

On preventing corruption: some comments based on recent ICAC investigations into Wollongong City Council and the NSW Fire Brigades

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1. These brief remarks are intended to supplement those made by Mr Symons and reinforce some of Dr Waldersee's ensuing observations. For those without the benefit of Mr Symons' and Dr Waldersee's comments, the two matters upon which this paper dwells, are the NSW Independent Commission Against Corruption's *Investigation into corruption allegations affecting Wollongong City Council* and *Investigation into tendering and payments in relation to NSW Fire Brigades capital works projects*, both completed in 2008.²
2. This brief paper will examine (a) some of the techniques that were used by corrupt individuals to manipulate or bypass public sector managers in gatekeeper roles; and (b) the rationalisations that were used by corrupt individuals to justify their conduct. The concluding remarks sketch out a few observations on some desirable management practices that the NSW ICAC sees as important for the prevention of corrupt conduct.
3. At the outset, it is worth emphasising that the conduct uncovered in these two investigations was particularly brazen, and much of it, premeditated. While it would be an overstatement to characterise the culprits as master criminals; the planning, execution and concealment of their schemes entailed considerable effort and resources. For example, Messrs Christian Sanhueza and Clive Taylor would have spent approximately \$2,500 establish their eight "two-dollar" companies through which they funnelled false tenders to the NSW Fire Brigades (NSWFB). Each company had its own address and contact details, email account, letterhead and paging service. In order to conceal Sanhueza's involvement, a third party was also paid a fee of \$8,900 to assume the role of director and shareholder of three of these companies. Similarly, Wollongong City Council town planner Ms Beth Morgan, after befriending a group of local businessmen (known as the "Table of Knowledge") and deciding to confer corrupt benefits on three of them (developers Frank Vellar, Glen Tabak and Michael Kollaras), acted out a long-running pattern of dissembling behaviour involving many hours of her time.

¹ Thank you to ICAC colleagues Deirdre Cooper, Mark Eady and Alex Mills for helpful comments

² For details, see www.icac.nsw.gov.au.

4. The framework that we most often use at ICAC for our approach to corruption prevention (CP) is Routine Activity Theory, attributed to Felson and Cohen. Adapted to corrupt conduct, the Theory neatly breaks conduct into three constituent parts, all of which must be simultaneously present: the **Motivation** to engage in misconduct, the **Opportunity** to do so and the absence of a credible threat of **Detection**. In our office, we call these the “three prongs”.
5. When he gave evidence to the Commission, Mr Taylor was shown a copy of the NSWFB code of conduct and the NSW government code of practice for procurement, which he had not previously read. He was asked:

Q: You are not telling me, are you, that if only you had read these documents you would not have taken secret commissions and the like?

A: I don't know, I've never read them. It might have made us think.

6. Now of course it is the case that once Taylor and Sanhueza had embarked upon their course of action, a fresh appreciation of the prevailing code of conduct would have done absolutely nothing to deter them. However, the simple comment “*It might have made us think*” bears further scrutiny.
7. Although it is a very useful framework, Routine Activity is prone to misapplication with respect to corrupt conduct. Specifically, it is a mistake to consider the three prongs of Routine Activity Theory exclusively in terms of the corrupt act itself, rather than its antecedents. For instance, in a bribery case it would be misguided to confine CP analysis to the payment of the bribe and the corrupt favour; while overlooking factors such as how the actors got themselves into that predicament in the first place. The consequence of making such a mistake is to direct CP energies to the time and place of the corrupt event and the personnel involved. That is, to conceive of CP as an exercise in blocking corruption at the time it occurs or catching the culprit *in flagrante delicto*. Rather than stopping corrupt conduct in its tracks, which can be expensive or impractical, it is often more useful to think of the CP task in terms of forcing culprits to: take additional risks (hopefully to the point of actual deterrence); experience heightened discomfort; or; paraphrasing Mr Taylor, to make them think.
8. At Wollongong Council, Ms Morgan had so slight a fear of detection that she telegraphed a great deal of her partial and dishonest conduct in correspondence sent via her council email account. She even sent a thank you email (“*I do not know what to say as it was unexpected but thank you*”) to developer Glen Tabak after he had given her a \$3,300 cash payment two days before she allegedly corruptly approved his 10 storey development.
9. Analogously, it is a mistake to think of CP as a matter of preventing someone from taking the wrong fork in the road, when it could equally be a matter of stopping that person from being on the road in the first place; or being on the road by themselves; or taking some other fork at a

much earlier point in time. Or, taking Malcolm Sparrow's well-known metaphor of regulatory-problem-as-a-knot; untying the knot is good but avoiding the tangle in the first place is even better. This is perhaps a rather underwhelming point, but in our experience at the ICAC, the mistake is not uncommon.

10. In our investigations into Wollongong Council and the NSWFB we have tried to apply our minds to the antecedents of the corruption as well as the possibilities for blocking the corrupt act itself. After all, since the culprits put a considerable amount of effort into planning their conduct, it makes sense to direct preventative measures where they are less likely to be circumvented. So, although the code of conduct meant nothing to Mr Taylor by the time it was brought to his attention, had his first few weeks at the NSWFB been a different affair, we are confident that at the very least he would have viewed his scheme as involving greater risk.
11. With this in mind, I will now touch on a just a few of the antecedents to the corrupt conduct in these investigations. In particular, the way in which certain managers were manipulated or corrupted.
12. Many of the corrupt officials involved in these investigations were extremely skilled at **managing up**. That is, officers like Ms Morgan , Mr Sanhueza and Mr Taylor put a great deal of effort into convincing their superiors that they were dependable and diligent, when in fact they were trying to keep those managers in the dark.
13. In relation to a development that she corruptly approved, Ms Morgan said to Mr Tabak in an email "*It went under the radar in terms of community interest and hence was able to be dealt with very swiftly and without interference. Very few developments of that size are that fortunate*". In point of fact, it was not a matter of good fortune. On this and other developments, Ms Morgan had done her very best to avoid interference. For instance, she deliberately failed to request, create or file important documents that would have been adverse to developers' interests; understated the gravity of community objections and extent of non-compliance in her advice to councillors; directed her files only to those managers she thought would support her proposed course of action (which at times involved bypassing several layers of management); closed off tasks that had been assigned to her colleagues; and generally held herself out to be providing good customer service, when in fact she was engaged in corrupt partiality.
14. Ms Morgan took specific advantage of the pro-development philosophy of Council's General Manager (GM). Knowing that he was likely to be supportive of most development proposals, Ms Morgan would at times bypass those layers of management that she knew to be unsupportive of

the development applications in question - in order to deal directly with the GM. The GM allowed this to happen, which meant that the ability of senior planning managers to control Ms Morgan was undermined. Ms Morgan also relied on developer-friendly decisions made by the GM as the basis for corruptly conferring similar benefits on Vellar, Tabak and Kollaras.

15. At the NSWFB, Sanhueza and Taylor quickly deduced that their managers placed excessive faith in their project management capabilities. The ICAC concluded that their manager “*was unable to think of anything he did to supervise Mr Sanhueza and Mr Taylor that didn’t rely on their word or trust*”. Sanhueza and Taylor knew that as long as their projects were delivered within the approved budget (which they knew to be inflated), they had nothing to worry about. As a result, Sanhueza and Taylor successfully managed-up by manufacturing an apparent focus on the one key indicator that most pleased their manager: meeting budget.

16. We often find that corrupt public officials are, in other respects, quite good at their jobs and use this to engender trust and manage up. One of the main reasons why Sanhueza and Taylor were able to obtain money by deception from the NSWFB is that they were quite capable project managers, which arguably caused their managers to be inattentive. No doubt to the considerable embarrassment of their superiors, Sanhueza and Taylor were quickly able to determine that the NSWFB was simply paying far too much for the construction of its fire stations. But, rather than use that superior knowledge to the benefit of the taxpayer, these officers skimmed off the cream for themselves.³ Likewise, the ICAC found Ms Morgan to be “*knowledgeable and competent*”, which, along with her relative seniority and the high workload within Council’s planning department, she used to avoid interference.

17. Another technique that was used to great effect in these matters was **grooming**. At Wollongong Council, both Ms Morgan and Mr Vellar actively groomed a number of Council officials with a view to compromising their integrity. They did this by forming friendships and business relationships, giving gifts and hospitality, asking for small favours, asking for and receiving advice, flattery, taking others into their confidence and sharing secrets and gossip. The upshot of this grooming activity was that when evidence of Ms Morgan’s misconduct and the Vellar/Morgan relationship was brought to the attention of certain managers, they failed to act and therefore effectively aided and abetted Morgan and Vellar. One Council manager, Mr John Gilbert, who had responsibility for overseeing Ms Morgan’s work on a \$100 million development of Mr Vellar’s, was compromised by taking gifts and acquiescing to requests for favourable treatment. Among other things, Mr Gilbert ended up allowing Ms Morgan to approve the controversial development using his electronic signature without even requiring her to prepare an assessment report.

³ The Commission found that the gross margin that Sanhueza and Taylor corruptly obtained across 39 projects was 40%.

18. Sanhueza and Taylor solicited and received numerous gifts (televisions, computers and numerous lunches) from a supplier (which he later characterised as blackmail). Once he showed himself to be amenable to doing business in this way, this supplier then colluded with Sanhueza and Taylor to submit four false invoices to NSWFB as part of a joint fraud. This supplier also provided gifts to other NSWFB staff including a \$4,000 golf day attended by about a dozen NSWFB staff. He admitted doing this for the purpose of *“building relationships and maintaining them and . . . as a natural result of that, yes, more work would arise”*.
19. When Ms Morgan originally decided to join the “Table of Knowledge” in early 2004, she did so with a plan to cultivate potential business relationships with local property developers, with a view to winning them as clients for her proposed private sector consultancy business. In February 2004, months before any of her actual corrupt conduct had commenced, she obtained an Australian Business Number for her proposed business. Ironically, she was herself ultimately groomed by Mr Vellar, who persuaded her to remain at Council so that she could assist with the approval of his development applications.
20. Digressing briefly, during our investigation we also considered why Ms Morgan joined the Table of Knowledge in the first place. The ToK itself met very early in the morning and Ms Morgan would regularly attend, rain, hail or shine often with her small child. Although she ended up forming close personal relationships with three of the developers on the ToK, based on her own evidence, Ms Morgan was profoundly unhappy with her work at Council. In some of her subsequent emails to Vellar she wrote *“I must leave Council for my own sanity”*, *“I hate this place! I can’t wait to leave”* and *“I just want to get up and walk out of here now ... never to come back!”*. It is not drawing too long a bow I think, to conclude that this dissatisfaction was a causal antecedent factor that goes to the Motivation prong in Routine Activity Theory. Completing the picture, one of the other logical reasons for Morgan to join the ToK (and for her presence to be welcomed) was the fact that in her role at Council she had significant discretion to easily and unilaterally confer benefits on development applicants. Had this not been the case, she may have thought twice about joining the ToK in the first place.
21. Getting back to grooming - we know from the psychology literature that situation often unexpectedly trumps disposition as the cause of behaviour. Simply put, when trying to predict behaviour, observers tend to place too much emphasis on their perception of the kind of person you are and insufficient emphasis on the situation you are in. Psychologists call this the “fundamental attribution error”. It seems to me that public sector managers are prone to making this error in unusual situations where staff have to make difficult ethical decisions.
22. From my own experience observing corrupt individuals, it is clear that although they are not trained psychologists, they are completely aware of the need to place the people they are trying to corrupt in unfamiliar or awkward situations. I also suspect that many corrupt individuals get a

sense of whether their manager is likely to make the fundamental attribution error and use grooming techniques to create a false sense of character. But perhaps more often it is just a simple case of taking advantage of an incompetent or absent manager.

23. Conscious grooming should not be surprising. Our twenty year history of corruption investigations tells us that while bribery of any variety is uncommon in NSW, it is rarer still for a public official to be offered the proverbial brown paper bag point blank. More often, a bribe is only offered or solicited after the groundwork has been laid which provides the bribe giver or taker with a level of confidence. Alternately, bribes are sometimes dressed up as something less sinister, like a Christmas present or cultural custom that is intended to make acceptance less awkward.⁴ That is to say, bribery typically involves varying degrees of grooming.
24. Unlike the scenario at Wollongong Council, in the NSWFB case Mr Sanhueza's manager had not been actively groomed apart from being invited to attend the aforementioned golf day. As a result, when evidence of the corrupt conduct was inadvertently discovered, the manager was not seriously compromised and took steps to alert the ICAC. Regrettably, without any other available leverage, Mr Sanhueza allegedly resorted to threats of physical violence against this particular manager after his conduct came to light.
25. Another technique that corrupt public officials use is to transform themselves into, or take advantage of the fact that they are, **resident experts**. This entails having near monopoly knowledge and/or control over a particular function. This can be technical knowledge or expertise but more often, it involves being the only person with a meaningful understanding of a particular task or project. Economists refer to the resulting problem as one of information asymmetry. At the NSWFB, supervision of Sanhueza and Taylor was poor. Their managers never came into contact with the tenderers and contractors that Sanhueza and Taylor were purporting to deal with and could not nominate any instance where they used their authority to challenge the recommendations placed before them.
26. Aggravating the problem at NSWFB was the fact that the hierarchy of sign-offs and approvals created a completely false sense of propriety. On paper, there was a segregation of duties between the acts of recommending contractors and awarding contracts; but because there was complete reliance on the advice of Sanhueza and Taylor, the subsequent approvals were somewhat artificial. In fact, an audit or review of the relevant projects files might have created a misleading impression of a properly-functioning hierarchy.

⁴ Two recent ICAC reports touch on this issue. See: *Investigation into attempts to improperly influence Warringah Council officers* (June 2009); and *Attempts to improperly influence a Ku-ring-gai Council officer* (February 2009).

27. At Wollongong Council, Ms Morgan worked especially hard to ensure that she retained near-monopoly control of the development applications lodged by developers with whom she had close personal relationships. On one occasion, Ms Morgan emailed Mr Vellar to advise that she and Mr Gilbert were “going to work on a delegated approval for Quattro”⁵ – i.e. to make sure that she, and not the Council determined the development. On another occasion, when the Director of Planning, Mr David Broyd, suggested that an independent planning expert be brought in to assess another of Mr Vellar’s development applications, Ms Morgan protested strongly and leaked internal emails to Mr Vellar so that he could lobby the GM to keep Ms Morgan on the job (which he did, and she was).
28. Digressing again for a moment, it is worth touching on Mr Broyd’s involvement. Mr Broyd resigned from Council in July 2005 and until that time, had been something of an obstacle to Ms Morgan and Mr Vellar. Mr Broyd created some of the “interference” that Ms Morgan tried so hard to avoid and resisted breaches of the Council’s planning ordinances and policies. However, because of ongoing values clashes with the GM, Mr Broyd resigned, thereby opening the way for Ms Morgan to push through the Quattro approval the following month. There is little doubt that Mr Broyd was suffering from what Menzel calls “ethics-induced stress” and describes as “a form of cognitive dissonance between an employee’s personal ethics and the ethical climate found in the employee’s workplace”, often resulting in job dissatisfaction and impaired performance.⁶ Put differently, public sector agencies in which staff are encouraged to engage in unethical or unlawful practices suffer a collateral blow from the likelihood that officers most likely to act as CP gatekeepers (in respect of all three “prongs”), take their services elsewhere. It is quite reasonable to view Mr Broyd’s departure as an enabling factor for Ms Morgan and three of her superiors who also engaged in corrupt conduct. Even if he could not have prevented the Quattro approval, Mr Broyd’s presence might have caused Vellar, Morgan or Gilbert to view their actions as entailing additional risk.
29. It is also interesting to look at the **rationalisations** that corrupt individuals rely upon when giving evidence before the Commission. On one interpretation, these rationalisations are often just ex post facto excuses intended to avoid the consequences of making frank admissions. Many are outright fabrications. However, on closer examination, one wonders whether some of these rationalisations do not play a role in accommodating the conduct. In some cases, rationalisations probably act as catalysts because they contain the necessary grain of truth that allows self-justification. So, while not excusing the conduct, they may create a tipping point. If so, they can provide an insight into how managers can prevent corrupt conduct. In much the same way that persons of interest need to concoct excuses for their conduct when appearing before our Commissioner, they also need to find ways of giving themselves permission to engage in what they otherwise know to be corrupt. Recognising and then removing the basis for these

⁵ “Quattro” was a proposed \$100 million development of Mr Vellar’s that grossly exceeded the prevailing limits for height and floor space.

⁶ Menzel, 2007, pp.11/12.

rationalisations therefore becomes a plausible approach to CP work. That is to say, prevent the conduct by taking away the excuse.

30. In their evidence to the ICAC, Messrs Sanhueza and Taylor repeatedly emphasised that the corrupt benefits they were receiving could be justified because they did not cause the NSWFB budgets to be exceeded.

In his evidence, Taylor also explained that the reason he never disclosed to the NSWFB that he had a personal interest in one of the tendering companies was *"I was never asked"*.

Taylor also claimed that because he was only recommending tenderers to his manager, as opposed to personally awarding contracts, he was somehow less culpable. Similarly, he claimed that because he was not setting the budget for each project, he was less responsible. Mr Taylor's other rationalisations included:

- *"I wasn't a public employee"* – in response to a question about his regard for the public interest
- That if not for his corrupt manipulation of the process, the NSWFB might have paid even more because of its history of overspending its budget
- *"The work was getting done. Everybody was happy so I didn't think they would have a problem"* and *". . . because we were doing a good job"*
- That *"it's not unusual"* in the private sector for people to *"let contracts to themselves"*, sometimes on the basis of receiving a hidden commission
- *"I thought some time they would induct me but they never did"*
- *"It's what happens all the time"* – on allowing contractors to take him out for expensive lunches
- *"But I wasn't always doing anything in the Fire Brigades' time"* – explaining that he prepared and priced at least some the corrupt tenders on his own time

Mr Sanhueza's excuses included:

- That because no-one asked about his false tertiary qualifications, it was acceptable to claim them
- *". . . he [Sanhueza's manager] didn't care how we did it or who did it, just to get - go away and do it"*.
- *"We earned the money. We worked for the money"*
- That because NSWFB management was inattentive and inefficient, his conduct was justified
- *"I wasn't given an opportunity to do my job correctly"*

- *“I wasn't given any codes, any procedures whatsoever. There was no supervision so I - I undertook to do the jobs the way I thought they would be done”*
- *“for the private sector, yes. For the public sector, no”* – in response to a question about whether obtaining value for money is important
- *“I thought I was working for myself”* – on why he did not appreciate that he was working for a public sector agency
- *“They all give work to associates”* – on practices in the private sector
- Gifts are common on the construction industry

Ms Morgan advanced excuses such as:

- *“The gifts I received from Mr Vellar ... were given to me not for my position at Council but because of the relationship we had at the time ... He didn't give me gifts ... as a bribe or inducement to do anything for him, he gave me those gifts because he either wanted to look after me, support me, or give me a gift”* – denying that the gifts were going to influence her conduct
- *“Well I believed he did give me the right to use his computer because when you leave a computer you're supposed to shut it down or turn it off so that people can't access it when you're not there”* – blaming a colleague after she used his computer and log-on details to corruptly issue a development consent
- *“I thought it was my job to keep him informed . . . on what was going on with his application in terms of the assessment process”* – explaining the numerous internal council emails that she sent to Mr Vellar
- *“I knew that you were supposed to determine the section 94 contributions in accordance with the contribution plan but because it had been done before and nothing had ever been said about it, that - that it was okay to do it”*
- *“You shouldn't but that's what was done at Wollongong”* – commenting on whether it was proper to misuse the planning system to provide developers with a de facto rezoning
- Ms Morgan's husband gave evidence that she rationalised accepting a cash payment from Mr Tabak because *“She wasn't getting any recognition through the Council for her hard work and it was a reward for her good work”*

Mr Gilbert's evidence included:

- *“I . . . relied on the assessment and decisions made by Ms Morgan as the assessing officer”*
- *“had only a supervisory role in the determination of the DA”* – on his role in Quattro
- *“I ... had no specific role in determining the development proposal to a height above ... 11 metres . . .”*

31. The point of canvassing these rationalisations is that they give us a clue to the way in which corrupt individuals view the three prongs. Putting the outright lies to one side, the fact that most excuses are plainly tendentious is what makes them potentially useful for CP purposes. An understanding of the role that rationalisations play in facilitating corrupt conduct can help to inform the risk assessment process and suggest the types of behaviour that we want public sector managers to exhibit. It does not take a great deal of imagination to think of some things that NSWFB managers could have easily done to make it harder for Sanhueza and Taylor to self-justify their behaviour.

32. By definition, public sector managers cannot realistically be expected to know whether their employees are deceiving them; especially in case where that deception is planned. If an employee like Morgan or Sanhueza is determined to conceal a conflict of interest or a fraud, it is quite likely that they will at least be able to fool their immediate manager. Consequently, the role of the manager becomes less about blocking or intercepting corrupt conduct and more about giving their staff fewer excuses to rely upon, and/or obliging staff to at least regard corruption as a risky proposition. Managers can take responsibility for removing crutches such as “everybody does it”, “that’s how it’s done in the private sector”, “it wasn’t my job to check” and “nobody told me I couldn’t do it”. The failure to do so was perhaps the main reason for our strong criticisms of managers at Wollongong Council and NSWFB.

33. By way of conclusion, some of the best lessons from these two investigations are as follows:

- Especially in cases where the conduct is premeditated, CP analyses ought to consider not only corrupt acts but the antecedents to those acts.
- Similarly, blocking or catching corrupt conduct is not the same as preventing it. Because it is often difficult or expensive to block corrupt acts, it can be more useful to think of CP as an exercise in obliging would-be culprits to apprehend additional risk or feel greater discomfort.
- In part, this can be done by recognising some of the ways in which individuals manipulate public officers that are in gatekeeper roles. These two investigations have shown that where a corrupt individual can persuade, compromise or bypass their managers, the opportunity for misconduct expands and the chances of being caught are

reduced. In particular, where a manager does not understand the tasks that their subordinates perform or cannot meaningfully challenge the advice that they are receiving, the potential for corruption is rife.

- Corrupt individuals usually have to go through a process of rationalising their corrupt acts. Arguably, it is within the power of public sector managers to do something about some of these rationalisations.

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