIA Integrity Framework** (see Figure 3) outlines the organisation's main integrity instruments, mechanisms and measures, including defining the roles and responsibilities that collectively help support an ethical culture.

The **goals** of the framework are to make sure that all MTIA persons:

- **KNOW** their integrity obligations, and apply and comply with regulations, policies and procedures
- **AVOID** putting their private interests before the public interest
- **REPORT** integrity breaches as part of MTIA's anti-corruption stance.

109 Standards Australia 2021, 'AS 8001:2021 – Fraud and Corruption Control', web page, Sydney, viewed 14 October 2022.
110 Standards Australia 2021, 'AS 8001:2021 – Fraud and Corruption Control', web page, Sydney, viewed 14 October 2022.
111 U4 Anti-corruption Centre 2022, 'What we mean by Corruption Risk Management', web page, Bergen, viewed 14 October 2022, **www.u4.no/topics/corruption-risk-management/basics**.

## Figure 3: MTIA Integrity Framework



The **MTIA Fraud and Corruption Control Framework** (see Figure 4) outlines:

- fraud control governance arrangements at MTIA
- roles and responsibilities for responding to fraud and corruption at MTIA
- approaches taken to identify, assess and manage corruption and fraud risks
- controls for minimising fraud and corruption risks, including preventing, detecting and responding.

### Figure 4: MTIA Fraud and Corruption Control Framework

**THE MTIA FRAUD AND CORRUPTION CONTROL FRAMEWORK**

| Roles and Responsibilities | Risk Management | Prevent | Detect | Respond |
|---|---|---|---|---|
| • Know your obligations<br>• Be alert<br>• Report suspicions<br>• Cooperate in investigations<br>• Attend mandatory training | • Identify<br>• Assess<br>• Manage/treat<br>• Review and monitor | • Ethical leadership<br>• Communicate expectations<br>• Policies and procedures<br>• Training and awareness<br>• Pre-employment screening<br>• Declaration of private interests/conflicts of interests<br>• Due diligence 3rd parties<br>• Internal controls | • Red flags<br>• Integrity hotline<br>• Reporting channels<br>• Compliance and reviews<br>• Data analytics<br>• Internal audits<br>• External audits | • Assess<br>• Investigate<br>• Report<br>• Notify<br>• Prosecute<br>• Loss recoveries<br>• Lessons learned<br>• Corrective actions |

## Clear and accountable leadership roles

Setting clear expectations and a 'tone from the top' are essential in all public sector organisations. They are particularly crucial in major infrastructure organisations due to the unique difficulties such organisations face in managing hybrid private-public sector workforces.

As numerous IBAC investigations have demonstrated, codes of conduct, ministerial guidelines and other integrity-related processes – although fundamental to establishing organisational cultures of integrity – can have limited effects on the conduct of some senior leaders. Previous research has shown that perpetrators of significant fraud are more likely to come from senior management.[112] Therefore, establishing a strong regime around recruitment and training for people in these roles is essential.

Additionally, integrity responsibilities must be incorporated into personal performance measures and shared among senior leaders. In turn, a supporting network of advisory bodies, such as corporate boards and executive committees, must be involved in integrity functions, enabling senior executives to be both enabled and accountable in performing integrity roles.

Enabling the leaders of industry partners to manage integrity and risk is important for preventing corruption, because private sector employees and contractors comprise most of the workforce in major infrastructure projects – even though the MTIA's workforce is almost entirely made up of public sector employees – and these organisations will continue to circulate between different state-led projects.

Coordination between departments and their portfolio agencies is essential to good integrity practices. Providing clear definitions and delineations of responsibility between these can reduce corruption risks and close gaps in risk identification and management.

112 PwC 2014, 'Fighting corruption and bribery in the construction industry', PDF, Sydney, viewed 14 October 2022

In its 2014 review of integrity frameworks, IBAC identified 'nesting' arrangements between portfolio departments and their portfolio agencies, where the former relied on the latter to undertake corruption prevention that they were not equipped to do, in part due to an absence of dedicated integrity teams and access to records for analysing and assessing corruption risk.[113]

Even though integrity coordination between the DTP and MTIA is relatively limited, this is mitigated by the MTIA's well-developed integrity framework, which is tailored to its specific risks, along with the DTP's policies, which the MTIA has augmented with localised procedures.

### Box 21: MTIA insight – integrity function

The MTIA's integrity roles and system are not unique in the public sector. Most departments and agencies have a central integrity function that develops integrity-related policies. Most also have integrity champions across the business operations to assist with implementation and compliance.

Notably, the MTIA Integrity function conducts in-house data analytics, and advises other business areas on governance, risk, controls and probity. These tasks are in addition to providing the traditional integrity training and awareness, policy administration and fraud investigations.

## Managing corruption risks

Managing corruption risks is an essential corruption-control process. It encompasses strategies for identifying, assessing and managing risk. These strategies identify risks to which an organisation is susceptible, identify the best controls to mitigate those risks, and assess the effectiveness of those controls.[114] Ideally, corruption risk management is an iterative process that considers risk at each level of activity (for example, organisation-wide or for a particular project), and the adequacy of controls at each project stage, through an initial risk assessment before accepting a project, and subsequent annual re-assessments. As explained earlier, different phases of a project bring different types and levels of risk, with the construction or implementation phase being a high risk period due to the high levels of procurement and payments involved. Examples of how this process can be applied to the construction phase are listed in Table 6.

**Table 6: Stages in managing corruption risk**

| Stage | Purpose and activities | Construction phase examples |
|---|---|---|
| **Identify** | • Comprehensively lists corruption risks that could threaten a project.<br>• Develops a risk register to compile and classify risks according to type (for example, institutional, programmatic, regulatory or industry) and level (project or organisation). [115] | • Construction project fraud, including false claims, collusion between contractors and subcontractors.<br>• Procurement fraud, including contractors taking or requesting bribes from subcontractors.<br>• Billing fraud, including false invoicing from fake companies or the diversion of funds through scams. |

113 Independent Broad-based Anti-corruption Commission 2014, *A review of integrity frameworks in Victorian public sector agencies*, IBAC, Melbourne, pp 10–11, **www.ibac.vic.gov.au/docs/default-source/reviews/review-of-integrity-frameworks-research-paper.pdf?sfvrsn=8f446475_12**.
114 U4 Anti-corruption Centre 2022, 'What we mean by Corruption Risk Management', web page, Bergen, viewed 14 October 2022
115 U4 Anti-corruption Centre 2022, 'What we mean by Corruption Risk Management', web page, Bergen, viewed 14 October 2022.

Table 6: Stages in managing corruption risk (continued)

| Stage | Purpose and activities | Construction phase examples |
|---|---|---|
| **Assess** | • Categorises and rates risks according to their potential implications for the project and the probability of their occurrence.<br>• Assesses objective risks such as weak policies, guidelines and regulations alongside subjective risks, such as employee awareness and tolerance to corruption.[116]<br>• Uses a risk matrix or list to distinguish major risks from minor risks.<br>• Does not focus on current incidents of corruption but on possible weaknesses that facilitate corruption.<br>• Serves as baseline to measure changes in risk over time and early warning indicators of such change.<br>• Determines the controls used to respond to each risk, based on:<br>— severity and likelihood<br>— priority<br>— which business units and leaders have primary responsibility for their execution and monitoring.<br>• Seriously considers risks that are low probability but high impact. IBAC has found that public sector organisations have underestimated the risk of certain types of corruption, such as bribery, based on their relatively low probability, despite their serious consequences for the organisation and the public sector more broadly. | • Construction project fraud: external, financial threat. Example rating: possible likelihood, with moderate impact.<br>• Procurement fraud, internal and external reputational and financial threat. Example rating: unlikely, but with potentially minor to major impacts.<br>• Billing fraud. External financial threat. Example rating: unlikely to rare, with minor impacts. |

116 Transparency International 2021, 'Corruption Risk Assessment Topic Guide', PDF, Berlin, viewed 14 October 2022, knowledgehub.transparency.org/assets/uploads/kproducts/Corruption_Risk_Assessment_Topic_Guide.pdf.

**Table 6: Stages in managing corruption risk (continued)**

| Stage | Purpose and activities | Construction phase examples |
|---|---|---|
| **Manage** | • Follows up risk assessments by identifying and executing steps to deal with the identified risks.<br>• Involves the use of effective controls that mitigate risk both internally and externally. Depending on the type of risk, its complexity and severity, and the collective appetite for risk, organisations can choose to:<br>— treat it by avoiding or reducing its likelihood<br>— tolerate and monitor risk, leaving the option to escalate to treatment<br>— transfer the risk to another entity<br>— terminate the path of action due to the associated risk being too high. | • Construction project fraud. Examples of controls and mitigation actions: commercial contractual controls; compliance with project management and contract performance management processes; strong financial and approval controls; regular financial claims audits and data analytics; supervision of major subcontracting arrangements.<br>• Procurement fraud. Examples of controls and mitigation actions: compliance with procurement and probity framework and approval processes; supplier due diligence checks; conflict of interest management processes.<br>• Billing fraud. Examples of controls and mitigation actions: claims and invoice validation and checks; receipting invoices against approved purchase orders; security measures relating to changes to supplier banking details; cyber-awareness training. |

Because infrastructure agencies cover several programs at once, their risk assessments are more likely to require a comprehensive analysis of all factors affecting each program. This type of assessment could involve 'cascading' assessments, which use assessments at higher, institutional levels to inform and provide context for lower levels, such as project sites.

As with all aspects of risk management, assessment should be participatory and inclusive, seeking feedback from all levels of an organisation and aiming to provide as much contextual detail of risk factors as possible, to strengthen the effectiveness of the process.

When assessing corruption risks, the following factors and questions should be considered:

- **Commodity** – What asset(s) are you protecting from corrupt use? What do you control that is valuable to a corrupter?
- **Location** – What areas or activities are at highest corruption risk?
- **Corruptor** – Who may want to corrupt your staff, and why? Who would benefit from your commodities?
- **Susceptibility** – Who among your employees could be vulnerable to corruption if the circumstances allowed?
- **Vulnerability** – What weakness in the system can be exploited? What barriers would corrupt actors need to overcome to achieve their aims?[117]

Managing risk in a major infrastructure project will involve numerous parties and functions, requiring coordination to determine ownership, roles and responsibilities for risk controls. Activities that should be conducted with construction partners include a review of their internal policies and procedures to identify gaps, ownership, location and comprehensiveness of documentation.[118] (See Box 22 for an assessment process being trialled by the MTIA.) Because corruption involves actors that deliberately seek to circumvent controls and conceal their actions, and because such actors will adapt to controls, risk management must include regular review that involves reporting of incidents, identification of new risks, and assessment of the effectiveness of controls against current and future threats of corruption and fraud.

117 Australian Commission for Law Enforcement Integrity 2021, 'Identifying corruption risk', web page, Canberra, viewed 14 October 2022, **www.aclei.gov.au/corruption-prevention/corruption-prevention-toolkit/identifying-corruption-risk**.

118 PwC 2016, 'Assessing the risk of bribery and corruption to your business', web page, Sydney, viewed 14 October 2022, **www.pwc.com.au/pdf/assessing-the-risk-of-bribery-and-corruption-oct2016.pdf**.

## Box 22: MTIA insight – entity-level controls (ELC)

As part of its due diligence efforts and assurance controls in alliances and in some of its collaborative contracts, the MTIA is piloting a process to assess entity-level controls (ELC) of certain construction partners. Like integrity frameworks, ELCs set the 'tone from the top' rules, corporate governance policies and procedures, and expectations for governance and behaviour by an organisation's stakeholders, including board, management, employees and suppliers. Besides overall governance, ELCs can include an organisation's expected code of conduct, hiring and retention practices, enterprise system controls, assurance frameworks, and anti-fraud measures such as complaints management processes, whistleblowing hotlines and ethics training programs.

ELCs look beyond the project level controls to the construction partner and recognises the importance of leadership and corporate governance controls at the entity level in influencing an organisation's culture and behaviour.

The ELC assessment process involves the contractor completing a questionnaire (see areas covered to the right), which alliance financial auditors subsequently assess through a desktop workshop with the contractor's managers. A major benefit of the process is improved understanding by the MTIA of the construction partner's corporate governance and enterprise controls, to enable more proactive risk management by the MTIA and allow the alliance's financial auditors to undertake more efficient claims audits.

Entity-level control aspects assessed in the questionnaire include:

- governance, risk management and ethics
- controls assurance framework
- fraud and corruption control framework
- recruitment, retention and exiting
- accounting and finance
- information and ICT systems
- project reporting and forecasting
- procurement, subcontracting and contract management
- contractor payments
- payroll
- staff reimbursements
- materials management.

At this stage, the ELC pilot will be applied only to selected contractors in alliance or collaborative contracts. However, its application will allow the MTIA to better understand the controls culture of these contractors – which collectively have a large footprint across the Big Build – and learn how to continuously improve to align contractor performance in these areas with the expectations of the Victorian community.

## Box 23: MTIA insight – assessing and managing risk

Regular risk assessments underpin the MTIA's ability to see and understand risk as it continues to evolve. Risk identification, assessment and management occur at the individual field-based project level, at the project-office level and at the MTIA-wide level. Fraud and corruption risks are considered at each of these levels, culminating in an MTIA-wide strategic assessment of the fraud and corruption risks. The MTIA-wide fraud and corruption risk register is maintained by the Integrity function in the Office of the Director-General and is annually updated and reported to MTIA executive leadership.

Integrity risk is a strategic risk in the MTIA-wide strategic risk register maintained by the Risk function in the Office of the Director-General. This register is reviewed and reported each quarter to the MTIA Board; its Program Assurance, Risk and Integrity Committee; and the MTIA Executive Committee.

Additionally, each project office maintains its own thefts, losses and fraud register, to record such incidents as required under the Finance Ministerial Directions. The Integrity function reviews these registers periodically to identify fraud themes and any systemic risks, incorporating its findings into its annual MTIA-wide fraud risk assessment exercise. The MTIA Integrity function provides transparency on the loss/theft entries as well as complaints under investigation/management to the Program Assurance, Risk and Integrity Committee in its quarterly reporting.

Risks, both general and integrity-related, can also be mitigated by information sharing, which can alleviate uncertainties that are higher in a project's initial phases. Results of these central activities are shared with the members of the MTIA Program Assurance Community of Practice.

### Integrity training and review

High-quality training is vital for establishing a corruption-resistant organisational culture. Training helps all employees understand their legal and regulatory obligations and company policies.[119] This is particularly important for employees in high risk areas such as procurement, finance and contract management, and for these reasons such employees require specialised training to ensure compliance with values and public sector requirements. Training and better awareness of corruption enable employees to be proactive – as opposed to reactive or neutral – in their attitudes and responses to corruption.

Training can sometimes focus on either values or compliance, but a combination of both is desirable to understand all factors that can contribute to employees committing fraudulent or corrupt acts.[120] Compliance training focuses on employees understanding and complying with legislation. At a minimum, this can help organisations meet their legal obligations and avoid legal liability. However, compliance-focused checklist requirements can be less effective at reducing an organisation's vulnerability to corruption.

On the other hand, ethics and compliance training can have a values orientation, giving employees better decision-making skills that are not only compliant with those of the organisation, but tailored to their own particular circumstances.[121] Compared with compliance-based training, values-based training can better deal with personal motivation and rationalisation – two of the three elements of corruption according to the 'Fraud Triangle'.[122]

Training outcomes should also be regularly reviewed, not only to improve training standards but also to identify areas for improvement in governance and integrity-assurance processes. In addition to post-training surveys, interviews conducted with staff can measure comprehension of control policies as proof of behavioural change, and organisation-wide perceptions of corruption and efforts to counter it.[123]

119 Australian Centre for Healthcare Governance 2019, 'Integrity Governance Framework', PDF, Melbourne, viewed 14 October 2022, **www.vha.org.au/wp-content/uploads/2019/07/VHA_ACHG_IGF_AssessTool_Doc_0519_FA_01_IGF.pdf**.

120 Hess D 2021, 'Ethics and compliance training', in Van Rooij B, & Sokol D (eds), *Cambridge Handbook of Compliance*, Cambridge University Press, UK.

121 Deloitte 2009, 'Ethics and compliance: The advantage of a values-based approach', PDF, London, viewed 14 October 2022, **www2.deloitte.com/content/dam/Deloitte/in/Documents/risk/Board of Directors/in-gc-ethics-and-compliance-a-value-based-approach-noexp.pdf**.

122 The 'Fraud Triangle' is a model that explains the factors that cause someone to commit occupational fraud: perceived financial need, perceived opportunity, and rationalisation. Association of Certified Fraud Examiners 2022, 'Fraud 101: What is Fraud?', web page, Austin, viewed 14 October 2022, **www.acfe.com/FRAUD-RESOURCES/FRAUD-101-WHAT-IS-FRAUD**.

123 Hess, D 2021, 'Ethics and Compliance Training' in *Cambridge Handbook of Compliance*, Van Rooij, B., and Sokol, D. Daniel (Eds.) Cambridge University Press, Cambridge.

## Box 24: MTIA insight – integrity training

MTIA employees are required to:

- read, understand and work actively to comply with all relevant policies and procedures
- help create an effective internal control environment by participating in, where appropriate, the design, implementation and monitoring of fraud and corruption–control activities
- cooperate with fraud enquiries or investigations as required
- attend all mandatory integrity (including fraud) training and awareness sessions.[124]

The MTIA All Staff Integrity Awareness e-learning course is designed to improve staff's understanding of Victorian public sector values and MTIA integrity requirements, and to develop staff's ethical awareness, including being alert to 'red flags', or indicators, of fraud or corruption. Red flags can indicate potentially risky business activities, or fraud or corrupt activity as individuals seek to avoid detection.

The 2.5-hour course must be completed by all MTIA executives and Victorian public sector staff. It is also mandatory for agency hires and contractors engaged by the MTIA for three months or more. Importantly, MTIA plans to make the training a mandatory component of performance reviews. By June 2022, the course had been completed by all existing staff, with new staff undertaking it as part of their induction.

The MTIA All Staff Integrity Awareness e-learning course comprises four modules:

- Module 1 – Integrity at the MTIA (15–25 minutes)
- Module 2 – Conflict of interest and acceptance of gifts, benefits and hospitality (30–40 minutes)
- Module 3 – Integrity in our processes, including ensuring information security, privacy and confidentiality (25–35 minutes)
- Module 4 – Fraud and corruption awareness (40–50 minutes).

After completing this course, staff must also undertake the MTIA Integrity Refresher training. MTIA staff are automatically enrolled in the Refresher training on the 12-month anniversary of their completing the fourth module of the All Staff Integrity Awareness course.

To make training more engaging and beneficial, MTIA's Integrity function has developed a range of content and learning activities within its e-learning modules. This includes using actual IBAC case studies, videos made available by regulators, MTIA's own videos, and interactive features in the learning checks, as well as allowing learners to choose a character and follow their integrity challenges – then use the responses to these challenges to direct further learning.

Training completion is monitored by the Integrity function and periodically reported to the PARIC.

124 MTIA 2021, 'Fraud policy statement', web page, Melbourne, viewed October 14 2022, **www.bigbuild.vic.gov.au/about/mtia/governance/fraud-policy-statement**.

### Integrity awareness and reporting

Regular staff integrity-awareness programs and reviews are necessary to reinforce and monitor integrity training results. They should be tailored to specific roles and positions in an organisation, as well as to suit construction-delivery partners. Decision-making guides can also offer employees practical advice on how to make ethical choices in difficult situations.[125]

Integrity awareness can also be developed externally – for example, by disclosing or publicising resources – such as anti-fraud statements; gifts, benefits and hospitality policy; codes of conduct; and reporting channels on the organisation's public website – or by making these resources available to stakeholders such as project partners and suppliers.

Awareness campaigns can include information on reporting channels that employees trust as being confidential and independent. Externally operated reporting hotlines can provide independent support to internal reporting functions. Additionally, effective internal feedback and communication processes can encourage staff to speak up against corrupt practices and assure them that matters that are reported will be treated seriously and will be fully assessed and responded to. Internal integrity staff play an essential role in maintaining awareness and providing points of contact for integrity-related questions or reports.

Review mechanisms can help increase the effectiveness and rate of reporting. Regular surveys can assess employees' attitudes towards corruption, and their confidence in the organisation's values and behavioural standards. Reporting through mechanisms for public-interest disclosures (more commonly known as whistle-blower complaints) may not always yield complete or actionable information. However, continuing analysis of reporting trends and reviews of unsuccessful tip-offs can identify areas of potential vulnerability or under-reporting. Reviews of successful investigations can locate and strengthen controls that may have failed or been bypassed or overridden.[126]

### Box 25: MTIA insight – reporting integrity matters

The MTIA actively encourages its staff, partners, suppliers and the public and to report any integrity matters through the reporting channels made available. All reported matters are treated seriously and fully assessed and responded to. Avenues of reporting include:

- **MTIA Integrity Hotline** – This hotline is managed by a third party – to report misconduct, corruption or wrongdoing. This integrity hotline service can be reached online, by phone, by an app or through a QR code scan. The MTIA Integrity Hotline is on the Big Build external website, MTIA intranet sites, physically communicated via posters at MTIA office locations including co-located sites. It is also promoted with its construction partners at co-located project sites and at certain project construction sites.
- **Big Build contact site** – This is managed by a third party – for the public to provide any feedback or complaint. Any feedback or complaint relating to integrity is referred to the MTIA Integrity function to investigate and manage.
- **MTIA PID-interest disclosure coordinators** – This refers to staff who are trained to receive and assess complaints, including assessing whether a complaint is a public-interest disclosure under the PID Act. When assessing complaints, coordinators are guided by the PID Act and IBAC's guidelines for handling public-interest disclosures.
- **MTIA Fraud and Corruption Control Officers within the project offices** – This refers to staff who will refer complaints or allegations received within their project office to the MTIA Integrity function and assist with an investigation and/or remedial actions.
- **External reporting options** – For example, IBAC and the Victorian Ombudsman are promoted on the Big Build website, MTIA intranet sites and in existing communications materials made available to the project offices and partners.

125 Department of Education and Training 2017, *Building Confidence in our Systems and Culture: Integrity Reform in the Department of Education and Training*, DET, Melbourne, **www.ibac.vic.gov.au/docs/default-source/reports/det-report.pdf**.

126 PwC 2008, 'Fraud: A guide to its prevention, detection and investigation', PDF, Sydney, viewed 14 October 2022, **www.pwc.com.au/consulting/assets/risk-controls/fraud-control-jul08.pdf**.

### Gifts, benefits and hospitality, and outside business events checks and register

Gifts, benefits and hospitality can give rise to conflicts of interest in all parts of an organisation and can create a perception that a public officer's decision-making has been corruptly influenced.[127] Offers of gifts or benefits by current or potential suppliers will nearly always create a conflict of interest. According to directives from the Victorian Public Sector Commission and the Minister for Finance, public sector employees must refuse all offers of gifts, benefits and hospitality – above a token value – that give rise to an actual, potential or perceived conflict of interest.

Good practice in managing gifts, benefits and hospitality risks involves:

- discussing and identifying conflict of interest risks early and throughout a project's procurement phase
- using declaration forms and systems to promote active management and recording of relationships with suppliers
- implementing centralised, electronic and automated systems to record conflict of interest declarations, to facilitate data analysis
- requiring all employees, particularly those fulfilling a procurement function, to complete adequate training.

### Box 26: MTIA insight – managing gifts, benefits and hospitality, and outside business events

Close associations with partners, suppliers and providers generate considerable risks arising from gifts, benefits and hospitality. MTIA complies with the DTP's policies on gifts, benefits and hospitality and official business events. These policies are complemented by localised procedures and case scenarios that offer guidance to staff on how to respond to offers of gifts, benefits and hospitality; the process for attending outside business events; and how to register offers.

MTIA's gifts, benefits and hospitality entries are published on the DTP's internet site. The MTIA Integrity function regularly reviews these activities and attendances. It analyses the gifts, benefits and hospitality and official business events entries and reports on its analyses to the MTIA Director-General and the Program Assurance, Risk and Integrity Committee.

127 Independent Broad-based Anti-corruption Commission 2019, *Managing corruption risks associated with conflicts of interest in the Victorian public sector*, IBAC, Melbourne.

## Overseeing procurement

Procurement involves complex actions that are particularly vulnerable to corruption. Several IBAC investigations have uncovered corruption that was enabled by insufficient supervision and separation of duties in procurement processes. The centralisation of procurement, along with conflict of interest management and IT procedures, has been a consequence of investigations such as Operation Dunham's uncovering of the then Department of Education and Training's Ultranet-related corruption. Employees and managers should receive appropriate procurement training to comply with the Victorian Government Purchasing Board's policy and Ministerial Directions on procurement. Understanding of procurement risks needs to be shared between organisations, and line managers should be supported in their decisions by a procurement unit and other organisational committees that provide guidance and supervision.

Procurement can be overseen by a specialised procurement oversight committee (POC) and by an organisation's audit committee. An effective POC would include independent members alongside management, and collectively its members should possess skills including commercial acumen, probity, risk, governance and industry expertise. Beyond ensuring value-for-money purchasing, the POC would oversee organisational compliance of procurement systems and processes, consider any emerging and existing 'red flags' in the procurement process, and consider any changes to procurement policy, such as delegation variations or exemptions. The POC would then report to the board's audit, finance and risk committee for additional scrutiny.

Enterprise-level procurement supervision should be supported at project level, where major suppliers and sub-suppliers should ideally appoint a senior manager who is responsible for developing and implementing an integrity framework and for making sure that contractors and subcontractors comply with all applicable anti-corruption laws and regulations and project codes of conduct.[128]

### Box 27: Open Data for Infrastructure Standard and Civil Society Oversight

Overseeing procurement can be assisted by the routine publication of data at important stages and points during a project's lifespan. There are international standards that define which information can be released and monitored by external monitors and civil society, thus increasing transparency and accountability in infrastructure. The CoST Infrastructure Data Standard and the Open Contracting for Infrastructure Data Standard are examples of international standards that define project data – such as cost, duration, parties and contracting processes involved – for subsequent publication.[129] This definition and public release of data have empowered the involvement of civil society actors in both developing and developed countries, including several in the European Union. Data users include contract monitors, journalists, supervisory authorities and other evaluators.

128 Global Infrastructure Anti-Corruption Centre 2021, 'PACS Standard 7: Controls for Major Suppliers and Major Sub-suppliers', web page, Chesham, viewed 14 October 2022, **www.giaccentre.org/pacs_ps7/**.

129 Infrastructure Transparency Initiative (CoST) 2021, 'CoST Infrastructure Data Standard' , PDF, High Holborn, viewed 14 October 2022, **https://infrastructuretransparency.org/wp-content/uploads/2017/12/CoST-Infrastructure-Data-Standard.pdf;** Open Contracting Partnership 2022, 'Open Contracting for Infrastructure Data Standards Toolkit', web page, High Holborn, viewed 14 October 2022, **www.standard.open-contracting.org/infrastructure/latest/en/**.

## Box 28: MTIA insight – scrutinising procurement

The procurement oversight framework at MTIA includes the following:

- **Procurement oversight committee** – This committee (which includes external independent members), advises the chief procurement officer on matters such as pre-approving procurement and market engagement strategies for material goods and services procurements, selection processes, pre-contract awards and material exemptions and variations sought for goods and services procurements. This is an important contrast with some other agencies, in which supervisory committees have conducted only historical reviews of procurements awarded.
- **Audit committee** – For example, the Program Assurance, Risk and Integrity Committee's scrutiny of MTIA procurement activities has increased, focusing attention on progress of MTIA's Victorian Government Purchasing Board accreditation, procurement controls and improvement projects.
- **Chief procurement officer (in the office of the Director-General)** – This position oversees procurement compliance by each of the five project offices. The chief procurement officer also periodically checks the compliance of goods and services contracts, and analyses MTIA-wide goods and services procurements and contracts.
- **Internal audits** – These are delivered through the Program Assurance function in the Office of the Director-General.
- **Probity advisors** – This role, and also probity auditors, are embedded in material procurements.
- **Business information reporting tools** – These can provide valuable oversight.

Additionally, for major construction procurements, the following arrangements are in place:

- documented evaluation plan for each tender evaluation, developed with the oversight of an independent probity advisor
- ongoing oversight by an independent probity advisor during the tender process
- contracts are only entered into following sign-off from both the independent probity advisor and an independent probity auditor
- multiple layers of review and endorsement (including by the Major Transport Infrastructure Board) before a preferred tenderer is selected and a contract is presented for execution
- the allocation of work packages under the Program Alliance approach follows a tailored process that includes endorsement of the allocation from an independent reviewer, review by an assessment panel, which includes a DTF representative, sign-off from an independent probity auditor, and endorsement by the Major Transport Infrastructure Board
- MTIA projects are also generally subject to the Victorian Government's High Value High Risk assurance framework, which is administered by DTF. This includes gateway reviews for high volume, high risk projects, covering readiness for market, tender documentation, contract award and variations.

## Data analytics

Analysing data is an efficient means of detecting, as well as preventing, corrupt activities. It is particularly useful for major infrastructure projects, given the industry's large workforce and its high value and high-volume transactions. Data collected through regular transactions, for example, can reveal patterns and anomalies that can provide a better understanding of tactics that corrupt actors could use, as well as the effectiveness of the controls being used to counter them.[130] The use of quantitative data can complement the qualitative approaches – surveys and interviews – often used in corruption and fraud risk assessments, reducing the biases and inaccuracies that can arise from using only one methodology.

Computer-aided audit tools can increase the effectiveness of management supervision and external assurance. Data analytics strategies should coordinate the collection and analysis of data across different areas of an organisation and provide the IT infrastructure and education necessary to support such efforts. In response to IBAC's Operation Ord, the then Department of Education and Training instituted data analytics strategies for its Integrity and Assurance Division and its Financial Services Division.[131] Similarly, major projects agencies require data analytics strategies that provide common processes across all projects, and that set out common policies and opportunities to share and apply any analytical findings.

Data collection and analytics can also help employees report potential conflicts of interest. Anecdotal research evidence shows that employees sometimes have mixed views on declaring conflicts of interest, with some employees hesitating to make such declarations for various reasons. Making conflict of interest declarations common, and using automated systems for this, leads to a higher rate of declarations and compliance. Good training can educate employees about what type of information is applicable in declarations. For example, the MTIA's requirement that staff declare property holdings applies only to properties near their projects, not property owned interstate or abroad.

Good training can also empower employees to respond accurately and completely, and – importantly – can empower them to disclose or seek clarification if unsure whether their private interests could conflict with their public role.

During the construction phase of a project, data analytics can allow efficient identification of anomalies in contracting activities, financial claims and invoicing, and supply chain usage.

### Box 29: MTIA insight – data analytics

The Integrity function in the Office of the Director-General develops and implements the MTIA Data Analytics Program for Fraud and Corruption Control. A range of techniques is used to interrogate and analyse internally held data to detect internal-control problems, inefficiencies or anomalous transactions, including potential fraudulent transactions and/or corrupt activities. The datasets currently analysed include financial, contracts, suppliers, employee, and certain enterprise systems datasets. An annual plan is tabled with the PARIC for approval, and the Integrity function reports the results of its analysis to this committee each quarter.

Alliance auditors regularly use data analytics in their financial claims' reviews of alliance projects. The program assurance internal audit function in the Office of the Director-General also uses data analytics in its internal audit projects. Additionally, functional teams in the project offices (for example, procurement, finance, project cost control) employ data analytics for both compliance and project-reporting purposes.

130 Organisation for Economic Co-operation and Development 2019, 'Analytics for integrity: Data-driven approaches for enhancing corruption and fraud risk assessments', PDF, Paris, viewed 14 October 2022.

131 Department of Education and Training 2017, *Building confidence in our systems and culture: Integrity reform in the Department of Education and Training*, DET, Melbourne, **www.ibac.vic.gov.au/docs/default-source/responses/det-report.pdf**.

## Third and fourth lines of defence – independent assurance, internal and external audit

Internal and external assurance are the third and fourth lines respectively of defence against fraud and corruption. Internal assurance is often provided via internal independent audits. External assurance can be provided by auditors, regulators, parliamentary committees, and integrity agencies such as IBAC.

### Internal audits and reviews

Business systems, business processes, projects and programs should be designed to include strong systems of internal control. This is essential for preventing fraud and corruption.

First line management-controlled processes, when well documented, provide an audit trail of decision-making and actions. This, in turn, is essential for the preparation and planning of internal audit reviews.

Establishing high levels of scrutiny and awareness of internal control principles at each level of defence makes it more likely that irregularities will be detected and that subsequent internal and external audits will focus more efficiently and effectively on areas of concern.

Several high volume, high risk MTIA projects undergo an added level of review and scrutiny via the Department of Treasury and Finance's Gateways and Project Assurance Reviews.

## Box 30: MTIA insight – internal audits and reviews

The program assurance internal audit function in the Office of the Director-General is responsible for developing and implementing the MTIA Three-Year Strategic Internal Audit Plan (the Plan). The Plan is risk based, includes consideration of fraud and corruption risks as required by the Institute of Internal Auditors and its International Professional Practices Framework,[132] is reviewed and assessed annually, and is tabled annually with the Program Assurance, Risk and Integrity Committee for approval. Implementation of the Plan is overseen by this committee.

Under the Institute of Internal Auditors' framework, internal auditors must consider the risk of fraud when designing and executing their audits. Additionally, because integrity is a strategic risk for MTIA, the MTIA Integrity Framework is periodically subject to internal audit to ensure its effectiveness and efficacy.

Project offices have assurance personnel and/or access to external assurance providers for project-specific risk assurance requirements. An independent audit firm is used, for example, to provide compliance assurance over project claims on the large alliance packages. Project offices also use external firms to provide probity assurance for material procurements.

Each project office has designated internal staff who are members of the MTIA Community of Practice – Program Assurance. This group is chaired by the Director, Program Assurance, to share lessons learned, and to communicate and coordinate assurance and integrity-related matters between all projects.

At MTIA, the Integrity function sits alongside the Internal Audit and Risk functions (under the Program Assurance Unit) in the Office of the Director-General (ODG). This allows the three teams to be familiar with each other's work and share information.

132 Institute of Internal Auditors (IIA) 2018, 'Factsheet: The International Professional Practices Framework (IPPF)', PDF, Sydney, viewed 14 October 2022, **www.iia.org.au/sf_docs/default-source/technical-resources/2018-fact-sheets/ippf.pdf**

### External assurance activities

Internal audits should be coordinated with a program of external audits that target high risk areas. Cooperation with state integrity agencies in using reports, case studies and other training materials can help reveal these areas.

VAGO undertakes the annual financial audit of the MTIA, with the audit of MTIA's finances incorporated in the DTP's annual reporting. Additionally, MTIA projects are almost always included in VAGO's annual performance audits. Other external audits may be undertaken by authorities such as WorkSafe, Local Jobs First Commissioner, and the Environment Protection Authority.

## Box 31: New York City's integrity monitors

In 1996, New York's Department of Investigation (DoI) established the Integrity Monitoring program, to collaborate with private industry in overseeing and auditing contractors providing services to the city.[133] If the DoI decides that a contract requires additional supervision due to its nature, scale or past performance, it can subject contractors to additional scrutiny to deter misconduct and detect potential fraud and corruption. Private sector firms can apply to serve as independent watchdogs that report to the DoI. Integrity monitors can be individuals or entities from legal, auditing, investigative and other fields. The DoI uses a computerised and randomised process to match monitors to vendors. It then requires the business entity to retain an Integrity Monitor to oversee its compliance with relevant laws and regulations, to establish appropriate internal controls, and to report any unethical or illegal conduct back to the DoI.

Monitors enter into a multi-year monitoring agreement with the DoI and the respective vendor, and are essentially deputised to inspect and assess documentation, personnel and other factors that might point to misconduct, fraud or corruption, including organised crime. In carrying out their roles, they also help private sector firms reform their business practices so that they can continue to enter contracts with the city.

133 Center for the Advancement of Public Integrity, Columbia University 2016, 'The Integrity Monitor Program – The role of the private sector in city contract oversight', PDF, New York, viewed 14 October 2022, **https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1068&context=public_integrity**; New York City Department of Investigations 2021, 'Integrity Monitor Program', web page, New York, viewed 14 October 2022, **www1.nyc.gov/site/doi/about/integrity-monitor-program.page**.

## Box 32: Integrity pacts

Integrity pacts are collaborative mechanisms through which public entities collaborate with civil society and other parties to increase transparency and accountability in public procurement.[134] Pacts are legally binding documents signed by contracting authorities, bidders and an independent monitor. Civil society organisations act as independent monitors, making sure that applicable regulations are respected, and corruption risks are dealt with.

Devised by international anti-corruption organisation Transparency International in the 1990s, integrity pacts have been used not only in developing countries, but also in the European Union. Collaboration in 11 European Union countries has seen government, private sector and civil-society actors monitor 18 major contracting projects. By drawing on a range of civil society actors, including communities in areas close to infrastructure projects, integrity pacts can improve scrutiny of public contracts, as well as strengthen public trust in their efficiency. The pacts have been recognised by the European Court of Auditors and the European Ombudsman as demonstrating innovative fraud prevention and good public administration.[135] Further analysis is required to see how these could apply in Victoria.

### Pressure testing

Pressure testing is a proactive measure of the effectiveness of an organisation's integrity-related processes in the first and second lines of defence. When paired with timely and effective auditing programs, pressure testing can identify weaknesses before they can be exploited for corrupt purposes. By adopting the mindset and techniques used by internal threats and external criminals, pressure testing creates realistic scenarios that simulate integrity threats and measure how employees and countermeasures would stand up to real threats.

Testing methods can involve:

- research – including desktop reviews and case studies
- observation – process walk-throughs or workshops with stakeholders
- analysis – sample reviews or data analysis
- testing – such as technical testing or covert actions to attempt to breach and test countermeasure effectiveness.

Test transactions involving the introduction of documents, data or other actions simulating an actual fraud or corruption event can determine the strength and reliability of internal controls.[136] By pressure testing processes and analysing the results, organisations can collect valuable data and other information to improve their processes, training and awareness. Testing should be regular and proactive, and conducted in periods of higher risk, such as after the introduction of new integrity measures, or mass recruitment.

134 Transparency International 2022, 'Integrity Pacts', web page, Berlin, viewed 14 October 2022, **www.transparency.org/en/projects/integritypacts**.
135 European Court of Auditors 2019, 'Special report no 06/2019: Tackling fraud in EU cohesion spending: managing authorities need to strengthen detection, response and coordination', web page, Luxembourg, viewed 14 October 2022, **www.eca.europa.eu/en/Pages/DocItem.aspx?did=49940**; European Commission 2019, 'Ombudsman awards Integrity Pacts as excellence in the field of open administration', web page, Brussels, viewed 14 October 2022, **www.ec.europa.eu/regional_policy/en/newsroom/news/2019/07/07-01-2019-ombudsman-awards-integrity-pacts-as-excellence-in-the-field-of-open-administration**.
136 Standards Australia 2021, 'AS 8001:2021 – Fraud and Corruption Control', web page, Sydney, viewed 14 October 2022, **https://store.standards.org.au/product/as-8001-2021**.

# Chapter 6

Conclusion

# Conclusion

**The major infrastructure projects being undertaken in Victoria are a large, complex, long-term and multi-faceted endeavour, which will grow even larger in the future as more projects are planned and approved. This work is vital because it creates essential long-term infrastructure for the state of Victoria. This report highlights corruption risks for the sector, and controls that are applicable to any major project.**

In Victoria, as in other comparable jurisdictions, the accountability processes at all stages of every major infrastructure project must be continually assessed and strengthened to prevent corruption.

The corruption risks faced by organisations managing major transport infrastructure projects resemble those encountered by other organisations. However, the complexities inherent in major projects can increase risks when combined with pressures to complete works and meet deadlines. In addition, the size and scale of major infrastructure projects mean that small- to medium-sized fraud that may be easier to detect in a smaller agency is harder to discern and detect in a massive program of infrastructure work.

Victoria's major infrastructure projects managed by the MTIA appear to employ sound methods to prevent and detect corruption. Although not all risks and contributing factors identified in this assessment apply to all major projects all the time, they merit attention so that any major project and its overseeing agency, or agencies can make informed assessments of the risks facing their sector and any major project they undertake, and invest in appropriate prevention and detection strategies.

This report details the corruption risks and their associated drivers in government-funded major infrastructure projects, and alerts funding agencies, regulators and the public sector to opportunities to strengthen their systems and practices to mitigate these risks and drivers. Each agency should tailor its corruption prevention and detection strategies to its particular operating environment, so that its efforts will be effective and proportionate.

IBAC will continue to work with organisations across the Victorian public sector, to help raise awareness of the risks highlighted in this report and to support their efforts to eliminate corruption.

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