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Is a manager accountable when trust is broken?

by Dr Robert Waldersee, ICAC Executive Director, Corruption Prevention

I am often challenged by managers who argue that trust must be part of management. They are absolutely correct. The trust that managers place in their staff is central to efficiency. Without trust, the cost of checking and monitoring every action of every employee in an organisation becomes exorbitant and ultimately untenable.

When a manager is facing questions about a corrupt subordinate, he or she will often state that they trusted the subordinate – that corrupt behaviour was a breach of that trust. The question then becomes one of rational versus irrational trust: was the trust a rational and appropriate way to manage the situation or was the trust an irrational response and one that amounts to an excuse for abrogation of the manager's duty?

Unfortunately, the nature of the public service is to foster an inappropriate, excessive or irrational trust. Individuals are hired with little knowledge of their reputation or ability, the weak reputational systems limit the damage to a subordinate's personal reputation if they misbehave, and there are relatively fewer incentives for managers to carefully consider the costs of trusting.

Trust is a complex concept. It calls for two essential elements: the reputation and ability of the person being trusted, and the willingness of individuals to make themselves vulnerable to that person.

Eighteenth century philosopher David Hume was among the first to recognise the personal value of reputation as a key component in the way trust operates. A person that makes a promise is "immediately bound by his interest to execute his engagements and may never be expected to be trusted anymore, if he refuse to perform it".

We trust brand names and big-name organisations because of the self-interest inherent in protecting their reputation; after all, a blow to the reputation of such an organisation could result in huge financial loss and require substantial effort to rebuild trust with their customers.

There is, therefore, financial incentive for an organisation to conduct its business honestly. And the more a reputation is propagated, the greater the incentive to be honest. To find a builder for our house, for example, we tap into other people's experiences; a builder with a good reputation is, after all, more trusted.

In large bureaucracies, the reputation of individuals is generally not well checked and the systems for making reputation widely known are weak.

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The ICAC's *Annual Report 2010-2011* (see page 2-3) is now available online.

Commissioner's editorial

In October 2011, the Independent Commission Against Corruption released its results for the 2010–11 financial period. These results show that the Commission continues to operate at the same peak levels of activity that were evident in 2009–10. In addition to a significant body of investigation work and achievements across the board, 2010–11 represents a landmark year for the Commission's corruption prevention work.

The findings of three major ICAC corruption-prevention initiatives were released in 2010–11. These projects examined the corruption risks in areas of statewide significance; specifically, lobbying practices in NSW, procurement in the NSW public sector, and Part 3A of the NSW *Environmental Planning and Assessment Act 1979*. The recommendations made to the NSW Government during the reporting period represent the culmination of extensive research into these issues, some of which was conducted over several years.

Corruption prevention milestones

In August 2010, 48 witnesses gave evidence at an 11-day public inquiry held as part of our first major investigation into the regulation of lobbying in NSW. The subsequent report, released in November last year, made 17 recommendations for greater transparency in the NSW regulatory system.

The NSW Government recently introduced the *Lobbying of Government Officials Act 2011*, which gives effect to two key reforms canvassed in the investigation: the abolition of success fees, and the introduction of a cooling-off period for ex-Ministers and Parliamentary Secretaries before they can lobby a government official. We remain hopeful that our other recommendations will be reflected in legislation in due course.

In December 2010, the Commission released an important paper that outlined 20 recommendations to more effectively manage and mitigate the corruption risks attached to Part 3A of the NSW *Environmental Planning and*



The Commission introduced fee-free training in 2010–11. We delivered 89 training sessions and 50 speaking engagements in 2010–11, reaching an audience of 3,700 people. Two new workshops on managing corruption risks in procurement were the most frequently requested, and comprised 45% of the total workshops delivered.



ICAC Commissioner the Hon David Ipp AO QC

Assessment Act 1979. Part 3A, which began in 2005, consolidated the various assessment and approval systems for major projects determined by the Minister for Planning in NSW.

An alternative system for the assessment of projects of state significance was recently introduced by the NSW Government that replaces Part 3A.

In June 2011, seven recommendations to the NSW Government were published as a result of our investigation into procurement practices in the NSW public sector. These recommendations were the result of a significant volume of research that included feedback from both procurement practitioners and suppliers to government (see page 7). To date, one of the practical and successful outcomes of this initiative has been our new training workshops on identifying corruption risks in procurement.

A total of 110 corruption prevention recommendations were made to the NSW Government and NSW public sector agencies in 2010–11, which is more than double those made by the Commission in the previous year.

Achievements across the board

In 2010–11, the Commission finalised 116 preliminary investigations and 15 full investigations, conducted nine public inquiries over 65 days, and furnished 12 investigation reports to Parliament. We also continued to carry out a high level of compulsory examinations; 130 in total, with our own lawyers acting as counsel in 126 of these examinations.

We made corrupt conduct findings against 26 people, recommended that the advice of the Director of Public Prosecutions (DPP) be sought with respect to the prosecution of 16 individuals, and recommended to relevant public sector agencies that disciplinary action be taken against 11 people.

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Commissioner's editorial (cont.)

Of course, the Commission's work cannot be judged by the number of convictions recorded that arise from recommendations to seek DPP advice. This is for several reasons, the most important of which is that in the vast majority of instances, the evidence available to the Commission in making findings of corrupt conduct is not admissible in criminal prosecutions. Thus, our core functions are to expose, investigate and work to prevent corruption in the NSW public sector.

In this regard, results also show that we continue to investigate and expose corrupt conduct in a timely and efficient manner. In the last year, we exceeded our target of completing 90% of full investigations within 12 months and reduced the time taken to report straightforward matters to the Assessment Panel by 32%.

This year, our Assessments Section, which is the first point of contact for complaints and reports to the Commission, received and managed 2,867 matters. This figure represents an increase on the last two financial reporting periods, and yet the team managed to further reduce the time taken to finalise matters by 24%.

Indeed, one of the strongest overall messages of the 2010–11 period is that our staff continue to demonstrate a high level of commitment to our goals and standards, despite increasingly heavy workloads, and I thank them for another year of important achievements.

A copy of the Commission's *Annual Report 2010–2011* can be downloaded from our website at www.icac.nsw.gov.au.



The Hon David Ipp AO QC
Commissioner

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There are examples of individuals who, although found to have engaged in corrupt activity at one council, are employed in similar positions by another. In these cases, the system did not effectively propagate the reputation of these individuals, and managers, who had placed trust in these people, did not tap into places where the reputational information could be accessed.

Governments have dealt with the issue of reputation propagation intermittently. In response to a problem doctor turning up as a problem in a second hospital, the NSW Department of Health implemented a service-checking system that records all investigations of staff in order to alert other recruiters within the agency. There have also been attempts in other agencies to capture and report the performance of contractors and consultants in reputational systems that mirror the eBay system; unfortunately, these have not become well used. Perhaps because such systems put at risk the value of the individuals' reputations, resistance to the implementation and use of similar systems in the NSW public sector has been strong.

Compounding the feeble spread of reputation is that checking the reputation of a person or company is highly constrained by the rules of the public sector and the motivation of managers. Referee checks are often simply formulaic calls to individuals nominated by the applicant. The exchange of information is guarded, as individuals fear legal consequences. This is a far cry from, let's say, the network of customers that we tap into to assess the reputation of, and ultimately choose, the builder of our new home.

In short, if neither prior reputation is checked nor damage to a person's reputation propagated widely, then one of the two elements of trust – that is, the value of the reputation of the person being trusted – is removed.

The second element of trust is the manager's willingness to make themselves vulnerable to the trusted person. The vulnerability of the manager is an incentive to carefully check the reputation and ability of a member of their staff. A decision to trust becomes a considered balance of personal cost and benefit; that is, a risk analysis. The degree of risk should escalate for a manager when a good reputation and trustworthiness are assumed rather than properly assessed.

Unlike private sector managers, public sector managers are insulated from much of the vulnerability of trusting a member of their staff. In the public sector, a promotion, a bonus or simply continued employment is not as closely linked to the performance of a subordinate staff member. If a subordinate member of their staff is found to have behaved inappropriately, the manager has a set of prescribed methods of action. Rarely is the question asked as to why the manager did not check their staff member more closely.

In short, the environment of the public sector does not create ideal conditions for the operation of trust, and a manager who trusts a subordinate may want to ask themselves on what basis they consider this to be a rational trust.

For the public sector more broadly, one answer is to simulate the conditions of trust by strengthening the reputational networks. This could mean creating internal records that are easy to access, collating feedback on contractors, logging complaints and recording performance-related issues in personnel files in ways that can be disseminated. Enhancing the collection and reporting of contractor performance is essential.

Another answer is to require managers to use legally accessible points for reputational information (beyond the referees given by an applicant), clearly define the risk for managers of misbehaviour by subordinates and build this into performance agreements along with clear accountabilities, and require managers to check rather than trust during probationary periods.

Randwick City Council staff training program module developed from ICAC/ANU executive program

A module of this year's Randwick City Council annual "All Stops to Randwick – Connecting You" staff training and development program featured a "Values at Work" component, which was developed from a project created during the Corruption and Anti-Corruption Executive Program, a joint initiative of the ICAC and the Australian National University (see page 5).

Vanessa Creighton, Randwick City Council's Internal Audit and Business Planning Coordinator, received an ICAC scholarship to undertake the course in 2010 and develop the module with her colleagues. Together, their objective is to further embed fraud and corruption prevention thinking and action into the workplace by encouraging staff to look at the Council's values system and consider how it applies to their day-to-day working environment.

Indeed, the team are now running the Randwick City Council Values short film competition, which calls on staff to make a short film on what the Council's ICARE (Integrity, Customer Focus, Accountability, Respect and Excellence) values mean to them as individuals.

Ray Brownlee, General Manager Randwick City Council, described All Stops to Randwick as "a learning experience, providing critical skills and knowledge while engaging the diversity of our workforce". Ultimately, the purpose of the program is to provide Council staff with the means – that is, the right information – to deliver better service to the council's residents.

The program is an opportunity for staff across the council to learn about new or existing policies and procedures, and share information on council activities and initiatives. Now in its third year, All Stops to Randwick is a practical and engaging way to open communication lines among council staff and improve access to essential information.



A total of 463 staff participated in All Stops to Randwick, which Vanessa Creighton (third from left) describes as "our biggest cross-departmental event held each year".

The innovative and cost-effective program comprises short, interactive modules delivered in various locations within Randwick City Council's main buildings. It not only fulfils the Council's requirements to educate staff in compulsory legislative topics, policies, procedures and technical information but provides opportunities for staff to network with colleagues from other divisions.

Randwick City Council's Learning and Development Team, which develops and delivers courses to meet specific Council and staff needs, manages the annual event with around 80 members of staff from across the Council contributing their time in support of the program. Mr Brownlee explains that the success of the program relies on these motivated volunteers. "It is evident through feedback that our staff appreciate the opportunity to network with their peers in an equal, open and inspiring environment."

Other modules delivered to staff in the 2011 program comprised: "Safety in a nutshell", on occupational health and safety issues for staff working both indoors and outdoors; a two-part module ("Shopping smart" and "Where we are at") on staff obligations under the purchasing policy, and an update on Council's financial performance and how it compares with other councils; a code of conduct module that drew on real-life events and scenes from movies; "Connecting you", on leading a healthy lifestyle and ways to maximise health; and a brainstorming session to address areas that rated low in the staff satisfaction survey.

In addition to the modules, networking and educational opportunities under All Stops to Randwick included a series of educational competitions and an information fair, which consisted of interactive games to assist with learning and stalls with useful information about the various divisions within the Council.

Randwick City Council's Vanessa Creighton can be contacted directly on (02) 9399 0567 to provide more information about content and planning for the All Stops to Randwick program.

Anti-corruption class of 2011

The annual Corruption and Anti-Corruption Executive Program wrapped up on 21 September, after a week of intensive learning about the theory and practice of corruption prevention. The course, now in its 12th year, was the first of its kind when it made its debut and continues to attract the participation of an ever-growing and diverse group of students.

Commission staff, who developed this Masters-level course with academic staff from the Australian National University's Crawford School of Economics and Governance, have been involved in co-presenting ever since the first course was offered in 1999.

This year, Dr Robert Waldersee, Executive Director of the Commission's Corruption Prevention Division, led a team of six Commission staff members to deliver the course in Canberra. "It is heartening to see how interest in the Program has grown and how the course material has also developed and progressed over time," says Dr Waldersee.

"There are few courses of this kind anywhere in the world and we receive enrolments not only from students across Australia but also overseas. In fact, this year's student group was one of the largest in the history of the course."

Each year, the Commission awards 10 scholarships to middle and senior managers from the NSW public sector to attend the course. Both state and local government managers are eligible to apply, with four places reserved for applicants from rural or regional NSW. Candidates are selected for scholarships on the basis of their workplace role in preventing corruption.



Staff and students on the final day of the Corruption and Anti-Corruption Executive Program, held 14–21 September at the Australian National University, Canberra.

The 2011 scholarships were awarded to managers from Endeavour Energy, NSW Maritime, TAFE NSW Riverina Institute, Lake Macquarie Council, NSW Procurement, Greater Taree City Council, Burwood Council, Transport NSW, Fire & Rescue NSW, and the Office of Liquor, Gaming and Racing.

Scholarship recipients can elect to take the course as credit towards a Masters-level qualification or to work on a project that addresses corruption risks in their own workplace. These workplace projects might include conducting a corruption risk assessment, developing an anti-corruption induction program for new staff, reviewing the agency's anti-corruption strategy or addressing a corruption risk that is persistent or unique to their organisation.

The project option gives students an opportunity to work with the Commission's corruption prevention staff over several months (that is, beyond the duration of the course) to implement a corruption prevention initiative that has been endorsed by their agency's CEO or Director General.

"For busy managers, one of the advantages of the course can be simply swapping the suit for jeans, turning off the phone and being a student for a week," adds Dr Waldersee. "Of course, it's a great opportunity for these senior personnel to stop and reflect on their work, and return to the office with some fresh insights and ideas about how things can be improved."

In 2011, the group of international students came from Bangladesh, Bhutan, Cambodia, China, India, Indonesia, Malaysia, Mongolia, New Zealand, the Philippines, Switzerland and the UK. Some of these students undertake Masters degrees in public policy, public administration or diplomacy, while others enrol in the course as a stand-alone executive program. Many students are public officials with responsibility for corruption prevention strategies in their own countries.

Dr Waldersee explains that this diversity brings with it a range of perspectives that, to a large extent, reflects the content of the course. "The expectation is that they will learn as much from each other as from the presenters and guest experts. It makes for a lively exchange of experiences that resonates with students – regardless of cultural background – because the examples come from real, day-to-day experiences that they can relate to."

Watch the ICAC website for information on next year's Program.

Gifts from suppliers: a corruption prevention case study

In October, the Commission held a public inquiry into allegations that employees from 110 state and local council authorities accepted gifts and benefits from suppliers in return for placing orders and continuing business relationships with these companies. The proactive response from one council illustrates some of the corruption prevention measures at hand to stop suppliers from improperly influencing the ordering practices of council staff.

The Commission had investigated an employee at this particular council who had, over time, received gift vouchers, a barbecue, a television, and a video camera from a supplier. These gifts were never declared, and his acceptance of them was in breach of the council's code of conduct, which prohibited gift giving (with the exception of token gifts).

The council was keen to stamp out the practice of gift giving, as it was aware that suppliers used it to persuade buyers to order goods that they might not normally buy or order in larger quantities than usual. It invited any other staff member who had received gifts and not declared them to now declare them to the general manager. This process resulted in several employees coming forward, and enabled the council to identify one particular supplier who had been cited repeatedly as providing gifts. The council wrote to this supplier, stating:

Council has a Code of Conduct in place which provides clear guidelines to employees with regard to receipt of gifts and benefits. Basically, the policy does not allow Council employees to receive cash, gift cards or gifts that are not of a token value. An example of a token gift is items such as hats and pens...It would be appreciated if you could advise your sales representatives to cease providing any gifts to Council employees.

The company, presumably concerned about the loss of future sales to the council, reacted with alacrity. It wrote back to the council, stating that in future there would be no provision of gifts to council staff, and emphasised that, had it known gifts were outside the council's code of conduct, they would never have been offered in the first place.



As a result of the employees coming forward, the council discovered that the sales representatives of various suppliers had often provided staff with gifts during their visits. Recognising the potential for corrupt relationships to develop during one-on-one meetings between council staff and sales representatives, the council introduced the following rules:

1. Meetings with sales representatives are now not permitted unless requested or initiated by the council officer and must be by appointment only.
2. Two council officers must attend all meetings with sales representatives.
3. Council officers are prohibited from holding meetings with sales representatives over the course of a meal or drinks.

The council also developed a simple, one-page flyer for suppliers, explaining its new protocol for meetings and stating that staff were not allowed to accept gifts or benefits for more than token value.

The council gave a first and final warning to the employee who had been investigated by the Commission, and temporarily demoted him for a period of three months. The council decided, however, not to take disciplinary action against other staff members who had come forward voluntarily to declare gifts and benefits.

Another council investigated by the Commission discovered similar, persistent gift-giving practices from suppliers to council staff. In response, this council decided to continue to allow suppliers to visit, but that they would now have to meet with the purchasing officer and that the meetings would need to take place in the foyer of the civic building. The public context in which meetings with suppliers now occur at this council – that is, in front of reception, the public and other employees going back and forth – automatically reduces the risk of improper gifts changing hands or improper relationships developing.

The Commission will be finalising its report into this investigation over the next few months. The report will include a number of recommendations designed to prevent corruption related to gifts, benefits and procurement.

Changes to the *Public Interest Disclosures Act 1994*

The last six months have seen a great deal of change to the former *Protected Disclosures Act 1994*, now called the *Public Interest Disclosures Act 1994* (“the PID Act”). These changes have included greater responsibilities for our office, as well as strengthened sanctions against those who take reprisal action in response to a disclosure. From 1 January 2012, agencies will also be required to record and report on the disclosures they deal with.

The *Public Interest Disclosures Amendment Act 2011*, which was passed by Parliament in September, made a number of additional changes to the PID Act, including:

- changing all references to “protected disclosures” in the PID Act to “public interest disclosures”
- clarifying the responsibilities of the head of a public authority
- requiring each public authority to provide half-yearly data to the Ombudsman on the authority’s compliance with the PID Act
- requiring each public authority’s public interest disclosures policy to require that a person who makes a public interest disclosure to the authority is to be provided, within 45 days of the person having made the disclosure, with a copy of the policy and an acknowledgment of the receipt of the disclosure
- clarifying the process for the referral of evidence of an alleged reprisal for a public interest disclosure to the Commissioner of Police, the Police Integrity Commission, the Independent Commission Against Corruption, the Attorney General and the Director of Public Prosecutions
- expanding the matters in respect of which public interest disclosures may be made to the local government investigating authority
- including a local government pecuniary interest contravention as a type of conduct caught by the PID Act
- making provision for the involvement of the Ombudsman in resolving disputes arising from a public interest disclosure having been made by a public official
- including the Information Commissioner on the Public Interest Disclosures Steering Committee.

The requirement to report statistical information to the Ombudsman every six months will begin on 1 January 2012.

For further information about public interest disclosures, contact the NSW Ombudsman’s Public Interest Disclosures Unit (pid@ombo.nsw.gov.au) or visit the public interest disclosures page on our website at www.ombo.nsw.gov.au.

Bruce Barbour
NSW Ombudsman

Procurement: a major risk area for corruption

Every year, approximately 12% of complaints received by the Commission include allegations of corruption in NSW government procurement and approximately 30% of the Commission’s public inquiries make findings of corrupt conduct related to NSW government procurement activities.

Two reports were published by the Commission in June this year, representing some of the important findings of the Procurement Outsourcing and Contracting project.

Corruption risks in NSW Government – Suppliers’ perceptions of corruption details the results of a survey conducted by the Commission in which suppliers were asked to provide their perceptions of corruption in NSW state and local government.

Almost half (41%) of the 1,515 suppliers surveyed thought that corruption was a moderate or major problem when doing business with government, while 32% said they had not bid on a contract because of corruption concerns.

Other corruption-prone behaviours that suppliers believe occur at least typically in NSW included the offer of gifts and benefits over \$20 (48% of respondents), the provision of unequal information to different bidders (39%) and the leaking of confidential supplier information prior to close of tender.

The Commission’s research as shown in the second report, *Corruption risks in NSW Government – Recommendations to government*, indicates that there is a feeling from the perspective of not only suppliers but also public sector procurement practitioners that there is general confusion about the best way to handle procurement, where information is available and why decisions are made.

The Commission has made seven recommendations to the NSW Government, including that the Government establishes a procurement leadership role to combat the fragmented approach to government procurement in the state. The recommendation is to develop a simplified regulatory framework for procurement that is contained in a single source, clearly distinguishes between mandatory obligations and advisory guidelines, has minimum exemptions and includes an explicit role to monitor procurement compliance of agencies.

Both publications are available from the Commissions’ website at www.icac.nsw.gov.au.

In other news

ICAC roadshow turns 10!

Although the Commission is based in a single location in Sydney's central business district, its mission is to combat corruption and improve the integrity of the public sector across the entire state of NSW. Since 2001, the Commission has presented a series of on-site events to two rural and regional communities every year in order to bring advice and resources to non-metropolitan areas. The objective of each outreach visit is to increase awareness of the ICAC and its role, to encourage the reporting of corruption, and to help public officials better manage corruption risks.

To find out more about the Rural and Regional Outreach Program, call ICAC's Training Coordinator on 02 8281 5999 (toll free on 1800 463 909) or email education@icac.nsw.gov.au.



From 31 May to 2 June 2011, the Commission delivered a program of corruption prevention activities in Queanbeyan, on the NSW Southern Tablelands (pictured). In November 2011, the ICAC will conduct an outreach visit to the NSW Central Coast.

Amendments to the ICAC Act

The *Independent Commission Against Corruption Amendment Act 2011* ("the ICAC Act") commenced on 13 September 2011. Some of the major changes are as follows:

Section 14(1)(a) to make it clear that the Commission can continue to assemble evidence for the Director of Public Prosecutions after an investigation has been discontinued.

Section 35(4A) now allows the Commissioner to excuse a person who has been summoned to appear before the Commission and produce documents or other things from having to attend on condition that the person produces the documents or things in accordance with a direction made by the Commissioner. The purpose of the amendment is to allow production to occur without the need for a formal appearance in a compulsory examination.

There are consequential changes to section 37 to allow for objection to be taken to production and for retention of the limited legal professional privilege in relation to documents produced under a direction given under section 35(4A).

There are some amendments to sections 57B, 57F and 77A to clarify the powers of the ICAC Inspector.

A copy of the ICAC Act can be obtained from www.legislation.nsw.gov.au.

APSACC's global perspective

The Hon Christian Porter, Western Australian Treasurer and Attorney General, will officially launch the third Australian Public Sector Anti-Corruption Conference (APSACC), "A Global Compass – Navigating Public Sector Corruption", in Fremantle, Western Australia, this month.

The initiative, which began in 2007, has become the premier biennial event for senior public officials, corruption prevention practitioners and other delegates from around Australia and overseas to meet and discuss issues, trends and the latest techniques to combat public sector corruption.

APSACC 2013 will be take place in Sydney.

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 Division of the Independent Commission Against Corruption.

Independent Commission Against Corruption

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