

**Undisclosed conflict of interest of a senior executive of the
Sydney Harbour Foreshore Authority****ICAC FINDINGS**

- The ICAC has found that Andrew Kelly and Charif Kazal engaged in corrupt conduct.
- Mr Kelly engaged in corrupt conduct by deliberately failing to disclose a conflict of interest and continuing to deal with matters affecting Kazal tenancies.
- Mr Kazal engaged in corrupt conduct by holding out the prospect of employment in the UAE to Mr Kelly and paying him \$11,170 for his flight and accommodation expenses arising from a trip to the UAE in May 2007, with the intention that these would tend to influence Mr Kelly to exercise his official Sydney Harbour Foreshore Authority (SHFA) functions in a manner favourable to Kazal business interests.

ICAC RECOMMENDATIONS

- The ICAC is of the opinion that the advice of the Director of Public Prosecutions (DPP) should be sought with respect to the prosecution of Mr Kelly for the common law offence of misconduct in public office in relation to his failure to disclose his conflict of interest.
- The ICAC is of the opinion that the advice of the DPP should be sought with respect to the prosecution of Mr Kazal for an offence under the *Independent Commission Against Corruption Act 1988* of giving false evidence to the Commission that he never intended to settle Mr Kelly's accommodation account for the May 2007 trip.
- As Mr Kelly is no longer a public official, it is not necessary to make any recommendation in relation to the taking of disciplinary or dismissal action.

CORRUPTION PREVENTION

The ICAC has made four corruption prevention recommendations to help the SHFA improve the robustness of the decision-making process to make it difficult to inappropriately influence the process, including that:

- Responsibility, authority and accountability for heritage protection be located within a single, independent role with a commensurate level of seniority within the SHFA.
- The SHFA establishes a formal process that tenants are required to follow when applying for compensation on works they have carried out on SHFA properties (including a report prepared by suitably qualified professionals that documents the work undertaken, why it was necessary, and an itemised list of expenditure).
- That where a recommendation to the general manager and board of the SHFA would provide a significant client benefit, a comprehensive written business case is to be provided to the general manager and board by the responsible director.

BACKGROUND

The Commission's investigation commenced following the receipt of a complaint in July 2010 alleging that Mr Kelly was involved in a business relationship with Mr Kazal and a Kazal family business at a time when, in his capacity as a SHFA officer, Mr Kelly was dealing with a number of issues arising from the leasing of SHFA properties to Kazal companies.

A number of articles also appeared in the *Sydney Morning Herald* alleging Mr Kelly favoured the Kazals when dealing with their leases at the SHFA, and that Mr Kazal repaid Mr Kelly by favouring him with trips to the UAE and a high paying position of employment in a company in which Mr Kazal exercised some control. The full report can be accessed from the ICAC website at www.icac.nsw.gov.au.

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