

Corruption matters

ICAC

INDEPENDENT
COMMISSION
AGAINST
CORRUPTION

December 2008 ■ Number 32 ■ ISSN 1326 432X

Running off the rails

The Independent Commission Against Corruption's long-running investigation into RailCorp is now complete, with the furnishing of eight reports to Parliament including 40 recommendations to combat corruption at the NSW railway corporation.

The investigation uncovered almost \$19 million in improperly allocated contracts that were awarded to companies owned by RailCorp employees, their families and/or friends, in return for more than \$2.5 million in corrupt payments.

In what is the seventh ICAC investigation into RailCorp and its predecessor organisations since 1992, the ICAC has made 96 corrupt conduct findings against 31 individuals, and is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of 33 people for 663 criminal offences.

In the eighth and final report on the most recent investigation, *Investigation into bribery and fraud at RailCorp*, the Commission says that it has exposed an "extraordinary extent of public sector corruption."

The report says that RailCorp's form of contracting, process design, reporting arrangements, management competence, culture and oversight arrangements all contribute to endemic corruption in the organisation. The ICAC identifies four critical areas for reform, recommending that RailCorp:

- reduces procurement risk by ensuring that it buys only what it can adequately monitor
- creates firewalls that remove end-to-end control of procurement by single individuals
- improves overall managerial effectiveness in the Asset Management Group (the focus of this investigation)
- improve oversight, especially by ensuring that corruption risk management strategies are implemented.



The Operation Monto investigation found widespread corruption in the procurement of goods and services for rail track construction and maintenance, involving both RailCorp employees and contractors.

"The investigation and findings entitle the Commission to infer that the type of corruption exposed extends beyond those individuals identified in this investigation," the report notes. "Therefore the conclusions have applications throughout RailCorp and for other agencies involved in procurement."

The report notes that the common systemic thread to corruption within RailCorp was transactions, including procurement of goods and services, and employment of labour. Systemic weaknesses in transactions by RailCorp allowed some suppliers to improperly obtain contracts; suppliers were also able to manipulate transactions within RailCorp in such a way as to over-charge, under-deliver or both.

The Commission's major recommendation in regard to procurement is that RailCorp's Asset Management Group should re-evaluate its decisions regarding what to procure from suppliers and what to source in-house. Some currently purchased services may need to be brought in-house to better control the risks and costs of such transactions.

The corruption prevention recommendations in the report are directed to RailCorp, the RailCorp Board and the Minister for Transport. The Commission will monitor the implementation of the recommendations made as a result of this investigation.

This report and the Commission's preceding seven reports on the investigation findings of this matter are available on the ICAC website at www.icac.nsw.gov.au.

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Commissioner's editorial

Our corruption exposure and prevention work in the past 12 months has underscored the importance of recognising and managing corruption risks as an essential part of public administration.

In May, the Commission's public inquiry into allegations of corrupt conduct affecting Wollongong City Council attracted intense media and public interest. Although much of the media and public attention was focussed on the conduct of a particular planning officer at the Council and her relationships with a number of developers, the most important findings were that corrupt conduct had occurred at five distinct levels of the Council's administrative and decision-making hierarchy.

The Commission found that systemic corruption existed within the Council and that there had been serious corrupt conduct in relation to the granting of development consent for a proposed \$100 million development known as "Quattro". As provided for in the ICAC Act, the Commission recommended that all civic offices at the Council be declared vacant and that the development consent for Quattro be revoked. The Commission also made a total of 27 corruption prevention recommendations to the Council in its final report, released in October, and is providing training to help the Council deal with the systemic weaknesses that facilitated the corrupt conduct.

The investigation also highlighted structural problems in the NSW development approvals process.

Many of these problems were identified in the Commission's 2007 publication, *Corruption risks in NSW development approval processes*, and it is to be hoped that all NSW councils and others involved in regulation of development will take heed of the Commission's findings and recommendations.

Earlier this month we released the final in a series of eight reports into bribery and fraud at RailCorp. That investigation was one of the largest in the Commission's history, involving 32 days of public inquiries. Findings of corrupt conduct were made against 31 individuals, including 14 RailCorp employees who were found to have improperly allocated contracts totalling almost \$19 million to companies owned by themselves, their friends or their families, in return for corrupt payments totalling over \$2.5 million.

Startling as these figures are, the Commission's findings in relation to the prevalence of corruption and failures of management and governance at RailCorp are even more dramatic.

The Commission found serious and widespread deficiencies in management of the corporation's Asset Management Group, which is responsible for procurement of goods and services for the entire rail network. The Commission also identified a failure at senior executive and Board level to identify and manage corruption risks that were well-known as a result of the Commission's seven previous investigations into corrupt conduct at RailCorp and its predecessor organisations.

The Commission's final report, released on 15 December, makes a total of 40 corruption recommendations to the Minister for Transport, RailCorp and the RailCorp Board, including a number that provide for fundamental change to the way the corporation's procurement function is structured and managed. The Commission does not have the resources, if it is to discharge its statutory function according to law, to devote its entire time to corruption within RailCorp.

Next March marks 20 years since the Commission began its work. In that time, the Commission has exposed corruption and provided advice and assistance in managing corruption risks across the entire spectrum of public sector activity. However, it is up to the public sector agencies themselves to ensure that corruption risks are properly identified and managed.

This edition of *Corruption Matters* is in a new format, designed for easy internal distribution and printing within public sector organisations. We hope that this and other ICAC publications and resources will be widely circulated within public sector organisations, as part of an ongoing commitment to exposing and preventing corruption within the NSW public sector.

The Hon Jerrold Cripps QC
Commissioner

When investigators meet ...

The 7th National Investigations Symposium, held on 6 and 7 November 2008 in Manly, Sydney was a great success.

The Symposium, organised by the ICAC in conjunction with the Institute of Public Affairs (NSW) and the NSW Ombudsman, is held every two years, and is the premiere networking event for investigators and investigation agencies from around Australia.

Both the Symposium and the day of training workshops that preceded it were fully subscribed. Delegates came from every Australian state and territory and from a number of countries in Asia and the Pacific. A pod of whales even dropped in, putting on a show in the calm waters off Manly Beach for training workshop participants during their lunch break.

Luke Cornelius of the Victoria Police gave a keynote address on the challenges faced by Commissioner Christine Nixon and her team in establishing new leadership capacity and ethical standards within the force. Robert Needham, Chair of Queensland's Crime and Misconduct Commission, delivered an insightful address on the work of the CMC and its far-reaching effects in that state.

A total of 18 sessions was available to delegates, with three streams running concurrently to cater to a range of interests. Among the most popular sessions were *The Unreasonable Complainant Conduct Project: two years on, Catch me if you can: the use of coercive powers*, and the *Real crime* session with award-winning author Helen Garner and journalist Kara Lawrence in conversation with Damien Carrick, from *The Law Report*, ABC Radio National.

A number of presenters dealt with complex, contentious and challenging aspects of investigations, including effective communication with remote Indigenous communities, the latest developments in forensic evidence-gathering and techniques for interviewing children.

The panel discussion sessions and group presentations were popular innovations as was the eco-friendly electronic delivery of papers.

During the conference dinner, entertainer David Callan managed to make even the most serious investigators have a good laugh at themselves.

Papers and presentations are available for delegates from www.publicminds.org.au



ICAC Commissioner the Hon Jerrold Cripps QC at the Symposium opening session.

The 8th National Investigations Symposium will be held in 2010 and planning is already underway.



The 7th National Investigations Symposium brought together investigations from around Australia, as well as from Asia and the Pacific.

Investigation into Wollongong City Council winds up

On 8 October 2008, the Commission released its third and final investigation report into allegations of corrupt conduct affecting Wollongong City Council. A total of 10 persons, eight of them former council officials, were found to have engaged in corrupt conduct. The Commission has also recommended seeking the advice of the Director of Public Prosecutions with respect to prosecuting 11 individuals for 139 criminal offences including offering and receiving corrupt benefits (bribery); misconduct in public office and providing false or misleading statements to the Commission.

The conduct that the Commission uncovered at Wollongong City Council was without precedent; individuals occupying five distinct tiers within the council hierarchy engaged in corrupt conduct. This means that a number of public officials whose job it was to prevent corrupt conduct and other forms of aberrant behaviour were, in fact, themselves engaging in it.

The investigation centred on a council town planner, Beth Morgan, who formed undisclosed close personal relationships with local property developers for whom she provided numerous favours and concessions when assessing their development applications. Much of her favourable conduct was induced and rewarded by numerous gifts, including cash, holidays and building materials, which were capable of being construed as bribes.

Yet the behaviour did not rest just with Ms Morgan; she was aided and abetted by a number of council managers who ignored clear evidence of her corrupt relationships and overlooked her favourable conduct. In part, this managerial failure was the result of various Wollongong senior managers and councillors allowing themselves to be groomed and as a result, compromised, by local developers such as Frank Vellar.

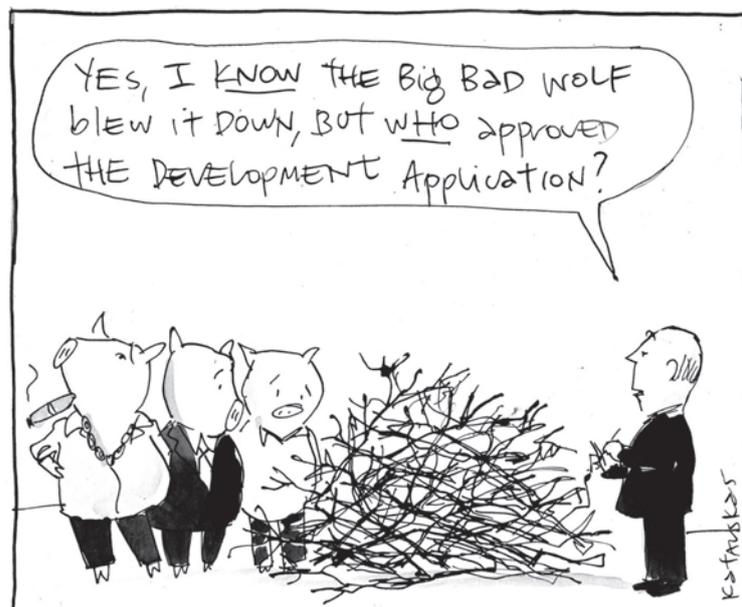
Mr Vellar gave many gifts to Ms Morgan, while also grooming councillors and other staff with gifts of wine, lunches and weekend visits to his farm. Council officers should be aware that gifts and acts of hospitality (especially those that are not declared in accordance with policy) can be used to compromise their integrity and test whether they might be susceptible to future, more serious misconduct.



The ICAC's investigation found corrupt conduct in the granting of the development consent for the Victoria Square luxury residential development in the Wollongong CBD.

All public officers with managerial responsibilities need to be mindful of the example that they set for their staff. Given the diverse and discretionary nature of much of the work that public servants perform, there are obvious limits on the extent to which ethical conduct can be codified. Consequently, managers must exhibit the behavioural standards to which they expect staff to adhere.

The ICAC's Corruption Prevention, Education and Research Division is working with individual NSW councils and state regional organisations of councils to deliver corruption prevention training, tools and advice based on the Wollongong experience. To take advantage of this service, please call (02) 8281-5999, 1800 463 909 (toll free) or email icac@icac.nsw.gov.au.



Reporting on internal investigations

When agencies conduct internal investigations into complaints and disclosures, questions often arise about what information can be given to interested parties, including FOI applicants, about the progress and results of the investigation.

When a matter is referred to an agency for investigation, for example by the ICAC, specific advice is given to the agency about what information may be disclosed.

While it is not possible to give definitive advice that applies in all other circumstances, it is possible to give some general guidance.

Who

When considering what information should be provided to the parties to an investigation, consideration needs to be given to whether the investigation is either 'evidence focussed' or 'outcome focussed':

- 'evidence focussed' inquiries seek to pursue all lines of inquiry in a way that will meet all legal and procedural

requirements, particularly where there is a possibility of criminal or disciplinary action, or a finding of wrong conduct against an individual

- 'outcome focussed' inquiries are primarily directed at quickly identifying and remedying problems and therefore only seek to obtain sufficient information for a fair and informed judgment to be made about the issues in question, particularly where those issues relate to policies, procedures and/or practices.

Where an investigation is 'evidence focussed', the parties with a legitimate interest in receiving information about the progress and outcome of the investigation might include:

- complainants/whistleblowers
- subjects of complaints/disclosures
- witnesses whose evidence is obtained during the course of an investigation.

Where an investigation is 'outcome focussed', the party with the legitimate interest in receiving such information may only be the complainant/whistleblower.

Why

The reasons why information should be given to interested parties about the progress and results of investigations would include:

- to meet the legitimate expectations of those involved
- to respect the rights and interests of those involved
- to better manage complainants/whistleblowers and subjects of complaints/disclosures
- to provide procedural fairness to subjects of complaints/disclosures.

What and when

The stages at which information might best be provided to interested parties, the information that could be provided, and advice on how it might be provided, are set out in a *Reporting on Progress and results of Investigations* brochure which can be downloaded at www.ombo.nsw.gov.au/show.asp?id=493.

ICAC Outreach program visits Greater Western Sydney for first time

The Commission held its first outreach visit to Greater Western Sydney in November. Nearly 195 people from various local state government agencies and local councils attended workshops, briefings and training sessions.

The visit commenced with a community leader's breakfast at Rooty Hill RSL. More than 40 people attended the breakfast, which was hosted by Commissioner the Hon Jerrold Cripps QC.

Commissioner Cripps told the breakfast that the cooperation of community leaders and other responsible members of the community helps the ICAC in the fight against corruption. "In the last financial year we received and assessed more than 2,700 complaints and reports of suspected corrupt conduct from the general public, CEOs and public officials across NSW," he said.

"These complaints and reports form the basis of much of our investigation and corruption prevention work."

The Commissioner also spoke about the visit to Greater Western Sydney. "The ICAC is keen to share its corruption prevention skills and resources across metropolitan, regional and rural areas," he said.

"We also acknowledge that different areas are unique and are keen to tailor our visit to suit the local community. For example, as western Sydney is home to Australia's most diverse population, this particular Outreach visit will include a number of multicultural interagency meetings."

Local agencies that participated included the Department of Premier and Cabinet, the NSW Police Force, TAFE NSW, the Department of Corrective Services, Ambulance Service of NSW, Sydney West Area Health Service, Housing NSW and the Department of Environment and Climate Change.

Participating councils included Blacktown, Auburn, Liverpool, Baulkham Hills, Campbelltown, Camden, Wollondilly, Fairfield and Blue Mountains.

The program featured workshops on *Better management of protected disclosures*, which provided information about the protection that can be provided to public sector employees who report improper, corrupt or unlawful behaviour in the public sector. The workshop covered definitions of what constitutes a protective disclosure, types of wrongdoing and the protection from reprisals for those making the disclosure.

There were also two tailored workshops on corruption prevention for managers in state agencies and local councils. Topics included the role and functions of the ICAC, identifying and managing conflicts of interest, and what managers can do to prevent, detect and respond to corruption in the workplace.

The ICAC conducts two outreach visits a year to bring anti-corruption initiatives and training to all of NSW.

ICAC training in demand

In the last 12 months there has been an increased demand for the ICAC's training services.

The combined effect of the introduction and marketing of the ICAC calendar workshops, which are publicly advertised and open to staff of all NSW public sector agencies, and the conduct of high-profile ICAC investigations (into Wollongong City Council and RailCorp) has meant that agencies are aware that ICAC provides this training and motivated to take it up.

The core training workshops offered are:

- Corruption prevention for managers – full-day or half-day workshop
- Fact-finder (training for new and inexperienced agency investigators) – full-day workshop
- Better management of protected disclosures (delivered in conjunction with NSW Ombudsman) – half-day workshop

These workshops are delivered:

- in-house at agencies on request (fees on a per workshop basis)
- as part of ICAC regional outreach programs (free)
- advertised calendar workshops (fees on a per individual participant basis).



Margaret Ludlow, Senior Project Officer, Training and Development, conducting a Better Management of Protected Disclosures workshop in Goulburn in July for staff of six southern NSW councils.

Of these, in-house training is by far the most requested, but workshops delivered as part of ICAC outreach programs and by the calendar basis have also all been fully subscribed.

The increased demand for ICAC training shows that agencies are adopting a more proactive approach to corruption risk management.

Our Senior Project Officers, Training & Development are Margaret Ludlow (02) 8281 5810 and Adam Shapiro (02) 8281 5732. For more information about specific workshops or general enquiries about ICAC training, contact Mary Murabito on (02) 8281 5729.

Making a complaint about suspected corrupt conduct

There is no prescribed format for reporting a matter, making a complaint or providing information to the ICAC. Information can be provided to the ICAC in person or by letter, fax, email or phone.

Information can be provided anonymously, but this can make it difficult for the ICAC to take action if further details cannot be obtained from the person reporting the matter.

Reports of suspected corrupt conduct made to the ICAC should include:

- the name of the relevant NSW authority or public official
- a clear summary of the alleged corrupt conduct
- a chronology of events
- documentation or other information that supports the allegations
- the names of other people who could corroborate the information
- an outline of any steps that have been taken to bring the matter to the attention of the authority concerned
- the names of any other agencies that have been contacted about the matter (for example, the Department of Local Government or NSW Ombudsman).

It is not necessary to attempt to gather 'evidence' before reporting a matter to the ICAC. Generally, it is advisable not to pass on details of matters reported to the ICAC to others.

ICAC contact details can be found on the back page of *Corruption Matters*.



Corruption prevention advice

The ICAC's corruption prevention officers work with public sector organisations to strengthen administrative systems and to raise awareness of potential corruption problems.

One of the key functions of the ICAC is to provide advice to the public sector about strategies to minimise corruption and maintain the integrity of public administration. In some situations the ICAC can also provide advice to private citizens about corruption prevention practices that should be followed by public sector organisations. The main benefits of contacting the ICAC for advice by telephone are that informal advice can be given promptly and the caller can be advised about relevant information and resources. Sometimes, more research and consultation than a phone call will allow is required and in such cases ICAC officers would discuss the most appropriate way to assist. This may involve writing to the ICAC.

In some circumstances, the ICAC may decline a request for advice. Advice requests are declined when the ICAC considers that the advice function would potentially conflict with its investigative function. The ICAC is unable to give advice that could be seen as authorising a particular course of action or to provide advice that extends beyond probity and corruption prevention issues. The ICAC may only be able to provide generalised advice in cases where the request is complex or detailed and the ICAC cannot resource the request.

For corruption prevention advice:

Telephone the ICAC between 9am and 5pm on 02 8281 5999 (or toll free on 1800 463 909 for callers outside Sydney).

ICAC highlights and achievements in 2007–2008

The ICAC has reported several results in the last financial year that show it continues to be a real force in fighting and preventing corruption in NSW, according to the Commission's 2007-2008 Annual Report.

During the year, the ICAC reported high achievements despite increased workloads. These included a 10% improvement in finalisation times although there was a 26% increase in the number of matters received during the year.

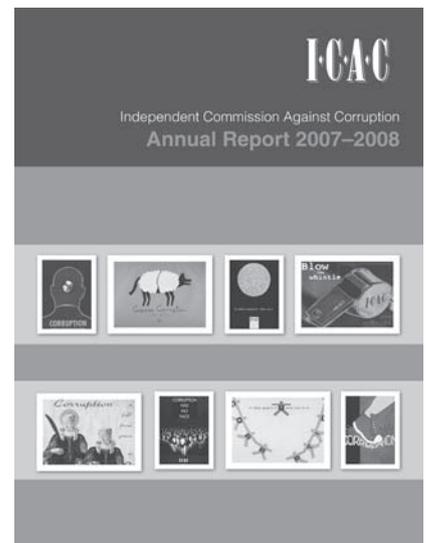
The Commission held substantially more public inquiries in 2007–08 than in 2006–07, with 11 conducted in total over 51 days, compared with four public inquiries conducted over 24 days in the previous year. It also published seven investigation reports.

During 2007–08, the Commission received and assessed 2,702 matters, an increase of more than 550 on the previous year. Local government was the most frequently represented government sector for allegations from the public, with 41% of complaints relating to this area, most of which concerned building and development applications, and rezonings.

Reports from public sector principals also related mainly to the local government sector (30%). The most common type of alleged corrupt conduct was misuse/theft of resources by a public official.

The ICAC made corrupt conduct findings against 51 people in 2007-08, compared with 17 in the previous year, and referred 23 people to the Director of Public Prosecutions for consideration of prosecution proceedings, which is a 44% increase on 2006–07.

A major highlight of the Commission's corruption prevention program was hosting the inaugural Australian Public Sector Anti-Corruption Conference in October 2007, which brought together 34 national and international experts to deliver cutting-edge information about anti-corruption work to more than 500 delegates. Other corruption prevention and education highlights in 2007–08 included delivering 57 corruption prevention training sessions, and continuing the regional outreach program with visits to the Hunter and Riverina areas.



The ICAC Annual Report is available on the ICAC website: www.icac.nsw.gov.au

The ICAC also responded to 236 corruption prevention advice requests, included 57 corruption prevention recommendations in its investigation reports, and published six corruption prevention and research publications.



In other news

2009 Corruption Prevention Awards

Nominations for the Corruption Prevention Network's 2009 Awards for Excellence in Corruption Prevention are now being accepted.

The awards are designed to recognise and encourage excellence in corruption prevention and to share good practice.

Organisations can nominate for one of two award categories:

1. Corruption Prevention Tool or Technique

This category recognises the development, implementation and/or application of a specific tool or technique by an organisation.

2. Corruption Prevention Program

This category recognises the implementation of a suite of corruption prevention strategies in an integrated fashion within an organisation.

Additionally, organisations can submit their nominations to be examined for their potential to be awarded recognition of innovation in corruption prevention.

Organisations throughout Australia may nominate themselves for the awards.

Entry is open to all organisations in Australia including public and private business enterprises, not for profit organisations and state, local and Commonwealth agencies.

Nominations close on 30 June 2009 and Award winners will be announced at the Corruption Prevention Network Forum on 9 September 2009.

For more information and a copy of the 2009 Nomination Guide, visit the CPN website: www.corruptionprevention.net

ICAC public inquiries

The Commission has held public inquiries in recent months involving allegations of corrupt conduct concerning a school, a fire-fighting authority and a local council.

The public inquiry into NSW Fire Brigades was held in August. It involved allegations that Fire Brigades project managers Clive Taylor, Christian Sanhueza, and others, had engaged in corrupt conduct in relation

to the awarding and management of capital works and maintenance projects.

This month, the Commission held a public inquiry as part of its investigation into allegations that Xiaodong Lu or Qinghua Pei gave money to a teacher at Westmead Public School in western Sydney with the intention of gaining favouritism for their son.

The third public inquiry, also held this month, investigated allegations that Diana Huang and Wing Mak engaged in corrupt conduct by giving benefits to an employee from Ku-ring-gai Council, in Sydney's north, with the intention to gain improper assistance with obtaining approval for a linen plan and a traffic management plan submitted to the Council.

The ICAC Commissioner, the Hon Jerrold Cripps QC, presided at all three inquiries. At press time the Commission was still to furnish its reports to Parliament.

About Corruption Matters

Corruption Matters is produced twice a year to raise awareness in the NSW public sector and the wider community about corruption-related issues. If you have any comments about the publication or would like to be put on the mailing list, please contact the Corruption Prevention, Education and Research Division, Independent Commission Against Corruption.

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