



## Shipping services to the Island

Two ships, the *Sitka* and the *Island Trader* service the Island. The *Sitka* is managed by IHI Shipping Services Pty Ltd, an Australian mainland company. It has been trading with IHI since 1984. In 1992, Islanders set up a company called IHI Seafreight Pty Ltd and commissioned the *Island Trader* to compete against the *Sitka*. Island residents hold all but a small parcel of shares in Lord Howe Island Seafreight Pty Ltd.

Most of the provisions for the Island are supplied by sea. Sea trade consists of private orders and IHI Board related activities. Competition between the ships is fierce because of the limited quantity of trade tonnage. The view has been expressed that current trade levels are barely enough to sustain a two-ship supply operation. The conflict between the shipping services has been described as 'shipping wars' <sup>10</sup>.

The IHI Board advises that the level of complaints about shipping is not surprising given the competitive nature and value of shipping services to the Island. Because of the intense interest shipping services generate, the Board advises it has consciously divested itself of responsibility for tendering of the shipping contract. NSW Supply, which is a branch of the NSW Department of Public Works and Services, have been engaged to manage this process. The Board believes that it has operated responsibly in this regard. Complaints about shipping tenders or performance of contracts let by NSW Supply for the IHI Board related to shipping are not the responsibility of the Board. NSW Supply is ultimately responsible for managing any breach of contract and in respect of decisions made to award shipping contracts for services provided to the Board. Day to

day responsibility for shipping services provided to the Board, however, remain the responsibility of the Board.

### *Responsibility for regulating ships*

The movement of these ships in and out of IHI and their regulation under NSW legislation is controlled by the New South Wales Department of Transport. It is also responsible for protecting the Island's environment from marine oil spills. In addition, it regulates the activities of commercial vessels that require a pilot when entering Island waters.

The Waterways Authority of NSW (Authority) is responsible for all recreational boats and three commercial vessels which are not required to take a pilot when entering or leaving the lagoon, these being primarily charter and fishing boats. Together, the Department of Transport and Authority have responsibility to ensure that maritime operations associated with the Island are conducted safely and according to regulations and policy.

In order to ensure that it keeps informed about the concerns of the community, the Authority conducts annual public meetings on the Island. Authority officials also visit the Island from time to time throughout the year. Day-to-day enforcement activities, of which there are few, are conducted by the Island's police officer on behalf of the Authority.

The Authority discharges its day-to-day responsibilities through a Port Operations Manager and two Deputies who are volunteers that are

appointed to oversee marine operations on the Island. These public officials receive a stipend and equipment to perform these duties. They have authority under delegation to perform a range of tasks and responsibilities and exert a significant influence on the Island's commerce as they regulate the movement of commercial vessels which are in competition with each other for limited Island business. They are also appointed Oil Spill Inspectors, an area of contention from time to time.

In the following commentary about the positions of Port Operations Manager and Deputy Port Operations Managers, the ICAC does not intend to criticise the incumbent officers or suggest that they have acted improperly in any way. The ICAC comment is limited to describing the facts that pertain to administration of these positions and to suggest how their operation can be improved.

The present Port Operations Manager and Deputy Port Operations Managers have held these positions since 1997—the first and only time the positions have been advertised. The positions have not been advertised as vacant since. All these officers are related. Prior to 1997, they had all been involved in management of port operations on an honorary, unpaid basis since the 1980s.

In information provided to the ICAC, the observation was made that there is a lack of information on the Island about the roles and responsibilities of the subject public officials. There also appears to be a view that holding the position of Port Operations Manager or Assistant Port Operations Manager is something of a privilege on the Island.

The Authority representatives on the Island are in a position where they oversee and administer the regulation of the commercial activities of a number of enterprises. Not surprisingly, they can be perceived as having frequently arising conflicts of interests in that they are expected to make detached decisions, some with potentially adverse economic consequences for enterprises in which they or their associates have interests.

As previously discussed, these conflicts of interests are all but unavoidable in a small community such as LHI. This imposes on the Authority a responsibility for ensuring that all practicable steps are taken to protect the reputation of it and its representatives as fair decision makers.

It is known to the ICAC that the Authority has had cause to review practices on the Island in respect of its representatives. Observations have been made that, in respect of the Authority's representatives, some Island residents want to be assured that they are on a 'level playing field'—that is, they want everybody to be treated equally, they want to understand what arrangements have been put in place that affect them and how they will be enforced and they want related processes to be fair, transparent and unbiased.

In respect of LHI, it is the management of the real and apparent conflicts, both by the LHI Board and the Authority that we believe can help address the issues of concern on the Island to the satisfaction of the Island population.

The LHI Board in reviewing the Discussion Paper advised that the Port Operations Manager takes his role very seriously and provides a 24 hour radio watch over shipping in the LHI area from his home. The Board states that lives could be seriously at risk if this position was not performed voluntarily by someone in the LHI community.

*It is recommended that:*

20. As Department of Transport and the Authority are responsible for the two areas of administration that appear to generate the most concern about public administration on the Island, these two agencies, NSW Supply and LHI Board should examine a range of options to resolve disputes, including those about shipping services, such as, but not limited to:
  - a. resolution through facilitated negotiation
  - b. establishment of a LHI Grievance Officer or Ombudsman (perhaps off Island)
  - c. establishment of an Island Complaints Resolution Panel, or similar, comprising objective representatives with no Island interests
  - d. producing a guide to assist complainants in appropriately directing complaints about shipping services or marine matters to the correct agency.

The Department of Transport and Authority agree with this recommendation.



NSW Supply advises that any dispute resolution mechanism or outcome, cannot impinge on the contracts it manages without agreement between the parties to the contract.

The Board expresses the view that many of the complaints received about shipping relate to the competing commercial interests of different groups and do not warrant the public credibility or expense which they currently attract. The Board considers that its governance of the shipping issue is not being accurately presented, given it fully divested itself of the shipping freight tender process in 1996. A formal and independent complaint handling process as recommended would be beyond the limited budget of the Board and it is suggested that the mechanisms provided by the Ombudsman and ICAC are adequate.

The ICAC acknowledges the measures taken by the Board to use NSW Supply to diffuse concern about decisions made in respect of providing shipping services. The ICAC advises that the recommendation contemplates a joint responsibility for resolving complaints about shipping services—it would not be the responsibility of the Board alone to implement this recommendation. Further, experience shows that it is preferable in terms of long term sustainability of solutions to achieve them through a negotiated outcome at the local level. Doing so is clearly preferable to making complaints to the ICAC, which has no legislative basis to negotiate outcomes between parties. The number of complaints about shipping services warrants consideration of a fresh approach to resolving issues of dispute. Maintaining the status quo, as is suggested, is unlikely to improve the situation in respect of shipping services.

21. The Minister for the Environment establish a suitable joint consultative body to ensure that, as far as is possible, the accountability and corruption resistance arrangements that apply to all NSW public officials on the Island are adequate, consistent and complement one another.

The Authority has indicated that it should be a member of the consultative committee where it relates to maritime matters or water related issues.

This recommendation is generally supported by the Board, which is prepared to take a leadership role in bringing the parties together, noting the barriers that

different policies and procedures of agencies might present.

*In respect of the Authority's representatives on the Island, it is recommended that:*

22. The Authority advertise for expressions of interest from Island residents to undertake the duties of Port Operations Manager and Assistant Port Operations Manager on a regular basis, to be determined by the Authority

In respect to this suggestion, although the officers concerned have no responsibility to the Board, the IHI Board supports the suggestion of competitive selection, but not the notion of annual appointments because of logistical difficulties. The Board is of the view that the position should be advertised every five years.

The Authority agrees with this recommendation and expresses the view that it would be more practical to fill the position every two years with an option to extend for another two years, subject to successful performance.

23. Although the subject positions are undertaken on a voluntary basis, there be a contract between the selected individual and the Authority outlining the responsibilities of the individual and the obligation of that person to abide by the Authority's Code of Conduct.

The Board advises that, although the matter is outside the Board's influence, it is fully supported. In addition to addressing Code of Conduct matters, there are areas of potential overlap between the duties of Port Operations Manager, the Police, the Marine Parks Authority and the Board, and the development of a contract or MoU would assist in clarifying some of these issues.

The Authority agrees with this recommendation.

24. The Authority develop a code of conduct for the Port Operations Manager and Assistant Port Operations Manager and ensure, to the extent practicable, that it is consistent with other codes of conduct applicable to NSW public officials on the Island.

The Board supports this recommendation and repeats its preparedness to take a leadership role in exploring



the creation of a joint consultative committee on the Island. The Board advises that, if successful, this committee could examine the consistency of the various Codes of Conduct applying to public officials on the Island, and make appropriate recommendations.

The Authority advises it has its own code covering its responsibilities in the boating area which it is examining to see if any amendments are necessary to ensure it is consistent with other codes for NSW public officials on the island.

The Authority also agrees with the following recommendations below which relate to its jurisdiction.

25. The code should require the disclosure of pecuniary and non-pecuniary interests.
26. A breach of the code should be determined to be grounds for removal from office or other disciplinary measure such as suspension or removal of all or part of delegated authority.

The Authority advises that it would use its own disciplinary procedures to determine a final outcome for any breach of the code.

27. Suitable arrangements are put in place for the registration and disclosure of the pecuniary interest of these officers.

The Board advises it is prepared to manage a single Register of Pecuniary Interest for all agencies on the Island, if agreed to by all parties.

28. Assessment of applicants for the subject positions should be based on merit principles to the extent possible, with consideration given to the need to ensure equity and opportunity for all on the Island community.
29. If requisite skills do not exist to safely enable the alternating of personnel in these roles, that the Authority implement a succession plan to ensure such skills are developed by other Island residents.

The IHI Board has indicated it supports the notion of a succession plan.

30. The roles, responsibilities and duties of the Authority representatives are fully documented, made known to the occupants and freely available to the Island community.


31. As far as is practicable, all decisions of the representatives affecting shipping services or related to major incidents are to be made public together with the reasons on which they are based. In so far as it is required, this should occur in consultation with the Authority's compliance officer (currently the Police). This consultation will be required only in the cases of breaches of the marine legislation requiring Police intervention or marine incidents involving loss of life or injury, or loss of or damage to property.

32. That provision should exist for appeals to the Authority against any decision taken on the Island and information is provided concerning any other avenues of appeal available.

The Authority advises that appeals can be made to the General Manager, Operations, Waterways Authority in the first instance. Further appeals may be heard by the Chief Executive of the Waterways Authority.

33. Reporting of all major incidents, decisions and reasons on which they are based to the Authority and frequent audits of those decisions by the Authority.





## Building corruption resistance in LHI administration

The ICAC is of the view that all NSW public sector agencies should have in place certain generic conditions of employment and policies and procedures intended to assist staff to understand and discharge their public duty and to build resistance against corruption. Although many of those features are already in place in the Island's administration, they should be reviewed regularly to ensure they are still relevant and reflect up-to-date provisions.

*It is recommended that:*

34. The Minister for the Environment ensure that the LHI Board develops and implements, or if already in place reviews, the following to ensure current relevance and to include up-to-date provisions:

- corruption risk management procedures and prevention strategies

The Board advises that strategies are already in place, it already adheres to various government guidelines and it will undertake a review of this area in each three year term of the Board

A resource that the Board might find useful is Australian Standards *Guidelines for managing risk in the Australian and New Zealand Public Sector (SAA/NZS HB143:1999)*.

- internal audit

The Board advises that it currently invests some \$22,000 per annum in internal audit and considers no change is necessary.

The purpose of the recommendation is to ensure the relevance of current practices and that such practices are up-to-date. The amount of money paid for internal audit services is not an indication of these factors. It is the ICAC's experience that some public authorities have internal audit programs that, because of poor audit planning, inadequate audit framework or lack of understanding of risks, have failed to protect the agency from corrupt practices.

Further, *On Board* recommends that a board should understand better practice guidelines such as those set out in the *NSW Audit Office's Statement of Best Practice for Internal Control and Internal Audit* and the sign off of the *Statement of Responsibility*. The ICAC notes the Board, in fulfilling its commitment given in this report to benchmarking its procedures against the requirements of *On Board*, will also have the opportunity to review procedures related to internal audit and internal control.

- complaint and grievance management

The Board advises that Island residents have access to many avenues for complaint resolution, including Island Board Members, professional senior managers, access to Board meetings, and a Chairman and NPWS Board members who are both 'independent' of the Island. These are said to all lead to an effective complaint and grievance management.

A formalised complaint handling system is a feature of most modern public authorities. A good complaint handling system should ensure a consistent approach is taken with all complaints and complainants. The

measures indicated above are adhoc and do not provide a single way to lodge a complaint, an identified process for solving problems and a method for reporting on outcomes. These requirements assure complainants that they are treated fairly and equally. For this reason the ICAC is of the opinion that the Board should ensure it complies with contemporary complaints and grievance handling requirements, guidance for which is available from the Ombudsman's office.

- performance management

The Board advises that the performance management process it uses for Board staff is arguably superior to the process adopted for NSW departments. In addition, the Corporate Plan for IHI includes thirty measurable performance indicators for corporate performance. The Board points out that it has already agreed to benchmark its processes and procedures, as recommended elsewhere in this report.

- staff development

The Board advises that staff development needs are noted during staff appraisals and acknowledges the need for a formal staff development program to complement its performance management program. The isolation of the Island can sometimes impede staff development opportunities.

- recruitment and selection

The Board advises it recently agreed to change its recruitment and selection policies and practices to ensure that all staff comply with the requirements of the *NSW Public Sector Management Act*. The NEWS has been assisting the Board in a review of its processes and improved procedures are being implemented.

- internal reporting systems

The Board has adopted the Internal Reporting System developed by the NEWS.

- gifts, benefits and bribes

The Board advises that these requirements are adequately covered within the Codes of Conduct for Board members and staff. As previously advised, these codes will be reviewed and updated.

- codes of conduct

The Board has already acknowledged the need to regularly review these documents.

- conflicts of interests

The Board advises these will be managed in accordance with Local Government Act requirements, as previously noted.

- secondary employment.

The Board advises it has sought assistance from the ICAC about this area and expresses disappointment that the Discussion Paper was silent on the issue.

The ICAC has been able to suggest suitable resources for the development of a relevant policy, a draft copy of which has been provided to the ICAC. The ICAC will continue to work with the Board on the development of a suitable secondary employment policy.

The Board has provided a response to each of the areas identified above and some of these suggest no action is required. The ICAC points out that the purpose of the recommendations is to ensure that important processes are benchmarked to ensure that the residents of IHI receive the benefit of contemporary developments in public administration, and consequently, levels of service equivalent to their mainland counterparts. Earlier in this report, the Board indicated that it is prepared to benchmark its governance procedures against contemporary practices. This should be extended to include all of the areas listed above.

## How to enhance understanding of public duty on the Island

Day-to-day operations of the administration are the responsibility of the Manager of the IHI Board. In this he is assisted by a full-time and part-time staff of about 30. All of these individuals are NSW public officials.

As a general principle, public officials should not derive from public office any personal benefit, other than salary and other formally recognised conditions of service, either for themselves or for any other person. This includes not having use of, or access to, any gifts, benefits, equipment, resources or places which are not available to everyone in the community.

The above principles apply to all public officials whether they be elected members or full-time, part-time or casual employees. In order to ensure that



these principles of public duty are understood and applied in the day-to-day operations of all staff, the IHI Board should ensure the following.

*It is recommended that:*

35. The IHI Board should ensure that all Board staff are fully trained in the implications of their public duty and the need to ensure that the conduct of public officials is always seen to be correct and in the public interest. Training should also include familiarisation with, and reinforcement of, all provisions relating to conduct.

The Board advises that staff have been trained in the contents and application of the Code of Conduct for Board staff. The Code is also an integral part of the induction process for new staff. The view is expressed that, as a result of ongoing criticism of the Board and its staff over a number of years, there has been a concerted campaign to make staff aware of conduct issues. This has included the use of ICAC awareness raising resources. The Board states that it is probable that ongoing criticism, and awareness training, of the Board members and staff, has made them more conscious of conduct and corruption issues than most other public officials in NSW. Concern is expressed that ongoing criticism could result in poorer performance by these public officials if they are too constrained to be creative and to take appropriate risks in decision making.

The ICAC agrees that public officials should be able to exercise discretion in performing their functions, based on an established set of public duty values and awareness of code of conduct requirements. We believe that implementing the recommendations contained in this report will equip the Board to deal with complaints and criticisms in future in a way that satisfies the expectations of accountability bodies and Islanders alike.

36. The IHI Board review its Guarantee of Service to ensure it clearly stipulates the standards of public duty staff must adhere to and that Island residents can expect.

The Board advises it has a Customer Service Charter which is linked to the Corporate Plan. This Charter clearly sets out the standards of service which the Board's staff will provide to the community. Both the Corporate Plan and Customer Service Charter have been made available for public comment. The Board supports the need for regular review of the Charter

and this will be undertaken at the same time as the review of the Codes of Conduct.

37. The Guarantee of Service be published in the IHI's Annual Report.

The Board advises it supports this recommendation and will adopt it.





## What now?

IHI is a part of the State of NSW, and as such those responsible for its governance are required to ensure that they meet the standards of probity, accountability, transparency and objectivity called for in the discharge of the duties of a public official in NSW. However, there are unique conditions on IHI which need to be considered in its administration.

Many of the issues that have attracted attention from various sources and which stimulate the making of complaints to the ICPC still exist. In the past opportunities to address some of these problems have not been followed through to conclusion. Two notable examples of this are the implementation of the PAC recommendations and the review of the Codes of Conduct for Board Members and Staff of the Board.

This report, together with the recommendations which it contains, are intended to assist the IHI Board and the other State agencies which operate on the Island to maximise their corruption resistance characteristics through enhancing the probity, accountability and transparency of their processes. Actions have been identified which can be taken by the Minister for the Environment, NSW Department of Transport, NSW Supply, the IHI Board and the Waterways Authority to assist in demonstrating to the Island population that it is entitled to have faith in the capacity of its public officials to perform their duties in the interests of all on the Island. That faith should be based on the ability to see how and why governance decisions are taken.

### *Our view*

IHI is a small, but significant part of the State. It is time for those responsible to address the issues of concern identified in this report with the seriousness they deserve.

### *It is recommended that:*

38. The Minister for the Environment, the Department of Transport, the IHI Board, Waterways Authority and NSW Supply should establish a joint task force, comprised of departmental personnel, Island representatives, Board members and other independent people as deemed useful and necessary to:
  - a examine the recommendations and suggestion in this report and to engage the Island community more broadly in doing so
  - b report publicly on the decision of the joint task force in respect of implementing the recommendations and to give reasons for not implementing recommendations
  - c formulate a project plan for implementation of recommendations specifying timelines for implementation and responsibility and resourcing required to do so.

The Board is confident that the intent of the recommendation above can be achieved without the need for a task force for the following reasons:



- the popularly elected Island Board members are truly representative of the Lord Howe community
- the Board regularly accesses advice and assistance from departmental personnel without the structure of a task force. A number of agency personnel have been consulted in the preparation of the Board's response to this report
- the Board regularly produces 'issues papers' on contentious matters for community comment by Island residents, prior to the Board making decisions on these issues.
- this ICAC report will be seen as far more independent than a Board task force.

Further, the Board states that, based on experience, it is unlikely that regular complainants about the Board management would nominate themselves for a task force, nor would the Board be seen as independent by the regular complainants in selecting nominees for a task force.

The Board has suggested an alternative recommendation that asks the Minister for the Environment to review the ICAC report and direct the Board on action he wishes to be taken, including a timeframe for implementation.

The intention of this recommendation was to engage all major parties involved in the administration of IHI equally in resolving the issues intended to be addressed by the recommendations contained in this report. As noted throughout this report, the Board is not responsible for all of the recommendations made, but is responsible for most. The alternative recommendation suggested by the Board does not reflect this joint accountability. While noting the Board's comments, it is considered that a joint task force does not necessarily have to be established and managed by the IHI Board. It is open to the parties involved to negotiate who should take leadership in establishing membership of the task force, determining reporting requirements and providing administrative support.

39. The IHI Board provides quarterly reports on progress to the ICAC for publication on its web site

Owing to the Board's limited resources it sees little value in the workload and expense of quarterly reporting to the ICAC, particularly as a large number of Lord Howe residents do not have access to the Internet. The Board believes its resources would be better expended in developing and maintaining

transparent decision making processes including the total outsourcing of significant and potentially controversial procurement actions.

The ICAC does not believe that quarterly reporting would be as expensive or onerous as suggested. Other public agencies regularly report to the ICAC in this manner, simply by creating a document containing a table which includes all recommendations indicating progress made. This can then be faxed, emailed or posted as required.

40. The Minister require the IHI Board to include in its Annual report measures taken in respect of managing corruption risks in Island activities.

The Board questions this recommendation and advises it is unaware of any authority in NSW that is required to report on corruption risks in this manner. The Board does support regular annual reporting of its activities, including measures taken to deal with perceived issues where propriety could be questioned.

State agencies and local councils are all required to have appropriate measures in place to minimise risk. Most agencies are required to include in their annual reports measures to deal with these risks. Typically, such reporting has been limited to fraud control measures and liability risk issues, such as workers' compensation and public liability claims. Recently, the ICAC has been advocating the inclusion of corruption risks in this general reporting of risk management by public agencies. An example of this new approach can be found in *Guidelines:1 Taking the Con out of Contracting – guidelines for managing corruption risks in local government procurement and contract administration* in which each local council is asked to "include corruption risk management in their general risk management planning and report strategic initiatives in corruption risk management in their Management Plan." What is being recommended for the IHI Board is also being recommended for each local council and all other state agencies.

As isolated, relatively small self-governing communities are to be found throughout NSW, as well as elsewhere, the observations and recommendations contained in this paper are also likely to be applicable in many other situations. As was stated in the introduction, the ICAC urges all such communities and those responsible for their governance, to seek to apply the observations and recommendations contained in this paper to their own circumstances. Part B of this report, which follows below, addresses good governance issues specifically for small communities related to conflicts of interests, secondary employment and facilitating the making of complaints.

## PART B

### Good governance guidance for small communities

New approaches to managing conflicts of interests, secondary employment and making complaints

#### What is a conflict of interest?

The potential for conflicts of interests arises when an individual with two or more interests in a matter has to take decisions concerning that matter. In the case of a public official they are of concern when one interest is a public interest and another is a private interest. An example of this might be where an Island representative on the Board has a business interest which might be advantaged by a decision of the Board.

Where this occurs it must always be managed in such a way as to ensure public faith in the process of government. The public interest must come first on all such occasions. Usually, this would require the public official to identify the conflict of interest immediately and withdraw entirely from the process.

However, on the Island, it might not always be possible to have such an approach. The high incidence of conflicts of interests on the Island is a result of the small population and isolated location of the Island, leading to the emergence of a number of well known associations of individuals based on family, business, church and social ties. Many small communities share this feature.

#### *What is different about small, isolated communities?*

We often hear statements like, "we all know each other's business so no one can get away with anything—we don't need you looking over our shoulder", when discussing accountability issues in small communities. It is a characteristic of such places that generally, because everybody knows everybody else, people believe this acts as a restraint on improper conduct. The argument

follows that such communities do not need interference from outside agencies or measures in place that might be necessary in large metropolitan situations where you don't know, and therefore can't trust the people who share your community. There are some fundamental flaws in this argument in the ICAC's opinion.

The very fact that communities are small and close in the sense described above, can permit influence to operate in ways that do not deliver optimum results to the community, particularly if conflicts of interest arise for decision makers. An example of this might be a public official giving business to an influential person in the community, even though the same service could be provided more cheaply by another local competitor, or even a competitor further afield. Another example might be a public official deciding to employ a person solely on the basis that they are the friend or relative of an influential person, and not because they are the best qualified for that position.

It is also a feature of small communities that people with significant influence who are involved in decision making, or can otherwise influence it, have a greater degree of relative impact on the day-to-day lives of people in the community because there are fewer immediately accessible options in the way of services, schooling, health, employment opportunities or social, sporting and cultural activities.

This greater influence and lack of apparent options should not be an excuse for lower standards of efficient, effective and ethical public administration. We believe such communities deserve equivalent opportunities and standards of public service to the rest of the State. While obviously, we cannot overcome the physical isolation of these communities,

we can help set consistent standards of behaviour in respect of conflicts of interests in an endeavour to ensure they do not get second best services and outcomes.

Finally, decision makers in small communities might not have access to the necessary expertise to make the best decisions for the community if they do not look outside their own physical jurisdiction for assistance from time to time. The following quote illustrates the point:

*"We do not have, despite the presence of considerable talent on the Island, expertise in all the relevant areas. Therefore we do rely on expertise from outside consultants and from other government departments."<sup>11</sup>*

Related to this point, the IHI Board, in commenting on the Discussion Paper have pointed out that there are some unique factors with regard to public employment that affect governance of the Island. An example given is where the limitation on accommodation for workers from the mainland and the limited number of Island residents with certain skills can result in conflicts of interest where the one person may be in demand as a public employee and a local contractor. This raises conflict of interest issues related to effective secondary employment management, which are also discussed below.

A complete ban on secondary employment for public sector staff is an unrealistic option and would be impossible to implement. This is especially so in remote communities. Some small and isolated communities rely on the unique skills that their experienced public officials have to meet the needs that, in larger, urban and regional locations, would normally be met by private businesses rather than public officials working in secondary employment. This issue is discussed in more detail below in the context of managing conflicts of interest created by secondary employment opportunities.

Knowing each other very well is desirable from a community and human perspective. Knowing that public officials are providing the standards of public administration that the rest of the State is entitled to by doing their job, effectively, efficiently and ethically is also important for the well being of the community.

*How might conflicts of interest be managed better?*

The following quotes from IHI illustrate some of the difficulties in managing conflicts of interest in a small, isolated community generally:

*"... that is very largely also a function of the smallness of the Island, that when the Board come to formulate policies they are very often formulated based on Island interests rather than formulated with a view to broader perspective of community functioning as a whole."<sup>12</sup>*

*"How one addresses the issues of 'conflict of interest' and 'pecuniary interests' would seem to be almost impossible, given the LHI Act and the inter-woven and business connections."*

*"I can see that it can be a conflict because I do own the biggest private owned business on the Island. But again, everyone on the Island knows that and if they don't want me on the Board they have the opportunity next February (election time) to bring me off it."<sup>13</sup>*

*"See, you've got to appreciate that everybody on LHI is... has a friend or a relation or something that is involved in, you know, something that might be controversial."<sup>14</sup>*

*"We're on the Island, we've looked after the Island and I must say that if we were Aborigines we would own the Island"<sup>15</sup>* [The Island was uninhabited until it was settled in 1833. Some Island inhabitants are able to trace their heritage back to eight generations.]

*"The restriction in the number of residents and visitors and the sheer isolation of the Island has resulted in a very close community which could be called 'parochial' by some."<sup>16</sup>*

The relatively few qualified individuals available to participate in decision making processes, the ubiquity of conflicts of interest, feelings of ownership, rights and privileges due to status or kinship as a local, render the management of conflicts of interest difficult.

In these communities, the withdrawal option is often not viable in many instances where it would be regarded as mandatory in larger communities. To explain further, the situation could conceivably arise in such a community that every public official involved in the decision making process has a conflict of interest, or that so many have a conflict of interest that a quorum no longer exists. In this situation, the public interest is not served if the



administration is paralysed in its decision making capacity.

Isolated communities with small populations are in a position where rigorous, perhaps unique, conflicts of interests management strategies need to be developed and applied. The aim of these policies and procedures should be to ensure 'a level playing field' for all. This means that matters are considered in an open, fair and unbiased way where decision makers do not act on the basis of personal gain for themselves, their friends or favoured causes, and the community can see that this is so.

### **What might a tailored approach to conflicts of interest and secondary employment in small and isolated communities involve?**

#### *Our view*

The following might be features of a unique process for managing conflicts of interest and secondary employment in small and isolated communities:

There should be a single co-ordinated policy and approach for managing both pecuniary and non-pecuniary interests of public officials in such communities. There should also be a similar coordinated policy for managing secondary employment. The public authority with the greatest responsibility for the good administration of the community should take leadership in co-ordinating these efforts. In some locations this will be the local council. In others, like IHI, it might be a State or Commonwealth government agency.

The policy and approach should be developed in consultation with the community and appropriate external and local, government agencies. This consultation should permit public comment on the proposed policy and procedures.

The policy and rules governing conflicts of interest and secondary employment should be a public document accessible to all in the community.

It should be a base requirement of all such policies and procedures that local public officials must enter their pecuniary interest details in a pecuniary interests register. This may be a central register kept by a single public authority or otherwise maintained by each public authority present in the community. Rules

for disclosure and access to the register(s) should be consistent.

It should be a condition of an approval for secondary employment that the local public officials must enter relevant details into a pecuniary interests register.

The policy and rules should also be embodied in the relevant Codes of Conduct for the local public officials. This may mean that large public authorities might have special Code of Conduct provisions for public officials living in such communities.

It should be an explicit requirement of such a policy that failure to comply with the policy is a serious and substantial breach of the Code of Conduct and may lead to disciplinary action.

Being too close to the community can be a problem for some public officials when they have to deal with conflicts of interest and secondary employment issues. The decision maker in a small and isolated community might consider referring an application for secondary employment or a conflict of interest issue to an objective person, or panel of people outside the immediate influence of the community. Similarly, appeals against secondary employment decisions might be dealt with in the same way. Small and isolated communities, led by the lead public agency should consider establishing local grievance mechanisms to deal with alleged abuses of the policy and procedure. Thought should also be given to other resolution processes, such as the use of telephone conference systems to access independent persons to aid in the resolution of disputes.

Not all conflicts of interest require that a public official withdraws from a decision making process. Sometimes, particularly where there is no financial interest in a matter, the conflict might be managed by public declaration of its existence and an acceptance by others involved in the decision, or affected by the decision, that it is proper for the individual to continue. Decisions taken about the continuation of the declarant of the interest should be taken in a democratic way after suitable discussion in which affected parties have equal rights of reply. Records of such discussion and the eventual decision taken should be made and kept in a manner that facilitates scrutiny later, if required.

No public official with a conflict of interest should be permitted to continue in deliberations in a decision making process if that decision is not being made in

public or where a pecuniary interest is apparent or suspected. In these situations, the subject public official should withdraw from the process.

No approval to undertake secondary employment should be granted to a public official where a conflict of interest is not capable of being resolved, through appropriate management. For example, an approval should not be given for a Waste Facility Controller to run a rubbish removal business where the waste facility has no access or usage recording or controlling mechanisms other than the Waste Facility Controller and his subordinates. In such a case, it would appear that no effective solution to the conflict of interest can be found in which case approval for secondary employment should not be given.

Even volunteer work might create perceptions of conflicts of interest and that secondary employment is being carried out, so policies need to take account of such matters and decide whether unpaid work should be captured in a public agency's secondary employment policy.

All public agencies should devote more care and attention to the identification and management of conflicts of interests and secondary employment in their activities in small and isolated communities. To this end all public agencies, should ensure they have a clear policy on conflicts of interest and secondary employment that:

- is available to all staff
- stipulates secondary employment is to be separate from a staff member's normal duties. For example, if a person is employed by a public agency to advise people whether they can keep, or must remove trees on their private property, they should not ordinarily be permitted to hold a second job as a tree surgeon. However, they might be permitted to hold a job working in a Garden Centre
- ensures new and existing staff know about issues involved in secondary employment and how to deal with conflicts of interest.

A number of recommendations made in Part A build on the strategies suggested above. These are identified throughout the report.

More guidance on conflicts of interest and secondary employment is available from the ICAC's publication, *A Practical Guide to Corruption Prevention* which is available at [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)

## How to overcome problems with making complaints about public officials in small and isolated communities

We all want the places we live, work and play to be friendly, inviting and trouble free, but some problems will inevitably arise. The opportunity to be heard about issues that concern us is one of our rights as citizens of NSW.

What are the consequences of speaking out to criticise the very people you rub shoulders with, day in and day out, and who may have considerable social, community, and business influence?

In working with communities throughout NSW in our RAROS, we have been alarmed at the number of people who have expressed concern about speaking out, because of fear of recrimination or ostracism from the community as a whole, or by people of considerable local influence.

There is an element within our society that suggests speaking out about such problems, particularly in a close knit group, and particularly to people or agencies who are not part of that group, is antisocial behaviour. It is our experience that people who believe their identity will be revealed in such situations do not speak out.

We are also concerned about the relatively poor knowledge of many people of how and to whom they complain about public officials. While many people know instinctively that they complain to the 'boss' we frequently hear concerns about doing so because of fear that complainants will be easily identified, due to local knowledge and networks, and they will suffer recrimination or ostracism. The basis of this concern may simply be that the complainant will be seen going to see the boss, overheard talking to the boss or that the incident giving rise to the complaint is widely known to have involved the complainant.

Although it is preferable for matters to be resolved locally, sometimes a person with a complaint may need to look outside the local community for assistance.



*Our view:*

- The public authority with the greatest responsibility for the good administration of the community should have responsibility for co-ordinating information about making complaints, both within the community, and to sources outside the community.
- The complaints handling system of public agencies in small and isolated communities should conform to guidelines provided by the NSW Ombudsman's Office.
- Each public agency in small and isolated communities should provide information to citizens about where they can make complaints, seek advice or otherwise obtain support in resolving matters of concern outside of the public agency.
- That guidance should, as a minimum, explain the role of the NSW Ombudsman's Office— which deals with matters of maladministration, the Independent Commission Against Corruption —concerned with matters of corruption and the NSW Audit Office —which looks at serious and substantial waste. The following telephone contact details should also be given for people who want immediate assistance.

Independent Commission Against Corruption (02) 9318 5999 or toll free 1800 463 909

NSW Ombudsman (02) 9286 1000 or toll free 1800 451 524

The Audit Office of New South Wales (02) 9285 0155

- Details of other complaint handling bodies such as the Anti Discrimination Board, Community Services Commission, Health Care Complaints Commission and Privacy Committee should also be provided.
- Consideration should also be given to providing information about obtaining advice and support from other areas outside the community, such as by going to see a Chamber Magistrate or public advocacy group in a neighbouring town.



## Endnotes

- 1 Question without notice asked by The Hon MJ Gallacher to the Hon JW Shaw on 4 April 2000 in the Legislative Council. Response provided by the Hon JW Shaw on 1 June 2000. Question on notice also asked by Ms Peta Seaton MP and answered on 30 June 2000 in the Legislative Assembly.
- 2 In 1999–2000, the ICAC received a total of 1912 complaints from the NSW State population of 6.4 million, that is one complaint per annum for every 32,000 residents. In the eight years from 1993 to 2001, the Commission received an average of three complaints per year from the 323 strong permanent population of LHI. This represents one complaint per annum for every 107 residents – 300 times the State incidence.
- 3
- | Year             | Complaints | Information | Total |
|------------------|------------|-------------|-------|
| 1993             | 2          |             | 2     |
| 1994             | 3          |             | 3     |
| 1995             | 1          | 1           | 2     |
| After ICAC visit |            |             |       |
| 1995             | 3          |             | 3     |
| 1996             | 4          |             | 4     |
| 1997             | 1          | 1           | 2     |
| 1998             | 1          |             | 1     |
| 1999             | 4          | 1           | 5     |
| 2000             | 3          | 2           | 5     |
| 2001             | 2          |             | 2     |
| Total            |            |             | 29    |
- 4 Public Accounts Committee Report on the LHI Board December 1990 pg 126. Evidence taken by the PAC in public hearings.
- 5 Ibid.
- 6 Ibid pg 71.
- 7 Part 3, s.10 LHI Act 1953.
- 8 1 Public Accounts Committee Report on the LHI Board December 1990– Selected Recommendations:
- a) It is recommended that the LHI Board assess, upgrade and strengthen the present system of internal checks and controls.
- b) It is recommended that the LHI Board becomes a member of the Local Government and Shires Association to provided exposure to current attitudes and developments applicable in local government administration.
- c) It is recommended that at all future meetings of the LHI Board and its committees be held in public.
- d) It is recommended that the LHI Board administration liaise with the Department of Local Government in drafting meeting procedures for use by the Board and its committees for inclusion in the regulations to the LHI Act.
- e) It is recommended that the LHI Board review its minute taking procedures to ensure that the minutes accurately reflect proceedings of the Board and its committees and thus fulfil its accountability responsibilities.
- f) It is recommended that the LHI Act be amended to include a requirement that such pecuniary interests shall be fully disclosed and recorded in a register which is open to the public.
- 9 Public Accounts Committee Report on the LHI Board December 1990 pg 63 In respect of the Works and Services Committee
- 10 A Current Affair 20 July 2000. Comments made by reporter.
- 11 Public Accounts Committee Report on the LHI Board December 1990 pg 93.
- 12 Ibid pg 65 Comments made by Chairperson of the LHI Board, Ms V.C Ingram.
- 13 Public Accounts Committee Report on the LHI Board December 1990 pg 57. Comments made by Vice Chairman Bruce MacFayden.
- 14 Comments by Judy Riddle reported on A Current Affair 20 July 2000.
- 15 Public Accounts Committee Report on the LHI Board December 1990 pg 9. Comments made by Bruce MacFayden, then Vice Chairman of the LHI Board in respect of a proposal by the then Minister for the Environment, The Hon T J Moore MP, that the administrative arrangements on the Island be altered to provide for greater State and Commonwealth government involvement.
- 16 Public Accounts Committee Report on the LHI Board December 1990 pg 3.

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