

Corruption risks in the public health sector

On 23 September the ICAC launched its discussion paper on corruption risks in the NSW health sector, in conjunction with the NSW Department of Health.

The discussion paper is the first stage of a major project to assist area health services and hospitals to identify and manage the particular corruption risks they face.

The ICAC commenced this project because of the size of the health sector and its importance to the NSW community. NSW Health employs approximately one-third of all the full-time equivalent staff employed by the NSW government and approximately one quarter of the NSW budget was allocated to the health portfolio between 1996–97 and 2001–02.

Preliminary research by the ICAC suggested that corruption risks in the health sector deserve particular attention because of the particular characteristics of area health services and the services that they provide.

Area health services are large and decentralised, they often employ individuals who work in both the public and private sectors, they have a high proportion of temporary, contract and casual staff, they manage large budgets and government grants and they purchase specialist technology and equipment.

In its corruption prevention work, the ICAC analyses the systems, procedures and practices of public sector organisations and public officials, identifying specific corruption risk areas that agencies need to manage.

The discussion paper, launched at a meeting of the Senior Executive Advisory Board of the NSW Department of Health, is the first step in this process and will be the basis for extensive consultation with key stakeholders in the health sector in NSW.

Over the next few months the ICAC is planning to consult with all of the area health services, as well as organisations such as the Australian Medical Association, NSW Nurses Association, the Royal Australasian College of Physicians and the Royal Australasian College of Surgeons.

The discussion paper identifies four broad areas of potential corruption risk in the NSW public health sector: misuse of resources; conflicts between private and public interests; inappropriate relationships between clinicians and suppliers; and corruption in responding to errors or problems in the delivery of health care services.

These risk areas were identified after analysing ICAC records and research, reviewing published articles about

corruption in the health sector and conducting a preliminary consultation with some individuals working in area health services.

The analysis revealed that while area health services face many of the same corruption risks as other public sector organisations, they also face specific corruption risks associated with their role in delivering services to patients.

Misuse of resources is one of the most common areas of alleged corruption in all parts of the public sector.

The analysis found that these types of allegations were more than twice as common in area health services compared to other parts of the public sector, suggesting that public health organisations may have particular characteristics that make these risks difficult to address. One example of this type of problem is staff consistently taking food from the hospital kitchen and not paying.

The conflict between public duty and private interests is fundamental to our understanding of corruption, which can occur if such conflicts are not

declared or effectively managed. It is common for clinicians to have private interests outside their work for the area health service and these conflicts can emerge on the clinical, research and administrative aspects of their work. One example of this type of problem is when a doctor was the principal of a company that supplied surgical products to the hospital where he worked.

A specific type of conflict of interest can occur when there are inappropriate relationships between clinicians and suppliers to the health sector. One example is a private relationship between a doctor and a pharmaceutical company which involved the inappropriate provision of gifts, corporate hospitality and overseas travel.

It is also important to examine corruption risks associated with responding to errors or problems in the delivery of health services, since corruption in this area would have a major impact on the delivery of quality health care to patients. Of particular interest are the corruption risks of hiding evidence of malpractice, professional misconduct or clinical errors, or improperly dealing with allegations about these matters.

In the third and final phase of the project the ICAC will work with the Department of Health to develop practical resources to assist area health services and hospitals to better manage their corruption risks.

A copy of the discussion paper, *Strengthening the corruption resistance of the NSW public health sector*, is available on the ICAC's website www.icac.nsw.gov.au



Robyn Kruk, Director-General of NSW Health and ICAC Commissioner Jerrold Cripps (2nd and 3rd from left, front row) with the Senior Executive Advisory Board of NSW Health at the launch of the ICAC's discussion paper.

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Commissioner's editorial

Readers of the last issue of *Corruption Matters*, and indeed anyone who follows the news in New South Wales, will be well aware that the planning system in this State has recently come under close scrutiny.

In June this year, the ICAC reported on a byzantine plot to unseat the Mayor of Strathfield Council, a plot which was ultimately intended to overturn planning decisions and benefit certain property developers who had invested in local properties with the expectation of reaping substantial profits.

In August, the ICAC released the report on its investigation into planning decisions relating to the Orange Grove Centre in southwest Sydney. This investigation highlighted issues associated with lobbying of public officials and the need for certainty in the planning process.

Emeritus Professor Maurice Daly's public inquiry into Tweed Shire Council, which was established by the State Government in late 2004 and concluded in August 2005, determined that a developer-controlled group had selected, supported and influenced the decisions of a majority of the Tweed Shire Councillors, misleading the electorate and undermining the democratic process.

Each of these matters has generated intense media interest and community concern, highlighting the importance of planning decisions to the entire community.

This high level of community concern is also reflected in the fact that 17 percent of the complaints of suspected corrupt conduct that the ICAC currently receives relate to planning matters.

In recognition of these issues and concerns, the ICAC has commenced a major project to identify corruption risks in the planning process in New South Wales and options for reform.

As the first stage of this project, the ICAC is about to release a discussion paper which sets out the current state of knowledge regarding corruption risks in the NSW planning process. The discussion paper will help inform the ICAC's consultations in coming months, resulting in the production of a position paper which will include options for reform of the planning process.

This project will complement work already done by the ICAC in this area. In 2001–2002 the ICAC examined corruption risks in the administration of development applications by local councils. The main areas of risk identified were poor communication with applicants and objectors; weaknesses in councils' policies and procedures for handling development applications and pressures faced by councillors and council staff in dealing with development applications.

This work, which was done under the title, "Taking the Devil out of Development", resulted in a series of specific recommendations by the ICAC, relating to such matters as dealing with non-pecuniary conflicts of interest, caucusing on individual development applications and the separation of roles and responsibilities in the various stages of dealing with a development application.

Many of the ICAC's recommendations have subsequently been implemented by the State Government and local councils.

The new project will also consider the assessment and approval of development applications at a local council level, but the project scope has been extended to consider issues associated with planning at a state level in some areas, in recognition of the State Government's role in developing planning policy and overseeing planning decisions.

I am confident that this project, like the many other corruption prevention initiatives undertaken by the ICAC, will make a substantial contribution to good governance and the fair, effective and efficient provision of public services for the benefit of the entire community.

The Hon Jerrold Cripps QC
Commissioner

2004–2005: the year in review

2004–2005 was a significant year for the ICAC.

The review of the *Independent Commission Against Corruption Act 1988*, announced by the Premier in June 2004, was completed by Bruce McClintock in January 2005. In response to the review a number of amendments have been made to the Act, including the establishment of an Inspector of the ICAC position, a move that the ICAC itself has been advocating for some time as an accountability measure. The Inspector of the ICAC is responsible for overseeing the ICAC's use of its investigative powers and for investigating complaints against staff. The position is independent of the ICAC and Graham Kelly has been appointed as the inaugural Inspector from 1 July 2005.

Other amendments include renaming public hearings as "public inquiries" and private hearings as "compulsory examinations"; providing additional

information in the annual report about investigations and the time taken to complete them; specifying the objectives of the ICAC Act and confirming the ICAC's independence and accountability.

In 2004–2005 the ICAC received and assessed 2,511 complaints, reports and information regarding suspected corrupt conduct; undertook 274 preliminary enquiries, began ten investigations and 41 preliminary investigations and continued work on 14 investigations and 20 preliminary investigations carried over from 2003–2004. The ICAC held 94 days of public hearings in relation to eight investigations and presented six investigation reports to Parliament.

In 2004–2005 the ICAC maintained an integrated approach to investigations, to address both legal and corruption prevention issues as they arise.

The six investigation reports released in 2004–2005 included detailed analysis, where relevant, of systems failures or other governance issues and made

a total of 37 corruption prevention recommendations, designed to assist agencies to address the issues identified. The ICAC's corruption prevention officers also provided advice in relation to 67 complaints and reports of corrupt conduct and responded to 381 requests for corruption prevention advice.

The ICAC continued to undertake training, education and awareness activities for public officials and the NSW community. The ICAC provided 45 training sessions to public sector agencies; conducted training and education programs in two regional areas of the State (Illawarra and Central Coast); produced a range of resource materials included a comprehensive toolkit on managing conflicts of interest that was produced in partnership with Queensland's Crime and Misconduct Commission and co-hosted the 5th National Investigations Symposium in partnership with the NSW Ombudsman and the Institute of



Public Administration
Australia, NSW Division.

The ICAC's *Annual Report 2004–2005* was presented to Parliament on 31 October.

Better practice for public sector contracting

A new ICAC resource provides guidance on probity and probity advising – crucial considerations in managing major public sector projects.

In the public sector context, probity involves ensuring that often-complex public sector processes are conducted in a manner that is fair, impartial and accountable.

Probity considerations most often arise when public sector agencies undertake substantial acquisitions of goods and services, major information and communications technology upgrades, or major construction projects.

However, probity considerations can also arise during the course of other activities, such as the disposal or privatisation of assets, assessment of development applications, the awarding of government grants, consideration of sponsorship offers and entering into joint ventures.

Probity and probity advising: guidelines for managing public sector projects, is the latest better practice guide produced by the ICAC.

The publication provides readers with:

- an explanation of the probity advising role

- the key fundamentals that underpin probity management
- guidance on the circumstances in which appointment of an independent probity adviser is warranted
- information on how to find and engage a probity adviser
- an overview of probity plans
- practical steps that agencies can take to implement a probity-rich environment without the assistance of probity advisers.

The ICAC worked with a range of organisations and individuals within the private and public sectors to develop the new resource, which supersedes the ICAC's 1996 publication *Probity Auditing: When, Why and How*.

The new publication gives practical advice and has scenarios that illustrate the application of this advice as well as pitfalls to avoid, such as an over-reliance on engaging external probity advisers.

The supply of probity advice services and consultancies has expanded considerably, as have the accountability expectations of government. The increasingly complex nature of many public sector projects and the use of non-traditional contracting arrangements (such as privately-financed projects and alliance contracting), has

meant that probity expertise is often sourced from specialists outside the public sector.

The publication identifies 16 criteria for use in determining whether the engagement of an external probity adviser is warranted.

These include the inherent complexity of the project and its cost relative to other projects; whether the project is expected to be privately financed or uses a complicated contract structure; whether the market is highly concentrated or whether collusion or other forms of anti-competitive behaviour are a possibility and whether the agency lacks experience in the nature or magnitude of the project being undertaken.

The publication advises that agencies should not normally need to engage external probity advisers for projects that are part of the agency's routine work. Public sector agencies should ensure they have the internal capacity, including appropriate policies and procedures, to manage the probity aspects of such work.

The publication also provides information and guidance on the use of probity plans, which are now part of the planning and management of many large, complex and/or potentially controversial projects.

In some jurisdictions, probity plans are mandatory for very large projects. In New South Wales, state government agencies are required to submit a probity plan as part of their reporting to Treasury on projects that are valued at more than \$10 million and/or are classified as high risk.

Probity and probity advising is intended to be a practical and useful resource for public sector managers and staff involved in managing government projects. It will also be relevant and useful to practising probity advisers.

The publication will be launched by ICAC Commissioner Jerrold Cripps QC on 16 November as part of the ICAC's regional visit to south-east New South Wales and will be available on the ICAC website www.icac.nsw.gov.au from that date.

Copies of the publication will be distributed to each state agency and local council in New South Wales, with additional copies available on request.

Call for papers

Expressions of interest to present at the 6th National Investigations Symposium are welcome from specialists and practitioners who conduct investigations.

The National Investigations Symposium (NIS) is a two-day, biennial event that attracts over 180 delegates from across Australia, the South Pacific and South East Asian regions. The 6th NIS will be held in Sydney on 2–3 November 2006 at the Manly Pacific Hotel, Manly.

The NIS is aimed at experienced investigators, complaint handlers, regulators, managers and human resources professionals and auditors who work for Commonwealth, State and local government bodies and wish to enhance their knowledge, skills and capacities to conduct administrative, regulatory or disciplinary investigations.

NIS delegates have the option of attending sessions offered in three concurrent streams that cover topics such as practical investigation techniques, case studies, topical issues, investigation planning and management, frameworks, tips and lessons learned and investigative journalism.

The NIS is not an academic conference. Presentations are sought from practitioners who can provide practical advice and insights into issues related to administrative, regulatory and disciplinary investigations and complaint handling.

Expressions of interest

Expressions of interest are due by 16 December 2005. More information about submitting an expression of interest can be accessed at the ICAC website www.icac.nsw.gov.au

Presentations will be selected on the basis of relevance to the symposium aims and the interests of the broad range of participants, topicality and compatibility with other presentations. Should a paper be accepted, a commitment will be required that at least one of the authors presents at the NIS.

To discuss the NIS please contact Greg Andrews, Office of the NSW Ombudsman (tel 02 9286 1002, email gandrews@ombo.nsw.gov.au) or Sue Bolton, ICAC (tel 02 8281 5828, email sbolton@icac.nsw.gov.au).

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
- names of other people who could corroborate the information
- outline of any steps that have been taken to bring the matter to the attention of the authority concerned
- 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*.



Focus on local government

Internal audit and local government

by Paul Terrett, Department of Local Government

The NSW Department of Local Government (DLG) is currently working to develop best practice standards for internal audit by councils.

DLG considers that internal audit should be given more prominence in NSW local government. Research conducted by the ICAC in 2001 found that a majority of general managers considered that internal audit was important, yet only about 20 percent of councils had an audit charter, internal auditor or audit committee.¹

In July 2005, DLG released a discussion paper on internal audit seeking feedback from stakeholders on the formulation of guidelines and legislative change. To date 40 submissions have been received from council, professional bodies and private citizens.

Internal audit plays an important role in an organisation's governance processes. According to the Institute of Internal Auditors' Standards for the Professional Practice of Internal Auditing, internal audit is:

An independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives

by bringing a systematic disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

Internal audit has no direct connection to day-to-day operations, but it has a direct functional relationship with the general manager and the council. An effective internal audit function should, among other things, evaluate and monitor the adequacy and effectiveness of the internal control framework.

Risk management is also an essential part of a council's management and internal control framework, identifying the risks the council may face in performing its functions and the best way to address these risks. Assessment and management of risk is central to the direction of an organisation's internal audit activities.

Promoting internal audit in local government raises the following issues:

- the need to extend councils' understanding of risk management beyond traditional areas of public liability and occupational health

Local government at a glance¹

Number of local government councils in NSW:	152
Largest land area:	53,511 sq.km (Central Darling Shire Council)
Smallest land area:	6 sq. km (Hunter's Hill Council)
Largest residential population:	273,267 (Blacktown City Council)
Smallest residential population:	1,414 (Urana Shire Council)

1. Except where otherwise noted, source is Department of Local Government website www.dlg.gov.au, accessed 14 October 2005.

and safety, into areas such as internal governance, corruption prevention, fraud risk and broader regulatory risk

- whether councils should have a uniform approach to assessing and managing risk, regardless of size or location
- whether it is feasible for councils to pool resources or arrange through regional organisations of councils for internal audit services
- whether small management teams can feasibly conduct audits or internal reviews in the absence of an audit function

- how councils can properly resource internal audit and internal control programs.

The Department of Local Government will be analysing the submissions received and will then determine what approach to take to assist in promoting internal audit as a means of improving council performance through strengthening council internal control frameworks.

1. ICAC 2001, *ICAC and local government: Research findings summary*, p. 14.

Update on Tweed Shire Council inquiry

Emeritus Professor Maurice Daly concluded his inquiry into Tweed Shire Council in August with the release of his second and final report on the Council's governance.

The Inquiry was convened in November 2004 by the Minister for Local Government to inquire, report and provide recommendations to the Minister on the efficiency and effectiveness of the governance of the Council.

On 16 February this year Professor Daly advised that the Inquiry would focus on a number of themes: election issues, conflicts of interest issues, development processes and statutory functions, transparency and communication with the community and compliance with the Council's charter. The Inquiry

reviewed documents, sought and received submissions and held public hearings between December 2004 and March 2005.

The Inquiry's first report, released in May 2005, focussed on electoral issues and the relationship between certain councillors and developers. The report concluded that in the 2004 Council election, a group called Tweed Directions constructed a campaign funded by money primarily sourced from developers and intended to secure a pro-development majority in Council.

Professor Daly said in his report that Tweed Directions controlled the selection, funding and campaign strategy of a number of candidates who presented themselves as independents and that following the election the successful Tweed Directions candidates

were bound by an implicit obligation to the developers who donated to Tweed Directions.

Professor Daly recommended that all councillors' positions be declared vacant and an Administrator appointed for a minimum period of two years. In response to this report the State Government appointed a three-member panel to administer the Council: the Director General of the Department of Local Government, Garry Payne; former Sydney Mayor Lucy Turnbull and former Tweed Shire Councillor, Max Boyd.

Professor Daly released his second and final report in August 2005. The report focussed on the remaining themes outlined on 16 February and made a total of 24 recommendations. These include recommendations to revise local government electoral procedures and

legislation; to review local government's planning and determinative roles and the role of the Department of Planning and other state departments and bodies in the planning process, and that councils adopt some or all of a number of measures to achieve greater transparency in council decision-making. Among the measures suggested by Professor Daly is the establishment of Independent Hearing and Assessment Panels to process controversial or large development applications.

Information on the Tweed Shire Council Public Inquiry, including the full text of the Inquiry's first and second reports, can be found on the Department of Local Government website: www.dlg.nsw.gov.au/Tweed



Focus on accountability

Who does what – an overview

The ICAC encourages the reporting of suspected corruption involving NSW public officials. It also conducts various education initiatives which aim to increase understanding about corruption and the work of the Commission.

The ICAC receives complaints about suspected corrupt conduct from a range of sources. Complaints are received from public officials, members of the NSW community, principal officers of NSW public sector agencies and local government councils and elected officials such as NSW Parliamentarians and local government councillors.

All matters reported to the ICAC are referred to the ICAC's Assessment Panel, an internal committee that has the responsibility for determining what action, if any, should be taken in regard to matters received. While most matters are within the ICAC's legislative authority a small number of complaints are not. In 2004–05 the

ICAC had 2,511 matters reported, 228 of which were outside the ICAC's jurisdiction. Reports classified as being out of jurisdiction are referred by the ICAC to the appropriate complaint or investigative agency and feedback about the referral is provided to the individual who originally reported the matter to the ICAC.

The ICAC refers matters to other agencies such as the NSW Ombudsman and the Department of Local Government if it determines that the issues raised are appropriate to be dealt with by these agencies given their role, functions and jurisdiction.

These agencies, like the ICAC, can also be contacted directly to discuss concerns and seek clarification prior to making a report or complaint.

The following table provides an overview of these agencies, their jurisdiction and contact details.

NSW public sector	Organisation	Contact details
Corruption involving a NSW state or local government authority or public official	Independent Commission Against Corruption	Tel: 8281 5999 Freecall: 1800 463 909 TTY: 8281 5773 Fax: 9264 5364 Email: icac@icac.nsw.gov.au Website: www.icac.nsw.gov.au
Complaints about administrative conduct and maladministration of a public official	NSW Ombudsman	Tel: 9286 1000 Freecall: 1800 451 524 TTY: 9264 8050 Fax: 9283 2911 Email: nswombo@ombo.nsw.gov.au Website: www.ombo.nsw.gov.au
Corruption or serious misconduct involving NSW Police officers and employees	Police Integrity Commission	Tel: 9321 6700 Freecall: 1800 657 079 Fax: 9321 6799 Email: contactus@pic.nsw.gov.au Website: www.pic.nsw.gov.au
Complaints about the misconduct of NSW police officers	NSW Ombudsman	Tel: 9286 1000 Freecall: 1800 451 524 TTY: 9264 8050 Fax: 9283 2911 Email: nswombo@ombo.nsw.gov.au Website: www.ombo.nsw.gov.au
	Or NSW Police	Freecall: 1800 622 571 Email: Customerassistance@police.gov.au Website: www.police.nsw.gov.au
	Or contact your Region office or local police station	
Complaints about the Department of Community Services	NSW Ombudsman	Tel: 9286 1000 Freecall: 1800 451 524 TTY: 9264 8050 Fax: 9283 2911 Email: nswombo@ombo.nsw.gov.au Website: www.ombo.nsw.gov.au
Complaints about a NSW state authority about serious and substantial waste	NSW Auditor-General	Tel: 9275 7100 Fax: 9275 7200 Email: mail@audit.nsw.gov.au Website: www.audit.nsw.gov.au
Complaints about conduct of councils	Department of Local Government	Tel: 4428 4199 Fax: 4428 4199 Email: dl@dlg.nsw.gov.au Website: www.dlg.nsw.gov.au
	NSW Ombudsman	Tel: 9286 1000 Freecall: 1800 451 524 TTY: 9264 8050 Fax: 9283 2911 Email: nswombo@ombo.nsw.gov.au Website: www.ombo.nsw.gov.au
Promotion and disciplinary matters for public sector employees (not involving corrupt conduct)	Government and Related Employees Appeal Tribunal (NSW)	Tel: 9020 4750 Fax: 9020 4790 Website: www.industrialrelations.nsw.gov.au/great/
Commonwealth public sector	Organisation	Contact details
Conduct of a Federal government department or public official	Commonwealth Ombudsman	Tel: 9218 3000 Fax: 9211 4402 Website: www.comb.gov.au

Legal	Organisation	Contact details
Conduct of barristers, lawyers or solicitors	Legal Services Commissioner	Tel: 9377 1800 Freecall: 1800 242 958 TTY: 9377 1855 Fax: 9377 1888 Email: olsc@agd.nsw.gov.au Website: www.lawlink.nsw.gov.au/olsc
Complaints against judges, magistrates or judicial officers (not involving corrupt conduct)	The Judicial Commission	Tel: 9299 4421 Fax: 9290 3194 Email: judcom@judcom.nsw.gov.au Website: www.judcom.nsw.gov.au
Other matters	Organisation	Contact details
Banks	The Banking and Financial Services Ombudsman	Freecall: 1300 780 808 Fax: (03) 9613 7345 Website: www.abio.org.au
Consumer, building and real estate matters and co-operatives	NSW Office of Fair Trading	Tel: 9895 0111 TTY: 9338 4943 Fax: 9895 0222 Website: www.fairtrading.nsw.gov.au
Discrimination	Anti-Discrimination Board	Tel: 9268 5555 Freecall: 1800 670 812 TTY: 9268 5522 Fax: 9268 5500 Website: www.lawlink.nsw.gov.au/adb
	Human Rights and Equal Opportunity Commission	Tel: 9284 9600 Freecall: 1300 656 419 – Complaints Infoline 1300 363 992 – Privacy Hotline TTY: 1800 620 241 Fax: 9284 9611 Website: www.hreoc.gov.au
Privacy issues	Privacy NSW	Tel: 9228 8585 Fax: 9228 8577 Email: privacy_nsw@agd.nsw.gov.au Website: www.lawlink.nsw.gov.au/privacynsw
Electricity, gas and water	Energy and Water Ombudsman, NSW	Freecall: 1800 246 545 Fax: 1800 812 291 Email: info@ewon.com.au Website: www.ewon.com.au
Consumer protection (complements state and territory offices of fair trading)	Australian Competition and Consumer Commission	Freecall: 1300 302 502 Website: www.accc.gov.au
Complaints about health care in NSW	Health Care Complaints Commission	Tel: 9219 7444 Freecall: 1800 043 149 TTY: 9219 7555 Fax: 9281 4585 Email: hccc@hccc.nsw.gov.au Website: www.hccc.nsw.gov.au
Telephone or internet company complaints	Telecommunication Industry Ombudsman	Freecall: 1800 062 058 TTY: 1800 675 692 Fax: 1800 630 614 Email: tio@tio.com.au Website: www.tio.com.au

NOTE: Freecall and Freefax numbers are available for regional and rural areas of NSW only.

Frequently asked questions about the ICAC

Q Does the ICAC prosecute people?

A No, but the ICAC can make recommendations that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of a person for a criminal offence.

Q Can the ICAC deal with allegations of corruption against MPs, local government councillors, NSW judges and magistrates?

A Yes, because Members of Parliament, local government councillors, magistrates and holders of judicial office are public officials within the meaning of the ICAC Act.

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THE AUDIT OFFICE
OF NEW SOUTH WALES

Building probity and ethics into decision-making

Aware of the need for probity in decision-making, public sector officials have made increasing use of probity auditors as part of major project or procurement decisions. Our 1997 audit of the lease of the Moore Park Showground to Fox Studios found that only limited reliance could be placed on the work of the probity auditor in that case. Similarly, our 1998 audit of the Walsh Bay project supported previous ICAC advice that the probity auditor did not have a robust approach and the probity reports lacked detail and adequate analysis.

In our Showground report we said that "the use of probity auditors reflects the desire to establish a strong perception to external observers that processes are of the highest standards. However, there are currently no specific formal standards for probity audit work". We are pleased that Standards Australia has taken up this challenge, establishing a working group to produce a handbook on probity auditing.

Whilst probity audit and advice is a helpful adjunct to decision making, integrating probity and ethics into the normal processes for all key decisions must be the goal. Some leading-edge work has been done in this area that we are pleased to promote.

In 2000 the NSW Roads and Traffic Authority developed an on-line decision-support tool – the Probity Assessment Technique (PAT) – to assist RTA staff with ethical decision-making.

Inspired by this concept, the Corruption Prevention Network recently launched the next generation of an on-line tool to support decision-making. Called BIG (for Big Issues Grappler), it is a user-friendly aid for making major decisions that are compatible with agency values and ethics, probity considerations and good old-fashioned common sense. BIG is free to use and fully confidential. It can be accessed via the Corruption Prevention Network website at www.corruptionprevention.net

Contact: Stephen Horne, Assistant Auditor-General Performance Audit on 02 9285 0078 or email at stephen.horne@audit.nsw.gov.au

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.

For information on the ICAC's new resource on probity and probity advising, see article on page 3.



NSW Ombudsman

A-Z of good conduct and public administration

The NSW Ombudsman has been developing an A to Z of fact sheets to provide guidance to public sector agencies and public officials on various important issues in public administration. Some of the titles so far available are: *Apologies, Conflict of Interests, Gifts and Benefits, Handling Complaints, Investigating Complaints, Maladministration, Natural Justice/ Procedural Fairness, Public Interest, Quality Customer Service and Reasons for Decisions*. All fact sheets are freely available both in electronic and print formats.

The Ombudsman has also produced a number of guidelines on good conduct, complaint handling and complaint investigation.

Titles available include:

The Complaint Handler's Tool Kit (2nd edition), Investigating Complaints: A Manual for Investigators, Effective Complaint Handling, Dealing with Difficult Complainants, Protected Disclosure Guidelines (5th edition), and Good Conduct and Administrative Practice: Guidelines for State and Local Government.

All guidelines are available in hard copy and some are also downloadable from our website.

Visit the Ombudsman's new website at www.ombo.nsw.gov.au.

The revamped website is very easy to navigate with many user-friendly functions including a search facility.

Click on 'Guidelines for agencies' on the menu bar and you will find all Ombudsman guidelines and fact sheets listed under three sections: guidelines for public sector agencies and councils, guidelines for community service providers and guidelines on workplace child protection issues. All fact sheets and some guidelines are free to be downloaded from the website.

If you wish to order a hard copy you can either ring our Publications Officer on (02) 9286 1072, or use the online order form in the 'Publications' section.

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.

Frequently asked questions about the ICAC (continued from previous page)

Q Can the ICAC deal with allegations of corruption in NSW local government?

A Yes, because local government authorities are included within the definition of a 'public authority' in the ICAC Act. The introduction of the *Local Government Amendment (Discipline) Act 2004* increased the capacity of the ICAC to investigate the conduct of councillors and council staff which involves or may involve a substantial breach of a council's code of conduct.

Q Who deals with matters relating to NSW Police?

A Allegations of serious misconduct by police should be referred to the NSW Police Integrity Commission.
Other kinds of misconduct (abusive behaviour, negligence and breaches of police rules and procedures) by police are matters for the NSW Ombudsman and the NSW Police.
The ICAC can investigate the conduct of police officers where it is in the context of matters that also involve the conduct of public officials.

Q Can the ICAC deal with allegations of corruption in the private sector?

A No, not unless public officials and/or public authorities are involved or affected. However, in some circumstances private contractors and consultants are considered to be public officials if they are exercising public official functions.

Q Does the ICAC investigate every report of suspected corruption that it receives?

A Every report the ICAC receives is carefully assessed, but investigation is only one of the options open to the ICAC. Reports may also be referred back to the relevant

public authority for action, referred to other agencies if they are outside the ICAC's jurisdiction or used as the basis for corruption prevention work with the relevant public authority.

Q Who oversees the ICAC?

A There is a range of accountability mechanisms in place to oversee the ICAC's operations and exercise of its powers. The Parliamentary Joint Committee (PJC) on the ICAC is responsible for monitoring and reviewing ICAC activities. The PJC can examine trends in corruption but does not investigate particular conduct or reconsider decisions the ICAC has made on individual matters. The Inspector of the ICAC is responsible for overseeing the ICAC's use of its investigative powers, investigating any complaints against ICAC staff and monitoring compliance with the law and any delays in the conduct of investigations or unreasonable invasions of privacy. The Operations Review Committee is responsible for ensuring that the ICAC is accountable for decisions about whether to investigate complaints of corrupt conduct.

The Inspector of the ICAC

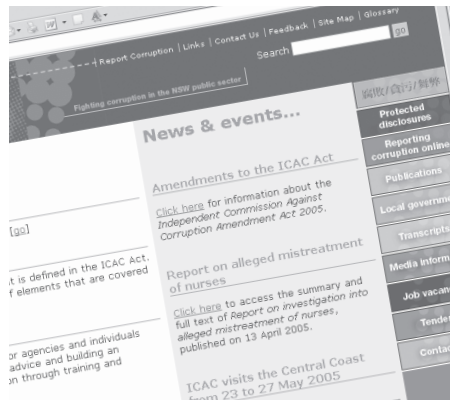
The Inspector operates independently from the ICAC and can be contacted at:

Postal address: Office of the Inspector of the
Independent Commission Against Corruption
GPO Box 5341, Sydney NSW 2001

Tel: (02) 8374 5381

Fax: (02) 8374 5382

Email: inspectoricac@oicac.nsw.gov.au



ICAC news in brief

ICAC visits South East NSW

ICAC will be heading to south-east NSW for its next regional training and education program in November. As part of its Rural and Regional Outreach Strategy, the ICAC takes anti-corruption initiatives and training to regions across NSW.

The south-east program covers a large geographic area from Goulburn down to the Victorian border and west up to and including the largest national park in the state – Kosciusko National Park.

The program will focus on two regional hubs for the core training program – Queanbeyan and Batemans Bay. The ICAC's Fact Finding workshop, a Corruption Risk Management workshop for Local Aboriginal Land Councils and the new Corruption Prevention for Managers workshop will be run in each location.

The Commissioner will be speaking at a Community Leaders Breakfast at Batemans Bay and launching the new ICAC publication – *Probity and probity advising* – at the Illawarra and South East Regional Coordination Management Group forum in Thredbo.

The program will also include Legal Studies workshops with Year 11 students at local high schools and visits to key agencies by ICAC Senior Corruption Prevention Officers.

For more information on the ICAC's Rural and Regional Outreach Strategy please contact the Education and Public Affairs team on tel (02) 8281 5999.

Conflicts of interest toolkits – order now!

The ICAC has a limited number of the *Managing Conflicts of Interest in the Public Sector Toolkit* left for public sector agencies and local councils that have not ordered copies. Order your copy now to avoid disappointment.

The Toolkit gives practical advice on how to scan your organisation for potential risks and develop workable policies and procedures for the declaration and management of conflicts of interest. The Toolkit and other associated resources have been produced by the ICAC and the Queensland Crime and Misconduct Commission to assist public sector organisations. The resources are not prescriptive, but provide options for systems that would work best within your organisation.

The resource also has options for conducting communication and education strategies for staff and external stakeholders as well as a training module that can be adapted to suit the particular needs of your organisation's conflicts of interest reporting and management system.

The Toolkit, other conflicts of interest resources and an order form for all the resources can be accessed at the ICAC website www.icac.nsw.gov.au

New ICAC workshop

A new one-day workshop for staff who work with non-English speaking background (NESB) communities was recently trialled at the Centre for Community Welfare Training (CCWT). The workshop, "Increasing the awareness of corruption in culturally and linguistically diverse communities" is specifically aimed at staff who advocate to, liaise with, interpret for, advise or educate members of the NESB community.

Using real case studies the workshop explores corruption topics such as bribery, conflicts of interest and fraud, and looks at some corruption resistance strategies.

The CCWT will be running the workshop again on 25 November 2005.

To register for the workshop call the CCWT on (02)9281 8827 or download the registration form from the CCWT website: www.acwa.asn.au/ccwt/2005SmallRegoForm.pdf. The cost is \$55 or \$50 for CCWT members.

New protected disclosures training module

The ICAC and NSW Ombudsman have just completed a successful series of train-the-trainer workshops for state agencies on the new ICAC Protected Disclosures Training Module. Over 50 protected disclosures coordinators and public sector trainers from more than 25 agencies attended the half-day sessions in Sydney to explore ways to use the new training modules for maximum benefit.

The workshops, facilitated by Chris Wheeler, Deputy Ombudsman, and senior ICAC officers, aimed to give participants a good understanding of the *Protected Disclosures Act* and how to increase the capacity of their staff to identify and report incidences of corruption, serious maladministration

and serious and substantial waste through internal reporting systems.

For more information about the Protected Disclosures training module contact Catherine Hughes, ICAC, tel (02) 8281 5731 or email chughes@icac.nsw.gov.au

ICAC report on handling of plagiarism

The "Focus on universities" section of the June 2005 edition of *Corruption Matters* outlined the ICAC's investigation into the University of Newcastle's handling of plagiarism allegations. The ICAC has subsequently completed its investigation and in its report, presented to Parliament on 30 June, made findings that Dr Paul Ryder, former Head of the University's Graduate School of Business, and his former deputy, Dr Robert Rugimbana, engaged in corrupt conduct in having assignments which were the subject of plagiarism allegations re-marked contrary to University policy and without any proper investigation as to the truth of the plagiarism allegations. Both men had resigned from the University prior to the release of the ICAC's report.

The ICAC's report made a number of specific corruption recommendations to the University to prevent the occurrence of similar problems in future. The ICAC recommended that the University establish a complaints management function, reinforce to academic staff the importance of complying with University policies and procedures and ensure that academic staff appointed to administrative positions have adequate management skills and an understanding of standard management practices.

ICAC report on Orange Grove Centre

On 11 August the ICAC presented to Parliament the report of its investigation into planning decisions relating to the Orange Grove Centre in southwest

Sydney. After analysing relevant documents, conducting private hearings and then holding a total of 22 days of public hearings, the ICAC concluded that there was no credible evidence of corrupt conduct as defined in the ICAC Act.

The ICAC's investigation established that there was no evidence of corrupt conduct in relation to the Liverpool City Council's grant of development consent to change the use of the Orange Grove site, owned by Gazcorp Pty Ltd, to a "warehouse clearance outlet".

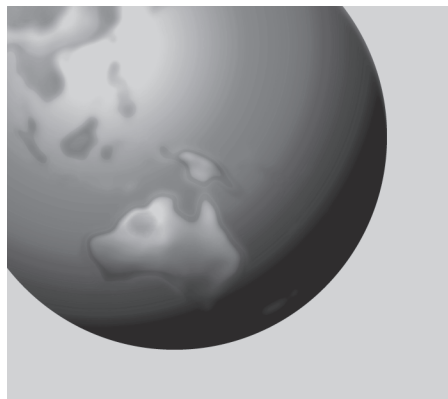
The ICAC also examined the refusal by the Hon. Diane Beamer, the then Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), to amend the Liverpool Local Environment Plan to permit the premises to continue operating as a retail outlet centre. This refusal resulted in the Centre's forced closure.

The ICAC found no evidence that management of corruption allegations made by Mark Ryan, Director of Corporate Affairs at Westfield, which operated its own retail centre in the same area, to the then Premier's Chief of Staff, Graeme Wedderburn, had adversely affected Minister Beamer's decision so as to constitute corrupt conduct. The ICAC also found no evidence to substantiate claims that the then Premier took or authorised any inappropriate action to interfere in Minister Beamer's decision-making.

In its report the ICAC made three specific corruption prevention recommendations. It recommended that the NSW Government amend the Ministerial Code of Conduct to include guidelines about lobbying activities and put in place a protocol for Ministers and their staff for managing allegations of corrupt conduct made against external parties with an interest in a ministerial decision. The final recommendation is that draft State Environmental Planning Policy 66 – Integration of Land Use and Transport – be finalised as soon as practicable.

New South Wales public sector agencies are welcome to reprint articles from *Corruption Matters* for education purposes in their own publications. The ICAC would appreciate notification of any such use, and the following acknowledgement:

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



In other news

ACCC acts on cartels

The Australian Competition and Consumer Commission (ACCC) has formed a dedicated national anti-cartel branch to increase the detection and treatment of cartels in Australia.

A cartel is generally considered to include conduct by two or more competitive businesses and includes price fixing, market sharing including bid rigging or customer sharing and/or production or sales quotas. This type of conduct, between otherwise competitive firms, is often referred to as a hard-core cartel and is illegal.

ACCC Chairman Graeme Samuel has described cartels as a “cancer on our economy” because their “price fixing, bid rigging and market sharing ... in many instances do far more damage to our economy, to business and to consumers, than many of the worst consumer scams”.

Under the existing civil penalty regime, corporations involved in cartels face

pecuniary penalties of up to \$10 million per contravention, while their executives face penalties of up to \$500,000 per contravention. However, the Federal Government has foreshadowed the introduction of a criminal regime, including imprisonment.

Government procurement, which tends to be subject to fixed, observable criteria, can at times make it easier for cartels to operate. Consequently, it is important that procurement officers be aware of the possibility of cartel or anti-competitive behaviour. To assist, the ACCC has produced a presentation “Cracking Cartels: warning signs during the procurement process” which is available at www.accc.gov.au

Corruption Prevention Network

The Corruption Prevention Network’s annual conference, held on 8 September, focussed on the role of organisational culture in relation to fraud and corruption risk.

Presentations covered such topics as the importance of policies and procedures for the disposal of redundant goods; the importance of communication, education and auditing in changing the culture of the NSW Police; the Management Assurance Program in the Roads and Traffic Authority; and culture and corruption in Asian countries.

The CPN presented its 2004/2005 “Encouraging Excellence in Corruption Prevention” awards, which focussed on the systems agencies have implemented to receive information about corrupt conduct or potentially corrupt activities within the agency. The Australian Taxation Office won the Commonwealth public sector award, Transgrid won the State public sector award, and Sutherland Shire Council was presented with the ‘Encouragement Award’ for the local government sector.

New ethics resource

The Big Issue Grappler (BIG), a governance, probity and ethical decision making tool, was launched at the Corruption Prevention Forum’s annual conference in September.

BIG is an interactive program that requires the user to examine decisions based on personal values, the community’s values and/or the organisation’s values.

BIG is intended to assist users by:

- bringing structure to decision-making
- prompting assessment of relevant generic ethical values
- encouraging a probity and reality check
- helping identify risks to manage before the decision is implemented
- documenting how the decision was made

The program is free to use, and fully confidential. BIG can be accessed via the CPN website at

www.corruptionprevention.net

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 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 Education and Public Affairs section, Independent Commission Against Corruption.

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