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What do you mean “ethical culture”?

by Dr Robert Waldersee,
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Recently, the importance of an ethical culture has re-established itself in management thinking. The idea that the integrity of staff behaviour has roots in the complex culture of the organisation makes a lot of sense. Logic dictates that the values, traditions, stories, symbols, and so forth, that guide ethical behaviour in society could also exist in the places where we work. If so, to what extent can an ethical culture be fostered in the workplace as a corruption deterrent?

If we receive consistently excellent service from a given organisation, it seems quite reasonable to attribute this to the shared values of the staff and to the organisation’s service culture. Terms such as quality culture, management culture, service culture and efficiency culture have become part of our vocabulary.

From the early 1980s, the idea of organisational culture started to dominate management strategy. As a result, the solution to staff behavioural problems was to be found in cultural change. But the limitations quickly became apparent. Expensive and lengthy cultural change programs produced disappointing results.

Only a few years after popularising the concept of culture, Edgar Schein realised there were problems. In 1990, he wrote that the popular use of the concept has “muddied the waters by hanging the label of ‘culture’ on everything from common behavioural patterns to espoused new corporate values that management wishes to inculcate”. By the mid-1990s, organisational culture had faded into the background.

If the re-emergence of ethical culture is not to repeat the same disappointing demise, then the lessons of history are worth noting. The core of the problem is that such a simple term as ethical culture masks incredible complexity underpinning ethical behaviour in organisations. In fact, the term ethical culture almost appears to defy definition.

The most obvious criticism is that organisations cannot really have cultures. For an individual within a society, culture is the totality of their group’s history, their cherished symbols and stories, and the values, beliefs and principles they have developed over decades. Staff cannot switch on ethical values when they clock-on for work and revert back by the time they are home for dinner.

The degree of integrity displayed in the workplace is probably due to factors other than a true cultural effect. Most obviously, staff integrity

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In October, 26 recommendations were made to the NSW Government to improve its management of the state’s coal resources (see page 5).

Commissioner's editorial

The NSW Independent Commission Against Corruption has made 26 corruption prevention recommendations to improve the way the state manages its coal resources. These recommendations follow a protracted and complex public inquiry concerning the issuing of mining exploration licences and other matters involving former NSW Government ministers.

As I reported in the May issue of *Corruption Matters*, the public inquiry comprised three investigations, namely operations Indus, Jasper and Acacia. The investigation reports, which present the Commission's findings on each matter, were tabled in the NSW Parliament in July and August 2013.

In the reports, the Commission makes corrupt conduct findings against 12 people and is of the opinion that the advice of the Director of Public Prosecutions (DPP) be sought with respect to the prosecution of 13 people. It has also disseminated relevant information to the NSW Crime Commission, the Australian Taxation Office and the Australian Securities and Investments Commission.

In October, the Commission released a separate report on corruption prevention issues as a result of this public inquiry. *Reducing the opportunities and incentives for corruption in the state's management of coal resources* outlines the 26 recommendations for reform made by the ICAC to the NSW Government (some of these are canvassed on page 5 of this newsletter).

A copy of each investigation report, as well as the corruption prevention report, can be downloaded from the Commission's website at www.icac.nsw.gov.au.

Despite the strain these investigations placed on our existing resources, the Commission was able to maintain its standards and meet its obligations in the last financial period. Figures reported in the *Annual Report 2012–2013* reveal that, in some instances, we even improved on what were already exemplary results achieved in the preceding year.

In 2012–13, the Assessments Section, which is the first point of contact for complaints and reports to the Commission, received and managed close to 3,000 matters. The team took an average of 39 days to deal with a matter (compared to 44 in 2011–12), a reduction that continues to feature in the section's achievements from year to year.

The number of compulsory examinations undertaken by the Commission in the last financial year jumped from 135 conducted over 59 days to 257 conducted over 118 days. These bolstered figures are a direct result of the operations referred to above.

During the reporting period, the Commission also commenced 71 preliminary investigations and 22 new full investigations. The number of people against whom corrupt conduct findings were made also increased markedly on the previous year, quadrupling from 14 to 56. Recommendations to seek the advice of the DPP doubled from nine in 2011–12 to 18 this year.

Among its many training sessions and speaking engagements conducted every year to thousands of people, in the last financial year the Commission's Corruption Prevention Division undertook several major projects examining corruption risks of statewide significance. One of these examined the



The Hon David Ipp AO QC

operational issues surrounding the management of information technology, particularly contractors in this industry (see page 6).

For more information on these and other results, a copy of the *Annual Report 2012–2013* can be downloaded from the Commission's website.

This month, I would like to welcome all delegates to the 4th Australian Public Sector Anti-Corruption Conference (APSACC). The very first APSACC was held in Sydney in 2007, and in a few short years has garnered a reputation as Australia's leading anti-corruption event. The APSACC 2013 theme – Vision. Vigilance. Action – serves as a reminder that a corruption-free workplace is a dynamic one that requires active and well-informed participants. I hope you find the program both educational and inspiring.

This will be my final *Corruption Matters* editorial as Commissioner of the ICAC, as I will be retiring from the role on 24 January 2014. In closing, I would like to acknowledge the professionalism and commitment of the Commission's staff during my tenure, and thank the community and other parties for their interest in, and support of, the Commission and its work.

A handwritten signature in black ink, appearing to read 'D Ipp'.

The Hon David Ipp AO QC
Commissioner

What do you mean “ethical culture”? *Cont. from page 1*

is the function of group norms – of expectations around how a person should act. The source of such norms is varied, and can include the tone set by the leaders of the organisation, peer pressure, group protection of itself, sanctions and rewards.

Alternatively, ethical behaviour may well be the function of the core values of employees attracted to the organisation. Scholar Benjamin Schneider noted that certain types of people are attracted to certain types of organisations, are more likely to be selected into the organisation if their values fit, and are more likely to leave the organisation if their values do not fit.

Conversely, problem staff within an organisation may gravitate toward those work units and colleagues with similar problematic values. Indeed, various investigations into police corruption have shown how some commands attracted individuals already tending towards corrupt behaviour.

In some cases, what appears as ethical culture can be compliance with policies, codes of conduct and corporate values. Indeed, effective organisational controls may be the primary reason staff behave with integrity. In other cases, the extent of ethical behaviour may well be due to something akin to culture. In organisations that primarily hire at junior

levels and where staff remain for most of their careers, moving slowly up the ranks – perhaps their behaviour really is the product of the organisational culture.

The idea of an ethical culture sounds attractive but can run into difficulty when efforts are made to find a practical and well-accepted definition. As attempts are made to nail it down, to elucidate precisely why staff are behaving as they do, the concept becomes elusive and ephemeral.

If managers put the effort into understanding the complexity that underpins ethical behaviour then they may well come close to defining culture for their organisation in a practical way. But if it is a warm and fuzzy term that lacks rigour, then management may well re-live the failures of the past, with time and money spent on enforcing a new set of cultural values that resonate with no one.

APSACC returns to Sydney in November

The 4th Australian Public Sector Anti-Corruption Conference (APSACC) returns to Sydney with pre-conference workshops on 26 November, and two days of conference sessions on 27 and 28 November 2013, at the Hilton Sydney.

Discussions will be led by more than 90 skilled practitioners in the fields of anti-corruption management. Dr Peter Eigen, scholar, lawyer and founder of Transparency International, will deliver a keynote address on the important role that civil society organisations have in fighting corruption and working closely with governments and business to do so.

Commissioner Rose Gill Hearn, Department of Investigation NYC, will address the conference on the second morning in a session with the Hon James Wood AO QC, Chairman, NSW Law Reform Commission. These eminent leaders in corruption exposure and reform will speak on anti-corruption strategies and the organisational change required to be effective against corruption threats.

The program offers 20 concurrent sessions on a range of topics, including case studies on corruption investigations and the change program that followed, the link between bullying and corruption, lobbying, fraud prevention, and international perspectives.

APSACC is sponsored by many of Australia’s leading public sector agencies for probity and transparency. The conference is planned and hosted by the NSW ICAC, the Crime and Misconduct Commission, Queensland, and the Crime and Corruption Commission, Western Australia.

Registration for APSACC is still open and delegates can register on the day. Visit the APSACC website at www.apsacc.com.au to view the workshops and conference program or phone our conference organiser, ICE Australia, on 02 9368 1200 or email apsaccreg@iceaustralia.com.



“Vision. Vigilance. Action.” is the theme of this year’s Australian Public Sector Anti-Corruption Conference, 26–28 November. After 2013, the conference will next return to Sydney in 2019. Registrations can be made on the day.

Investigation findings released

A recent Commission investigation resulted in corrupt conduct findings against several people involved in the supply of security services to numerous NSW public authorities (Operation Tilga), while in another matter a NSW corrections officer was found to have acted corruptly by supplying steroids to a colleague and a former inmate (Operation Torino).

In Operation Tilga, the Commission examined allegations concerning the process related to the supply of security services to a number of NSW public authorities. The Commission found that security service providers and public officials engaged in corrupt conduct in relation to work for several NSW public authorities, which resulted in benefits – such as cash, trips to Las Vegas and a motor scooter – being awarded to public officials in return for favouring particular companies.

This included a security consultant, who provided services through his company to several NSW government agencies and, as such, is a public official for the purposes of the *Independent Commission Against Corruption Act 1988*. This consultant accepted rewards ranging from \$13,000 to \$27,500 to favour certain companies, with whom he had ongoing relationships, to receive contracts and ongoing work.

One of these companies also saw substantial increases in the value of security work it received from another agency, rising from \$68,000 in one year to between \$800,000 and \$1.2 million each year over the next four. The public official in this instance received money, accommodation in Las Vegas and a motor scooter, and assistance with the submission of dummy quotes for a carpark upgrade from the company.

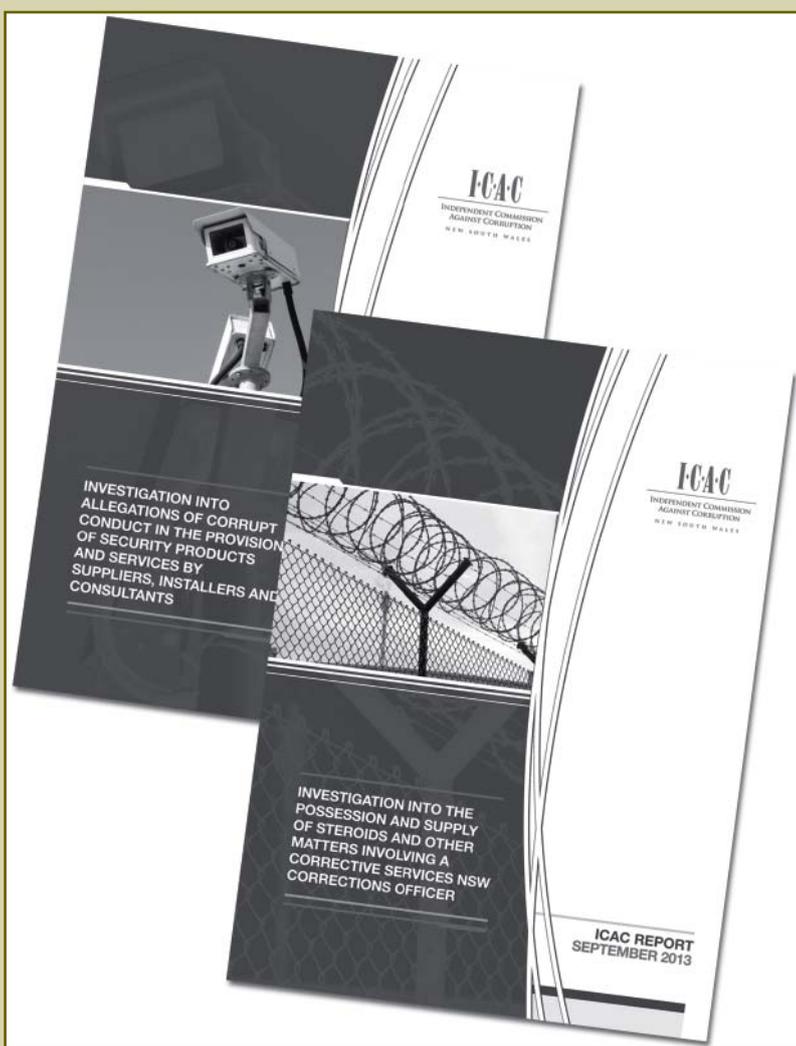
The Commission made 11 corruption prevention recommendations in this matter, and is of the opinion that the advice of the Director of Public Prosecutions (DPP) should be sought with respect to the prosecution of three individuals.

In Operation Torino, the Commission found that a NSW corrections officer engaged in corrupt conduct through supplying steroids to a colleague for cash payment. The Commission found that both men engaged in corrupt conduct by failing to report each other's steroid use in accordance with the disclosure obligations imposed on them by departmental policy.

The officer supplying the steroids also acted corruptly by attending work under the influence of a prohibited drug (commonly known as “ecstasy”), selling steroids to a former inmate with whom, according to policy, he should not have been associating, and using his mobile telephone while on duty, as the use of such devices in a NSW correctional centre is unlawful.

The Commission is of the opinion that the advice of the DPP should be sought with respect to the prosecution of the officer for offences of giving false evidence to the Commission. The Commission is also of the opinion that the officer should be dismissed, and that the other officer who purchased the steroids from his colleague, and did not report his colleague's steroid use, should be disciplined.

Both reports are available on the Commission's website.



State management of coal resources: recommendations for reform

Company behaviour is affected by government policy. Government decisions about infrastructure, for example, affect where companies decide to operate, while government regulations restrict what companies are permitted to do. When a government's policy and regulatory environment is fraught and susceptible to the influence of powerful, rogue individuals, corrupt conduct almost becomes inevitable; at that point, it becomes a question of the scale and degree of the corruption.

The Commission's report, *Reducing the opportunities and incentives for corruption in the state's management of coal resources*, examines the government's policy and regulatory environment in NSW from the time of Australia's mining boom period in roughly 2004–05 to today, with a view to providing the government with recommendations for reform.

The report is a direct response to the findings made by the Commission in operations Jasper and Acacia, both of which investigated the circumstances surrounding decisions made in 2008 and 2009 by Ian

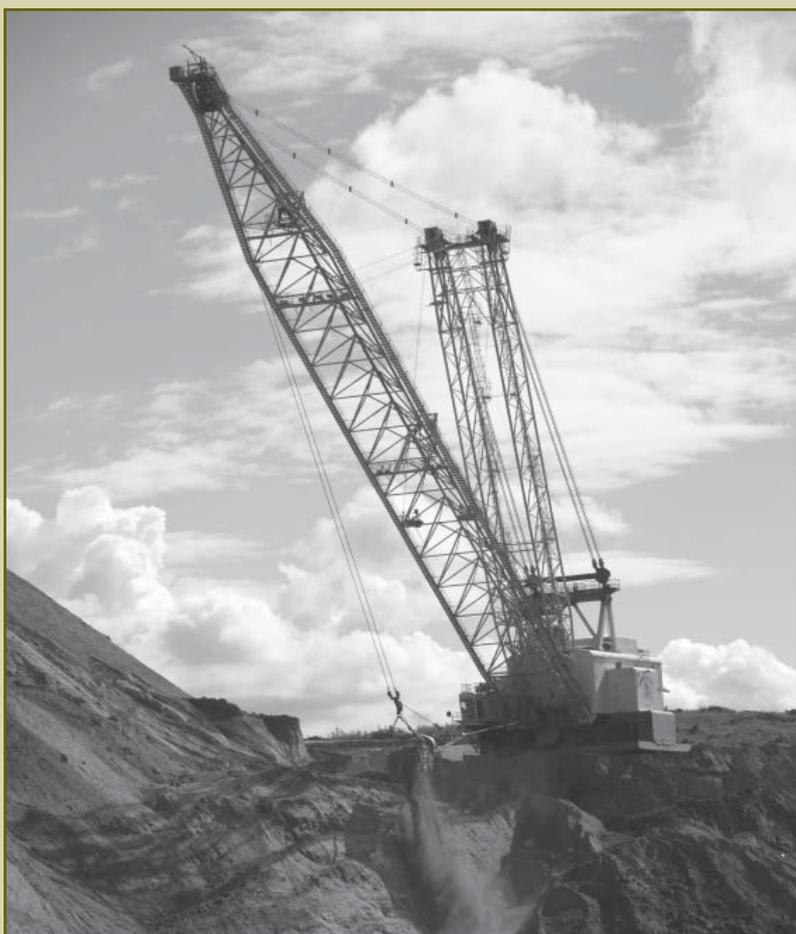
Macdonald, then minister for primary industries and minister for mineral resources, in the granting of specific coal exploration licences (ELs).

In preparing the report, the question facing the Commission was not simply how the state's policy and regulatory framework could allow coal ELs of great value to be corruptly provided to favoured recipients, but how it could have been so easy to do so.

The policy and regulatory environment in NSW at the time of the boom was far from ideal. It was characterised by uncertainty and inconsistencies in government decision-making along with regulatory overlap. The processes within government were complicated and the rationale for certain decisions made by Mr Macdonald was unclear. Many in the coal mining industry in NSW responded to these complex processes by either engaging lobbyists to try to navigate the process for them or directly lobbying departments or ministers. In order to establish a mine in NSW, the government had, effectively, created a system that provided for no other way to do business.

The report presents the Commission's 26 recommendations for reform and outlines the characteristics of a preferred future framework for the management of the state's coal resources, which will provide greater certainty to both the coal mining industry and the community. The preferred framework seeks to remove the incentives and opportunities for corruption and is based on best practice identified in other jurisdictions along with extensive consultation.

The Commission recommends, for example, that a government decision to release an EL be informed by broader government expertise that takes into account social, economic and environmental factors, and that the transparency of recommendations and the decisions of elected officials be open to public scrutiny. The report also makes recommendations for reform of the accountability framework governing the conduct of members of the NSW Parliament, including the *Code of Conduct for Members* and the current pecuniary interest disclosure system.



A copy of *Reducing the opportunities and incentives for corruption in the state's management of coal resources*, is available from the Commission's website at www.icac.nsw.gov.au. The reports into Operation Jasper (*Investigation into the conduct of Ian Macdonald, Edward Obeid Senior, Moses Obeid and others*) and Operation Acacia (*Investigation into the conduct of Ian Macdonald, John Maitland and others*) are also available from this website.

Controlling corruption and improving outcomes with IT contractors

In August 2013, the Commission published a report highlighting the corruption risks associated with engaging and managing information technology (IT) contractors and consultants, and strategies for maintaining efficiency and control of IT project management.

Every year, government agencies in NSW alone spend approximately \$1 billion on IT services. Approximately \$211 million of this total is spent on contractor services. This is a substantial sum, particularly when considered in the light of recent corruption findings identified by the Commission in this area.

Indeed, a number of investigations conducted by the Commission in recent years have revealed cases of corrupt manipulation in each segment of the IT project lifecycle. Corruption risks were identified from the initial project scoping phase, through to the design phase, and right up to project implementation and post-project servicing.

These risks are complicated by the fact that IT industry contractors, recruitment firms and project managers are often well-connected and have pre-existing relationships from previous work. If unchecked, this can create conflicts of interest and other corruption risks. In-house IT projects are also particularly vulnerable to a number of other corruption risks, such as over-charging, over-servicing, under-delivery, favouritism and manipulation to create a long-term dependency on contractors.

The Commission's report on Operation Tilga (*Investigation into allegations of corrupt conduct in the provision of security products and services by suppliers, installers and consultants*) exposed corrupt manipulation of project technical specifications by highly-networked consultants in order to steer work towards undisclosed business associations (see page 4).

Given the substantial annual expense coupled with these corruption risks, how do agencies maintain effective project management and control of corruption risks when it comes to engaging IT contractors and consultants? This question is the focus of the Commission's *Controlling IT contractors: improving outcomes* paper.

Rather than a to-do checklist, the publication provides examples and practical ideas to enable project managers in government agencies to reduce the risk of corruption and waste in engaging these experts by tailoring corruption prevention solutions that fit their unique IT needs and capabilities.

Based on analyses of practices in a number of organisations, the Commission's publication addresses common risks and challenges faced in the engagement of IT contractors, such as:

- over-specifying the needs of the organisation to boost the price
- under-pricing the work and then stalling completion in order to augment the original quote
- steering hardware purchases toward those organisations that provide them with a commission
- gaining control of intellectual property and making the organisation dependent on a single contractor for servicing and upgrades
- engaging sub-contractors of lower skill but billing them to the organisation at a price for higher skill
- owning a recruitment firm in secret through which contractors are sourced or having associates in the industry to whom work is directed
- enhancing position descriptions to include superfluous skills for a position in order to extract higher contract rates.

While there is no one-size-fits-all solution to each problem raised when hiring IT contractors, this publication aims to present a set of practical approaches to help managers solve some common challenges faced by agencies and mitigate or control corruption risks.

A copy of *Managing IT contractors, improving IT outcomes* is available from the Commission's website at www.icac.nsw.gov.au.

Complaint-handling matters: how can the Ombudsman help your organisation?

It is well accepted that integrity, transparency and accountability are touchstones for managing corruption risks within an organisation. An organisation that promotes these values and incorporates them into its systems and processes is well-equipped to resist corrupt influences.

But how well agencies deal with complaints made about them also sends a strong message to their staff and others about the agencies' commitment to these values. Well-designed complaint-handling systems allow agencies to identify areas for improvement and identify relationships that may need repairing and strengthening.

Over the past four decades, the NSW Ombudsman's office has gained significant insights into all aspects of effective and accountable complaint-handling, and common pitfalls to be avoided. By monitoring trends arising from our complaint-handling work, we have identified areas in which agencies and complaint-handlers are likely to benefit from with regard to further guidance, training and support.

This has allowed us to develop a wide range of guidelines and training courses attuned to the needs we identify in the public sector, the community services sector and the disability sector, and to continually refine these resources and develop new ones. In recent years, we have also developed a range of resources to support agencies to comply

with their obligations under the *Public Interest Disclosures Act 1994*.



A copy of the "Public Interest Disclosures Internal Reporting" poster can also be downloaded from the Ombudsman NSW website and used at your agency.

We thought it timely to bring together – in one publication – a summary of the key activities we have undertaken in this area over the years, as well as to provide a brief outline of the various roles and services we provide to assist the wide range of organisations within our jurisdiction to better respond to complaints and disclosures.

The resulting brochure, *Complaint Handling: research, resources, and training*, is now available and can be downloaded from our website at www.ombo.nsw.gov.au. If you have trouble accessing this material, please contact our office on 02 9286 1000.

Bruce Barbour
NSW Ombudsman

In other news

What do you think of the ICAC?

For the past 20 years, the Commission has been conducting surveys periodically to gauge the public's perceptions of corruption and of the Commission itself. After all, in order for the Commission to be effective in investigating, exposing and preventing corruption, it relies on members of the public and public officials in NSW to recognise that corruption is wrong and to be willing to report it. The community also needs to be aware that the Commission is the right place to report suspected NSW public sector corruption.

In July this year, the Commission released a report on its findings from the 2012 survey. The publication was also an opportunity to reflect on cumulative findings over the 20-year period since the first survey was conducted. One noteworthy trend is the long-term decline in the proportion of respondents who view corruption in NSW as a major problem. In the years immediately after the establishment of the Commission, some 55% of those surveyed viewed corruption in the state

as a major problem. This number has declined significantly since the establishment of the Commission but it is still at over 30%.

Findings from the nine community attitude surveys conducted between 1993 and 2012 are available from the Commission's website at www.icac.nsw.gov.au.

Anti-corruption classroom

Every year since 1999, the Commission has provided 10 scholarships (awarded competitively) for senior public officials to attend an anti-corruption short course delivered by the Commission in partnership with the Australian National University (ANU). The recently revamped four-day course, titled *Corruption prevention: Beyond risk management – leveraging operational effectiveness*, challenged participants to consider how they can make their organisation's operations both efficient and resistant to corruption.

Parliamentary referral

On 23 November 2011, by virtue of s 73 of the *Independent Commission Against Corruption Act 1988*, both Houses of Parliament referred five matters to the Commission for investigation. These matters resulted in Operation Acacia. The Commission will address three of the five matters in the original referral in a separate report to the NSW Parliament later in 2013.



The Commission's Dr Robert Waldersee presents at the ICAC/ANU anti-corruption short course in Sydney.

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