

Wednesday 28 May 2014

Investigation into the conduct of the commissioner of the NSW State Emergency Service

ICAC FINDINGS

The ICAC found that NSW State Emergency Service (SES) Commissioner Murray Kear engaged in corrupt conduct by deliberately failing to properly investigate allegations against SES Deputy Commissioner Steven Pearce in relation to the entry into two contracts, the use of SES funds to purchase roof racks and electric brakes for Mr Pearce's car, the obtaining of an SES-paid vehicle for an SES manager and the potential falsification of diary entries because of his friendship with Mr Pearce.

The Commission found that Commissioner Kear also engaged in corrupt conduct by dismissing Deputy Commissioner Tara McCarthy from her employment with the SES, substantially in reprisal for her making allegations about the conduct of his friend, Mr Pearce. These included the allegations concerning the circumstances in which the SES had entered into the two contracts, Mr Pearce's misuse of SES funds to purchase roof racks and electric brakes for his car, Mr Pearce's alleged misuse of his SES credit card and the alleged fabrication of diary notes.

ICAC RECOMMENDATIONS

The ICAC is of the opinion that the advice of the Director of Public Prosecutions should be obtained with respect to the prosecution of Commissioner Kear for an offence under section 20 of the *Public Interest Disclosures Act 1994* (the PID Act) of taking detrimental action in reprisal for a person making a public interest disclosure.

The Commission is also of the opinion that the minister for police and emergency services should give consideration to the taking of action against Mr Kear for disciplinary offences of misconduct with a view to his dismissal. The offences relate to his misconduct in terminating the employment of Ms McCarthy and deliberately failing to appropriately investigate allegations concerning Mr Pearce because of his friendship with Mr Pearce.

CORRUPTION PREVENTION

The ICAC has not made any corruption prevention recommendations in this report. One of the major issues identified during the investigation was Commissioner Kear's failure to properly identify and manage the conflict of interest arising out of his friendship with Mr Pearce. The identification and management of conflicts of interest are key anti-corruption issues and have been discussed in a number of previous ICAC reports.

Issues concerning failure to appreciate, or adhere to, the requirements of the PID Act are addressed through ICAC corruption prevention workshops. The NSW Ombudsman provides information, advice, assistance and training to public authorities on public interest disclosures and the operation of the PID Act.

BACKGROUND

On 14 May 2013, Commissioner Kear summarily dismissed Ms McCarthy from her position as an SES deputy commissioner. Commissioner Kear told Ms McCarthy that he had decided to dismiss her because he had lost trust and confidence in her. The following day, Ms McCarthy contacted the ICAC and alleged that, among other things, she had been dismissed by Commissioner Kear following reports she had made to him that Mr Pearce may have engaged in corrupt conduct.

The ICAC's investigation focused on the manner in which Commissioner Kear dealt with Ms McCarthy in the light of the allegations she raised in relation to the conduct and performance of Mr Pearce. The report is available on the ICAC website at www.icac.nsw.gov.au.

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