

Tangled up in videotape

On 23 June 2005 the Commission published its report on an investigation into what has been described as a “sinister and cynical plot” involving bribes, developers and secret recordings.

In February this year the ICAC held public hearings to investigate the circumstances surrounding a cash

payment to the Mayor of Strathfield Municipal Council, Alfred Tsang by local developer Melhem (Michael) Saklaoui.

Mr Saklaoui and a then-serving NSW Police officer, Scott Allman, secretly made audio and video recordings of Mr Tsang accepting the cash in a restaurant on 23 July 2004. A few days later Mr Saklaoui delivered copies of the recordings to Strathfield Councillor John Abi-Saab.

Mr Abi-Saab then asked to meet with Mr Tsang and told him he had seen a recording, which he claimed he had been shown by persons he didn't know, that showed Mr Tsang accepting a bribe. Mr Abi-Saab also showed the recordings to the then editor of the *Inner Western Suburbs Courier*, Geoffrey Howe.

The Commission's investigation established that Mr Abi-Saab used the recordings to try and force Mr Tsang to resign as Mayor and to stay on as a Councillor in circumstances where he and his vote could be manipulated.

In his opening address at the Commission's public hearing, Counsel Assisting the Commission Michael King described the situation as a “sinister and cynical plot ... fuelled by ambition and greed and carried forward by deceit and dishonesty”.

The investigation into the matter began when Mr Tsang himself reported to the ICAC on 1 August, after learning from Mr Abi-Saab of the existence of the recording, that he had received \$2,500 from Mr Saklaoui, who had offered him \$200,000 if Mr Saklaoui's application to develop a car park site and adjoining properties was approved by Council.

The circumstances surrounding this matter go back to early 2002 when Strathfield Municipal Council announced it would introduce an updated Local Environmental Plan (LEP), to include changes to the zoning and permissible floor space ratios for

certain areas, including land adjacent to Liverpool Road in South Strathfield.

Subsequently a number of developers, including Mr Saklaoui and Mrs Anne Bechara, purchased properties or acquired options to purchase properties that were likely to increase in value as a result of the proposed changes in the draft LEP.

In June and July 2004 Mayor Tsang recommended in two Mayoral Minutes removing some of the proposed zoning and floor space ratio changes from the draft LEP.

These Minutes were passed by Council and, if the recommendations were accepted by the Minister for Planning, would have significantly reduced any actual or projected increase in property values in the areas affected.

Mr Saklaoui was one of the developers affected by these changes. The Commission's investigation established that shortly after these Minutes were passed by Council, preparations for the operation to secretly record Mr Tsang accepting a bribe began.

The Commission's report makes findings of corrupt conduct against Alfred Tsang, Melhem (Michael) Saklaoui, John Abi-Saab and Scott Allman and recommends that consideration should be given to the prosecution of Mr Tsang, Mr Saklaoui, Mr Abi-Saab, Mr Allman, and also

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The former Mayor of Strathfield, Alfred Tsang accepting a cash payment. The Commission's investigation found evidence of an elaborate plot by another councillor and developers to manipulate the mayor.

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Commissioner's editorial

This is my first Corruption Matters editorial since commencing as ICAC Commissioner in November 2004, and I'd like to take this opportunity to share with you my thoughts on an issue of particular importance.

In the seven months that I've been in the role of Commissioner, the crucial importance of maintaining strong regulatory frameworks has been underlined time and again.

Many of the matters that come to us for investigation and/or corruption prevention work stem from a failure to keep a close eye on such functions as assessments, certification and licensing.

It can be a challenge to monitor these functions even when they are performed in-house, but the challenge is much greater when these functions are performed by others.

Outsourcing of public official functions is usually done for sound reasons – often economic ones – but the inherent risks must be recognised and managed.

In recent months we have investigated the issue of several thousand bogus competency and safety certificates to operators of heavy, potentially dangerous construction equipment such as bobcats and mobile cranes as well as systemic problems in the issue of contractor builder licences.

These problems have a direct bearing on workplace safety in the inherently hazardous construction industry and may affect consumer confidence in the contractor builder sector.

Furthermore, the fact that NSW qualifications are recognised interstate through systems of national accreditation means that these problems affect people in other states as well.

These are major and far-reaching consequences, yet they stem from very specific deficiencies in monitoring outsourced or shared regulatory functions. These include a failing to carry out such simple but important checks as monitoring the number of assessments carried out by individual assessors and conducting effective random audits.

Much of the work of monitoring regulatory functions simply requires diligent and consistent application of such processes. The corruption prevention recommendations

the Commission makes in its investigation reports and corruption prevention resources are designed to help agencies to implement such systems.

However, there are also some more fundamental, and intractable, issues that need to be addressed.

One is the proliferation of bodies which have the capacity to issue various forms of qualifications. There are over 800 registered training organisations in New South Wales alone, and hundreds more interstate. At present, these registered training organisations may be registered in a state of their choosing, yet conduct extensive operations in other states. The need for a coordinated national response is obvious; otherwise we run the risk of seeing training organisations registering in “states of convenience” – those with the fewest controls – and operating freely in other states.

Another major issue is the interdependency of regulatory bodies, with the consequent potential for problems in one agency to compromise the operations of others. We have seen recent examples where one agency's attempts to check the veracity of certificates and licences relied on computer records of another agency, yet the integrity of that data was in doubt as a result of inadequate monitoring. Similarly, the problems in the issuing of contractor builder licences that we have been investigating stem, at least in part, from an attenuated chain of assessment and reporting, in which one agency relied on another to conduct assessments on its behalf, assessments which were in turn contracted out to individual assessors.

Finally, there is perennial issue of an agency's reliance on the income generated through regulatory activity such as assessment, certification and licensing, which could potentially act as a disincentive to disclosing or managing problems in the conduct of that activity.

Dealing with issues such as these requires a sustained effort from public sector agencies and policy-makers at both state and national levels. I trust that the Commission's investigative and corruption prevention work will help in identifying the issues and suggesting some practical strategies to deal with them.

The Hon. Jerrold Cripps QC
Commissioner

Changes to the ICAC Act

In June 2004 the Premier announced that the *Independent Commission Against Corruption Act 1988* would be reviewed to determine whether the terms of the Act remain appropriate for securing the Commission's objectives.

The Hon. Justice Jerrold Cripps QC was appointed by the Premier to undertake the review, with a scheduled completion date of 29 October 2004. Justice Cripps withdrew from the review upon his appointment as ICAC Commissioner and Mr Bruce McClintock SC was appointed to take over and complete the review by 31 January 2005.

The McClintock report made a number of recommendations to amend the ICAC Act and these were considered in the

drafting of the Independent Commission Against Corruption Amendment Bill 2005, which was introduced into the Legislative Assembly on 23 February and assented to on 14 April 2005.

The most significant of the changes introduced in the *Independent Commission Against Corruption Amendment Act 2005* is the establishment of an independent Inspector of the ICAC position. The Commission itself has for some time been advocating for the creation of an independent Inspector role, to ensure the best possible accountability for the Commission's use of its extensive powers.

The Inspector of the ICAC will be responsible for overseeing the Commission's use of investigative powers and for investigating any complaints against Commission officers.

The Amendment Act also:

- renames public hearings of the Commission as “public inquiries” and private hearings as “compulsory examinations” (The purpose of these changes in terminology is to better reflect the fact that ICAC exercises investigative, not judicial, functions),
- requires ICAC to include additional information about its investigations and the time taken to complete them in its annual report,
- requires ICAC to provide reasons to complainants and reporting officials for not investigating allegations of corruption
- restricts the Commission's power to refer to the Supreme Court contempt

of ICAC and clarifies the procedures for punishing such contempts

- creates offences of threatening counsel assisting the Commission or legal practitioners or witnesses appearing before the Commission and makes a number of other minor amendments.

The Commission is currently working to ensure that its procedures comply with these changes once the amendments become law.

For more information on the *Independent Commission Against Corruption Amendment Act 2005*, visit the ICAC website: www.icac.nsw.gov.au

Information security – managing risks

It is the responsibility of every public sector organisation to ensure that sensitive information is handled securely.

Clear policies and procedures are needed to regulate access, handling and release of such information and effective auditing practices are needed to monitor these activities. Employees and contractors must also be informed and educated to ensure that sensitive information is not improperly used, released or concealed.

Improper handling of sensitive information can damage careers, cause embarrassment to the public sector agency and individuals and can, in extreme cases, put lives at risk.

For example, a café worker who occasionally served a Queensland police officer told the officer he was concerned for the safety of an ex-girlfriend, and asked if he could find out whether she had taken out a domestic violence order against her husband. Thinking he could trust the café worker, the officer used the police computer system to gain access to the woman's silent telephone number and address, which he also gave to the café worker. The woman later complained to the Queensland Police Service that this confidential

information had been released to the café worker who, she claimed, had been stalking her for many years. (Criminal Justice Commission 2000)

In 1992 the ICAC published its *Report on unauthorised release of government information* about public officials who were accessing and disseminating official information (for payment or otherwise) and the conduct of persons dealing with these public officials. The investigation disclosed a massive illicit trade in government information. That trade was conducted with apparent disregard for privacy considerations and a disturbing indifference to concepts of integrity and propriety.

There have been great reforms in the public sector since the release of that report. Access to databases in public sector agencies is password-protected and there are mechanisms for auditing access and identifying the people who have accessed specific information.

Although advances have been made to electronic system controls, education is still required to inform staff about public duty and the damage that breaches of privacy can cause.

It must always be remembered that not all breaches involving confidential

information are done for profit or nefarious reasons.

In 2003 an unsuccessful tenderer complained to the ICAC that there was corruption in a government tendering process by a NSW government agency. The tenderer had initially contacted the agency to receive feedback about its performance in the tendering process and was given the names and some details about the competing tenders. Enquiries found that the tender process was transparent and complied with statutes and policy. The problem was that a well-meaning public official had acted improperly by inadvertently giving out confidential information.

There is a range of resources that can help public sector agencies and councils to review and manage information security risks, including:

- *Information security: keeping sensitive information confidential*, Crime and Misconduct Commission, Queensland, 2005.
- *I wish it wasn't me: information security in the public sector*, Department of Information Technology and Management and ICAC, 2003.

This resource has been produced in two versions, for local government and state agencies respectively.



Copies have been distributed to NSW public sector agencies by DITM in 2003 and to NSW councils by the ICAC. Contact the ICAC for additional copies. The facilitator's guide is also available on the ICAC website.

- *Release of confidential information: Practical guide to corruption prevention*, ICAC, Sydney, 1996.

Printed resources can be accessed from the ICAC or Crime and Misconduct Commission websites www.icac.nsw.gov.au or www.cmc.qld.gov.au

ICAC investigates Koompahtoo land dealings

The Commission has released its report on an investigation into land dealings by the Koompahtoo Local Aboriginal Land Council (KLALC) at Lake Macquarie.

The report makes corrupt conduct findings against eight people and recommends that consideration be given to the prosecution for various criminal offences of six people, including Bill Smith, the former chairperson of KLALC and Stephen Griffen, the former KLALC Treasurer.

In July 1997 the KLALC entered into a joint venture with Sanpine Pty Ltd to undertake a residential development on a large parcel of land at Morisset, near Lake Macquarie, which was owned by the KLALC.

The Commission's investigation found that Mr Smith, as KLALC Chairperson, had accepted the position of Aboriginal Liaison Officer to the joint venture in circumstances which suggested that he had a clear conflict of interest, had accepted payment for this role and had failed to make appropriate disclosures to the members of the Land Council that he was employed as the Liaison Officer and receiving payment.

The Commission also investigated a number of other transactions, including the transfer of land from the KLALC to KLALC Property & Investments Pty Limited, a trustee company formed at the instigation of the Chairperson; the circumstances surrounding payments made by a property development company, Villa World Limited, to Sanpine in return for KLALC's consent for the construction of a sewer main across KLALC land; and the transfer of residential land to members of the KLALC at prices significantly below market value.

The Commission also found that Dale Holt, former Development Manager with Villa World; Adam Perkins and Graham Steer, directors of Sanpine; Robert Scott, a consultant and project manager and Kim Wilson, a native title and land rights consultant, had engaged in corrupt conduct and recommended that consideration be given to their prosecution of Mr Holt, Mr Perkins, Mr Scott and Mr Wilson for offences under section 249F of the Crimes Act (aiding / abetting receipt of corrupt benefit).

The Commission's report comments that KLALC's decision-making processes were marred by a lack of transparency and by mismanagement and factionalism, and highlights the need for legislative review and reform.

The Commission's report also makes seven recommendations to the NSW Government to reduce the risk of corrupt conduct in relation to the holding of land by Aboriginal land councils in NSW.

The report recommends that the Government consider whether and on what grounds Local Aboriginal Land Councils may dispose of lands they hold. It also recommends that the Government consider the oversight function of the NSW Aboriginal Land Council (NSWALC) and that once these policy matters are resolved, that the *Aboriginal Land Rights Act 1983* be amended accordingly.

The report also makes four specific recommendations: that Local Aboriginal Land Councils have clear guidelines for any commercial development of land; that the processes by which Local Aboriginal Land Councils enter into consultancy or partnership agreements be required to be open and transparent; that proper roles be established for the staff, executive and membership in general meeting of Local Aboriginal Land Councils and that the Government consider legislative change to require an appropriate

body to provide advice and assistance to Local Aboriginal Land Councils to help them comply with their statutory obligations and run their affairs effectively.

The NSW government has established a taskforce to review the *Aboriginal Land Rights Act 1983*.

NSWALC Administrator, Murray Chapman said that he "would expect the current review of the Act to propose a new and comprehensive land dealings regime for, among other things, much more transparency in development proposals... [and] forms of development which gives Aboriginal people lasting benefits that are transparent, commercially sound and in accordance with the law".

The Commission has met with the taskforce reviewing the *Aboriginal Land Rights Act* and is working closely with NSWALC on corruption prevention issues. In May this year, the Commission organised a well-attended workshop on corruption risk management for Local Aboriginal Land Councils as part of the Commission's education, awareness and training program on the Central Coast.



Focus on local government

Promoting better practice

The Department of Local Government (DLG) is currently conducting a major local government reform program which aims to improve the viability and sustainability of councils.

One of the core components of the DLG's reform program is "Promoting Better Practice", a comprehensive review process to examine a range of matters including the strength of individual councils' governance structures and internal controls.

Promoting Better Practice reviews also play a role in monitoring the performance of councils and in the development of good practice in local government across the state. For example, review findings can help identify the need for future action by DLG or legislative change.

DLG conducted a pilot review of Campbelltown City Council in July 2004, and after evaluating the pilot commenced a full review program.

The review process

A review involves a review team closely evaluating key aspects of council operations and giving feedback.

The review team examines the council's overall strategic direction, checks compliance, examines appropriate practices and ensures that the council has frameworks in place to monitor its performance.

Before the review team visits a council, the council completes a self-assessment of their strategic management and operating practices. The self-assessment includes checklists covering the areas of governance; regulatory functions; asset and financial management; community and consultation; and workforce relations.

The review team analyses this self-assessment material, as well as considering other relevant performance data and the local circumstances of the council, in order to appropriately focus the review.

The review team then visits the council to gather documentary evidence to support the department's analysis, to observe the work of the council at first-hand and to discuss these aspects with staff and councillors.

As the review progresses, the review team tests its hypotheses and preliminary conclusions before making recommendations to address specific issues. The review team then prepares

a draft report, which is submitted to the council for comment. The council's comments are incorporated into the final report, which the council is requested to table so that it becomes a public document.

The council is requested to draw up an action plan in response to the recommendations in the final report, and implementation of the recommendations is monitored by DLG.

Results to date

DLG has completed reviews of eight councils since the program began and a further nine reviews are in progress.

DLG reports that councils are interested in and supportive of the Promoting Better Practice review program, which has produced some interesting findings. For example:

- All councils have at least some elements of a good corporate governance framework in place, but larger councils tend to have much more detail and depth to their frameworks.
- Larger councils are much more likely to have a clearly defined strategic direction, but most councils can do better in ensuring

they have an integrated process for realising this strategy.

- Councils, particularly smaller rural councils, generally try to work together in order to overcome problems of size, isolation and limited resources.
- Risk management is generally focussed on managing insurable risks and does not extend to all aspects of council operations.
- Fraud risk management in particular is generally receiving insufficient attention.
- More attention needs to be given to documenting and monitoring procedures for procurement and disposal.
- The findings in the area of complaints handling are disappointing, with few of the councils reviewed having systems for managing complaints that meet good practice.

For more information on the program, or to register interest in having a Promoting Better Practice review of your council, contact the Investigations and Review Branch of the Department of Local Government on tel 4428 4100.

New resource

A new ICAC brochure, *The Local Government Amendment (Discipline) Act 2004 and the ICAC*, is now available.

The Local Government Amendment (Discipline) Act 2004, which came into effect in January 2005, sets out the standards of behaviour that the community expects of councillors and council staff. It also gives the Commission additional scope to investigate the conduct of council staff and councillors.

The brochure is intended to assist councils in understanding what the recent amendments to the Local Government Act mean in terms of the Commission's jurisdiction and what is required of staff and councillors. The brochure is being distributed to all councils in New South Wales and is also available on the ICAC website www.icac.nsw.gov.au.

Update on Orange Grove

The Commission is in the final stages of its investigation into matters concerning the Orange Grove shopping centre in southwest Sydney.

The Commission's investigation has focussed on the decision by Liverpool City Council to grant development consent for premises at 12-16 Orange Grove Road, Liverpool to be used as a warehouse clearance outlet, and the subsequent refusal by the Minister Assisting the Minister for Infrastructure and Planning, the Hon. Diane Beamer MP, to approve a draft amended Liverpool Local Environmental Plan (Amendment 92), which would have had the effect of allowing the warehouse clearance outlet to continue to operate.

The Commission's investigation originated in a complaint by Mr Nabil Gazal – a director of Gazcorp Pty Ltd, which owned the land and premises on which the warehouse clearance outlet was established – and his son, Nicholas Gazal, alleging that there had been corrupt interference with Ms Beamer's decision to refuse to grant the amendment to the Liverpool Local Environment Plan

Mr Gazal provided statutory declarations from himself and three other persons which alleged, in varying but similar ways, that the Premier, Bob Carr, had instructed Minister Beamer to withhold her approval for the proposed

amendments to the LEP so as to force Gazcorp to discontinue the warehouse clearance outlet. Mr Nabil Gazal's statutory declaration claimed that he had received information from the Hon. Joseph Tripodi MP that the Premier had done this as a favour for Frank Lowy, Chairman of the Westfield Group, which operates its own shopping centre in Liverpool.

The Commission decided it was in the public interest to investigate these allegations. It is vital that Ministers exercise their statutory discretion powers impartially, and it was important to ascertain the facts and dispel any misinformation when corruption had been alleged at the most senior levels of the State's public administration.

After conducting initial enquiries with a range of individuals and organisations, including Liverpool City Council, the Commission held public hearings over 22 days, hearing evidence from 12 witnesses. Those who gave evidence to the Commission included the Hon. Diane Beamer MP; the Hon. Craig Knowles MP (the then-Minister for Infrastructure and Planning); staff of the Department of Infrastructure, Planning and Natural Resources; the Hon. Joseph Tripodi (the Member for Liverpool); Mr Nabil Gazal, director of Gazcorp and representatives of the Westfield Group.

The Commission is currently finalising its report on this investigation.



Focus on universities

Quality assurance and corruption prevention

Universities are complex public sector organisations that face a wide range of fraud and corruption risks in their day-to-day operations.

Despite these risks, the NSW Auditor General's report on performance audit and fraud control reports that, based on responses from universities, the NSW university sector has "a significantly larger proportion of 'generally ineffective' strategies for preventing institutional fraud compared to the public sector as a whole".

The ICAC consistently recommends

that all public sector organisations include corruption and fraud risks in their standard risk management processes.

These risks may become more common as Australian universities increasingly market their services commercially – particularly to off-shore consumers. In response to the risks posed by off-shore provision, some analysts have called for increased regulation.

The regulation of services is usually imposed from outside an organisation but RMIT University has recently introduced a distinctive method of self-regulation of its off-shore services.

RMIT's Business Portfolio has several arrangements with Malaysian partners that are governed by service agreements. The agreements act as quality assurance mechanisms by building in routine audits and agreed performance standards. In a recent paper, RMIT staff report that "The contract provides the legal framework for the governance and operationalisation of our partnerships. The quality audit provides verification for all our stakeholders."

This strategy aims to ensure the quality of RMIT services but it presents another

mechanism to use against fraud and corruption. Because many of the risks to the quality of educational services involve academic, organisational and personal integrity, techniques for promoting quality such as performance standards and transparent processes are equally effective in preventing fraud and corruption.

Note: The RMIT paper by R. Sheehan and E. Fallshaw, "Quality in Overseas Partnerships: Evidence from a Malaysian Case Study", can be found at www.tefma.com/infoservices/papers/2003_ATEM_AAPPA_conf/Sheehan_R.pdf

Universities which are part of the NSW public sector:

- Charles Sturt University
- Macquarie University
- Southern Cross University
- University of New England
- University of NSW
- University of Newcastle
- University of Sydney
- University of Technology
- University of Western Sydney
- University of Wollongong

The NSW government's role

The NSW State Government is responsible for university governance, universities' use of land (sale and leasing) and the overall activities of higher education institutions including the propriety of their operating procedures. The

State is responsible for establishing universities under State legislation, and for periodically amending legislation and by-laws.

NSW universities and the ICAC

Like all NSW public authorities, NSW universities have an obligation under section 11 of the ICAC Act to notify the ICAC of possible corrupt conduct. University staff have the same reporting rights and responsibilities as any other NSW public servant.

In the ICAC report *Profiling the NSW Public Sector (2003)* the workplace activities that NSW universities most commonly rated as being a major corruption risk area were:

- Use of agency resources, material and equipment (nominated by 7 of the 10 universities)
- Purchasing/tendering for goods (6 universities)
- Cash handling (6 universities)
- How confidential information is used (5 universities)
- Use of travel claims and travel allowance (5 universities).

New university module

The Commission has been working with the University of Wollongong to develop a training module on corruption risks specifically designed for the university sector.

The Commission's collaboration with the University on this project developed out of links established during an education, awareness and training program in the Illawarra in November 2004 (part of the Commission's Rural and Regional Outreach Strategy).

The Commission's discussions with the University highlighted some of the issues raised in *Degrees of Risk*, an ICAC report published in 2002 in response to growing concerns that corruption risk management in universities was not as effective as it should be.

Degrees of Risk indicated that some of the corruption risks faced by universities are unique, and arise from the particular functions of universities, an incomplete overlap between academic and public sector standards and values, and the commercial environment in which universities now operate.

The University of Wollongong was also interested in developing some training about corruption prevention for its staff.

The training module will consist of a half-day workshop and will be piloted in 2005. If you would like more information on the Corruption Risks in Universities training module, please call Catherine Hughes at the Commission on tel 8281 5731.

Handling of plagiarism

The Commission is in the final stages of an investigation into the University of Newcastle's handling of plagiarism allegations.

The investigation arose from allegations in 2003 by Mr Ian Firms, a sessional lecturer at the University of Newcastle, of corrupt conduct in connection with the University's handling of a report by him that 15 postgraduate students had substantially plagiarised the contents of assignments which he had received for assessment.

The 15 students were all enrolled in an offshore Master of Business Administration (MBA) program administered by the University's Graduate School of Business and delivered through a partnership with Institut WIRA, a Malaysia-based private educational institution.

As a visiting Graduate School lecturer in the offshore program, Mr Firms visited Kuala Lumpur in late 2002 to deliver classes in an MBA unit titled "Organisational Behaviour and Effectiveness" and was responsible for marking the students' assignment and exam and for moderating coursework marks.

On 28 January 2003 Mr Firms reported to the University that in his opinion 15 of the students had substantially plagiarised the content of their assignments from other sources.

Mr Firms's report was made to the Head of the Graduate School, Dr Paul Ryder. The ICAC's investigation focussed on the handling of this report by senior executive staff of the University which had a detailed policy in place for prevention and detection of plagiarism.

The Commission's report on this investigation is currently being finalised and will then be presented to Parliament.



New resources on fraud control

In the last issue of *Corruption Matters*, I wrote about the importance of fraud control and our forthcoming performance audit report on the subject.

Our report, *Fraud control: Current progress and future directions* has now been published, together with a Better Practice Guide to assist public sector agencies to implement effective fraud control strategies.

What we've found

In conducting our financial audits, Australian Standard AUS 210 requires the Audit Office to seek a formal assurance each year from every agency concerning the adequacy of their arrangements for fraud control. The results of our financial audits are both encouraging and disappointing.

On the positive side, some agencies have developed strong profiles for their fraud control work and the proportion of agencies with only poor to moderately effective fraud control strategies has declined.

However, only half of the agencies have "effective" or "highly effective" fraud control strategies.

Our public sector needs to consolidate its slow but steady progress in addressing this issue and raise its performance to the level required to combat the risk that fraud presents.

What needs to be done?

Our performance audit report on fraud control report focusses on three areas: action at the policy level across the sector; action by Audit Committees within agencies and action by internal auditors and fraud control specialists within agencies.

In our ongoing relationships with agencies we will be placing a particular emphasis on the vital, ongoing role that Audit Committees play in assuring that an agency is managing its fraud risk.

To assist Audit Committees to meet this challenge, our report provides guidance on the role that Audit Committees should adopt and specifies key improvements in fraud control that each Audit Committee should examine for their agency.

Our report and Better Practice Guide are both available from our website – www.audit.nsw.gov.au/reports

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The Audit Office's Mission is to assist Parliament in improving the accountability and performance of the State. It does this by reporting its findings from auditing the financial reports of all the State's public sector bodies and through its performance audits on specific government activities. It also has a role in dealing with protected disclosures.



NSW Ombudsman

Problem statements by academics

Freedom to speak out on issues of public interest without fear of risk to employment has traditionally been regarded as a cornerstone of academic freedom. Some recent complaints to the NSW Ombudsman together with knowledge of cases elsewhere in Australia suggest confusion about the extent of this freedom, with complainants claiming over-restrictive application of codes of university conduct and media policies.

A particular point of sensitivity is where an academic criticises the administration or reorganisation of their own university. Of course, stifling criticism can at times be a means of cloaking maladministration, including corruption, from legitimate scrutiny.

To assess current thinking on this issue, earlier this year the Ombudsman sent a questionnaire to all ten NSW public universities (and to other interested parties including staff unions) on what might constitute acceptable and unacceptable public statements by university staff. It set out 11 classes that might be acceptable e.g. "where an opinion is within the field of academic or professional expertise of the staff member and given in good faith". It listed five classes that might be unacceptable e.g. "the statement contains purported facts that the staff member knows or could reasonably be expected to know are

incorrect". Lastly were five classes of statement that could be considered in a grey area e.g. "where a statement's substance could be expected to qualify it as a protected disclosure had it been made pursuant to the provisions of the *Protected Disclosures Act*".

In addition to seeking comments on the acceptability of classes of statement given in the questionnaire, we sought views on how a university might best handle issues arising from problematic public statements by staff. Should there be a standing panel to deal with these issues? Should unacceptable public statements be handled outside the disciplinary provisions of staff enterprise agreements?

We are currently assessing questionnaire responses. We expect shortly to produce a discussion paper suggesting guidelines to assist universities to deal with the issue of public statements by staff in a fair, consistent and transparent manner. Such guidelines could also provide staff with greater clarity about any reasonable limits to this area of academic freedom.

Chris Wheeler
Deputy Ombudsman

In the interests of the NSW community, the NSW Ombudsman works to promote good conduct and fair decision-making by all agencies and persons within jurisdiction.

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of Geoffrey Howe and Anne Bechara, for specified offences. Proceedings have already begun against Mr Howe and Mr Abi-Saab for offences under section 112 of the ICAC Act.

Since the Commission's public hearings ended, Mr Tsang and Mr Abi-Saab have resigned as Councillors from Strathfield Municipal Council. Mr Abi-Saab cited ill-health while Mr Tsang said his decision to resign was in the best interests of the local community.

The Commission's *Report on investigation into relationship between certain Strathfield Councillors and developers* is available on the ICAC website www.icac.nsw.gov.au

Profiling the NSW public sector – follow-up results

In 2003 the ICAC published *Profiling the NSW Public Sector*, which presented the findings of a major ICAC research project, which commenced in 2001, to record and analyse the functions, risks and corruption resistance strategies in place in NSW public sector organisations.

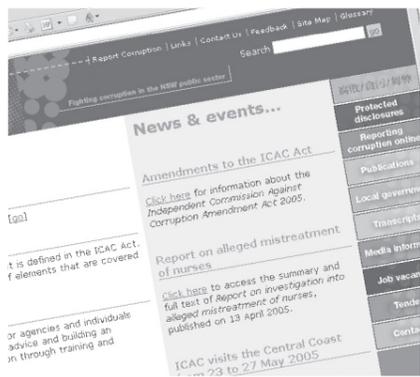
The ICAC considers that for effective corruption risk management all agencies should have a code of conduct, a corruption risk management strategy, an internal audit plan and internal

auditor, policy and procedures relating to acceptance of gifts and benefits and an internal investigation system.

To check whether progress had been made in implementing these corruption prevention initiatives, in 2004 the ICAC contacted 49 agencies which reported in 2001 that they did not have one or more of these elements. All of the 33 agencies which responded now have a code of conduct. No agency reported that it still does not have an internal auditor or internal

audit plan. The percentage of agencies which reported that they did not have a corruption risk management strategy decreased from 33% to 15%, those without a gifts and benefits policy from 15% to 2% and those without an internal investigations system from 21% to 6%.

In 2002 Queensland's Crime and Misconduct Commission (CMC) conducted research based on the ICAC model, and published the results in 2004 as *Profiling the Queensland Public Sector*.



ICAC news in brief

New-look ICAC website

We have created a new homepage to help visitors to the ICAC web site to find what they are looking for faster.

The new homepage has many new features including

- an expanded News & Events section to feature latest publications, events or other information
- new buttons highlighting key website content and allowing quicker access to important information
- colour contrast between text, buttons and images for vision impaired users
- buttons and images feature ALT tags allowing users with vision impairments or other disabilities to effectively navigate the home page.

We welcome you to log on to www.icac.nsw.gov.au and give us your feedback.

5th National Investigations Symposium a success

Thank you to all delegates who completed the online survey to help measure the effectiveness of the 5th National Investigations Symposium. We had a good response rate to the survey and found:

- Nearly all respondents (98 per cent) learnt something at the Symposium that is useful for their work
- 88 per cent indicated that they thought that the Symposium is beneficial to the performance of their duties
- The Symposium is a good networking opportunity according to 88 per cent of respondents
- All respondents stated that the Symposium met objectives with 71 per cent claiming that objectives were met in full
- 73 per cent said that they would attend the next Symposium.

The Symposium is a joint initiative of the ICAC, NSW Ombudsman and Institute of Public Administration Australia (NSW Division).

If you have any suggestions for the 6th National Investigations

Symposium program to be held in late 2006, please contact Sue Bolton, ICAC tel 8281 5828 or 1800 463 909 (toll free).

ICAC visits the Central Coast

The ICAC's latest regional education and training program took place in the Central Coast region in May. The Central Coast program formed part of the ICAC's Rural and Regional Outreach Strategy (RAROS), which takes anti-corruption information and training to regions across NSW.

The Central Coast RAROS program included workshops for enhancing investigative skills and techniques, a train-the-trainer session on protected disclosures, and corruption risk management workshops for public sector agencies, local government councils and Local Aboriginal Land Councils.

Other events included a breakfast with community leaders and a meeting with senior managers of state agencies in the region. Both events were hosted by the ICAC Commissioner the Hon. Jerrold Cripps QC. Commission officers also conducted liaison visits with councils, state agencies and elected councillors to discuss matters of mutual interest.

New conflicts of interest brochures

In our last edition the release of the new *Managing Conflicts of Interest in the Public Sector Toolkit and Guidelines* was featured. These resources are for the development of policies and procedures for disclosing, monitoring and managing personal interests and conflicts of interest.

New brochures are now available that support the implementation of conflict of interest policies and procedures. The two A4 brochures "Identifying Conflicts of Interest in the Public Sector" (staff resource) and "Identifying and Managing Conflicts of Interest in the Public Sector" (management resource) give useful advice through checklists for the individual to determine if they have a conflict of interest. The management brochure also presents options for managing conflicts of interest.

The brochures have been produced to support your organisation's conflict of interest policy and procedures. These resources are not to be used as alternatives to introducing effective conflict of interest policies and procedures.

If you need advice on developing a conflicts of interest policy or copies of the brochures please contact Corruption Prevention, Education and Research, ICAC tel 8281 5999 or 1800 463 909 (toll free).

New protected disclosures training modules and training sessions

New training modules are now available for NSW local government councils and public sector agencies to use in employee training programs to give staff a good understanding of NSW protected disclosures legislation. The modules inform staff of their obligations, protections and the role management can play to encourage and support reporting of serious misconduct within the organisation.

The modules can be customised for public sector organisations to incorporate their own internal reporting procedures, related policies and codes.

We encourage all public sector agencies and councils that have workable internal reporting systems and an open culture for reporting to conduct training for staff using the new protected disclosures training modules.

To assist take-up of the modules, the ICAC and NSW Ombudsman intend to hold a series of train-the-trainer workshops for protected disclosures co-ordinators and public sector trainers.

The protected disclosures training modules and more information about the train-the-trainer sessions can be obtained by contacting ICAC officers Catherine Hughes tel 8281 5731 email chughes@icac.nsw.gov.au or Steffanie von Helle tel 8281 5810 email sivhelle@icac.nsw.gov.au

NESB campaign

The ICAC information campaign targeting the NESB community has moved into its third year. While the first two years of the Corruption is Wrong campaign focused on research, production and evaluation of multi-lingual resources, in 2005 the campaign aims to embed key messages into the day-to-day work of identified agency staff and ICAC staff.

A key part of the campaign in 2005 is a one-day workshop aimed at those who advocate, liaise, advise, interpret or educate members of culturally and linguistically diverse communities.

The underlying context of the workshop is the recognition that people of culturally and linguistically diverse communities are often placed at particular risk of acting corruptly or being exploited by corrupt public officials.

Using real case studies this workshop will explore corruption topics such as bribery, conflicts of interest, and fraud and look at some corruption resistance strategies.

This new workshop will be run through the Centre for Community Welfare Training (CCWT) in Sydney. Two workshops have been scheduled for 26 August and 25 November 2005.

For more information about the workshop or of the campaign, contact Bill Kokkaris on tel 8281 5877 or email bkokkaris@icac.nsw.gov.au.

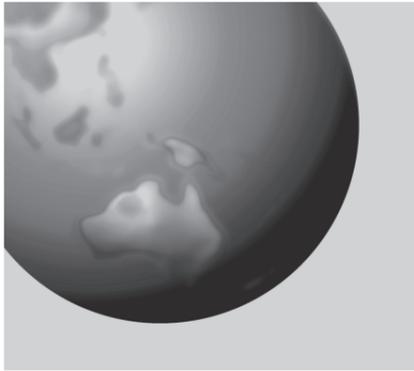
Publications research

In 2004 we surveyed a small but diverse group of public sector agencies to find out how ICAC publications are used, what users think of them and how they could be improved.

Responses were generally very positive, with our publications being praised for being relevant, practical and easy to understand. Respondents particularly valued the use of concrete examples and case studies, the provision of simple guidelines and checklists, and the fact that publications are easily adaptable to specific needs and purposes.

A number of helpful suggestions for improvement were made, including the need for shorter documents that give guidelines and advice on specific corruption prevention topics. These responses will help us produce more targeted and effective publications in future.

If you have suggestions or comments on ICAC publications, please forward them to icac@icac.nsw.gov.au



Inothernews

New CMC Chairperson

Robert Needham commenced his three year term as Chairperson of the Queensland Crime and Misconduct Commission in January this year. Mr Needham has a distinguished legal career that has been successful in exposing corruption in both the private and public sectors. He has been the Queensland Parliamentary Crime and Misconduct Commissioner since 2002 and has appeared as counsel for the Fitzgerald Inquiry into police corruption in Queensland and the Christopher Skase prosecution.

The costs of corruption – a worldwide perspective

Transparency International (TI) released the *Global Corruption Report 2005* in March this year. The report highlights the risks posed to both developing and developed countries from bribery and corruption. The report states that in excess of US \$4 trillion is spent worldwide on government procurement annually – and cites construction as being the area most prone to corruption.

The report gives many case studies and examples of how bribery in tendering poses real threats to economies and lives. The report claims that corruption caused many of the 156,000 deaths from earthquakes around the world in the past 15 years. In Turkey, Italy and other countries, buildings collapsed because corrupt relationships between contractors and public officials resulted in structurally unsound buildings.

In economic terms the report shows that corruption in construction slows economies, raises costs and lowers standards of infrastructure, and potentially wrecks the economies of emerging countries.

In response to the report findings, TI released *Minimum Standards for Public Contracting* for transparent public procurement. TI recommends the introduction of effective anti-corruption procedures for all government projects and tough sanctions against companies caught bribing officials. These sanctions include forfeiture of the contract and blacklisting from future bidding.

The *Global Corruption Report 2005* can be read at www.globalcorruptionreport.org.

Testing time for training assessors

WorkCover NSW has taken positive steps to ensure standards in the construction industry by reassessing around 30,000 certificate holders who operate heavy equipment.

In June last year the Commission released its report on an investigation into aspects of safety certification and training in the NSW construction industry. The investigation focused on the conduct of a number of WorkCover accredited assessors tasked with carrying out competency assessments on the operators of specified heavy plant and equipment. The retesting is necessary to ensure safety and competency standards in the construction industry because certificates issued by corrupt accredited assessors could jeopardise safety and lives.

John Della Bosca MP, Special Minister of State, Minister for Commerce, and Minister for Industrial Relations told NSW Parliament on 23 February that “the WorkCover Authority expects to complete the testing process by the end of this year”.

DFT cancels bogus builders’ licences

On 2 May the Minister for Fair Trading, John Hatzistergos, announced that the NSW Office of Fair Trading (OFT) would cancel 80 residential building licences as part of an ongoing campaign to rid the industry of “dodgy builders”.

The Minister also announced a major review into the licensing system and reforms to home building laws, to be headed by former ICAC Commissioner, Irene Moss AO.

These actions stem from an ICAC investigation into conduct associated with the issue of contractor building licences. As reported in the last issue of *Corruption Matters* (“Shaky foundations”, page 1), the Commission found evidence that a group of people had arranged for false references to be presented to the OFT, enabling applicants to gain building licences fraudulently.

The names of the 80 individuals whose licences are to be cancelled has been made public by the OFT and the Minister has announced that the OFT is working with other agencies including TAFE “to ensure the system is secure against any future attempts to fraudulently obtain building licences.”

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 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 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 8281 5999 (or toll free on 1800 463 909 for callers outside Sydney).

About *Corruption Matters*

Corruption Matters is produced 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 Education and Public Affairs section, Independent Commission Against Corruption.

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‘This article originally appeared in *Corruption Matters*, a publication of the Independent Commission Against Corruption’.

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