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## Who cares about value for money when it's not *your* money?

by Dr Robert Waldersee, ICAC Executive Director, Corruption Prevention, Education and Research Division

In classic markets where procurement negotiations take place on almost identical goods and services, individuals are motivated by self interest; that is, the seller won't sell for less than they have to, and the buyer won't buy for more than they have to. The result is a system that regulates itself. But in organisational procurement of somewhat unique goods and services, this individual motivation becomes less of a natural regulator of the procurement transaction.

In response, the private sector employs a variety of mechanisms to align the goals of the individual with those of the organisation (the basis of Principal-Agent models), such as offering employees stock options, bonuses, promotions, and a share of the profits. This alignment of individual motivation tends to be absent in much of the public sector. As US economist Milton Friedman once said, government is about spending someone else's money on someone else. More often than not, the care factor falls short of government's lofty goals.

Time and time again, the Commission links the occurrence of corruption with a lack of motivation from managers to verify the work of their staff. The Commission has found instances of RailCorp managers signing off material without checking documents (Operation Monto), failing to inspect the work of their staff at NSW Fire Brigades (Operation Mirna), and providing inadequate supervision of subordinate staff at the Australian Museum (Operation Savoy). Put simply, these organisations had not effectively aligned the interests of their managers with those of the organisation.

This alignment is a central pillar of private sector control. Despite the obvious restrictions in applying the same approach to the public sector, there are some options open to agencies. At the very least, a clear allocation of manager accountabilities and a strong disciplinary process that supports these accountabilities is a must.

Eighteenth century philosopher and economist Adam Smith stated that it is the expectation of future work that keeps a provider honest. As well as aligning employee goals to company targets, the private sector also aligns the motivation of the seller to the organisation's goals; that is, good work by a supplier is rewarded with more work. In contrast, regardless of the

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Held in November, the 8th National Investigations Symposium attracted a capacity crowd.

# Commissioner's editorial

Welcome to *Corruption Matters*, the ICAC's biannual newsletter. The year 2010–11 is shaping up to be another busy one for the Commission, a trend that characterised much of the last financial year.

In October, we released our *Annual Report 2009–2010*. The Commission's many achievements detailed in the report (some of which are highlighted below) are due to its dedicated team of professionals. I acknowledge the effort and high level of commitment that continues to be demonstrated by our staff, many of whom work well beyond the call of duty to ensure that the Commission achieves its goals as a world-class anti-corruption agency.

The Commission experienced a surge in activity in 2009–10. We commenced 138 preliminary investigations (compared to 58 in 2008–09), recorded a 186% increase in the number of full investigations undertaken (20 operations compared to seven in 2008–09), and more than doubled the number of days dedicated to public inquiries.

In the last financial year, the Commission also:

- received and managed 2,710 matters, and reduced the time taken to finalise matters in the Assessments Section by 16%
- published a total of nine investigation reports, in addition to several other publications and corruption prevention tools
- conducted 124 compulsory examinations, in which our lawyers acted as counsel in 118 (compared to 33 compulsory examinations in 2008–09, in which our lawyers acted as counsel in 31)
- made corrupt conduct findings against 28 people, and recommended that the advice of the Director of Public Prosecutions be sought with respect to the prosecution of 24 people
- made 45 corruption prevention recommendations
- delivered a total of 76 training sessions.

In 2009–10, the Commission also commenced its first major corruption prevention-based investigation for many years. The investigation examined the corruption risks associated with lobbying, with a view to determining what changes should be made to the NSW regulatory system in order to address those risks, and improve transparency and integrity (see page 8 for further details).

A copy of the Commission's *Annual Report 2009–2010* can be downloaded from our website at [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au).

This month marks the first anniversary of my term as Commissioner, which began in November 2009. During this time, it has been gratifying to see that the work of the Commission has continued to build on that undertaken by my predecessors, and that the public's perception of the work that we do remains positive and strong (findings from our latest community attitudes survey are available on page 8).

In addition to investigating, exposing and preventing corruption (see page 4 for results of recent public inquiries), the Commission is charged with



The Hon David Ipp AO QC, ICAC Commissioner

the responsibility of educating public authorities and officials, and members of the public about corruption and its effects. Every year, the Commission hosts a range of events in support of this objective.

The release of this edition of *Corruption Matters* coincides with our New England Outreach Program in Armidale (30 November–2 December 2010). Recently, the ICAC cohosted the 8th National Investigations Symposium (NIS). Held every two years, the NIS provides investigators and complaint-handlers with a unique opportunity to develop their knowledge and skills (see page 7 for further details).

Currently, the ICAC is working with the Crime and Misconduct Commission (Queensland) and the Corruption and Crime Commission (Western Australia) to organise the 3rd Australian Public Sector Anti-Corruption Conference (APSACC). The biennial event will take place from 15 to 17 November 2011 in Fremantle, under the theme, "A Global Compass – Navigating Public Sector Corruption". More information on the conference is available on page 7 and from the APSACC website at [www.apsac.com.au](http://www.apsac.com.au).

The Hon David Ipp AO QC  
Commissioner

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quality of the work performed, a public sector agency is likely to implement yet another tender process at the conclusion of a contract. In the eyes of the provider, the prospect of future work is barely tied to current, honest behaviour.

Public sector procurement may therefore be characterised in this way: suppliers, on the one hand, that are not motivated strongly enough to remain honest and are controlled, on the other hand, by managers that are not motivated strongly enough to ensure probity. Under such conditions, it is unsurprising that inappropriate relationships flourish.

Recently, some public sector agencies in NSW have made headway in improving the alignment of supplier motivation. A number of agencies are taking steps to consider previous performance as a factor in the allocation of future work. If the potential new risk of supervisors providing falsified reviews of performance can be managed, this approach is likely to increase the motivation of suppliers to provide high value and honest work.

## In-house procurement training on offer

**Approximately \$30 billion of goods and services are procured by NSW state and local governments per annum. The ICAC considers procurement in the NSW public sector to be a major risk area of corruption (between 1989 and 2009, 27 ICAC public inquiries found corruption had taken place in relation to procurement).**

Hence, in 2009, the Commission launched the Procurement Outsourcing and Contracting project in order to examine these risks and help agencies to better manage them. One of the project's most important outcomes has been the provision of new training resources.

Currently, the NSW Department of Services, Technology and Administration (DSTA) offers certification training for those who undertake procurement. A segment of this training is delivered by the Commission to ensure that probity in procurement is addressed.

There are many roles in state and local government agencies that have a significant procurement component. While these roles do not require training to certificate level, there are individuals in the NSW public sector who would benefit from the Commission's new procurement training workshops.

**Corruption prevention in procurement for officers** is designed for state agency and local government officers who undertake significant levels of procurement (particularly those with contract management roles and newcomers to the public sector). The workshop aims to help these officers to understand the probity requirements and corruption risks associated with the procurement of goods and services.

**Corruption prevention in procurement for managers** is designed for managers who have responsibility for a unit that undertakes significant procurement, but may not have a procurement background. The workshop aims to equip managers to identify corruption risks in procurement in their agencies and develop a risk management approach to corruption prevention.

Both of these workshops are free of charge and can be provided to NSW public sector agency staff on site, and issues specific to a work environment can be addressed within the workshop's standard framework. For more information, call the Education and Training Coordinator on 02 8281 5729 or email [education@icac.nsw.gov.au](mailto:education@icac.nsw.gov.au).



In 2009–10, the ICAC's Corruption Prevention, Education and Research Division delivered 76 training sessions across NSW. The Commission's new procurement workshops add to the range of training services offered.

## Lessons from recent ICAC investigations

The Commission has held several public inquiries in recent months, which have not only resulted in findings of corrupt conduct and recommendations to seek DPP advice with respect to prosecutions, but have also identified various corruption prevention issues.

Operation Avoca raised issues relating to poor employment checks. In this investigation, the Commission found that Don Gamage tried to secure employment at Sydney's Woollahra Council by offering \$15,000 to consultant Stephen Blackadder to help ensure Mr Gamage's appointment to a senior engineering position.

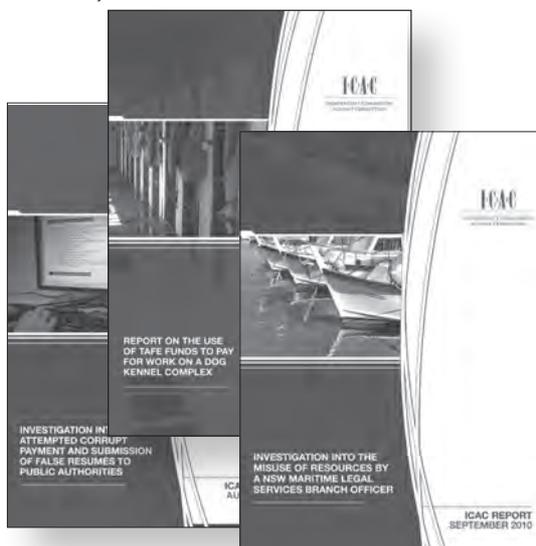
The Commission found that, prior to applying for the position at the council, Mr Gamage had provided false employment history and references when applying for senior engineering positions he successfully obtained at other councils.

The Commission made four corruption prevention recommendations, including that adequate employment screening checks in line with the current Australian Standard on Employment Screening be performed on preferred applicants. To help agencies improve their employment screening practices, the Commission has also produced new pre-employment screening guidelines (see story on page 6).

Operations Corsair and Vargas examined the need for agencies to have strong systems in place to help prevent the misuse of resources. In the former, the Commission found that TAFE head carpentry teacher Garrie Cooper and three contractors falsely claimed close to \$21,000 in payments from TAFE for work on a large dog kennel complex. The Commission made eight recommendations, including that TAFE undertakes an audit of all teaching positions involved in procurement.

In Operation Vargas, the Commission found that NSW Maritime Acting General Counsel Tonette Kelly engaged in corrupt conduct by misusing agency resources and grossly downplaying her secondary employment details in relation to her private conveyancing business, which had an annual turnover of approximately \$120,000.

The Commission made seven corruption prevention recommendations to NSW Maritime, including that all employees in a supervisory role undertake training, and refresher training, in the operation of policies on secondary employment, the use of public resources and recruitment processes.



## A public sector code of conduct: an important symbol

In September, I delivered one of the keynote addresses at the Corruption Prevention Network's annual conference. I took the opportunity to stress the importance of ethics and integrity in building and maintaining community trust in the public sector. One of the cornerstones of an ethical public service is clearly defined values and standards of behaviour. These core values need to be enshrined in a legislated public sector code of conduct.

A clear, strongly worded code of conduct, contained within legislation, is an important symbol. It is a clear indication that the Parliament, the government and the public sector are serious about ethics and integrity. It also provides public servants with a greater level of certainty. They know what they are expected to do, and how they are expected to act.

Statements of values provide the foundation for the way in which organisations work. This is particularly important for the public sector, as they are working in the public interest. This has been recognised by every other government in Australia.

After introducing an Integrity Bill into Parliament recently, Queensland Premier Anna Bligh stated that: "We are determined and serious about providing Queenslanders with a robust integrity and accountability framework encompassing strong rules, a strong culture, strong scrutiny and strong enforcement". She went on to say that: "The message is now entrenched in law and is crystal clear – everybody in public office is expected and required to uphold the highest standards of integrity and accountability".

This was an important symbol. It came from the top, and it showed the importance placed on ethics and integrity. A similar statement, accompanied by a clear, binding, legislated code of conduct, would be an encouraging development in NSW.

**Bruce Barbour**  
NSW Ombudsman

## Corruption prevention tools that address diversity

Three recent ICAC public inquiries involved the giving of gifts and/or cash to local council officers by immigrants from Asia. One involved a businessman who gave a Christmas card containing \$2,000 in cash to a council officer during lease agreement negotiations. A key recommendation made as a result of this particular inquiry identified the need for local councils in NSW to do more to educate their culturally and linguistically diverse (CALD) communities about doing business with public officials.

In August, the Commission released the publication, *Communicating anti-corruption messages into community languages*, as a way of highlighting the issue with local councils. It briefly outlines how the alleged bribes occurred at these local councils, and how the issue of cultural practice was presented as a rationale for the conduct.

While it is recognised that the payment of money or gifts to local officials in some countries is a well-known practice for speeding up or guaranteeing approvals, it is crucial that new immigrants understand that this practice is not acceptable in Australia.

Over the years, the Commission has undertaken various communication-related initiatives to assist the NSW public sector to address this issue, including a radio campaign and printed resource in 30 languages with a clear message that bribery is unacceptable.

More recently, Commission staff have conducted short presentations to students of English language courses at TAFE, targeting recent arrivals who are seeking to settle in NSW. As part of the Commission's rural and regional outreach program, every effort is also made to raise this issue with agencies that specifically deal with new arrivals.

Results from recent public inquiries and Commission research into the public sector indicate that public officials in local councils face higher corruption risks than their state agency counterparts. One of the factors that may contribute to the increased risks is the higher discretionary powers that local council staff hold.

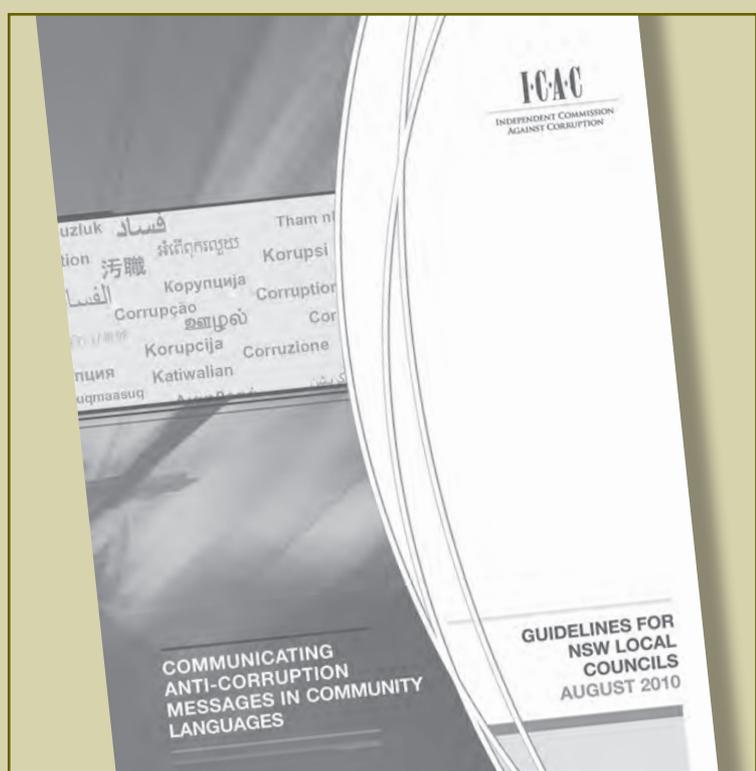
The Commission's guidelines call for local councils to analyse their demographic, and identify the language groups most populous in their area. One of the considerations is English proficiency, which is useful for identifying the languages that should be used for preparing key messages and translating council information. The publication also provides advice on how to develop these messages and how these messages can be communicated.

For example, some of the best ways for a local council to deliver a message to CALD communities include:

- on a poster or leaflet at a front counter
- as a direct link on council's homepage to the relevant language section that contains the translated material
- as part of a tender or contract arrangement (for example, relevant translated publications can be provided along with contracts and the Statement of Business Ethics)
- on application forms, rates notices, and so forth.

*Communicating anti-corruption messages into community languages* is available from the Commission's website.

Councils can also request to make links to the Commission's "Publication in Other Languages" page, where a number of Commission resources and publications are available in 30 languages. For further information, contact Bill Kokkaris, Senior Project Officer, on 02 8281 5877 or email [bkokkaris@icac.nsw.gov.au](mailto:bkokkaris@icac.nsw.gov.au).



## Recruitment: making better employment decisions

The ICAC has released a tip sheet designed to raise awareness of the risks that surround poor employment decisions. Available from the Commission's website, **Recruitment: the background check risk**, is recommended reading for managers, HR professionals and others responsible for recruitment in the NSW public sector.

The tip sheet provides advice under two broad headings – employment screening, and pre-emptive resignations to avoid investigation – and contains case studies from recent matters that have come to the attention of the Commission, such as results from the recent public inquiry (Operation Avoca), where money was offered to secure a job, in addition to a range of resume falsehoods.

**Poor employment screening** continues to create operational and financial angst for organisations that could very easily be avoided. Advice provided in the tip sheet includes the need for checks to be performed in line with the current Australian Standard for Employment Screening and advice for individuals acting as referees.

**Pre-emptive resignations** are often tendered by employees when they become aware that they are being investigated for serious misconduct. Many public sector employers quickly discontinue investigations and accept these resignations, and allow the employee to have a resignation recorded against them.

However, by avoiding a discipline-based termination these individuals are then able to apply for new positions without disclosing the true nature of their departure. It is also problematic for referees to provide adverse advice when giving a reference if the misconduct was not investigated.

The publication provides advice that encourages the continuation of investigations for serious matters, even in cases where the employee who is the subject of the corrupt conduct allegations has resigned.

## New guidelines for referred investigations

**The referral mechanism detailed in sections 53 and 54 (part 5) of the *Independent Commission Against Corruption Act 1988* gives the Commission authority to require a public agency to conduct its own investigation into allegations of corrupt conduct and report back its findings. The ICAC will soon implement new procedures to better monitor the outcomes of these so-called referred investigations.**

In the past three years, the Commission has noted a marked increase in referred investigations; a trend that will continue throughout the 2010–11 financial period. In 2009–10, the Commission monitored the progress of 39 referred investigations (compared to 27 in 2008–09, and 26 in 2007–08).

In light of the importance of these investigations to the Commission's work in exposing and working to prevent corrupt conduct, the Commission has identified the need to review how effectively it monitors referred investigations.

In most instances, the referral itself is made by the Commission to the public agency that is the subject of corrupt conduct allegations. However, in some instances, such as if senior-ranking staff members are implicated or if the agency lacks adequate capacity to investigate, the referral can be made to an oversight body.

Even if allegations are not substantiated to the degree alleged (or at all), a referred investigation often highlights weaknesses in systems or deficiencies in policies, which the agency can then address. In this way, the agency takes direct ownership of problems and can minimise its own corruption risks.

The new procedures that will be created and implemented by the Commission will require an agency conducting a referred investigation to:

- consult with the Commission prior to appointing an external investigator, so that the Commission can assess if the proposed appointee is suitably qualified
- provide an investigation plan from the outset
- provide at least one progress report.

Under the new guidelines, there will be more frequent communication between the agency and the Commission during the course of the investigation. Furthermore, if compelling evidence comes to light casting strong doubt on the veracity of the allegations, the agency can request the Commission to revoke the original referral on the basis that there would be little utility in completing the investigation.

Senior officers of the Commission's Assessments Section who manage referred investigations will receive training on how to determine whether an investigation was conducted satisfactorily. These changes will better enable the Commission to assess whether the resultant report is evidence-based and whether its conclusions and recommendations are sound.

# Australian Public Sector Anti-Corruption Conference 2011

Senior public officials across all tiers of the Australian public sector and corruption prevention practitioners are invited to attend the 3rd Australian Public Sector Anti-Corruption Conference (APSACC) 2011. The conference will be held from 15 November to 17 November 2011 at the Esplanade Hotel, Fremantle, Western Australia.

The biennial event explores tested and new approaches to identify corruption opportunities and develop effective remedies for application in the workplace. The conference theme in 2011, "A Global Compass – Navigating Public Sector Corruption", encompasses the global era and its inherent corruption risks.

Following on from its successes in Sydney (2007) and Brisbane (2009), APSACC has become Australia's premier gathering of anti-corruption practitioners. Both of these conferences attracted over 500 delegates from around Australia and overseas.

Early bird registrations open in March 2011. You can apply on the APSACC website to receive an electronic copy of the program and registration information when it becomes available in 2011. The conference organisers have also negotiated special rates at the conference venue for delegates.

APSACC is a joint initiative of Australia's three major anti-corruption agencies: the Corruption and Crime Commission (Western Australia), the Crime and Misconduct Commission (Queensland), and the ICAC. The event is hosted by the Commissioners of the CCC and ICAC and the Chairperson of the CMC.

## Who should attend?

- Public sector executives and managers
- Corruption prevention practitioners
- Policy advisers
- Local government and planning specialists
- Senior police officers
- Academic and university executive members
- Internal auditors and investigators
- Human resources specialists

## What's on the program?

The APSACC 2011 program is currently being developed. Past programs and papers are available to access from the official website at [www.apsac.com.au](http://www.apsac.com.au). The call for abstracts for proposed papers has been extended until 26/11/10 and the conference organisers welcome suggestions for possible speakers and topics. Please email suggestions to [icac@icac.nsw.gov.au](mailto:icac@icac.nsw.gov.au).

# National Investigations Symposium 2010

Jointly run by the ICAC, the NSW Ombudsman and the Institute of Public Administration Australia NSW, the National Investigations Symposium (NIS) is a biennial event that provides investigators and complaint-handlers with an engaging and relevant programme of workshops and presentations.

The 8th NIS was held in Manly, north of Sydney, on 3–5 November, and provided delegates with a broad range of topics that reflected the many dimensions of the investigative role. There were also practical sessions on report writing, workplace investigations, and investigative interviewing techniques.

The particular focus of this year's symposium was on how investigation practice is transforming. An example of this was in Professor Richard Macrory of University College London's keynote address, which referred to his experience in reforming environmental regulation in the UK.

Some 250 delegates attended the symposium, which was fully subscribed. The next NIS is expected to be held in 2012.



(L–R): Paul Dorn, Chief Executive Officer, Institute of Public Administration Australia NSW, Bruce Barbour, NSW Ombudsman, and the Hon David Ipp AO QC, Commissioner, ICAC.

## In other news

### Survey reveals ongoing support for the ICAC

Findings from a survey conducted in late 2009 on community attitudes to the ICAC showed that 95% of respondents believe that having the Commission is a good thing for the people of NSW. Approximately two-thirds of respondents indicated that the Commission has been successful in exposing corruption, and about half indicated that it had been successful in reducing corruption. Roughly 75% also said they would be willing to provide the Commission with information about serious corruption.

The Commission has conducted Community Attitudes Surveys periodically since 1993 to measure changes and trends in the NSW community's awareness, perceptions and attitudes to public sector corruption in NSW and the Commission. The *Community Attitudes to Corruption and to the ICAC: report on the 2009 survey* is available from the Commission's website.



### ICAC proposes new lobbying scheme

Lobbying may be a valuable component of government decision-making but it is also the source of widespread public suspicion and complaint. Much of this has to do with the perception that corruption is inherent in the relationship between the lobbyist and the lobbied. So, then, how do you regulate lobbying activity to improve transparency and discourage the occurrence of corrupt conduct?

In November, the Commission released the results of its major investigation into the corruption

risks associated with the lobbying of public officials and public authorities in NSW. The report contains 17 recommendations for a new lobbying regulatory scheme that would address the identified risks and improve the transparency and integrity of the state's lobbying practices.

The Commission's investigation began in December 2009 with a review of literature and regulatory systems both within Australia and at the international level. An issues paper was then released in May 2010, which generated 60 submissions. Almost 100 people were interviewed in the lead-up to the Commission's 11-day public inquiry (held in August), at which 48 witnesses gave evidence. A copy of the report, *Investigation into Corruption Risks Involved in Lobbying*, can be downloaded from the Commission's website.

### Platform for industry professionals

Now in its 16th year, the Corruption Prevention Network (CPN) encourages practitioners in Australia and beyond to keep abreast of developments in the areas of fraud and corruption prevention through regular events, and an e-discussion and information exchange.

Over 250 people gathered in Sydney for the CPN's 2010 Annual Forum. Held every year in September, participation at the event has steadily increased over the years (in fact, about half of the forum's attendees were new to the CPN).

The 2010 forum focused on two main streams of activity: corruption prevention fundamentals, and new frontiers. The 10 presentations included an opening keynote address by NSW Ombudsman Bruce Barbour, who highlighted the need for all who work in the public sector to "live up to the standards". The forum's closing presentation by United Nations representative Dr Olivier Brasseur provided insights into the challenges of corruption prevention when delivering services into areas where corruption is rampant and when operating in a highly political and global environment.

The CPN welcomes the participation of individuals from both the public and private sectors. For more information, log onto [www.corruptionprevention.net](http://www.corruptionprevention.net).

**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 of the Independent Commission Against Corruption.

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