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## ICAC Commissioner signs off

This month the ICAC will say goodbye to the current Commissioner, the Hon Jerrold Cripps QC (pictured below right), whose five-year tenure will conclude on 14 November. Over the past five years, there have been many examples of the substantial work done by the Commissioner in fighting and preventing corruption in NSW.

The Commission receives thousands of complaints, reports and information about corrupt conduct which are all registered and assessed. Depending on the matter, they can be referred back to agencies or to other agencies, or can progress to become an investigation. If an investigation proceeds to a public inquiry, it can generate mainstream state and national media coverage, which helps raise community awareness about the Commission and its work. Compulsory (private) examinations are also conducted by the ICAC.

In addition to the extensive work done to assess and investigate matters, the Commission is also committed to providing education and advice to help agencies minimise corrupt conduct, both as a result of specific investigations and from more proactive requests. If a matter appears to mainly involve systemic issues rather than instances of corrupt conduct, or the corrupt conduct has been dealt with but wider problems appear to exist, corruption prevention staff may evaluate the situation and provide advice to enhance an agency's capacity to minimise the risk of corruption or prevent the problem happening again.

The ICAC also monitors whether recommendations to combat or prevent corruption have been implemented.

### 2008-2009

The ICAC received 2,714 matters from members of the public, principal officers of NSW public sector agencies and public sector employees lodging complaints under the *Protected Disclosures Act 1994*. There were seven public inquiries undertaken over 28 days and 13 investigation reports published.

The number of compulsory examinations that took place during this time was 33.

In this financial year, 44 matters were referred to corruption prevention staff for analysis and/or advice.

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**Corruption Matters** is also available to download from the ICAC website [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)

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## Commissioner's Editorial

On 14 November 2004 I commenced my five-year tenure with the Independent Commission Against Corruption, which will end this month when the next Commissioner, the Hon Justice David Ipp AO, starts his term. I welcome Justice Ipp (an appellate judge of the NSW Court of Appeal and former Justice of the Supreme Court of Western Australia) to this important organisation and I am sure he will be successful in advancing the good work of the Commission.

The reporting of suspected corrupt conduct continues. The cover story in this edition of *Corruption Matters* provides further details on the number of matters reported to the ICAC, the number of public inquiries, compulsory examinations and corruption prevention recommendations over the past five years.

This edition also features a story on the Commission's performance in the 2008-09 financial year. Some of the highlights and achievements featured in the latest ICAC annual report include a 122% increase in the number of people subject to recommendation that the advice of the Director of Public Prosecutions be sought in relation to prosecution.


The Commission also made corrupt conduct findings against 52 people, and furnished 13 investigation reports to Parliament, which is nearly twice the number it presented in the previous year. It again reduced the average time taken to report to its Assessment Panel, achieving a 21% improvement despite a small increase in the number of matters reported to 2,714.

Another story I would like to address your attention to is on the second Australian Public Sector Anti-Corruption Conference (APSACC), which was held in Brisbane during July. Following on from hosting the inaugural conference in Sydney in 2007, the Commission again jointly organised this year's APSACC with its sister agencies in Queensland (the Crime and Misconduct Commission) and Western Australia (the Corruption and Crime Commission). The conference attracted 525 delegates from around Australia and from overseas, who benefited from the various sessions that were based on the theme "Taking responsibility, fighting complacency".

I would like to thank the people I have worked with during my five years at the Commission. The Commission has many dedicated staff working to a high standard to fulfil its statutory functions, being to investigate and expose corrupt conduct and to educate authorities about the detrimental effects of corruption.

The Commission is not a criminal law enforcement agency. Nor can it be regarded as a management consulting firm. When corrupt conduct is identified after investigation and exposure, the obligation to address corruption rests squarely on the agency responsible for the corrupt conduct. If the organisation cannot or will not address the

issue it should be dealt with by government. If government cannot or will not address the issue it becomes a matter for the Parliament.



The Hon Jerrold Cripps QC  
Commissioner



*Cont. from page 1*

## **2007-2008**

During 2007-08, the Commission received and assessed 2,702 matters including 579 reports from public sector agencies.

The Commission held 11 public inquiries over 51 days.

The ICAC made 57 corruption prevention recommendations published in reports during this time.

In 2007-2008 the number of compulsory examinations undertaken by the ICAC was 70.

## **2006-07**

During this financial year the Commission received and assessed 2,149 matters. Of this number 522 were received from public sector agencies and 680 from members of the public.

This resulted in 73 investigations conducted into serious and systemic corrupt conduct. Seven investigation reports were published, and public four inquiries were held over 24 days. The ICAC conducted 49 compulsory examinations in 2006-2007.

Also during this year the ICAC responded to 276 advice requests, delivered 70 training courses and compliance presentations, and produced six corruption prevention advice or research publications.

## **2005-2006**

In 2005-2006 the ICAC received 2,191 complaints, reports, and information about corrupt conduct in NSW. The focus continued on serious and systemic corrupt conduct resulting in eight major investigations of which four became public inquiries, over 27 days. There

were 78 corruption prevention recommendations made in investigation reports.

There were 32 compulsory examinations held this year.

## **2004-2005 (from 14 November 2004)**

The Hon Jerrold Cripps QC commenced his five year-tenure on 14 November 2004. From this date to 30 June 2005 the ICAC held five public inquiries over 56 sittings days and 22 compulsory examinations.

During the full 2004-2005 financial year 2,511 matters were received by the Commission. Eight of these became public inquiries. There were 43 compulsory examinations held during this time and 37 corruption prevention recommendations were published in investigation reports.

### **To summarise**

From 14 November 2004 to 30 June 2009 (inclusive) the Commission:

- Received more than 11,200 matters
- Conducted 50 formal investigations
- Conducted more than 30 public inquiries
- Made 354 corruption prevention recommendations
- Provided corruption prevention advice on more than 1,400 occasions



Commissioner the Hon Jerrold Cripps QC presiding at a public inquiry.

## How the organisational boundary affects corruption in procurement

***This is a snapshot of a presentation delivered by Dr Robert Waldersee, ICAC Executive Director Corruption Prevention, Education and Research, at the APSAC Conference in July 2009, in relation to the Commission's 2008 investigation into RailCorp.***

A risk that can make public sector agencies more vulnerable to corruption in procurement involves their organisational 'boundary'. This refers to what an organisation has to make or buy: the goods or services an organisation makes are inside the boundary; the things an agency procures are outside the boundary. Organisational boundaries are not visible, but they are an important concept when analysing what risks an agency faces.

Agencies need to clearly understand the risks in the transactions they undertake and put in place strategies to manage those risks. Appropriate location of organisational boundaries – the 'make it or buy it' decision – is a key element in managing these risks.

To determine the appropriate location of its boundaries, an agency needs to ask itself the following questions:

- Can the goods or services required be clearly specified?
- Can market prices be accurately determined?
- Is the volume of orders predictable?
- Can delivery be measured accurately?
- Do suppliers have alternative clients?

If the answer is 'no' to any of these questions, it may be easy to cheat the agency through overcharging, oversupplying or not supplying the good or service at all.

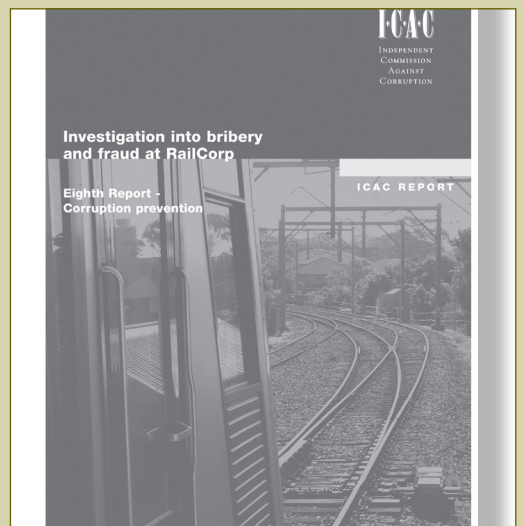
This is precisely what was exposed by the Commission's investigation into bribery and fraud at RailCorp. For example, RailCorp paid over

\$500,000 to hire plant and equipment that was never delivered. False orders were hidden in a large volume of orders that fluctuated between \$67 and \$84 million during the period investigated. Because of the high volume and unpredictability of plant hire orders, non-delivery was easy to hide. RailCorp also paid \$149,000 for a shed that cost the supplier \$68,000 to buy and install. A 118% profit margin! The manager who approved the purchase had no idea of market prices for sheds, and was therefore easily misled by a corrupt employee.

In its *Investigation into bribery and fraud at RailCorp – Eighth Report* the Commission recommended that RailCorp identify those goods and services for which it is not possible to effectively monitor delivery and measure quality, and for which there is no functioning market with genuine competition between suppliers.

The Commission also recommended that RailCorp should assess the risks of bringing in-house, compared to procuring externally, the provision of goods and services, such as maintenance services, that are difficult to accurately measure and monitor, and for the provision of which there is not a genuine competitive market.

This comprised one of 40 recommendations that the Commission made to RailCorp to assist it to prevent or minimise the recurrence or continuation of corrupt conduct in the future.



Dr Robert Waldersee, Executive Director Corruption Prevention, Education and Research.

## Another big year for the ICAC in 2008–09

### The ICAC again experienced a year of sustained activity in 2008–2009, with plenty of action across its corruption exposure and prevention areas.

In its 2008–2009 *Annual Report*, furnished to Parliament at the end of last month, the Commission reported a 122% increase in the number of people that it recommended the advice of the Director of Public Prosecutions (DPP) be sought for prosecution on the previous year, while the number of people prosecuted due to action arising from ICAC investigations more than tripled from six in 2007–2008 to 21.

The Commission also delivered presentations and seminars to more than 1,100 local government personnel on corruption risks in planning and development processes, following its investigation into corrupt conduct at Wollongong City Council.

The ICAC has again reduced the average time taken to report matters to its Assessment Panel, achieving a 21% improvement despite a slight increase in the number of matters received (up from 2,702 in 2007–2008 to 2,714 in 2008–2009).

“The 2008–2009 year has seen the ICAC continue to fight and prevent corruption in the NSW public sector, in an era when community expectations of how governments and their bureaucracies operate mean that the work of the Commission is as important ever,” the Commissioner, the Hon Jerrold Cripps QC said.

“The Commission has not only produced excellent work in terms of its investigation and corruption prevention functions during the year, but it also released the results of a major research project that showed a significant increase in the adoption of corruption prevention methods across the public sector since 2001.”

Major ICAC highlights and achievements from 2008–2009 include:

- recommending the advice of the DPP be sought with respect to

the prosecution of 51 people, which is a 122% increase on the 23 recommendations made from the previous year

- delivering targeted, face-to-face corruption prevention sessions to more than 1,100 councillors, council managers, planners and other key personnel on corruption risks associated with planning and development processes
- making corrupt conduct findings against 52 people
- furnishing 13 investigation reports to Parliament, compared to seven in 2007–2008
- making 84 corruption prevention recommendations arising from public inquiries, including 40 recommendations in a major corruption prevention report on RailCorp, compared to 57 the previous year
- delivering 87 training sessions, which is more than double the targeted number of 40
- helping facilitate asset restraint forfeiture to a total of \$2,634,000 through four pending matters sent to the NSW Crime Commission.

During 2008–2009, the Commission conducted seven public inquiries over 28 days. The ICAC also conducted two regional and rural outreach visits to Greater Western Sydney and the South Coast, at which more than 470 people participated in training, workshops and other events. The full report can be downloaded from the ICAC website, [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au).



Some of the Commission executives and staff. The Commission received 2,714 matters in 2008–09.

## Ombudsman focus on enforcement



**The old saying 'It's easier to get forgiveness than consent' still holds true. It has long been a fact of life in Australia that regulators often make people jump through administrative hoops to get consent but, once granted, have little interest in whether the consent is implemented in accordance with the approval.**

The lack of an enforcement culture is a perennial issue in complaints to the Ombudsman. The particular subject matter varies - from local councils not enforcing conditions of consent, to noise complaints being unactioned, through to water usage regulations not being enforced. A common theme in many of these matters is a focus by regulatory bodies on the initial consent or approval rather than on enforcement of its terms and conditions.

Lack of interest in enforcement appears to be a result of a range of issues including regulations or conditions being vague or ambiguous, insufficient agency resources and agency cultures which do not recognise the importance of enforcement action. Some agencies appear to struggle with the dual roles of providing assistance and policing a regulatory framework.

In our experience, when enforcement action is taken this is primarily in response to complaints. We see limited evidence of proactive, systematic checking of compliance by way of random audits of approvals or similar. Often complainants have to be particularly persistent or there have to be complaints about the same matter from

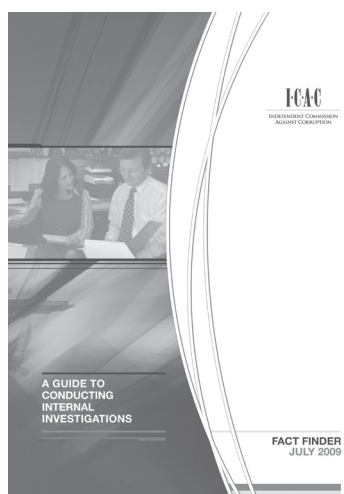
numerous people before that matter is investigated. This is not a constructive approach to encouraging citizen participation in government. Rather it teaches people they have to make life difficult for an agency before anything is done – the squeaky wheel syndrome writ large. Agencies that respond in this way spend considerable resources not dealing with an issue.

On the other hand there does not appear to be the same reluctance to take enforcement action where there is a revenue raising opportunity. In a recent Ombudsman investigation into the enforcement of water regulations, the agency concerned had 13 water inspectors for the entire State, far fewer than the number of parking inspectors in many local councils.

The Ombudsman sees these as important issues which go across State and local government and raise key public interest issues. We have recently decided to make enforcement a focus of our work for the foreseeable future. This will include a review of our enforcement guidelines.

**Bruce Barbour**  
NSW Ombudsman

## ICAC FACT FINDER: A guide to conducting internal investigations



**The ICAC *Fact Finder* guide to conducting investigations was re-released recently with updates to reflect the changing work environment and consolidate the content into a more concise format. The guide helps agencies to understand the different steps, processes and outcomes involved in conducting their own internal investigation.**

An effective internal investigation helps ensure that those who have engaged in improper conduct are identified as having done so, and

are dealt with appropriately. It can also ensure that those who have been wrongly suspected or accused of having engaged in improper conduct have their circumstances clarified and the suspicion removed. In addition, an internal process that exposes improper conduct ensures that the boundaries of acceptable behaviour within an organisation are clear and meaningful. Giving consideration to the circumstances of

each affected person in an investigation can boost support for the process and culture within the workplace and the acceptance of its outcomes. It can also set the tone for how people are treated within the organisation.

*Fact Finder: A guide to conducting internal investigations* is a practical tool to help agencies prepare and conduct their own internal investigation. There are many factors affecting an investigation so it is not a comprehensive instruction manual. The guide includes information to help agencies respond to initial referrals, and develop key principles and considerations when dealing with allegations, plan the investigation process, and manage analysis and reporting.

These steps are important when establishing the fundamentals of a quality investigation and the central requirements of driving at the truth so affected persons are treated fairly.

This publication is available to download from the ICAC website [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)

## Australian Public Sector Anti-Corruption Conference – taking responsibility, fighting complacency

The ICAC, Crime and Misconduct Commission (CMC) in Queensland and the Corruption and Crime Commission (CCC) in Western Australia joined forces to host the second Australian Public Sector Conference (APSACC) in Brisbane during July. Amid much media interest, the conference focused on the themes of “taking responsibility, fighting complacency”, and provided an important learning and networking opportunity for public sector officials keen to identify, prevent and manage corruption.

In the lead-up to the conference, ABC Radio 612 in Brisbane interviewed the Hon Jerrold Cripps QC (ICAC Commissioner), Robert Needham (CMC Chairman), and the Hon Len Roberts-Smith RFD, QC (CCC Commissioner) about the differences and similarities between the state-based Commissions, learning experiences, legislative powers and the importance of preventing corruption.

There were many conference highlights for the 525 delegates at APSACC, particularly the presentations by senior officials from different anti-corruption agencies from Australia and overseas. Feedback was highly positive with “excellent” and “exceptional” appearing frequently on conference feedback forms.

Notable speakers and delegates at APSACC included:

- The Hon Paul de Jersey AC, Chief Justice of Queensland
- Philip Moss, Commissioner, Australian Commission for Law Enforcement Integrity
- The Hon. Greg Smith SC, MP, Committee on the Independent Commission Against Corruption, NSW Parliament
- Michael Strong, Director, Police Integrity, Office of Police Integrity, Victoria



Front: APSACC Committee Dr Margot Legosz, Ms Theresa Hamilton, Dr Irene Froyland and Ms Jodie Boland. Back: Commissioners Robert Needham, Hon. Jerrold Cripps QC and Hon. Len Roberts-Smith RFD, QC.

- The Hon Matt Benson, Joint Standing Committee on the Corruption and Crime Commission, WA Parliament
- Paul Hoolihan, Chair, Parliamentary Crime and Misconduct Committee, Queensland Parliament.

The conference also featured a special video interview with former *Four Corners* journalist Chris Masters, and Quentin Dempster. Mr Masters provided a unique insight into the Fitzgerald years, a significant part of Queensland history, and a discussion of Mr Master’s seminal documentary on the corruption that contributed to the establishment of the Fitzgerald Commission, *The Moonlight State*.

Speakers from the ICAC included Mick Symons, Executive Director of the Investigation Division, who presented with Dr Robert Waldersee, Executive Director and Lewis Rangott, Acting Principal Officer, from the Corruption Prevention, Education and Research (CPER) Division on the Wollongong City Council investigation. Michael Nest, CPER Senior Corruption Prevention Officer also presented on the NSW Fire Brigades and RailCorp investigations, while Dr Waldersee and Mr Symons also discussed the corruption prevention lessons learned from RailCorp (see Dr Waldersee’s snapshot on corruption and procurement on page 4 in this edition of *Corruption Matters*). The panel on the role of the media in uncovering corruption featured Linton Besser from the *Sydney Morning Herald*, Quentin Dempster from the ABC, ICAC Manager Communications and Media Nicole Thomas and CMC Media Adviser Leanne Hardyman. Topics discussed included the challenges for traditional and new media in working within limited budgets, and the impact that fast response times required in the 24 news hour cycle, can have on investigative journalism. The role of the media in naming and shaming people who engage in corrupt conduct was also discussed, as was the unique way in which integrity agencies interact with the media.

Conference delegates also learnt about international models for fighting corruption, along with contemporary anti-corruption trends and strategies.

The next APSAC Conference will be held in Perth in 2011. For more information visit the conference website at [www.apsacc.com.au](http://www.apsacc.com.au).

## Recent ICAC investigations

### Recent public inquiries conducted by the ICAC included investigations into a RailCorp contractor, a former CEO of Sydney Ferries and a TransGrid Officer.

#### RailCorp

Following a public inquiry in June 2009, the report *Investigation into the solicitation and receipt of corrupt payments from a RailCorp contractor* was released in September. The ICAC made corrupt findings against a former RailCorp employee, Wasim Khan, and his associates who were involved in a plan to swindle \$200,000 from RailCorp in return for awarding a RailCorp security guard auditing services contract. Mr Khan had also stated during the public inquiry that "I always knew that I wanted to try something corrupt". As a result of the investigation RailCorp terminated his employment.

The ICAC was of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the three men involved for various offences under the *Crimes Act 1900* (NSW). In addition, five corruption prevention recommendations were made to help improve the procurement systems and procedures at RailCorp.

#### Sydney Ferries Corporation

A public inquiry was held in June into corrupt conduct allegations concerning a former Sydney Ferries Corporation Chief Executive Officer's (CEO) misuse of the corporation's financial resources. The Commission's report on this investigation is expected to be furnished to Parliament in the near future.

#### TransGrid

The ICAC made corrupt conduct findings against an employee and a contractor of TransGrid, the State owned corporation that owns and

operates the NSW electricity transmission network. The inquiry, conducted in April 2009, uncovered approximately \$7 million worth of contracting opportunities that were awarded to the contractor in exchange for \$42,500 in cash and other benefits.

The ICAC's report on an *Investigation into corrupt conduct associated with tendering for TransGrid work*, released in September 2009, found that between October 2006 and September 2007 Domenic Murdocca's contracting firm, Sage Civil Engineering Pty Limited, provided benefits including \$40,000 in cash to TransGrid employee Goran Pevec. In return, Mr Pevec provided, or agreed to provide, improper assistance with respect to Sage's tendering for three contracts for TransGrid work involving the erection of palisade fences around TransGrid electricity substations.

The Commission was of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Pevec, Mr Murdocca and Mr Pevec's wife, Linda Pevec, for various criminal offences. The ICAC also made six corruption prevention recommendations to assist TransGrid to develop procedures to minimise or prevent this type of conduct from recurring in the future.

This investigation began after it came to the ICAC's attention while examining Sage's dealings with a RailCorp officer during the Commission's 2007 and 2008 investigation into RailCorp procurement practices.

**Corruption Matters** is produced twice a year to raise awareness in the NSW public sector and the wider community about corruption-related issues. If you have any comments about the publication or would like to be put on the mailing list, please contact the Corruption Prevention, Education and Research Division of the Independent Commission Against Corruption.

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