INDEPENDENT COMMISSION AGAINST CORRUPTION

Data regarding corrupt conduct level RailCorp following Operation Monto

File No: Z14/0012

TO: Commissioner

VIA: Robert Waldersee

FROM: Ben Marx

DATE: 16 Oct 2014

ISSUE: You have requested data regarding changes in the level of corrupt conduct at RailCorp following Operation Monto.

BACKGROUND:

Operation Monto
Operation Monto was a major Commission public inquiry that investigated a plethora of corrupt conduct allegations against RailCorp staff and contractors.

Ultimately, the Commission found that a total of 31 individuals had engaged in corrupt conduct, almost $19 million of work had been awarded to companies owned by RailCorp staff or their close associates, and over $2.5 million of bribes or secret commissions paid.

Such widespread, serious corrupt conduct is unlikely to occur without major systemic failings. A large number of systemic issues were identified by the Commission and a total of 40 corruption prevention recommendations made.

A key question is whether the exposure of corruption in Monto and the subsequent corruption prevention measures RailCorp implemented has reduced the level of corrupt conduct within it. As argued below, it appears that it has.

Measuring a change following Monto
It is not straightforward to choose a measure to examine whether RailCorp's control of corruption has improved subsequent to Monto.

For instance, the number of public inquiries investigating allegations against RailCorp is an unreliable measure. This is because there may be many matters where corrupt conduct is likely to have occurred, but these matters were not subject to public inquiries because of public interest reasons.

By contrast, the number of matters received by the Commission that make allegations against RailCorp is also an unreliable measure because many of these matters may not relate to actual corrupt conduct.

A better measure is the number of matters where Commission powers were used. These matters are those matters investigated by the Commission and those matters where the Commission directed an investigation under s53 of the *ICAC Act*. This can be termed the number of RailCorp investigations.

The number of RailCorp investigations is reasonable because these are all matters where there appeared to be some likelihood of corrupt conduct. At the same time, these matters were not required to pass the criteria necessary for a public inquiry.

It is, however, problematic to simply count the number of RailCorp investigations because the number of investigations instigated or directed by the Commission varies from year to year. An increase in the number of RailCorp investigations may have arisen simply because the Commission investigated more matters that year.

Consequently, it is important to "scale" the number of RailCorp investigations in each year by the total number of investigations instigated or directed by the Commission. A straightforward way to achieve this scaling is to consider the number of RailCorp investigations as a percentage of the total number of investigations.

RailCorp investigations instigated or directed by the Commission
The figure below presents the number of RailCorp investigations as a percentage of the total number of investigations instigated or directed by the Commission for the years 2005–2014. There have been no RailCorp investigations in 2014.
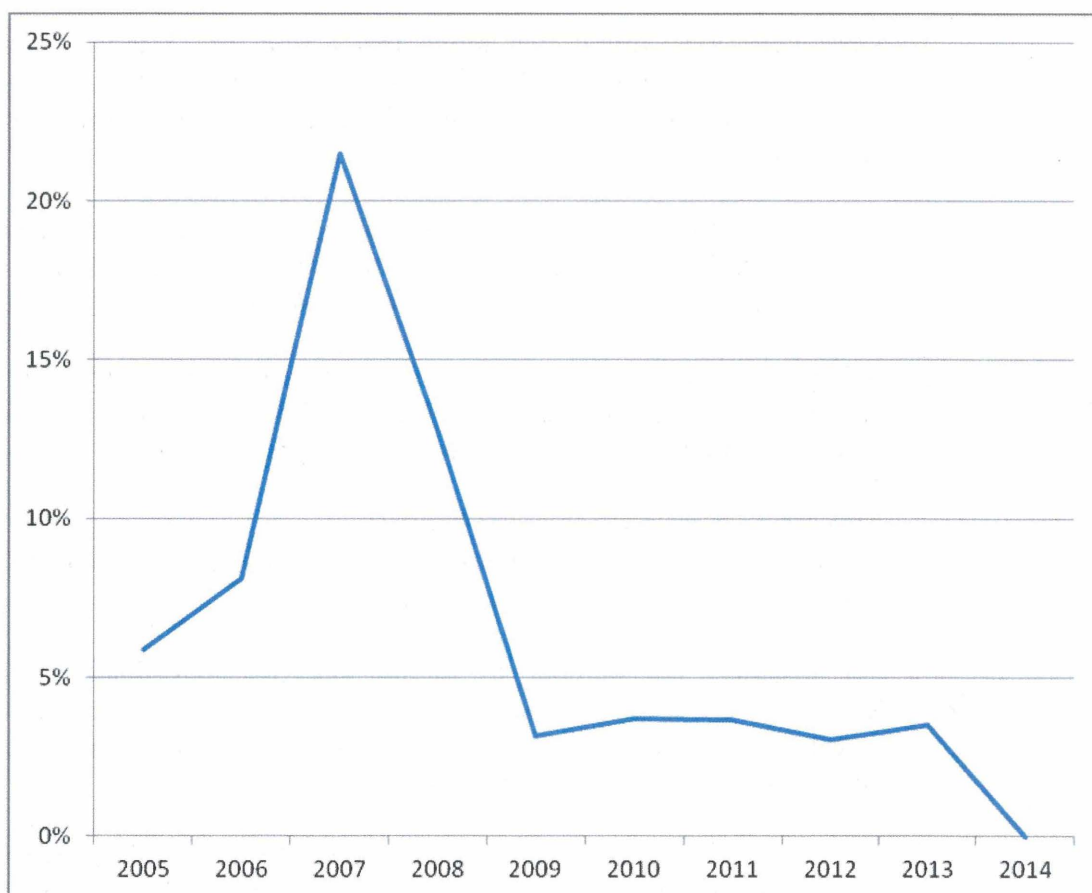
As points of reference for interpreting this figure, the Monto public inquiry commenced on 19 Nov 2007 and corruption prevention recommendations were made to RailCorp in an investigation report published on 15 Dec 2008.

The figure below presents the number of RailCorp investigations, separately for s11 matters and other matters.
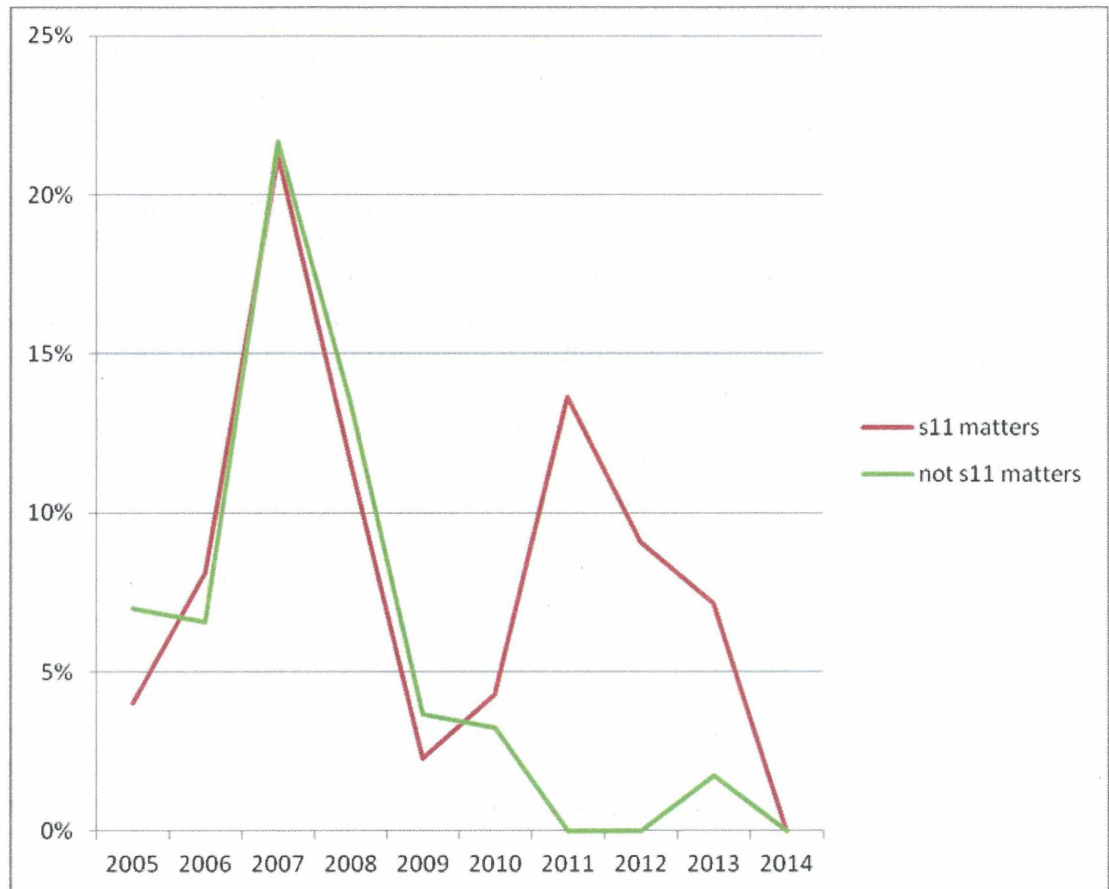
One striking trend from the data is that following 2010, there are almost no investigations related to non-s11 matters. This means that staff, contractors and stakeholders of Railcorp are not sending the Commission matters that result in RailCorp investigations.

At the same time, in 2011, there was a spike in investigations commenced where the matter was reported to the Commission under s11 followed by a decrease across the period 2011–14. This means that RailCorp initially found more matters that became RailCorp investigations but found fewer of these matters over time.

Together, these two trends are consistent with an improvement to RailCorp's internal governance. When a corruption-ridden organisation adopts improved internal controls, its capacity to detect corrupt conduct increases, producing two key effects.

First, the improved capacity results in an initial surge in corrupt conduct detected by the agency. Over time, however, this surge decreases due to the increased detection having a deterrent effect on individuals considering engaging in corrupt conduct.

Second, because the agency is detecting corrupt conduct itself, stakeholders such as staff and contractors do not need to complain about such matters to the Commission. This leads to a decrease in matters reported to the Commission by these stakeholders that result in the use of Commission powers.

Consequently, the data appears consistent with corruption control being improved at RailCorp following Monto.

Supporting evidence from inside RailCorp
Evidence from inside RailCorp is also consistent with improved control of corruption following Monto.

The corruption in relation to Monto was predominantly in relation to plant hire procurement (i.e. hiring of machinery). Following Monto, RailCorp made considerable improvements to its plant hire management including:
- Redesigning the procurement system to utilise a best practice category management approach supported by a powerful electronic procurement system (Ariba)
- Collecting independent information on plant hire performance from safety inspectors out in the field
- Using this information to affect which companies get which work, creating a positive incentive arrangement
- Removing contractors from the plant hire panel of suppliers, including the biggest contractor on the panel, because of poor performance, making an example of non-compliant contractors.

In addition to better controlling the risk of corruption, this has resulted in marked improvements to the operational effectiveness of plant hire. Indeed, RailCorp's procurement manager has commented that plant hire is now the best performing of RailCorp's procurement areas despite its history of corrupt conduct.