

EUROPEAN ANTI-CORRUPTION AGENCIES: PROTECTING THE COMMUNITY'S FINANCIAL INTERESTS IN A KNOWLEDGE-BASED, INNOVATIVE AND INTEGRATED MANNER

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LEARNING FROM EXPERIENCE: The NSW ICAC project to review investigations to support knowledge-based prevention policy

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This paper is not for publication or quotation in its present form. It reports interim findings and provisional conclusions of a project that is currently being undertaken by the Corruption Prevention Education & Research Division of the NSW ICAC. Final findings will be produced later in 2006 and will be available at www.icac.nsw.gov.au

ABSTRACT

The NSW Independent Commission Against Corruption (ICAC) is an anti-corruption agency that has a dual mandate to investigate and to prevent public sector corruption. These roles are pursued by the Commission both separately and in combination.

The investigative function employs standard law enforcement investigation techniques and its prevention activities include training, policy and analysis and advice for the public sector as well as public education.

The two functions merge in a cooperative way in particular operational activities and projects. They also have a conceptual symbiosis in the sense that public inquiries can be a method of preventing corruption as well as detecting it. The Commission's investigations are required to be conducted with a view to "determining the factors that may allow, encourage or cause corruption to occur" (s 13(2) ICAC Act 1988).

After 16 years of conducting investigations the Commission now has a sufficiently large body of investigation reports to analyse them for information they may contain about factors that might "cause, encourage or allow corruption to occur".

This paper reports on the project to analyse the reports, which is still underway, and presents some of its interim findings. The paper describes the context of the project, including the role and work of the New South Wales Independent Commission Against Corruption, and the methodology chosen. It relates the main interim findings from the study and indicates some of the ways that the information obtained might be used to improve the effectiveness of the ICAC.

PART 1: INTRODUCTION

This paper describes a project currently being undertaken by the Independent Commission Against Corruption (ICAC) in the State of New South Wales (NSW), Australia.

The purpose of the project is to maintain the currency of the Commission's knowledge about how and why corruption occurs and, as a consequence, how it might be prevented. Its relevance to this conference lies in the fact that the project is an example of one way that an anti-corruption agency can learn from its own experience to improve its capacity to achieve its objectives. The project is a logical consequence of the ICAC's integrated operating model. It was designed to explore information collected in the Commission's investigations that might inform its prevention policy, knowledge and advice.

The NSW ICAC has a mandate to investigate corruption as well as to build the capacity of the public sector to prevent it. Over 16 years of investigating allegations of corruption the Commission has collected knowledge about the circumstances in which corruption has occurred in the NSW public sector. The project reported in this paper reviewed the recent research literature about how corruption occurs as well as the information collected in the public reports of ICAC investigations in which corruption was found.

The paper begins with the background to the project which includes some salient features of the ICAC itself such as the policy context in which it operates, its statutory roles, functions and powers and its organisational structure. The paper then describes the project itself, the way it was undertaken, and some of its preliminary findings. Finally it identifies some of the applications indicated by the project's findings so far.

PART 2: BACKGROUND TO THE PROJECT

Policy context

The ICAC was established in NSW by the *Independent Commission Against Corruption Act 1988* (ICAC Act) as a political response to perceived community concern about the integrity of public administration. It followed events including the imprisonment of a Chief Magistrate and a Cabinet Minister, criminal trials of senior officials, and an enquiry into the police force, which led to the discharge of a Deputy Commissioner of Police. The Commission commenced in March 1989 with the mission to expose and minimize corruption in the NSW public sector.

The principal objectives of the ICAC Act are to promote the integrity and accountability of the States' public administration.

Operating structure

The ICAC is often referred to as a "standing Royal Commission" (or commission of inquiry). It follows the commission of inquiry model in terms of having a specific rather than general law enforcement focus (ie public sector corruption), it is concerned with fact finding rather than prosecuting, its operations and findings are independent of the government of the day¹, it is headed by an appointed Commissioner rather than a

¹ The ICAC is accountable not to a Government minister but to the people of New South Wales through a parliamentary committee. It is subject to a number of other accountability mechanisms: an inspector, Operations Review Committee provide external oversight and inter-divisional operational committees ensure internal accountability.

career public servant and it possesses and directs its own operational resources such as investigative and legal staff.

The permanent or standing nature of the ICAC gives it operational advantages over an ad hoc body. A permanent body can recruit and retain staff with a mix of skills and expertise - such as investigators, lawyers, analysts and other specialists - to meet the needs of its environment. Over time strategic intelligence can be collected and research about corruption risks can be gathered in order to improve the performance of all of the Commission's functions. These features allow the Commission to respond more effectively to the demands of an investigation or other anti-corruption work than a temporary organisation could.

Definition of corruption and jurisdiction

The scope of the Commission's jurisdiction is particularly wide, focusing on the acts of "public officials", broadly defined, and extending also to "conduct of persons who are not themselves public officials but whose activities impact on honest public administration. The most obvious example would be an attempt by a private person to bribe a public official"². It can also include those performing public functions on the part of government.³

Broadly, corruption is conduct that involves a:

- dishonest or partial exercise of public functions, or
- breach of public trust, or
- misuse of information or material acquired in the course of official functions.

The definition is not limited to criminal, or even unlawful, conduct. Nevertheless it must be conduct that breaches standards "recognised by law"⁴, defined as:

- (a) a [criminal offence](#), or
- (b) a [disciplinary offence](#), or
- (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a [public official](#), or
- (d) in the case of [conduct](#) of a Minister of the Crown or a member of a House of Parliament—a substantial breach of an [applicable code of conduct](#).⁵

In deciding which allegations to pursue the ICAC is also required to prioritise "serious and systemic" corruption in its work⁶.

Consequently the ICAC's prevention policy must be capable of addressing non-criminal as well as criminal behaviour in a wide range of institutional contexts.

Statutory role and powers

The ICAC Act gives the Commission a dual role to:

- investigate, expose and prevent corruption involving or affecting public authorities or public officials, and

² Legislative Assembly Hansard 26 May 1988 Mr Greiner (Ku-ring-gai)

³ The NSW public sector comprises over 300,000 people (12 per cent of the State's workforce) in over 130 public sector organisations, around 160 local government authorities, ten universities and over 1000 boards and committees.

⁴ NSW Legislative Assembly *Hansard* 26 May 1988.

⁵ Section 9(1) ICAC Act

⁶ Section 12A ICAC Act

- educate public authorities, public officials and members of the public about corruption and its detrimental effects on public administration and on the community⁷.

These roles are expressed in terms of the three main functions of investigation, prevention and education⁸. The combination of these roles and functions in a single organisation has been described as the “three-pronged” anti-corruption model which was first adopted by the Hong Kong ICAC in the 1970s. From a policy perspective it recognises the complexity of corruption and operationally it allows for interaction between the functions.

As an example, the ICAC Act requires that:

- (2) The Commission is to conduct its investigations with a view to determining:
 - ...
 - (c) whether any methods of work, practices or procedures of any public authority or public official did or could allow, encourage or cause the occurrence of corrupt conduct⁹.

Investigations can improve understanding about how corrupt behaviour occurs or persists¹⁰ which can help direct prevention efforts and ICAC prevention officers are routinely assigned to investigation teams. In this role they analyse evidence, examine the way affected organisations operate and, ultimately, advise them about improving their capacity to inhibit corrupt practices.

Investigation process

The ICAC Act prescribes investigative powers to the ICAC including to enter premises to inspect and copy documents. Warrants may be obtained to search properties, use listening devices and intercept telephone calls. As part of investigations, the ICAC can require a public authority or official to provide information or documents, hold compulsory examinations and public inquiries where witnesses are obliged to answer questions.

The Commission may make findings of fact and form opinions based on facts obtained about whether a person, a public official or not, has engaged in corrupt conduct. Whenever a public inquiry is conducted the Commission is obliged to issue a public report of the investigation process and findings.¹¹ This body of reports was reviewed for this project.

The ICAC does not investigate every allegation received and only a few become public inquiries. Allegations that do not concern “serious and systemic” behaviour may indicate a corruption risk that can be addressed with preventative action. These allegations may be referred for prevention policy advice rather than further investigation.

Prevention staff are also part of investigation teams for public inquiries responsible for analysing causative and contributory factors and developing recommendations for preventative action.

⁷ <http://www.icac.nsw.gov.au/index.cfm?objectid=D6F452F7-966A-4483-856CECB41203A0C7>

⁸ Section 13(1).

⁹ Section 13(2) ICAC Act 1988.

¹⁰ This analysis is taken from C Small & G Coulthart 2005 ICAC/ANU Course materials 2005: “Investigating Allegations of Corruption” ICAC internal document.

¹¹ ICAC Act s 74(3)

Research and prevention policy

The Commission's prevention work includes analysing laws and management practices and providing advice and assistance to reduce the likelihood of corruption¹². This occurs in the form of:

- individualised advice to agencies about preventative policies and procedures;
- analysis of evidence;
- published advice such as guidelines, discussion papers and resources for public sector organisations;
- training and speaking engagements with agencies or groups of agencies (ICAC 2004: 57).

The ICAC's current prevention policy was developed from sources including research conducted by the Commission including¹³:

- studies of employee perspectives of corruption
- studies of public sector managers' perspectives on corruption prevention
- a study of contractors perspectives of corruption
- reviews of the relevant research literature
- analysis of types of allegations of corruption made to the ICAC
- surveys of community awareness and support for the minimisation of corruption.

The common theme of the ICAC prevention model is the concept of "organisational integrity" which is an institutional policy framework intended to help an agency make itself resistant to corruption, rather than being forced to react to it. It works by integrating organisational values (such as integrity, honesty, excellence) into the usual work of the organisation largely through the example of managers. The anticipated outcome is an institutional culture of integrity that enables resistance to corruption and, operational effectiveness¹⁴.

The model emphasises the use of:

- risk analysis to understand the corruption risks that the agency faces
- institutional policies, procedures and management controls to address those risks
- the leadership of managers to enforce policies and demonstrate compliance.

PART 3: THE PROJECT

Objectives

The project is being undertaken by the Corruption Prevention, Education and Research Division of the ICAC which is responsible for the Commission's statutory "prevention" functions. It is a policy development project rather than a piece of research. In this sense the project has a scoping purpose in that it is intended to capture both current thinking and the ICAC's collected information about factors associated with corruption.

The project's objectives are to:

¹² Section 13 ICAC Act

¹³ Described in A Gorta 2001 "Research: A Tool for building corruption resistance" in P Larmour & N Wolanin (eds) *Corruption and Anti-Corruption Asia Pacific Press/AIC Canberra*.

¹⁴ ICAC 2001 *The First Four Steps* ICAC Sydney; Boardman Catherine and Vicki Klum 2001 "Building organisational integrity" in Larmour, P and Wolanin, N (eds) *Corruption and Anti-Corruption Asia Pacific Press/ AIC Canberra*.

- Examine current research literature and ICAC investigation reports to identify factors that could “allow, encourage or cause the occurrence of corrupt conduct” in order to update the policy and knowledge base of the ICAC’s prevention work.
- Produce resources to support the prevention work of the ICAC, eg a literature review, an investigation report review and a policy statement.
- Formulate an evidence-based prevention policy position for use in training, advising and recommendations.
- Identify new policy issues for further research.

Methodology

Two sources of evidence about the factors that could allow encourage or cause corruption were reviewed: the body of ICAC investigation reports, and research literature about the corrupt conduct. The reviews were conducted separately without reference to each other and their findings compared.

ICAC investigation reports

Since its creation in 1988 to the end of 2005, the Commission has conducted and publicly reported on 99 major investigations. For the purposes of this project we decided only to use data from the 59 investigations in which findings of corrupt conduct were made.

The format of ICAC investigation reports has varied over time. Each report sets out the evidence on which findings and recommendations for future action are based. Information about the circumstances in which the corrupt conduct occurred and recommendations about ways to prevent it recurring is usually included in reports but it is not required by statute and not routinely collected.

Consequently the categorical variables (the factors) reported in this paper are not consistent across all investigation reports. It was possible to identify some factors that could have allowed or contributed to the corrupt conduct, but it is also possible that more factors would have been identified if the data had been collected differently.

The review of the reports was an exploratory exercise. It was an attempt to find out what factors had been identified in reports and whether any patterns could be identified. A random sample of ten reports was used to refine a template of relevant factors to record the information found in the remaining reports.

Research literature

The other source of evidence reviewed for this project was the relevant research literature. Corruption is not limited to a single behaviour and the study of corruption is still developing as a unified discipline¹⁵. Consequently we undertook an inter-disciplinary literature review¹⁶ of institutional factors that could “allow encourage or cause corrupt conduct” (in the terms of the ICAC Act).

Research was selected for review if it:

- reported empirical, experimental or analytical research related to conduct that would meet the ICAC Act definition of corruption if it occurred in a public sector context;
- had been conducted in order to understand institutional factors that might contribute to the occurrence of corruption; and
- had the capacity to inform the development of ICAC prevention policy and advice.

¹⁵ Gorta A 2001

¹⁶ This ranged across the fields of criminology, economics, social psychology, moral philosophy, regulatory compliance and organisational management.

PART 4: INTERIM FINDINGS

This Part reports provisional findings from the review of the ICAC investigation reports compared with those from the literature review.

The findings presented here are interim only and should not be relied on as conclusions of the project. Final outcomes from the project will be available in various formats later this year.

In the 59 ICAC reports reviewed 18 factors were found that could have allowed or contributed to the corrupt conduct that occurred and they are discussed below. From the information available it is not possible to state that these 18 factors ‘caused’ the corrupt conduct. However, it is evident from the reports that the presence of these factors played some sort of role in the conduct occurring in each case.

We organised the 18 factors into three categories labelled environmental, internal and individual factors. Factors (usually several) from each of the three categories were found in nearly all the cases indicating that the reasons for corrupt conduct are complex. Similar categories are also used in the literature.

Individual factors

Individual perpetrators have been the subject of analytical and empirical research about the reasons for corruption and misconduct. Research about individual perpetrators commonly reports data about the age, rank and length of service of perpetrators.¹⁷ Research about the personality or attitudes of perpetrators is also common¹⁸.

Information about individual characteristics has limited application to ICAC prevention policy because of the context in which it operates. The consumers of ICAC advice are public sector employers and are, therefore, constrained by the extent to which they can, or indeed should, use or obtain information about individuals to take action that might be interpreted as detrimental. To decline to employ or promote someone on the basis of a personal profile, for example, would be, at least, controversial and possibly unlawful.

The 59 ICAC investigation reports did not always gather information about the perpetrators of conduct found corrupt; nevertheless the following themes about perpetrators emerged from the review:

- The public official perpetrators of corrupt conduct were more likely to act with another person than alone.
- The public official perpetrators were more likely to commit the corrupt conduct with a non-public official than with a public official.
- The perpetrators were more likely to be managers or elected officials than staff without supervisory or management functions.
- The perpetrators almost always took advantage of situations in which there were pre-existing opportunities rather than actively creating opportunities or finding ways to overcome the prevention systems.
- Where length of service in the agency or the related industry was reported, perpetrators generally had many years of service or experience.

¹⁷ For example Association of Certified Fraud Examiners (ACFE) 2004 *Report to the Nation on Occupational Fraud and Abuse* ACFE

¹⁸ Buckley, Ronald M, Wiese, Danielle S. & Harvey Michael G. 1998 “Identifying Factors which may Influence Unethical Behaviour” *Teaching Business Ethics* Vol. 2.

This information suggests that understanding an individual's decision to engage in unethical behaviour may be useful to ICAC work. One study concluded that "more ethically sensitive subjects tend to make decisions more consistent with accepted standards of ethical conduct"¹⁹. The motives that come into play in such decisions are explored in the criminology research using theories such as control theory²⁰, rational choice²¹ and the theory of routine activities²².

Individual motivation was not specifically discussed in all the ICAC reports but the motive most commonly stated was financial gain for the perpetrator. Other commonly stated or inferred motives (not in order of prevalence) were:

- Perceived reduced, or absent, risk
- Personal non-shareable problems, eg gambling, drug use
- To expedite business, for example the executives acting to increase profit, or using unofficial (improper) channels rather than official ones because it was easier and quicker.

The factors found in the ICAC reports that related to the individual perpetrator of the corrupt conduct were:

- perpetrators developing inappropriate relationships with clients
- perpetrators failing to declare conflicts of interest from pre-existing relationships
- perpetrators feeling dissatisfied or perceiving unfairness in the workplace

Many of the investigations exposed pre-existing personal relationships between public officials with regulatory or decision-making roles and persons in related industries outside the public sector. The relationships provided opportunities for the two parties to engage in corrupt conduct.

Apart from pre-existing relationships, many public official functions require staff to form professional relationships with non-public officials as part of their work, especially in service provision or regulatory roles. In the investigated cases, this aspect of the work often provided opportunities to act improperly or the officials lacked the skills to prevent relationships becoming improper.

One analysis from the corruption literature suggests that relationships facilitate corruption because corrupt transactions involve the exchange of power between individuals who are looking for ways to get something they want. When professional relationships become personalised an "influence debt" can develop and lead easily to a "power swap" or corruption²³.

We found that the role of staff dissatisfaction has also been explored in the research literature with links being made between staff dissatisfaction and deviant behaviour such as theft and minor workplace misbehaviours.²⁴ Other studies report that

19 Wittmer, Dennis, 1992 Ethical Sensitivity and Managerial Decisionmaking: An Experiment *Journal of Public Administration Research and Theory* October, 1992 pp 443-462

20 Cullen FT & Agnew R (eds) 2003 *Criminological Theory Past to Present: essential readings* Roxbury Publishing pp 219-226.

21 Cornish Derek B and Clarke Ronald V. 1986 *The Reasoning Criminal* New York: Springer-Verlag 1986

22 Felson M "Linking Criminal Choices, Routine Activities, Informal Control, and Criminal Outcomes" in Derek B. Cornish and Ronald V. Clarke (eds) *The Reasoning Criminal* New York: Springer-Verlag 1986 pp 119-128.

23 Warburton J "Corruption, Power and the Public Interest" *Business and Professional Ethics Journal* Vol 17 No 4 pp 80-99 at 8723. In the public sector context, power comes from "being given administrative control of decision-making processes and control of scarce resources on behalf of the public".

24 Challenger D 1994 Feeling Good at Work: an antidote to workplace crime" Paper presented at *Australian Institute of Criminology Conference: Crime Against Business* 28 February-2 March 1994 Melbourne; Hollinger RC and Clark JP 1983 *Theft by Employees* Lexington Books, DC Heath and Company Lexington Mass. quoted in Gorta A 1998

dissatisfaction that results from perceived unfairness in the workplace can be one of several “justifications for deviance” that act to neutralise or rationalise the behaviour.²⁵

Perpetrators labelling the institution or another person as the indirect cause of the behaviour²⁶ also emerged from the literature review particularly in relation to “noble cause” corruption in which the individual tries to make up for perceived system failures or unfairness²⁷. Noble cause corruption was not well represented in the ICAC reports but the need to act expediently in the interests of “getting the job done” did appear to be a relevant factor.

Internal (institutional) factors

Factors that can be described as institutional or internal to an agency are those that are largely within the control of the agency and result from agency decisions or inaction.

The literature reviewed indicates that organisations are more susceptible to fraudulent behaviour by employees if they are large²⁸, intensely competitive - either internally or externally, prioritise financial success,²⁹ operate in industries with a culture of misconduct³⁰, and are experiencing a state of dynamic change such as corporate restructuring or business diversification³¹. Other institutional factors mentioned in the literature were the existence of corporate financial problems³² and a finding that the likelihood of illegal behaviour increases when resources are scarce³³.

Few of the ICAC investigation reports described these kinds of details about the agency itself. It was clear that a variety of agencies of different sizes and types were represented in the reports and, it seems, there was no relationship between the size or type of agency and the occurrence of corrupt conduct.

The internal factors identified in the ICAC investigation reports as associated with the corrupt conduct were:

- Failures of senior or corporate management
- Inadequate supervision or work review
- Aspects of the culture of the organisation
- Inadequate knowledge, skills or experience of perpetrator or related supervisors
- Inadequate policies, procedures or systems

Minimising Corruption: Lessons from the Literature ICAC Sydney; Trevino L K and Brown M E 2004 :The Role of Leaders in Influencing Unethical Behaviour in the Workplace” in Kidwell RE & Martine LC (eds) *Managing Organisational Deviance* Sage Publications Inc 2005 pp 69-96.; Workplace dissatisfaction may also help to understand the contested relationship between low salary and corruption discussed in Gorta A 1998 pp 7-8.

25 Wellen J 2004 “From Individual Deviance to Collective Corruption: A social influence model of the spread of deviance in organisations” Paper presented to the *Social Change in the 21st Century Conference* Centre for Social Change Research Queensland University of Technology 29 October 2004 p 7; DF Sunahara 2004 “Searching for Causes: Entitlement and Alienation as Precursors of Unethical Police Behaviour” Canadian Police College, Ottawa at http://www.cpc.gc.ca/research/causes_e.htm last accessed 21 April 2006; Buckley, M. Ronald, Wiese Danielle S. & Harvey Michael G. 1998 “Identifying Factors which may Influence Unethical Behaviour” *Teaching Business Ethics* Vol. 2, 1998.

26 Buckley, Wiese & Harvey 1998.

27 Kleinig John 2002 “Rethinking Noble Cause Corruption” *International Journal of Police Science & Management* Vol 4 No 4 pp 287-314 at 289.

28 Baucus Melissa S. & Near Janet P ‘Can Illegal Corporate Behaviour be Predicted? An Event History Analysis’ *Academy of Management Journal* Vol. 34, 1991; Barnes P & Webb J 2005 *Reducing an Organisation’s Susceptibility to Occupational Fraud: Factors Affecting its Likelihood and Size* BDE Global London.

29 Clinard Marshall B 1983 “Why Some Organisations Are More Ethical than Others” *Corporate Ethics and Crime: The Role of Middle Management* Sage Publications Beverly Hills pp 70; Hegarty, W Harvey & Sims, Henry P Jr. 1978 Some Determinants of Unethical Decision Behaviour – An Experiment *Journal of Applied Psychology* Vol.63, No. 4, 1978. In the public sector this approach can also refer to a “political bottom-line” rather than a financial bottom-line, see Sims Ronald R 1992 “The Challenge of Ethical Behaviour in Organisations” *Journal of Business Ethics* July 1992

30 Victor Bart& Cullen John B. 1988 “The Organizational Bases of Ethical Work Climates” *Administrative Science Quarterly* Vol.33, No.1, March 1988.

31 Foss Nicolai J “Knowledge-based Approaches to the Theory of the Firm: Some Critical Comments” *Organization Science* Vol. 7, No.5, Sept–Oct 1996 pp 470-476; Baucus & Near 1991; Theobald 1997 “Enhancing Public Service Ethics: More Culture Less Bureaucracy?” *Administration and Society* v 29 No 4 p 490 Sep 1997; Weber RJ, Kurke Land Penticco D 2003 “Why do Employees Steal? Assessing Differences in Ethical and Unethical Employee Behaviour Using Ethical Work Climates” *Business and Society* Vol 42 No 3 Sept 2003: 359-380.

32 Clinard 1983

33 Baucus & Near 1991.

- Failure to follow existing policies / procedures / systems
- Poorly managed contracting / commercial relationships
- Inadequate resources
- Corrupt staff had high levels of personal discretion / autonomy / power / influence

Institutional factors were the most common factors in the ICAC investigation reports and were present in nearly every case. Although factors outside an agency's direct control were present in instances of corrupt conduct, most factors were within its control. This finding is consistent with a survey of managers about the occurrence of unethical behaviour.³⁴

The research literature on the influence that institutional factors can have on employee conduct indicates that these factors may be of two types: system failures such as poor supervision³⁵, oversight, or procedural rules; or socialisation factors such as the conduct of peers and managers in the organisation.³⁶

In the ICAC investigations poor supervision was often seen where:

- a. staff were in remote locations,
- b. there were confused reporting lines,
- c. managers did not have adequate technical knowledge to supervise staff effectively,
or
- d. staff were accorded high degrees of personal discretion by their managers.

The last group included 'resident experts' who held all the corporate knowledge or expertise in a particular functional area. When they acted corruptly it was in an environment where they were not effectively supervised, they were allowed a high degree of autonomy. They were frequently highly trusted and respected for their knowledge. These situations often came about in an informal, rather than official, way and gained acceptance over a long period of time. They resonate with the Klitgaard formula "monopoly + discretion – accountability = corruption"³⁷ in which the employee is given a monopoly on a body of essential information with discretion as to its use and no effective accountability on its exercise.

Inadequate knowledge and skills of perpetrators and of their supervisors, managers and other relevant staff was another factor evident in the investigation reports. Related to this factor was the lack, or poor quality, of agencies' policies and procedures. In many cases agencies had no relevant policies or procedures. In others, agencies may have introduced policies but they were not comprehensive, or were confusing, complicated or outdated. In many cases, this created a sort of policy vacuum that made it easier for perpetrators to engage in corruption and harder for managers to supervise their activities as it often was not clear how things should have been done.

The effect of a 'policy vacuum' appears in the literature as a level of uncertainty for employees about the acceptable behaviour. Where standards of conduct are not made explicit the consequent uncertainty among employees is said to create conditions that can encourage deviant behaviour³⁸, opportunism and moral hazard³⁹.

³⁴ Supported by Clinard 1983

³⁵ Dunkleberg J & Jessup DR 2001 "So Then Why Did You Do It?" *Journal of Business Ethics* 29:51-63; Clinard 1983

³⁶ Ethics Resource Center *National Business Ethics Survey* 1994-2005.

³⁷ Klitgaard R 1988 *Controlling Corruption* University of California Press p 75

³⁸ Wellen 2004

³⁹ Foss 1996

The ICAC reports revealed many instances of inadequate institutional management from strategic risk assessment to routine controls such as record keeping. Some perpetrators failed to follow procedures but the failure was not identified because monitoring was inadequate. The failures found were generally people-related rather than attributable to the lack of physical systems or an expensive technical solution.

The literature identifies two particular forms of poor management that were relevant to the ICAC reports. One was described as “organisational incompetence”⁴⁰ in a variety of forms. The second is the way that senior managers respond to ethical issues⁴¹ which can include behaviour on the part of managers such as:

- tolerating or rewarding unethical behaviour⁴²
- “individual ethics, personal ambition and poor supervision”⁴³
- not taking action about corruption and behaving inconsistently⁴⁴
- emphasising the “bottom line” of the organisation over other values.⁴⁵

The idea that factors of this kind can contribute to the “work climate” of an organisation was explored⁴⁶ in studies that concluded that organisations also have different types of *ethical* work climates that can encourage ethical employee behaviour.⁴⁷

External (environmental) factors

Environmental factors originate in the environment in which the organisation operates but have a demonstrable impact on it. They include:

- Significant change imposed on the agency (eg government policy or budget constraints that affect function, structure or operations)
- The nature of the work the perpetrator was required to do determined by the role of the agency
- Inadequate legislative provisions applying to the role
- Poor understanding of proper agency functioning by certain sectors of the community⁴⁸.
- Potential for significant gain – financial or otherwise
- Highly competitive operating environment

Another factor in many ICAC investigation reports was the incidence of significant organisational change such as an organisation’s restructure or the acquisition or outsourcing of functions. Increased commercialisation in the public sector was another example that has been said to introduce a cultural shift into an already complex decision making environment as well as corruption risks⁴⁹.

40 Kagan R and Scholz J 1984 “The ‘Criminology of the Corporation’ and Regulatory enforcement Strategies” in K Hawkins & John Thomas (eds) *Enforcing Regulation* Kluwer Nijhoff, Boston pp 67-96 quoted in Grabosky P N 1989 *Wayward Governance: illegality and its control in the public sector* Australian Institute of Criminology Canberra

41 Grabosky 1989; ERC 2005.

42 Bart Victor & John B. Cullen “The Organizational Bases of Ethical Work Climates” *Administrative Science Quarterly* Vol.33, No.1, March 1988; Hegarty & Sims 1978; Baucus & Near 1991; Sims 1992; ERC 2005; Trevino and Brown 2004; Clinard 1983.

43 Clinard 1983.

44 ICAC 1999 *Tips from the Top* ICAC Sydney

45 Sims 1992

46 Victor & Cullen 1988.

47 Weber J, Kurke L and Pentico D 2003 “Why do Employees Steal? Assessing Differences in Ethical and Unethical Employee Behaviour Using Ethical Work Climates” *Business and Society* Vol 42 No 3 Sept 2003: 359-380.

48 The investigations that demonstrated this factor involved people from non-English speaking backgrounds (NESB).

49 Theobald 1997; Van Wart 1996 “The Sources of Ethical Decision making for Individuals in the Public Sector *Public Administration Review* v 56 No 6 p 526.

However in these cases it appears that the upheaval brought to the agency by the change and the fact that it was not well managed was more significant than the type of change involved. Like the absence of adequate knowledge or management leadership mentioned earlier the corruption risk in major organisational change may be the uncertainty about proper behaviour that it produces.

An intensely competitive operating environment was also a factor in corrupt conduct that emerged from the ICAC reports. It also appears in the literature as a factor associated with unethical behaviour.⁵⁰ The response of organisations in such an environment has been described as a “tendency to push too aggressively for profits”⁵¹ without regard for institutional values and as intense “goal orientation”.⁵² Grabosky notes that the phenomenon exists in both private and public sectors, supporting Sims comment that in the public sector “bottom-line mentality” can also refer to the political bottom line⁵³.

PART 5: CONCLUSIONS AND POSSIBLE APPLICATIONS

This project has been exploratory in several ways. It has endeavoured to update our knowledge of the research literature relevant to corruption and it has undertaken the first analysis of the ICAC’s investigation reports for information about how corruption has occurred in NSW.

At this stage the data collected for the project are still being assessed and analysed according to the Commission’s corporate procedures. In terms of factors that will allow encourage or cause corruption we expect that final conclusions from the study will expand our understanding of the way the following factors are associated with corruption in a public sector organisation:

- the leadership of senior organisational managers
- relationships between perpetrators and their workplace environment
- organisational culture
- the management of professional relationships.

An implied function of this project is to indicate what we should do in the future to help us acquire and apply our internal (ie investigations) knowledge in an efficient and systematic way. In that sense we hope that the project’s findings will enable us to refine existing systems or introduce new ones. We expect that the project’s conclusions will have a range of practical applications in relation to the Commission’s:

- prevention policy
- investigation report methodology
- research data collection and
- public communication strategies.

⁵⁰ Hegarty & Sims 1978

⁵¹ Clinard 1983.

⁵² Grabosky 1989

⁵³ Sims 1992

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