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**I·C·A·C**

INDEPENDENT COMMISSION  
AGAINST CORRUPTION  
NEW SOUTH WALES

**INVESTIGATION INTO THE  
CONDUCT OF THE FORMER  
CITY OF BOTANY BAY  
COUNCIL CHIEF FINANCIAL  
OFFICER AND OTHERS**

**ICAC REPORT  
JULY 2017**



**ICAC**

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# I·C·A·C

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AGAINST CORRUPTION  
NEW SOUTH WALES

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Sydney NSW 2000

Mr President  
Madam Speaker

In accordance with s 74 of the *Independent Commission Against Corruption Act 1988* I am pleased to present the Commission's report on its investigation into the conduct of the former chief financial officer of the City of Botany Bay Council and others.

Commissioner, the Hon Megan Latham, presided at the public inquiry held in aid of the investigation.

The Commission's findings and recommendations are contained in the report.

I draw your attention to the recommendation that the report be made public forthwith pursuant to s 78(2) of the *Independent Commission Against Corruption Act 1988*.

Yours sincerely



The Hon Reginald Blanch AM QC  
Acting Commissioner

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# Summary of investigation and results

This investigation by the NSW Independent Commission Against Corruption (“the Commission”) concerned allegations that Gary Goodman, while chief financial officer (CFO) of City of Botany Bay Council (“the Council”) misused his position to financially benefit himself and others. The allegations included that he approved or caused the payment by the Council of over \$5 million for invoices that he knew were either entirely false or for inflated amounts, that he knowingly misused Council corporate credit cards to incur over \$600,000 in personal expenditure, and that he solicited and received payments as an inducement or reward for showing favourable treatment to Council contractors.

The Commission also examined allegations that Marny Baccam, a Council clerical assistant, and Malcolm Foo, a Council team leader, facilitated the payment of invoices they knew to be false for their own benefit and the benefit of others. Ms Baccam was also alleged to have approved the payment by Council of invoices that she knew to be false.

The Commission examined allegations that Suman Mishra, a Council senior accounting officer, and Lorraine Cullinane, the Council’s deputy general manager, were aware of certain aspects of Mr Goodman’s misconduct.

The Commission also examined the circumstances in which Ms Cullinane came to receive ex gratia payments from the Council totalling around \$800,000, two Lexus motor vehicles, and an alarm and security system.

## Corrupt conduct findings

The Commission found that Mr Goodman engaged in serious corrupt conduct by:

- between 1997 and October 2015, dishonestly exercising his official functions as Council CFO by approving, or causing the payment by the Council of, invoices totalling over \$5 million, which he knew to be either entirely false or

for inflated amounts, and did so in each case to obtain money from the Council for his own benefit and the benefit of others. The invoices were from, or purported to be from (chapter 2):

- Emu Alarms Pty Ltd (\$300,073.64)
- CND Computers Pty Ltd (\$2,097,021.74)
- On Q Installations (\$34,540)
- Truck Service Centre (\$536,474.95)
- Computer Intersection (amount not established)
- Australian Landscape Creations (\$55,495)
- Jovane Pty Ltd (\$1.85 million)
- Green Thumb Landscaping & Gardening Pty Ltd (\$132,682)
- Highland Profiles Pty Ltd and Cube Design and Construction Pty Ltd (amounts not established)
- Teletec (amount not established)
- Elias & Son Smash Repairs (amount not established)
- soliciting and receiving \$2,000 from Zoran Gajic of Cube Design and Construction and Highland Profiles as an inducement or reward for Mr Goodman exercising his public official functions to favour, or not to show disfavour to, Mr Gajic’s businesses in relation to their work for the Council (chapter 2)
- between December 2003 and January 2012, wilfully and intentionally using the Council’s corporate credit cards issued in the name of Peter Fitzgerald, the Council’s then general manager, to incur personal expenditure of \$620,091.77, knowing that he was not entitled to do so, and then authorising the payment by the Council



of the credit card accounts relating to that expenditure (chapter 6).

The Commission also found that the following persons engaged in serious corrupt conduct:

- Keith Mark by, between 1997 and 2005, in agreement with Mr Goodman, creating false Computer Intersection invoices, which he submitted to the Council for payment knowing that either he had not done the work claimed or that the amounts claimed had been inflated, with the intention that Mr Goodman would use his position at the Council to dishonestly arrange for payment of the invoices to benefit Mr Goodman (chapter 2)
- Mr Mark by, between 16 September and 7 October 2015, in agreement with Mr Goodman, creating false Australian Landscape Creations invoices totalling \$55,495, which he submitted to the Council for payment knowing that the work claimed had not been done, with the intention that Mr Goodman would use his position at the Council to dishonestly arrange for payment of the invoices to benefit Mr Mark (chapter 2)
- Aleksa Subeski by, between 20 November 2014 and 7 October 2015, in agreement with Mr Goodman, creating false Jovane and Green Thumb Landscaping and Gardening invoices totalling \$1,982,000, which he submitted to the Council for payment knowing that the work for which payment was claimed, had not been done, with the intention that Mr Goodman would use his position at the Council to dishonestly arrange for payment of the invoices to benefit himself and Mr Subeski (chapter 2)
- Mr Gajic by, on or about 20 July 2015, paying \$2,000 to Mr Goodman as an inducement or reward for Mr Goodman exercising his public official functions to favour, or not to show disfavour, to Mr Gajic's businesses in relation to their work for the Council (chapter 2)
- Joe Freitas by, in agreement with Mr Goodman, submitting to the Council for payment false Elias & Son Smash Repairs invoices for work he knew had not been done, with the intention that Mr Goodman would use his position at the Council to dishonestly arrange for payment of the invoices to benefit himself and Mr Freitas (chapter 2)
- Sam Alexander by, in agreement with Mr Goodman, submitting to the Council for payment false Teletec invoices for work he knew had not been done, with the intention that Mr Goodman would use his position at the Council to dishonestly arrange for payment of the invoices in order to benefit Mr Goodman (chapter 2)
- Ms Baccam by, between around 2013 and October 2015, dishonestly exercising her public official functions as a Council clerical assistant to obtain money from the Council for her own benefit and the benefit of others, by arranging for the payment by the Council of invoices she knew to be false. The false invoices were from, or purported to be from, Ari Landscape Solutions (\$245,751), Al-Furat Pty Ltd, and Gardens2NV (chapter 3)
- Mr Foo by, between around 2012 to 2013 and October 2015, dishonestly exercising his public official functions as a Council officer by arranging for the payment by the Council of Gardens2NV invoices, which he knew to be false, in order to obtain the invoiced amounts for his own benefit and the benefit of the contractor Gardens2NV (chapter 3)
- Lyndal Marshall by, between 2013 and October 2015, in agreement with Ms Baccam and Mr Foo, creating and submitting to the Council for payment false Gardens2NV invoices totalling

approximately between \$200,000 and \$220,000 for work she knew had not been done, knowing that Ms Baccam and Mr Foo would use their positions at the Council to dishonestly arrange payment of the invoices in order to obtain money from Council to recoup money paid to Ms Baccam or Mr Foo (chapter 3)

- Robert Floudas by, between 2013 and October 2015, being party to an agreement between Ms Marshall, Ms Baccam and Mr Foo whereby false Gardens2NV invoices, totalling approximately between \$200,000 and \$220,000, were submitted to the Council for payment for work that had not been done, knowing that Ms Baccam and Mr Foo would use their positions at the Council to dishonestly arrange payment of the invoices in order to obtain money from the Council to recoup money paid to Ms Baccam and Mr Foo (chapter 3)
- Siddik Hussein by collaborating with Ms Baccam to create false Al-Furat invoices to be paid by the Council for work he knew had not been done, knowing that Ms Baccam would use her position at the Council to dishonestly arrange for payment of the invoices (chapter 3)
- Ms Cullinane for wilfully and dishonestly failing, in her duty as the Council's deputy general manager, to cause the taking of disciplinary proceedings against Mr Goodman or to report his misconduct to the NSW Police Force (chapter 4).
- Mr Alexander for an offence of fraud pursuant to s 192E of the Crimes Act and an offence of giving false or misleading evidence to the Commission contrary to s 87(1) of the ICAC Act, when he denied involvement in false invoicing
- Ms Baccam for offences of fraud pursuant to s 192E of the Crimes Act and an offence of giving false or misleading evidence to the Commission contrary to s 87(1) of the ICAC Act, when she denied submitting false invoices to the Council other than the false invoices submitted through Ari Landscape Solutions
- Mr Foo for offences of fraud pursuant to s 192E of the Crimes Act, soliciting and receiving a corrupt commission or reward pursuant to s 249B(1)(a) of the Crimes Act, and an offence of giving false or misleading evidence to the Commission contrary to s 87(1) of the ICAC Act, when he denied involvement in or knowledge of false invoicing
- Mr Hussein for offences of fraud pursuant to s 192E of the Crimes Act
- Ms Mishra for giving false evidence to the Commission contrary to s 87(1) of the ICAC Act, when she denied knowledge of Mr Goodman's involvement in false invoicing
- Ms Cullinane for an offence of misconduct in public office.

## Section 74A(2) statements

Statements are made in the report pursuant to s 74A(2) of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act") that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the following persons:

- Mr Goodman for fraud pursuant to s 192E and s 178BB of the *Crimes Act 1900* ("the Crimes Act") and soliciting and receiving a corrupt commission or reward pursuant to s 249B(1)(a) of the Crimes Act
- Mr Mark for offences of fraud pursuant to s 192E of the Crimes Act
- Mr Subeski for offences of fraud pursuant to s 192E of the Crimes Act
- Mr Gajic for offences of fraud pursuant to s 192E of the Crimes Act and an offence under s 249B(2)(a) of the Crimes Act of corruptly giving a benefit to Mr Goodman

## Corruption prevention

Chapter 7 of this report sets out the Commission's review of the corruption risks identified during the course of the investigation. The Commission has made the following corruption prevention recommendations:

### Recommendation 1

That Bayside Council reviews its financial processes and makes any necessary changes to ensure that:

- its vendor master file is subject to appropriate segregation and review-based controls
- sufficient segregations exist in its invoice payment processes (including the introduction of a three-way match arrangement) to manage the risks associated with fraudulent payments
- operational managers have visibility over, and involvement in, setting budgets and monitoring expenditure against these budgets
- adequate segregations exist across different financial processes.

## Recommendation 2

That Bayside Council undertakes a review of the control frameworks governing processes that are vulnerable to corruption (including those related to procurement, invoice payment, fleet management and charge-card usage) and implements any recommendations arising from the review.

## Recommendation 3

That Bayside Council reviews the position descriptions of key operational and financial roles to ensure that they include the required skill sets and qualifications.

## Recommendation 4

That Bayside Council ensures that the implementation of both internal and external audit recommendations is considered by the elected body when evaluating the performance of the general manager.

## Recommendation 5

That Bayside Council undertakes a risk assessment (including an assessment of fraud and corruption risks) to inform its internal audit plan.

## Recommendation 6

That Bayside Council ensures that its internal audit function operates independently from management by reporting functionally to its audit committee.

## Recommendation 7

That Bayside Council ensures it has a robust system in place to monitor and report on the implementation of internal audit recommendations that is independent from management.

## Recommendation 8

That the general manager of Bayside Council conducts a review of the audit committee's effectiveness and the adequacy of its arrangements to ensure that it fulfils the responsibilities of its charter and provides sufficient assistance to Bayside Council's governing body on governance processes.

## Recommendation 9

That the NSW Government considers adopting a model of local council oversight that is comparable to that applicable to state government agencies. This model could include:

- mandatory administration and governance directives similar to those that apply to state government agencies

- requirements concerning the composition and operation of audit committees that are similar to those that apply to state government agencies
- the requirement for council general managers to attest that audit committees are operating in accordance with requirements.

These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E of the ICAC Act, will be furnished to Bayside Council, the Office of Local Government (OLG) and the responsible minister.

As required by s 111E(2) of the ICAC Act, Bayside Council and the OLG must inform the Commission in writing within three months (or such longer period as the Commission may agree in writing) after receiving the recommendations, whether they propose to implement any plans of action in response to the recommendations and, if so, of the plan of action.

In the event a plan of action is prepared, the agency is required to provide a written report to the Commission of its progress in implementing the plan 12 months after informing the Commission of the plan. If the plan has not been fully implemented by then, a further written report must be provided 12 months after the first report.

The Commission will publish the response to its recommendations, any plan of action and progress reports on its implementation on the Commission's website, [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au), for public viewing.

## Recommendation that this report be made public

Pursuant to s 78(2) of the ICAC Act, the Commission recommends that this report be made public forthwith. This recommendation allows either Presiding Officer of the Houses of Parliament to make the report public, whether or not Parliament is in session.

# Chapter 1: Background

This chapter sets out some background information concerning the investigation conducted by the NSW Independent Commission Against Corruption (“the Commission”), City of Botany Bay Council (“the Council”) and Gary Goodman, former chief financial officer (CFO) of the Council.

## How the investigation came about

In December 2014, the Commission received an anonymous complaint that Mr Goodman had misused between \$500,000 and \$1 million of Council funds and resources. The allegations included that he had misused \$50,000 worth of the Council’s Cabcharge cards, misused Council fuel cards for his personal use and retained from three– to four Council vehicles for his personal use.

## Why the Commission investigated

One of the Commission’s principal functions, as specified in s 13(1)(a) of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”), is to investigate any allegation or complaint that, or any circumstances which in the Commission’s opinion imply that:

- (i) *corrupt conduct, or*
- (ii) *conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or*
- (iii) *conduct connected with corrupt conduct, may have occurred, may be occurring or may be about to occur.*

The role of the Commission is explained in more detail in Appendix 1. Appendix 2 sets out the approach taken by the Commission in determining whether corrupt conduct has occurred.

The conduct reported to the Commission was serious and could, if established, constitute corrupt conduct

within the meaning of the ICAC Act. The Commission commenced a preliminary investigation in February 2015. The evidence gathered during the preliminary investigation corroborated some of the allegations made by the anonymous complainant. The Commission therefore decided to undertake a fuller investigation.

## Conduct of the investigation

During the course of the investigation, the Commission:

- interviewed and/or obtained statements from a number of persons, including Council employees and Council contractors
- obtained documents from various sources by issuing five notices under s 21 of the ICAC Act and 209 notices under s 22 of the ICAC Act
- obtained one warrant under the *Telecommunications (Interception and Access) Act 1979* to allow the interception of a telecommunications service
- undertook physical surveillance of certain persons suspected of being involved in corrupt conduct
- conducted 32 compulsory examinations
- executed five search warrants.

The Commission’s investigation revealed serious allegations of false invoicing of the Council by Mr Goodman and others involving millions of dollars, the solicitation and receipt of a payment from a Council contractor and extensive misuse of Council resources. It also identified serious weaknesses in the Council’s internal financial controls and governance mechanisms that needed to be addressed.

## The public inquiry

After taking into account each of the matters set out in s 31(2) of the ICAC Act, the Commission determined that it was in the public interest to hold a public inquiry, for the purpose of furthering its investigation. In making that determination, the Commission had regard to the following considerations:

- the allegations were serious, involved a significant amount of money, took place over a number of years and involved a senior public official in a significant position of trust
- there was a legitimate public interest in exposing corrupt conduct that affects public authorities
- public exposure of the matter might serve as a deterrent to others or might cause other instances of similar conduct to be reported
- while there was a risk to the reputation of Mr Goodman and other witnesses called before the public inquiry, the prejudice was not undue in light of the seriousness of the allegations, the strength of the evidence then available to the Commission, and the public interest in exposing conduct of the kind alleged
- it was in the public interest to examine inadequacies in the Council's processes and assist in the promotion of best practices.

The public inquiry was conducted over 16 days, between 29 February and 17 March 2016, and then between 3 and 8 June 2016. Twenty-nine witnesses gave evidence at the public inquiry. The Hon Megan Latham, Commissioner, presided at the public inquiry and Murugan Thangaraj SC acted as Counsel Assisting the Commission.

At the conclusion of the public inquiry, Counsel Assisting prepared submissions setting out the evidence upon which it was proposed the Commission should

rely for this report, and also addressing the findings and recommendations that could be made based on the available evidence. The Commission's Corruption Prevention Division also prepared submissions. These were provided to all relevant parties and submissions were invited in response. In addition, parties were given the opportunity to respond to the submissions in response filed by other parties.

In April 2017, supplementary submissions were prepared by Counsel Assisting and the Corruption Prevention Division. Counsel Assisting's supplementary submissions dealt with further evidence that came to light after, and as a result of, the public inquiry concerning Mr Goodman's conduct in relation to CND Computers Pty Ltd (chapter 2) and the use of the Council's credit cards (chapter 6).

The Corruption Prevention Division's supplementary submissions addressed further issues about internal controls and governance processes. Submissions in response to the supplementary submissions were invited from all relevant parties. The final submission in response was received on 17 May 2017. All relevant parties were also invited to request that a summary of their response to the adverse findings contended for by Counsel Assisting in their submissions be included in the Commission's report in the event the Commission made such findings. That summary is at Appendix 3 to this report.

On 1 June 2017, further submissions were provided to Ms Cullinane relating to whether there was sufficient evidence to support a finding of serious corrupt conduct by failing to act on her knowledge of Mr Goodman's misconduct. Submissions in response to those submissions were received on 23 June 2017.

## City of Botany Bay Council

In September 2016, the Council and Rockdale City Council merged to form Bayside Council.

Prior to its amalgamation, the Council provided



community services to 46,000 residents in the suburbs of Banksmeadow, Botany, Daceyville, Eastgardens, Eastlakes, Hillsdale, Mascot, Pagewood and part of Rosebery. Sydney Airport was located within the Council's area.

The Council was constituted under the *Local Government Act 1993* ("the LGA"). The governing body of the Council was made up of seven elected councillors. The powers and responsibilities of local councils, councillors and other persons and bodies are largely set out in the LGA. Section 334 of the LGA provides for the appointment of a general manager and s 335 of the LGA sets out the functions of the general manager, which include the day-to-day management of a council.

From 1997, until his retirement from the Council in 2011, Peter Fitzgerald was the general manager of the Council. In June 2011, Lara Kirchner became the general manager of the Council. From 1997 until her employment was terminated in March 2016, Lorraine Cullinane was the deputy general manager and the director of corporate and community services at the Council.

The two areas of the Council involved in the Commission's investigation were the finance division and the Airport Business Unit ("the Business Unit"). Mr Goodman was the CFO and the head of the finance division. He reported to Ms Cullinane.

The Business Unit was based at Sydney Airport. The Council and Sydney Airport Corporation Limited (SACL) had a contractual arrangement whereby the Business Unit provided services to SACL. The most recent contract was awarded to the Council in 2015 following an open tender process.

The Business Unit was managed by the business unit manager. The business unit manager reported to the manager of special projects, who, in turn, reported to the general manager.

In 2014, Mark Goodman, Mr Goodman's brother, became the acting manager of the Business Unit after holding various positions at the Council. He left the Council in December 2015, when his contract was not renewed.

## Mr Goodman

Mr Goodman had a career in local government spanning over 40 years. He started his career at Leichhardt Council in 1975 and worked at various councils, including Ryde Council, Ku-ring-gai Council, Marrickville Council and Drummoyle Council. In 1994, Mr Goodman became the Council's CFO. Mr Goodman held no formal qualifications. In October 2015, Mr Goodman's employment at the Council was terminated as a result of the Commission's investigation.


Mr Goodman is the sole director of two companies, Gas Motorsport Pty Ltd and Performance Service Centre Pty Ltd. Mr Goodman's operation of those companies reflected his interest in car racing.

## Mr Goodman's relationships

At various times, Mr Goodman was involved in intimate relationships with fellow Council officers Marny Baccam, Suman Mishra and Ms Cullinane.

Mr Goodman gave evidence that he had known Ms Cullinane for about 35 years. Between about 1996 and 2002, Mr Goodman and Ms Cullinane were involved in an intimate relationship. Between 1993 and 1997, they were joint owners of a video store business.

Between 2006 and 2009, Mr Goodman and Ms Baccam were involved in an intimate relationship. At the time of the public inquiry, they remained close friends. Ms Baccam met Mr Goodman at a gambling venue. In October 2010, she started work at the Council as a clerical assistant at the Business Unit. Her employment with the Council was terminated as a result of the Commission's inquiry.



Ms Mishra started work in the Council's finance division in 1994. She held various positions at the Council before becoming a senior accounting officer, a position she held until her employment from the Council was terminated in December 2015. In 2009, Mr Goodman and Ms Mishra became involved in an intimate relationship. Ms Mishra described it as an "on and off" relationship that was continuing at the time of the public inquiry

### **Mr Goodman's credit as a witness**

While Mr Goodman made admissions to extensive misconduct, including involvement in false invoicing schemes and misuse of Council corporate credit cards, his evidence was often inconsistent, unreliable and self-serving. He was not a credible witness. Consequently, the Commission has not accepted his evidence unless it is against his interest or is corroborated by other independent, objective evidence.

## Chapter 2: Mr Goodman – false invoicing and soliciting a payment

This chapter examines allegations that, while CFO of the Council, Mr Goodman dishonestly exercised his official functions to obtain financial benefits for himself and others by approving or causing the payment of false invoices to obtain money from the Council. This chapter also examines allegations that he solicited and received money as an inducement or reward for showing favourable treatment to Council contractor, Zoran Gajic of Cube Design and Construction Pty Ltd and Highland Profiles Pty Ltd.

Mr Goodman used two methods to obtain money from the Council through the submission of false invoices. The first method involved Mr Goodman arranging for Council contractors to submit false invoices to the Council. The second method involved Mr Goodman using the company details of Council contractors to create and submit false invoices without the knowledge of those contractors.

Mr Goodman's conduct was brazen and long-term. He admitted to engaging in false invoicing since the late 1990s or early 2000s. As CFO, he understood the weaknesses in the Council's systems and successfully exploited, created or perpetuated those weaknesses for his own benefit. Significant parts of the Council's business were under his control. These factors contributed to his conduct going undetected for many years. Mr Goodman agreed that, but for the Commission's investigation, his conduct would have continued.

Mr Goodman admitted that he forged his brother's signature in order to authorise the payment of false invoices, which were submitted through the Business Unit. He said that his brother had no knowledge of his conduct.

### False invoicing with the knowledge of the contractors

The contractors involved in this type of conduct were:

- Keith Mark of Computer Intersection, who used

the fictitious business name Australian Landscape Creations

- Aleksa Subeski of Jovane Pty Ltd, Green Thumb Landscaping & Gardening Pty Ltd, Iced Air MKD Pty Ltd and Alex Electrical and Air Conditioning Suppliers & Services Pty Ltd
- Zoran Gajic of Cube Design and Construction Pty Ltd and Highland Profiles Pty Ltd
- Joe Freitas of Elias & Son Smash Repairs
- Sam Alexander of Teletec.

The contractors involved were owed money by Mr Goodman and many gave evidence that they agreed to participate in the scheme as a means of recouping the money owed to them. Most of the contractors also worked for the Council and it was evident that some of the contractors feared that their employment with the Council would be terminated if they failed to comply with Mr Goodman's requests.

### Mr Mark

Keith Mark and Mr Goodman have known one another for about 40 years. They lived together as flatmates for several years and had a shared interest in car racing. In 1992, Mr Mark started his own business, Computer Intersection, and at some point after that, Mr Goodman arranged for him to be a contractor who provided services for Drummoyne Council. He later worked as a contractor for the Council.

### Computer Intersection

According to Mr Mark, in about 1997, he started to produce inflated and false invoices through Computer Intersection. Some of the invoices produced by Mr Mark were completely false, while others were for legitimate work but inflated amounts. This was done at Mr Goodman's request. Mr Mark told the Commission



that Mr Goodman retained all the proceeds from the false invoices and the amount above the legitimate amount from the inflated invoices. Mr Mark said he kept only the money he was entitled for legitimate work that he had undertaken for the Council. This practice continued until 2005, when Mr Mark and his wife moved away from Sydney to Queensland. The Commission accepts this evidence.

Mr Mark estimated that he had given approximately \$1.3 million to Mr Goodman through this scheme.

Mr Mark said that, when Mr Goodman wanted money, he instructed Mr Mark what amount to put on the invoice and between them they decided the description of work to put on the invoice. Mr Mark said that, after being paid by the Council, he would give Mr Goodman a cheque or, on some occasions, Mr Goodman came with him to the bank to collect cash. Mr Mark said that, although he did not share in the proceeds obtained through this arrangement, he did secure his employment as a contractor at the Council because he believed that “[i]f I refuse then I might be on shaky ground with my association with the Council”.

Mr Goodman gave different evidence. He accepted that he did authorise the payment of false Computer Intersection invoices but claimed that he and Mr Mark divided between them the money improperly obtained from the Council and that Mr Mark kept the lion’s share of the cash. Mr Goodman estimated that he received between \$150,000 and \$200,000. He then said he was not able to accurately estimate how much he received. He said that Mr Mark gave him the proceeds from the false invoicing by cash or cheque payments or by paying bills on his behalf.

The Commission does not accept Mr Goodman’s evidence about the cash-sharing arrangement. Mr Mark’s evidence is preferred. The Commission is satisfied that Mr Mark’s only motivation to engage in this scheme was to secure and continue receiving work from the Council.

Although Mr Mark estimated that Mr Goodman had been paid \$1.3 million during this period, the Commission is not satisfied that the amount paid to Mr Goodman can be calculated with any degree of accuracy. This is because of the historic nature of these matters and because of the limited recollection by both Mr Goodman and Mr Mark.

The Commission is satisfied that there was an agreement between Mr Goodman and Mr Mark whereby Mr Mark issued false and inflated Computer Intersection invoices to the Council, which Mr Goodman approved for payment knowing that they were false and with the intention of obtaining a financial benefit for himself.

### **Australian Landscape Creations**

In September 2015, while living in Queensland, Mr Mark spoke with Mr Goodman about money that Mr Mark claimed was owed to him by Mr Goodman. The amount involved was around \$161,000. On 5 September 2015, Mr Mark sent Mr Goodman an email to his Council email address demanding payment and threatening to inform the general manager and the deputy general manager about their prior conduct if Mr Goodman did not repay the money owed to him. Mr Mark gave evidence that, at the time he sent the email, he was “angry and annoyed I suppose, through being ignored [by Mr Goodman]”.

Mr Goodman eventually suggested that Mr Mark provide him with false invoices in the name of a fictitious landscaping business as a way of recouping the money. The evidence establishes that the entity used was Australian Landscape Creations. Mr Mark does not own a landscaping company and has never carried out landscaping work for the Council.

The agreement to use a fictitious business was captured in telephone calls between Mr Goodman and Mr Mark that were lawfully intercepted by the Commission. The Commission is satisfied that these telephone calls establish that Mr Goodman provided directions to Mr Mark about the content of the invoices in the four ways indicated below.

- Using email addresses that would not identify Mr Mark.

*GOODMAN: Um I need you to find a landscaping company for me.*

*MARK: A landscaping company?*

*GOODMAN: Yeah don't worry about it. Just do what I'm saying. I need you to get an email address ... Um, bank accounts don't matter, that's fine. Um, hang on let me start this again. The brain's not working. Okay genuine email address, genuine.*

- Fabricating an ABN.

*GOODMAN: It has to be genuine. Name don't matter, make it up. ABN don't matter, make it up.*

*MARK: Yeah. Oh so it needs an ABN.*

*GOODMAN: Yep. Just make one up.*

*MARK: Yep, yep.*

- Designing false invoice templates that would look legitimate to Council employees.

*GOODMAN: ... Yeah so um, now you got invoice, I need you to design one for me. Um, you got a pen there?*

*MARK: Yeah I've got a pen; I've just been writing down email.*

...

*GOODMAN: It's gonna supply labour and materials as required, Sydney Domestic Terminal.*

*MARK: Labour and materials.*

*GOODMAN: And add a few different words you know on each one. Each invoice is gonna be for around the eight, eight and a half thousand. I need them by Tuesday afternoon.*

*MARK: Yep.*

- Taking active steps to ensure their arrangement would not be detected.

*GOODMAN: This is between me and you by the way, nobody else.*

*MARK: Yeah, yeah, yeah.*

*GOODMAN: That's very important. Um -*

*MARK: You don't know what's a, what stress it put me under to send that email.*

...

*GOODMAN: Ah tomorrow, and when you get there make sure, make sure you delete after you've done it.*

Mr Mark used the ABN of a legitimate paving business in North Queensland and created a false email address. Mr Mark used the Post Office box address of one of his friends as the business address of the fictitious business. Mr Mark understood that the arrangement would continue until the debt was repaid. The Commission's investigation meant that the arrangement came to a sudden end.

The false invoices submitted by Mr Mark on behalf of Australian Landscape Creations and paid by the Council between 16 September and 7 October 2015 totalled \$55,495. This money was paid by the Council to a bank account associated with Mr Mark.

Mr Goodman admitted that Australian Landscape Creations did not do any work for the Council. He accepted that he authorised the payment of the false Australian Landscape Creations invoices or caused the payment of false Australian Landscape Creations invoices by arranging for others at the Council to authorise or pay those invoices.

The Commission is satisfied that Australian Landscape Creations was created by Mr Mark at the direction of Mr Goodman for the sole purpose of Mr Mark receiving money from the Council to which he was not entitled and that the arrangement was intended by both men to remain in place until such time as Mr Mark had received from the Council an amount equivalent to the debt owed to him by Mr Goodman.

The Commission is satisfied that there was an agreement between Mr Goodman and Mr Mark to issue false Australian Landscape Creations invoices to the Council, which Mr Goodman would approve, or arrange to be approved, knowing that those invoices were false.

### Mr Subeski

Mr Subeski is the director of Iced Air MKD, Alex Electrical and Air Conditioning Suppliers & Services, and Green Thumb Landscaping & Gardening. Jovan Gligorov, Mr Subeski's son-in-law, is the director of Jovane.

Mr Subeski began performing work for the Council through Alex Electrical and Air Conditioning Suppliers & Services and Iced Air MKD around 2011.

In his evidence to the Commission, Mr Subeski stated that Mr Goodman was indebted to him in the sum of around \$50,000 or \$60,000. In order to discharge the debt, Mr Goodman suggested that Mr Subeski falsely invoice the Council for work not performed. Mr Subeski agreed

to do so. Two companies – Jovane and Green Thumb Landscaping & Gardening – were used by Mr Subeski as the vehicles for providing false invoices to the Council. Mr Subeski gave evidence that his son-in-law, Mr Gligorov, had no knowledge of the false invoicing. The Commission accepts this evidence.

There was no dispute that, between 20 November 2014 and 7 October 2015, Mr Subeski submitted Jovane invoices totalling \$1.85 million to the Council for work neither he nor the company had performed. There was also no dispute that, between 23 September and 7 October 2015, Mr Subeski submitted Green Thumb Landscaping & Gardening invoices totalling \$132,682 to the Council for work neither he nor the company had performed. Both Mr Goodman and Mr Subeski admitted that Jovane and Green Thumb Landscaping & Gardening did not carry out any work for the Council. Mr Goodman admitted that he authorised Council payment of all false Jovane and Green Thumb Landscaping & Gardening invoices by forging his brother's signature.

There is a dispute as to who received the greater share of money obtained through this arrangement.

Mr Subeski said that the major share of the money went to Mr Goodman. Between 19 December 2014 and 6 October 2015, the total cheque payments made to Mr Goodman from accounts operated by Mr Subeski (or his family members) was \$499,271.04, and the total of electronic payments to Mr Goodman from accounts operated by Mr Subeski (or his family members) was \$453,986. Mr Subeski gave uncontested evidence, which the Commission accepts, that Mr Goodman or his associates were given more money than these amounts, including cash payments totalling between \$400,000 and \$500,000. Mr Subeski also gave evidence of electronic transfers to other bank accounts, at Mr Goodman's direction, payment of bills as directed by Mr Goodman, and wire transfers of money overseas.

Mr Subeski told the Commission that the money he kept from the false invoicing scheme was used to defray his GST and income tax obligations and for the work he did in private homes at Mr Goodman's instruction (the latter is discussed further below).

Mr Goodman admitted that he had obtained money from Mr Subeski on numerous occasions and, at the time of the public inquiry, he still owed Mr Subeski money. Mr Goodman maintained that Mr Subeski benefited from the false invoicing scheme and retained some of the money. His evidence on this issue, however, was inconsistent and generally unreliable. At one point in his evidence, he stated that he (Mr Goodman) received \$700,000. At another point in his evidence, he said most if not all of the funds he received from Mr Subeski were

transferred overseas. At another point, he claimed that Mr Subeski had retained "a substantial amount".

The Commission is satisfied that Mr Goodman was the primary beneficiary of the scheme. Mr Subeski gave clear and consistent evidence about this issue. This was largely corroborated by other evidence, including lawfully intercepted telephone calls between Mr Goodman and Mr Subeski revealing Mr Goodman's demands for more money, and financial records, which show that, between 19 December 2014 and 6 October 2015, around \$1 million was transferred from accounts operated by Mr Subeski or his family members to Mr Goodman through cheques and electronic transfers.

The Commission is satisfied that, between 20 November 2014 and 7 October 2015, the Council paid approximately \$1,982,000 to Jovane and Green Thumb Landscaping & Gardening in respect of work that had not been performed. The Commission is satisfied that there was an agreement between Mr Goodman and Mr Subeski to issue false Jovane and Green Thumb Landscaping & Gardening invoices to the Council, which Mr Goodman would arrange to have approved, knowing that those invoices were false.

Mr Subeski also admitted that he did work in private homes at Mr Goodman's instruction, including at the homes of Ms Mishra, Ms Baccam and Ms Baccam's mother, and issued invoices for payment by the Council through Alex Electrical and Air Conditioning Suppliers & Services, Iced Air and Jovane. Mr Goodman admitted that Iced Air MKD did private work at the home of various people, including Ms Mishra and Ms Baccam. Notations on a number of the Iced Air MKD invoices, which were submitted to the Council, indicate that work was carried out at the homes of Ms Baccam and Mr Goodman.

In light of this evidence, the Commission is satisfied that Mr Goodman and Mr Subeski caused the Council to pay for private work carried out by Mr Subeski at various homes, including those of Ms Mishra and Ms Baccam, knowing that this work was not related to Council business.

## Mr Gajic

Mr Gajic met Mr Goodman through car racing. Mr Goodman introduced him to the Council. Mr Gajic told the Commission that two of his companies, Highland Profiles and Cube Design and Construction, carried out work for the Council at the Business Unit, Centennial Park and the Council itself.

Mr Gajic agreed that he submitted false and inflated invoices to the Council. He said he agreed with Mr Goodman to submit false invoices because he was attempting to recover money that he was owed

by Mr Goodman. According to Mr Gajic, it was Mr Goodman's idea to submit false invoices. Mr Gajic said that he was "chasing him [Mr Goodman] for some money and he goes, oh, just send me an invoice to cover it". He said that this happened a "few times" and that Mr Goodman told him the amount to be written on the invoice. Some of the invoices that were submitted were entirely false. Others were for services provided to the Council but were inflated so that the Council would pay more than the work was actually worth.

Mr Goodman admitted that he and Mr Gajic arranged to issue false invoices to the Council for payment and that false invoices had been submitted by Mr Gajic and authorised for payment by the Council by Mr Goodman.

There is some evidence that Mr Gajic did legitimate work for the Council and, consequently, it is not possible for the Commission to quantify the amount of money improperly obtained through this scheme. The Commission is satisfied, however, that there was an agreement between Mr Goodman and Mr Gajic to issue false and inflated invoices to the Council, which Mr Goodman would approve, knowing that those invoices were either false or for inflated amounts. Mr Gajic kept the proceeds of the money from this scheme by way of payment of the debt owed to him by Mr Goodman.

During a lawfully intercepted telephone conversation on 20 July 2015 between Mr Goodman and Mr Gajic, Mr Goodman solicited a payment from Mr Gajic in return for the promise of Council work. Mr Gajic agreed to give him \$2,000. Both Mr Goodman and Mr Gajic admitted to the Commission that Mr Gajic paid Mr Goodman \$2,000 in return for the promise of Council work.

## Mr Freitas

Mr Freitas runs a panel beating company that trades under the name Elias & Son Smash Repairs. The company is based in Wetherill Park, near the workshop Mr Goodman used for his personal businesses. He has known Mr Goodman for about 14 years. Between 10 and 12 years ago, Mr Goodman suggested that Mr Freitas work for the Council.

In his evidence to the Commission, Mr Freitas initially denied submitting false invoices to the Council and claimed that all invoices submitted by him were genuine. A lawfully intercepted telephone conversation of 4 September 2015 was played at the public inquiry in which Mr Goodman urged Mr Freitas to submit a false invoice purportedly for cleaning a Council tar truck because Mr Goodman wanted to repay some of the money he owed to Mr Freitas. After hearing this telephone conversation, Mr Freitas changed his evidence and admitted that the invoice dated 4 September 2015

for cleaning a Council tar truck was false. Mr Goodman's signature appears on this invoice authorising payment by the Council.

Mr Freitas said Mr Goodman owed him money and admitted to submitting false invoices for the purpose of Mr Goodman reducing his debt. Mr Freitas said that he gave Mr Goodman cash and also paid bills for him from the proceeds of the false invoicing. He told the Commission that the general practice was that Mr Goodman would contact him and specify the description of works and the amount that should be written on the invoice in order to avoid detection and suspicion. Mr Freitas said that he agreed to engage in this practice because, "[w]ell, if I didn't do it I didn't get the work pretty much". He described Mr Goodman as a "very demanding person" and himself as "basically weak".

The Commission accepts Mr Freitas' evidence that he felt pressured by Mr Goodman. During a lawfully intercepted telephone call between Mr Goodman and Mr Freitas, when Mr Freitas expressed reluctance to submit further invoices and discomfort about their arrangement, Mr Goodman threatened to cease providing Mr Freitas with all work, including Council work. Mr Goodman questioned Mr Freitas as to why he had not added a further 40 per cent to the false invoices as profit. Mr Freitas said that he did not add extra to the invoices as profit for himself.

In his evidence to the Commission, Mr Goodman agreed that this telephone conversation showed that, unless Mr Freitas cooperated with him, Mr Freitas would lose all the work that came through Mr Goodman or the Council. He admitted that false invoices issued by Mr Freitas were submitted to the Council and agreed that he either received the proceeds of the false invoices directly or received them indirectly through the use of the proceeds to reduce his debt to Mr Freitas or that Mr Freitas used the proceeds to pay bills for Mr Goodman.

The Commission is satisfied that Mr Goodman exploited Mr Freitas and threatened to cease providing Mr Freitas with work if he did not submit false invoices. There is evidence that Elias & Son Smash Repairs did legitimate work for the Council and, consequently, it is not possible to quantify the amount of money improperly obtained through the false invoicing arrangement.

The Commission is satisfied that there was an agreement between Mr Goodman and Mr Freitas to issue false Elias & Son Smash Repairs invoices, which Mr Goodman would arrange for payment, knowing that those invoices were false. The Commission is satisfied that Mr Freitas received some of the proceeds from the false invoicing to reduce the debt owed to him by Mr Goodman and also provided Mr Goodman with cash and paid bills on Mr Goodman's behalf with proceeds from the scheme.



## Mr Alexander

Mr Alexander is a telecommunications consultant who has operated his own business, Teletec, since 1986. He met Mr Goodman in 2011 and has since provided services to Mr Goodman's company, Gas Motorsport. He was also a contractor to the Council. Over a period of between about 18 to 24 months, Mr Alexander lent Mr Goodman about \$35,000, of which about \$10,000 was repaid to him. Mr Alexander also acted as a courier for Mr Goodman by collecting cash and cheques intended for Mr Goodman from Mr Subeski.

When first questioned at the public inquiry, Mr Alexander largely denied involvement in false invoicing. Mr Alexander made the implausible claim that the only false invoices he submitted to the Council were submitted in order to repay Council staff who had paid Council's legitimate Telstra bills with their own credit cards. The Council staff he nominated as having paid Telstra bills on behalf of the Council at various times were Barry Byrnes, Mark Thompson, Mr Goodman and Ms Cullinane. He claimed that these people would receive reimbursement much more quickly if he submitted a false invoice so that the money paid by the Council on the invoice could be given to them. He denied involvement in any other false invoicing.

During the public inquiry, Mr Alexander was confronted with a number of lawfully intercepted telephone calls, which suggested that he had been involved in false invoicing with Mr Goodman in a much more significant way. Mr Alexander, however, continued to deny involvement in false invoicing, other than as a means of reimbursing Council staff for the payment of Council's Telstra bill. Mr Alexander's position became increasingly untenable.

After a break in his evidence to the public inquiry, Mr Alexander eventually admitted to involvement in submitting false invoices to the Council. Specifically, he admitted that a Teletec invoice for four car kits, dated 30 September 2015, was false and that those car kits had not been supplied to the Council. This was abundantly clear from a lawfully intercepted telephone conversation with Mr Goodman, during which Mr Alexander proposed to claim to have provided four car kits to the Council. The purpose of the invoice was to secure funds, totalling \$2,000, for Mr Goodman's girlfriend, who resided in the Philippines. The Teletec invoice submitted to the Council is dated 30 September 2015 and is for \$2,178. Mr Goodman's signature appears on the invoice authorising payment by the Council. Mr Alexander had initially denied that this was a false invoice.

Mr Alexander also admitted that an email, dated 1 October 2015, in which he requested payment of \$6,673.22 for an outstanding "Telstra account" purportedly "under threat of disconnection", was false.

Mr Goodman and Mr Alexander discussed submitting this false invoice in a telephone call lawfully intercepted by the Commission. The payment was made to Mr Alexander on 1 October 2015 by the Council and the telephone call reveals that Mr Goodman facilitated the making of the payment. Mr Alexander had initially denied that this was a false invoice.

Mr Alexander ultimately admitted to deliberately submitting false invoices to the Council for goods or services that were not performed by him for a period of about 12 months, although he later said, "...I can't know if it was nine months, 15 months, it could've been 15 months". He told the Commission that the false invoicing arrangement predominantly involved him submitting false invoices to the Council for goods he had not provided and fabricating invoices claiming reimbursement for payment of the Council's bills. He estimated that approximately \$90,000 was improperly obtained from the Council over a period of between about 12 to 15 months.

Mr Alexander said the arrangement to submit false invoices was initiated by Mr Goodman and all the proceeds were remitted to Mr Goodman either in cash or by making payments on his behalf.

Mr Goodman gave evidence that false invoices had been submitted by Mr Alexander and he instructed Mr Alexander about what should be written on the false invoices. He said that most of the money received by Mr Alexander was sent overseas on his instructions and he agreed that Mr Alexander did not keep any of the proceeds. Mr Goodman said he was not able to determine which Teletec invoices were false and which were genuine.

The Commission is satisfied that there was an agreement between Mr Goodman and Mr Alexander to issue false Teletec invoices to the Council, which Mr Goodman would approve, knowing that those invoices were false. Teletec carried out legitimate work for the Council and so it is not possible to quantify the amount obtained through the false invoicing scheme. The Commission is satisfied that the financial beneficiary of the false invoicing through Teletec was solely Mr Goodman.

## False invoicing without the knowledge of the contractors

The second method to obtain money through the submission of false invoices to the Council involved Mr Goodman using the company details of Council contractors, without the knowledge of those contractors, to create false invoices. These contractors were Raj Haria of CND Computers Pty Ltd, Jovance Veljanovski of Wetherill Park Metalwork Pty Ltd and Wetherill Park

Metal Fabrications Pty Ltd, Khim Leong Seng of On Q Installations and Kevin Maton of Emu Alarms Pty Ltd.

## CND Computers

CND Computers was established in 2005. It also used a number of trading names, including 360 Vision and CND IT. Mr Haria worked for CND Computers from 2004, and became a partner of the company in 2007. He stopped working for CND Computers in 2011, when the business closed. For a period of time, CND Computers provided technical services to the Council; namely, installing and maintaining closed-circuit television (CCTV) camera equipment. Mr Haria's main contact person at the Council was Mr Goodman.

There is no dispute that Mr Goodman created false CND Computers invoices. He put his own bank account details on the invoices so that payments made by the Council would be made directly into his bank account. He authorised Council payment of the invoices. Between 18 October 2007 and 15 June 2011, Mr Goodman, by misrepresenting these CND Computers invoices as genuine, caused \$2,097,021.74, to be paid into bank accounts associated with him.

In his evidence to the Commission, Mr Haria said his company did not issue these invoices, that he did not receive any payments for them, and had no knowledge of Mr Goodman's misuse of CND Computer invoices. The Commission accepts this evidence. Mr Haria gave evidence that the invoices submitted by CND Computers to the Council were not locked PDF files and could be edited. Mr Goodman admitted that he had used CND Computers invoices to submit false invoices using his own bank account details and Mr Haria did not have knowledge of this conduct.

The Commission is satisfied that, between 18 October 2007 and 15 June 2011, Mr Goodman created false CND Computers invoices, submitted them to the Council and authorised their payment by the Council. As a result, \$2,097,021.74 was paid by the Council into accounts associated with Mr Goodman. The Commission is satisfied that Mr Haria had no knowledge of Mr Goodman's conduct.

Mr Haria told the Commission that CND Computers had done work for Mr Goodman's company, Gas Motorsports. This involved providing a CCTV camera system and carrying out computer maintenance. Mr Haria told the Commission that the cost of this work was about \$22,000 and, after requesting the payment of this invoice for about one month, Mr Goodman instructed him to re-issue the invoice to the Council. Mr Haria received payment for this work from the Council.

Between 2007 and 2011, further work was carried out by CND Computers for Gas Motorsports, which cost approximately \$8,000. CND Computers also received payment for this work from the Council. Mr Haria said that Mr Goodman directed him to send all invoices to the Council with the same description; namely, "[s]upply and installation of CCTV camera equipment as per quotation". When Mr Haria tried to put more details on the invoice, Mr Goodman instructed him to submit less detailed invoices. Clearly, this instruction was given by Mr Goodman to avoid detection.

Mr Goodman was not asked whether work carried out by CND Computers for Gas Motorsports was paid through false invoicing.

Counsel Assisting submitted that Mr Haria's evidence on this issue be accepted by the Commission. Mr Goodman's legal representatives did not object to this submission in their submissions in response. On this basis, the Commission accepts Mr Haria's evidence about this matter. His evidence was against his own interest and is consistent with other evidence that Mr Goodman arranged for contractors to submit false invoices to the Council to pay for his private work. In the light of Mr Haria's evidence, the Commission is satisfied that, on Mr Goodman's instructions, Mr Haria created and submitted invoices to the Council in order to obtain payment from the Council for private work that he performed for the benefit of Mr Goodman.

## Truck Service Centre

Between 21 June 2011 and 5 July 2013, \$536,474.95 was paid into a bank account associated with Mr Goodman for work purportedly carried out for the Council by an entity called Truck Service Centre. Most of the Truck Service Centre invoices submitted to the Council stated that Truck Service Centre was the trading name of either "Wetherill Park Metal Works" or "Wetherill Park Fabrications".

Mr Veljanovski was the director of Wetherill Park Metalwork and is currently the director of Wetherill Park Metal Fabrications. Mr Veljanovski knew Mr Goodman because his company was based in the same industrial complex as Mr Goodman's businesses.

Mr Veljanovski told the Commission that he had carried out only limited work for the Council over a five- or six-year period. He carried out maintenance on the Council's two sweepers and also worked on the Council's main entrance. Any payments for Council work were made directly by the Council into his company bank accounts. Mr Veljanovski had no knowledge of, or connection with, Truck Service Centre. Truck Service Centre was not a nominated trading name for either of his companies. He told the Commission that he did not carry

out work for Truck Service Centre and he did not receive any of the money paid to that business by the Council.

Mr Veljanovski's evidence, that he did not receive money from Truck Service Centre invoices submitted to the Council, is accepted by the Commission. Truck Service Centre is not a trading name for either of his companies. More importantly, the invoices bore the bank account details of an account associated with, and controlled by, Mr Goodman rather than the bank account details for either of Mr Veljanovski's companies.

Notwithstanding, Mr Goodman's initial suggestions in his evidence to the Commission that the Truck Service Centre invoices may have been genuine, he eventually agreed that they were false. Mr Goodman accepted that he created and submitted to the Council for payment false Truck Service Centre invoices containing a bank account controlled by him. He admitted that he authorised Council payment of the false Truck Service Centre invoices.

The Commission is satisfied that, between 21 June 2011 and 5 July 2013, Mr Goodman created and submitted false Truck Service Centre invoices to the Council, which resulted in \$536,474.95 being paid to an account controlled by him. The Commission is satisfied that Mr Goodman approved payment of those invoices knowing that they were false.

## On Q Installations

Between 2004 and 2012, Mr Seng was the proprietor of On Q Installations, a business that mainly supplied mobile telephones, car trackers, car alarms, car audios, computers and toner cartridges to the Council.

For a period of time, On Q Installations was on a retainer with the Council. On 6 January 2009, a payment from the Council in an amount of \$34,540 appeared in a bank account associated with Mr Goodman with the reference "On Q Installations". The Council was not able to locate an invoice relating to this payment.

Mr Seng said he knew nothing about this payment and there was never an arrangement between him and Mr Goodman whereby money owed to On Q Installations by the Council would be paid into Mr Goodman's bank account.

Mr Goodman gave confused evidence about why funds with the reference "On Q Installations" were deposited into his bank account. The effect of Mr Goodman's evidence was that, without an invoice, he could not say why the funds were deposited into his account.

Mr Seng's evidence about this issue is accepted. The Commission is satisfied that Mr Goodman arranged for \$34,540 to be paid into a bank account associated with,

and controlled by, Mr Goodman by submitting a false invoice to the Council in the name of "On Q Installations". Notwithstanding that no invoice was located by the Council in relation to the transaction, the Commission is satisfied that this is consistent with other evidence that Mr Goodman arranged for payments to be made to his bank accounts without the knowledge of various contractors and that Mr Goodman authorised the payment of the invoice, knowing that the invoice was false.

The Commission is satisfied that Mr Seng had no knowledge or involvement in Mr Goodman's conduct.

## Emu Alarms

According to Australian Securities and Investments Commission documentation, Emu Alarms traded from 15 June 1998 to 14 January 2007. Mr Maton was the director of the company. Emu Alarms mainly sold and serviced security cameras, alarms and intercoms. Emu Alarms carried out work for the Council and Mr Goodman's business, Gas Motorsports. The services carried out for the Council included work in relation to garbage depots, maintenance depots, cameras and alarm repairs. The Council paid him directly for this work. Mr Maton said he stopped working for the Council between 2006 and 2007. In January 2007, Mr Maton sold the company and was subject to a trade restraint clause.

Relevant banking and other records show that, between 11 August 2006 and 30 April 2009, \$300,073.64 was paid into accounts associated with Mr Goodman as a result of the payment by the Council of invoices submitted in the name of Emu Alarms. Mr Goodman admitted that he had created and submitted false invoices in the name of Emu Alarms and had used his own bank account details on those invoices. He admitted that he was the sole person responsible for doing so and that Mr Maton had no knowledge of what he did. The Council was not able to produce all relevant Emu Alarms invoices. Those which were produced, were approved for payment by Mr Goodman.

The Commission is satisfied that Mr Goodman created, submitted and authorised the payment of false Emu Alarms invoices and thereby caused the Council to make payments into his bank accounts totalling \$300,073.64 to which he was not entitled. This conduct is consistent with other evidence that Mr Goodman arranged for payments to be made to his bank accounts without the knowledge of various contractors by authorising the payment of false invoices and that the money was paid into his bank account, and Mr Goodman's own admissions about his conduct relating to Emu Alarms.

The Commission is satisfied that Mr Maton had no knowledge of Mr Goodman's conduct.

## Corrupt conduct

The Commission's approach to making findings of corrupt conduct is set out in full in Appendix 2 of this report.

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of s 8(1), s 8(2) or s 8(2A) of the ICAC Act. If they do, the Commission considers s 9 and the jurisdictional requirements of s 13(3A) of the ICAC Act. The Commission then considers whether, for the purpose of s 74BA of the ICAC Act, the conduct is sufficiently serious to warrant a finding of corrupt conduct.

In the case of subsection 9(1)(a), the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence.

### Gary Goodman

Between 1997 and October 2015, Mr Goodman dishonestly exercised his official functions as Council CFO by approving or causing the payment by the Council of invoices totalling over \$5 million, which he knew to be either entirely false or for inflated amounts. The invoices were from, or purported to be from:

- Emu Alarms (\$300,073.64)
- CND Computers Pty Ltd (\$2,097,021.74)
- On Q Installations (\$34,540)
- Truck Service Centre (\$536,474.95)
- Computer Intersection (amount not established)
- Australian Landscape Creations (\$55,495)
- Jovane Pty Ltd (\$1.85 million)
- Green Thumb Landscaping & Gardening Pty Ltd (\$132,682)
- Highland Profiles Pty Ltd and Cube Design and Construction Pty Ltd (amounts not established)
- Teletec (amount not established)
- Elias & Son Smash Repairs (amount not established).

Mr Goodman did so in each case to obtain the invoiced amounts from the Council for his own benefit and the benefit of others.

This conduct on the part of Mr Goodman is corrupt conduct for the purposes of s 8(1)(b) of the ICAC Act because it is conduct that involves the dishonest exercise of his official functions.

For the purpose of s 9(1)(a) of the ICAC Act, it is relevant to consider s 192E(1) of the *Crimes Act 1900* ("the Crimes Act") for conduct that took place from 22 February 2010:

*(1) A person who, by any deception, dishonestly:*

*(a) obtains property belonging to another, or*

*(b) obtains any financial advantage or causes any financial disadvantage,*

*is guilty of the offence of fraud.*

*Maximum penalty: Imprisonment for 10 years.*

Section 192C of the Crimes Act provides that a person obtains property if the person obtains ownership, possession or control of the property for himself or herself or for another person.

For conduct that took place before 22 February 2010, it is also relevant to consider s 178BB(1) of the Crimes Act:

*Whosoever, with intent to obtain for himself or herself or another person any money or valuable thing or any financial advantage of any kind whatsoever, makes or publishes, or concurs in making or publishing, any statement (whether or not in writing) which he or she knows to be false or misleading in a material particular or which is false or misleading in a material particular and is made with reckless disregard as to whether it is true or is false or misleading in a material particular shall be liable to imprisonment for 5 years.*

The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Goodman's conduct would constitute or involve offences of fraud pursuant to s 192E(1) of the Crimes Act or offences of obtaining money by false or misleading statement pursuant to s 178BB(1) of the Crimes Act.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct because the conduct took place over a significant period of time, between 1997 and October 2015, and involved millions of dollars. Mr Goodman was clearly motivated by greed and self-interest. As CFO, he held a position of trust within the Council and his conduct involved a significant breach of that trust. The conduct was pre-meditated and involved a significant level of planning. Given that Mr Goodman was a senior public official, his



conduct could have impaired public confidence in public administration. Furthermore, the conduct could involve offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years imprisonment, or offences pursuant to s 178BB of the Crimes Act for offences that occurred before 22 February 2010, which have a maximum penalty of five years imprisonment, meaning they are serious indictable offences.

Mr Goodman solicited and received \$2,000 on or about 20 July 2015 from Mr Gajic, as an inducement or reward for Mr Goodman exercising his public official functions, to favour, or not to show disfavour, to Mr Gajic's businesses in relation to their work for the Council.

This conduct on the part of Mr Goodman is corrupt conduct for the purposes of s 8(1)(b) of the ICAC Act, as it is conduct of a public official that constitutes or involves the dishonest or partial exercise of his official functions.

For the purpose of s 9(1)(a) of the ICAC Act, it is relevant to consider s 249B of the Crimes Act. Section 249B(1)(a) of the Crimes Act provides:

- (1) *If any agent corruptly receives or solicits (or corruptly agrees to receive or solicit) from another person for the agent or for anyone else any benefit:*
- (a) *as an inducement or reward for or otherwise on account of:*
- (i) *doing or not doing something, or having done or not having done something, or*
- (ii) *showing or not showing, or having shown or not having shown, favour or disfavour to any person,*
- in relation to the affairs or business of the agent's principal, or*
- (b) *the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show favour or disfavour to any person in relation to the affairs or business of the agent's principal,*

*the agent is liable to imprisonment for 7 years.*

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Goodman committed an offence under s 249B(1)(a) of the Crimes Act of corruptly soliciting and receiving benefits as an inducement or reward for showing favour, or not showing disfavour, in relation to the affairs or business of the Council.

Accordingly, the Commission is satisfied that the requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct because Mr Goodman, as CFO, held a position of trust within the Council and his conduct involved a significant breach of that trust. Mr Goodman was clearly motivated by greed and, given he was a senior public official, this conduct could have impaired public confidence in public administration. The conduct was premeditated. Further, the conduct could involve an offence under s 249B(1)(a) of the Crimes Act, which has a maximum penalty of seven years imprisonment and is a serious indictable offence.

## Keith Mark

Between 1997 and 2005, Mr Mark, in agreement with Mr Goodman, created false Computer Intersection invoices, which he submitted to the Council for payment knowing that either he had not done the work claimed or that the amounts claimed had been inflated, with the intention that Mr Goodman would use his position at the Council to dishonestly arrange for payment of the invoices to benefit Mr Goodman.

This conduct is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because Mr Mark's conduct adversely affected the honest exercise of Mr Goodman's official functions.

Mr Mark's conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Mark committed criminal offences of fraud under s 178BB(1) of the Crimes Act.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

Between 16 September and 7 October 2015, Mr Mark, in agreement with Mr Goodman created false Australian Landscape Creations invoices totalling \$55,495, which he submitted to the Council for payment knowing that the work claimed had not been done, with the intention that Mr Goodman would use his position at the Council to dishonestly arrange for payment of the invoices to benefit Mr Mark.

This conduct is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because Mr Mark's conduct adversely affected the honest exercise of Mr Goodman's official functions.

Mr Mark's conduct also comes within s 9(1)(a) of the

ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Mark committed criminal offences of fraud under s 192E of the Crimes Act.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

In each case, Mr Mark's conduct is serious because it involved a significant amount of money. The conduct was premeditated and involved a significant level of planning. The conduct could involve offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

### Aleksa Subeski

Between 20 November 2014 and 7 October 2015, Mr Subeski, in agreement with Mr Goodman, created false Jovane and Green Thumb Landscaping & Gardening invoices totalling \$1,982,000, which he submitted to the Council for payment knowing that the work for which payment was claimed, had not been done, with the intention that Mr Goodman would use his position at the Council to dishonestly arrange for payment of the invoices to benefit himself and Mr Subeski.

This conduct is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because Mr Subeski's conduct adversely affected the honest exercise of Mr Goodman's official functions.

Mr Subeski's conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Subeski committed criminal offences of fraud under s 192E of the Crimes Act.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The conduct is serious because the conduct took place over a significant period of time and involved a significant amount of money. The conduct was premeditated and involved a significant level of planning. It could involve offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

### Zoran Gajic

On about 20 July 2015, Mr Gajic paid \$2,000 to Mr Goodman as an inducement or reward for

Mr Goodman exercising his public official functions to favour, or not to show disfavour, to Mr Gajic's businesses in relation to their work for the Council.

This conduct on the part of Mr Gajic is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because it is conduct that could adversely affect, either directly or indirectly, the honest or impartial exercise of Mr Goodman's official functions.

For the purposes of s 9(1)(a) of the ICAC Act, it is relevant to consider s 249B(2)(a) of the Crimes Act, which provides:

(2) *If any person corruptly gives or offers to give to any agent, or to any other person with the consent or at the request of any agent, any benefit:*

(a) *as an inducement or reward for or otherwise on account of the agent's:*

(i) *doing or not doing something, or having done or not having done something, or*

(ii) *showing or not showing, or having shown or not having shown, favour or disfavour to any person,*

*in relation to the affairs or business of the agent's principal, or*

(b) *the receipt or any expectation or which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,*

*the first mentioned person is liable to imprisonment for 7 years.*

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Gajic committed an offence under s 249B(2)(a) of the Crimes Act of corruptly giving a benefit to Mr Goodman as an inducement or reward for Mr Goodman showing favour, or not showing disfavour, in relation to the affairs or business of the Council.

Accordingly, the Commission is satisfied that the requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is also satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct because the payment was made to Mr Goodman with the intention of influencing Mr Goodman, a public official, to use his position at the Council to favour Mr Gajic's companies, Highland Profiles and Cube Design and Construction, in its dealings with the Council.

The conduct was premeditated and involved a significant level of planning. The conduct could involve an offence under s 249B(2)(a) of the Crimes Act, which has a maximum penalty of seven years imprisonment, meaning it is a serious indictable offence.

Counsel Assisting did not submit that a corrupt conduct finding should be made in respect of Mr Gajic's involvement in false invoicing. In these circumstances, the Commission has not made a corrupt conduct finding with respect to this aspect of his conduct.

## Joe Freitas

Mr Freitas, in agreement with Mr Goodman, submitted to the Council for payment false Elias & Son Smash Repairs invoices for work he knew had not been done, with the intention that Mr Goodman would use his position at the Council to dishonestly arrange for payment of the invoices to benefit himself and Mr Freitas.

This conduct is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because Mr Freitas' conduct adversely affected the honest exercise of Mr Goodman's official functions.

Mr Freitas' conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Freitas committed criminal offences of fraud under s 192E of the Crimes Act.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The conduct is serious because the conduct took place over a significant period of time. The conduct was premeditated and involved a significant level of planning. It could involve offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

## Sam Alexander

Mr Alexander, in agreement with Mr Goodman, submitted to the Council for payment false Teletec invoices for work he knew had not been done, with the intention that Mr Goodman would use his position at the Council to dishonestly arrange for payment of the invoices in order to benefit Mr Goodman.

This conduct is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because Mr Alexander's conduct adversely affected the honest exercise of Mr Goodman's official functions.

Mr Alexander's conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Alexander committed criminal offences of fraud under s 192E of the Crimes Act.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

Mr Alexander's legal representatives submitted that Mr Alexander's conduct could not be classified as "serious corrupt conduct" for a number of reasons.

It was submitted that a finding that the conduct was serious because it took place over a significant period of time should not be made because the evidence is unclear as to the duration of the arrangement to create false invoices. The submission is rejected. Mr Alexander gave evidence that the conduct took place over a period between 12 and 15 months. In the Commission's view, this is a significant period of time.

It was submitted that a finding that the conduct was serious because it involved a significant amount of money should not be made because the evidence is unclear as to the amount of money involved. It was submitted that Counsel Assisting conceded that the total amount of the false invoices is "not possible to accurately quantify the amount of false invoicing carried out by Mr Alexander". Counsel Assisting conceded that it was not possible to quantify the total amount of false invoicing carried out by Mr Alexander because Mr Alexander's company, Teletec, also carried out legitimate work for the Council. In any event, Mr Alexander admitted that approximately \$90,000 was improperly obtained from the Council and, in the Commission's view, that is a significant amount of money.

It was submitted that a finding that the conduct was serious because the conduct was premeditated and involved a significant level of planning should not be made because there is no evidence of Mr Alexander's premeditation, that the arrangement was initiated and directed by Mr Goodman and that Mr Alexander was a participant in the arrangement. The submission is rejected. The lawfully intercepted telephone calls in evidence before the Commission demonstrate that Mr Alexander's conduct was premeditated and involved a significant level of planning. One such conversation took place between Mr Goodman and Mr Alexander on 30 September 2015 in relation to an invoice dated 30 September 2015, which Mr Alexander ultimately admitted was false. The conversation is set out below:

*GOODMAN: Put an invoice in.*

*ALEXANDER: um, I'm just trying to think aloud, I know, I sent you an invoice—two invoices yesterday afternoon.*

GOODMAN: Send me another one.

ALEXANDER: Send you another one? Rightio, what do I say two iphones or?

GOODMAN: Yeah, whatever it is. No don't make them iphones -

ALEXANDER: Oh okay.

GOODMAN: make them for the airport -

ALEXANDER: Yeah.

GOODMAN: Those, those numbers you put in.

ALEXANDER: Um, I'm just trying to think, ah, do you want car kits?

GOODMAN: Um, yeah, that'll do yeah, yeah, for those blokes?

ALEXANDER: Okay I'll send you an invoice for four car kits.

GOODMAN: Yeah.

ALEXANDER: So -

GOODMAN: Airport, airport, airport.

ALEXANDER: Okay now where do you want me to put the \$2,000?

GOODMAN: Just, ah, send them to Cheryl.

It was submitted that Counsel Assisting's submission – that the conduct was serious because, if proved on admissible evidence to the criminal standard by an appropriate tribunal it could involve offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years, meaning they are serious indictable offences – should not be made because maximum penalties address the worst conduct by the worst offender and are not always a reliable indicator of "seriousness". This submission is not an accurate summary of Counsel Assisting's submission, which was that an offence under s 192E of the Crimes Act is a serious indictable offence. It was not a submission that the maximum penalty was an indicator of seriousness.

The conduct is serious because the conduct took place over a significant period of time. The conduct was premeditated and involved a significant level of planning. It could involve offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

## Section 74A(2) statement

In making a public report, the Commission is required by s 74A(2) of the ICAC Act to include, in respect of each

"affected" person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:

- a. obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the person for a specified criminal offence
- b. the taking of action against the person for a specified disciplinary offence
- c. the taking of action against the person as a public official on specific grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

An "affected" person is defined in s 74A(3) of the ICAC Act as a person against whom, in the Commission's opinion, substantial allegations have been made in the course of, or in connection with, the investigation.

The Commission is satisfied that Mr Goodman, Mr Mark, Mr Subeski, Mr Gajic, Mr Freitas and Mr Alexander are "affected" persons for the purposes of s 74A(2) of the ICAC Act.

## Mr Goodman

The evidence Mr Goodman gave was the subject of a declaration under s 38 of the ICAC Act and therefore cannot be used against him in criminal proceedings except for offences under the ICAC Act. There is, however, other admissible evidence that would be available, including lawfully intercepted telephone calls, the Council's records and financial records. There is also admissible evidence in relation to Mr Goodman's position at the Council and the fact that he was in a position to authorise false invoices himself or arrange for the payment of false invoices. As CFO, Mr Goodman was also in a position to show, or not to show, favour to particular contractors. The evidence of Mr Mark, Mr Subeski, Mr Gajic, Mr Freitas and Mr Alexander could also potentially be available.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Goodman for offences of fraud pursuant to s 192E of the Crimes Act and s 178BB of the Crimes Act.

The Commission is also of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Goodman for an offence of soliciting and receiving a corrupt commission or reward totalling \$2,000 from Mr Gajic pursuant to s 249B(1)(a) of the Crimes Act.



Mr Goodman resigned from his position at the Council prior to disciplinary action being taken. The Commission, therefore, makes no recommendation in relation to the consideration of disciplinary or dismissal action.

### Mr Mark

The evidence Mr Mark gave was the subject of a declaration under s 38 of the ICAC Act and, therefore, cannot be used against him in criminal proceedings except for offences under the ICAC Act. There is, however, other admissible evidence that would be available, including lawfully intercepted telephone calls, the Council's records and financial records.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Mark for offences of fraud pursuant to s 192E of the Crimes Act.

### Mr Subeski

The evidence Mr Subeski gave was the subject of a declaration under s 38 of the ICAC Act and, therefore, cannot be used against him in criminal proceedings except for offences under the ICAC Act. There is, however, other admissible evidence that would be available, including lawfully intercepted telephone calls, the Council's records and financial records.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Subeski for offences of fraud pursuant to s 192E of the Crimes Act.

### Mr Gajic

The evidence Mr Gajic gave was the subject of a declaration under s 38 of the ICAC Act and, therefore, cannot be used against him in criminal proceedings except for offences under the ICAC Act. There is, however, other admissible evidence that would be available, including lawfully intercepted telephone calls, the Council's records and financial records.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Gajic for offences of fraud pursuant to s 192E of the Crimes Act.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Gajic for an offence under s 249B(2)(a) of the Crimes Act of corruptly giving a benefit to Mr Goodman as an inducement or reward for Mr Goodman showing favour, or not showing favour, in relation to the affairs or business of the Council.

### Mr Freitas

The Commission is of the opinion that it is not in the public interest to seek the advice of the DPP in relation to the prosecution of Mr Freitas. The Commission has taken into account Mr Freitas' personal circumstances in making this determination and the significant admissions that Mr Freitas made to the Commission.

### Mr Alexander

The evidence Mr Alexander gave was the subject of a declaration under s 38 of the ICAC Act and, therefore, cannot be used against him in criminal proceedings except for offences under the ICAC Act. There is, however, other admissible evidence that would be available, including lawfully intercepted telephone calls, the Council's records and financial records.

Mr Alexander's legal representatives submitted that there is insufficient evidence for consideration to be given for prosecution in relation to an offence under s 192E of the Crimes Act. This submission is rejected because there is admissible evidence that would be available, including lawfully intercepted telephone calls, the Council's records and financial records.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Alexander for offences of fraud pursuant to s 192E of the Crimes Act.

It was submitted on behalf of Mr Alexander that he voluntarily made numerous admissions against interests after "the penny dropped" and "as a result of a revelation into his involvement with Mr Goodman" and therefore no recommendation should be made that consideration be given to obtaining the advice of the DPP with respect to his prosecution for an offence under s 87 of the ICAC Act of giving false or misleading evidence. This submission is rejected because it does not accurately reflect Mr Alexander's evidence, an extract of which is set out below:

*[Counsel Assisting]: Mr Alexander, I took you through a number of phone calls yesterday and I put a number of propositions to you?*

*[Mr Alexander]: Yes.*

*[Q]: You've had overnight to consider that evidence?*

*[A]: Yes, I do.*

*[Q]: Alright. It's the case, isn't it, that you and Mr Goodman deliberately put in false invoices for work not performed by you?*

[A]: Yes.

[Q]: So you and Mr Goodman had an arrangement whereby at various times the two of you would put in an invoice that you were not entitled to and you got the benefit of that from Council?

[A]: Yes.

[Q]: Alright. So how long did this continue, how long did this go on for?

[A]: I'm not sure, perhaps a period of twelve months.

[Q]: And how much do you think was stolen from Botany Bay Council by you and Mr Goodman in that period?

[A]: I would say a figure of perhaps \$90,000.

[Q]: Alright. Now how did it come about?

[A]: It came about originally as I said, that I was told to reimburse some money but very quickly it turned out that it wasn't, you know the penny dropped. And approached Mr Goodman and he said he was using the funds for a separate matter that he'd be reimbursed and then he would repay the Telstra accounts.

[Q]: Alright. But then after that you knew full well that the invoices you were – let's be clear, however it started from very early on for some considerable time over a considerable amount of dollars you knew full well that you

were putting in invoices that you were not entitled to?

[A]: Yes.

[Q]: And you were paid money you were not entitled to?

[A]: Yes.

The transcript of evidence makes clear that Mr Alexander did not experience a sudden and unexpected revelation in the witness box that resulted in him making numerous admissions against interest. His evidence was that "the penny dropped" at an early stage in his arrangement with Mr Goodman and he was aware from that point that he was involved in false invoicing.

It was further submitted that it is in the interests of the Commission to encourage witnesses to be truthful and forthcoming and the Commission should exercise its discretion not to refer Mr Alexander to the DPP for consideration to be given to his prosecution for an offence under s 87 of the ICAC Act. Even after Mr Alexander was confronted with the evidence from the lawfully intercepted telephone conversations, he continued to deny involvement in false invoicing with Mr Goodman. He eventually admitted to involvement in false invoicing after a break in the proceedings. The Commission accepts Counsel Assisting's submission that Mr Alexander gave flagrantly false evidence and took the approach of denial until that stance became untenable. In the circumstances, the Commission does not consider it is appropriate to exercise its discretion to not seek the advice of the DPP.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Alexander for an offence of giving false or misleading evidence at the public inquiry on 3 March 2016, contrary to s 87(1) of the ICAC Act, when Mr Alexander denied involvement in false invoicing.

## Chapter 3: False invoicing at the Council's Airport Business Unit

This chapter examines allegations that Ms Baccam and Malcolm Foo, while employees of the Council's Airport Business Unit, dishonestly obtained financial benefits for themselves and others by causing fraudulent payments to be made by the Council to various entities. This chapter also examines an allegation that Mark Goodman, while an employee of the Business Unit, accepted between \$8,000 and \$10,000 from Council contractor, Gardens2NV.

From 2010, Ms Baccam was employed as a clerical assistant at the Business Unit. Her employment was terminated as a result of the Commission's investigation. She was previously romantically involved with Mr Goodman and had an ongoing close friendship with him. Mr Foo was employed at the Business Unit for 19 years; most recently as a team leader until his employment was terminated by the Council in March 2016. In 2014, Mark Goodman became the acting manager of the Business Unit. He is also Mr Goodman's brother. His contract with the Council was not renewed in December 2015.

The evidence of Ms Baccam was inconsistent, unreliable and changed throughout the course of the public inquiry when she was confronted with further evidence. She was not a credible witness.

The evidence of Mr Foo was confusing, contradictory and unreliable. He attempted to minimise his role in any misconduct. He was not a credible witness.

### Ari Landscape Solutions

On 9 September 2014, Ms Baccam and Mr Goodman established Ari Landscape Solutions Pty Ltd. Although the company did not carry out any work for the Council, it was paid by the Council on the basis of false invoices submitted by Ms Baccam. The first false invoice submitted to the Council was dated 18 September 2014. Between 24 September 2014 and 7 October 2015, Ari Landscape Solutions was paid \$245,751 by the Council. Ms Baccam admitted to the Commission that all

Ari Landscape Solutions invoices submitted to the Council were false.

Ms Baccam said that she prepared the Ari Landscape Solutions invoices. She either emailed or hand-delivered the invoices to Mr Goodman. Ms Baccam said that sometimes the description of works on the invoices was decided by her and, at other times, by Mr Goodman. She said that sometimes they deleted the emails to the Council that attached the invoices after sending them, in an attempt to cover up their conduct. She said that both she and Mr Goodman signed the invoices to authorise their payment.

Ms Baccam told the Commission that the money that was paid into the Ari Landscape Solutions bank account was shared between her and Mr Goodman. Ms Baccam said that she usually received 40 per cent of the invoiced amount and Mr Goodman received 60 per cent. On other occasions, however, she received more than Mr Goodman or Mr Goodman received the whole amount. She estimated that she received about \$90,000 through this scheme.

In his evidence to the Commission, Mr Goodman agreed that Ari Landscape Solutions did not do any work for the Council and that false invoices had been submitted by Ms Baccam. He was not asked whether he received any of the money the Council paid on the invoices and he was not asked whether he authorised payment of the false Ari Landscape Solutions invoices.

In his submissions to the Commission, Counsel Assisting submitted that Mr Goodman collaborated with Ms Baccam to submit false Ari Landscape Solutions invoices to the Council and that they shared the money obtained from the Council through the payment of those invoices. Mr Goodman's legal representatives made submissions in response to Counsel Assisting's submissions in which no objection was made to Counsel Assisting's submission on this issue. In these circumstances, and taking into account other evidence that Mr Goodman was involved in several other schemes to obtain money from the Council through

the submission of false invoices, the Commission is satisfied that Mr Goodman collaborated with Ms Baccam in the submission of false Ari Landscape Solutions invoices to the Council and shared in the money obtained from the Council through the Council's payment of the invoices.

At a compulsory examination on 10 December 2015, Ms Baccam denied submitting false invoices to the Council other than the false invoices submitted through Ari Landscape Solutions. At the public inquiry, Ms Baccam was confronted with evidence and admitted her involvement in false invoicing through two other companies, Al-Furat Pty Ltd and Gardens2NV.

## Al-Furat

Siddik Hussein is the owner of the printing and Arabic-language newspaper company, Al-Furat. Mr Hussein gave evidence that he met Ms Baccam at a gambling establishment that they both frequented and, while he was gambling, he borrowed money from her.

Ms Baccam gave evidence that she entered into an arrangement with Mr Hussein whereby he agreed to submit false Al-Furat invoices to the Council to finance her own and Mr Goodman's private printing needs. She claimed that Al-Furat also carried out legitimate work for the Council. Ms Baccam approved the Al-Furat invoices for payment. The money was shared between her and Mr Hussein. She had no idea how much she received as a result of this scheme.

Mr Hussein told the Commission that he did work for the Council and also did private work for Ms Baccam and Mr Goodman. The private work included printing business cards for various ventures and posters for a concert. He admitted that some of the Al-Furat invoices that he submitted and were paid by the Council were for private work he performed for Mr Goodman and Ms Baccam. Mr Hussein also admitted that he submitted inflated invoices to Ms Baccam for payment by the Council.

On more than one occasion, he provided cheques to Ms Baccam reflecting her share of the proceeds from the false invoicing. He said he agreed with Ms Baccam to submit false invoices to the Council because he owed her money and felt he could not refuse her demand to submit false invoices. He told the Commission that he could not, by examining the Al-Furat invoices, say which were false. Although he initially claimed that he only kept money that was owed to him for work carried out for Ms Baccam, Mr Goodman or the Council, he later agreed he kept additional proceeds from the false invoices for himself. The Commission accepts his evidence that, in effect, he and Ms Baccam shared in the proceeds of the false invoicing.

The Commission is satisfied that Mr Hussein submitted false Al-Furat invoices to the Council for payment. These invoices were authorised for payment by Ms Baccam, and both Mr Hussein and Ms Baccam shared in the proceeds of the false invoicing. It is not possible to estimate the extent to which they financially benefitted from the proceeds of the false invoicing because the evidence was that Al-Furat also did legitimate work for the Council. Furthermore, it cannot be established with any degree of accuracy how the money Ms Baccam and Mr Hussein improperly obtained from the Council was shared between them.

## Gardens2NV

Lyndal Marshall and Robert Floudas are owners of the business Gardens2NV. Ms Marshall and Mr Floudas gave evidence of payments and other benefits provided to Ms Baccam, Mr Foo and Mark Goodman between approximately 2013 and October 2015. During the period, the Council was Gardens2NV's major client. Ms Marshall kept records of some of the payments made, including in a 2014 diary and a 2015 cash payment log. Her records indicate that the payments started in 2013. She said: "to be quite honest I felt like I was treated like an ATM machine". Ms Marshall said that she understood Ms Baccam, Mr Foo and Mark Goodman could authorise payment of Gardens2NV invoices and she received "very explicit instructions on what invoices went where and how". Ms Marshall's evidence was that Ms Baccam and Mr Foo had knowledge of, and involvement in, the submission of false Gardens2NV invoices to the Council.

## Mark Goodman

During the course of the public inquiry, Mark Goodman volunteered to the Commission that, for a period of about two months, he received cash payments via Mr Foo totalling between \$8,000 and \$10,000 from Gardens2NV.

He told the Commission that, in June 2015, he commenced borrowing money from Mr Foo when his wife required a series of operations and he was in a financially dire situation. He said he repaid this money to Mr Foo. After borrowing more money at a later stage, he was told by Mr Foo that the money came from Council contractor, Gardens2NV. Mark Goodman continued to take money from Mr Foo even after he was aware that the money was obtained by Mr Foo from Gardens2NV.

Mark Goodman said that he believed all Gardens2NV invoices he approved for payment by the Council were legitimate because he checked with the relevant Council worker responsible for supervising the work carried out by Gardens2NV or, on occasion, he personally checked that the works had been done or the goods provided.



He denied authorising the payment of any invoices knowing that they were false or favouring Gardens2NV in the provision of Council work.

Mark Goodman understood that receiving payments from a contractor for personal use was a conflict of interest. He chose not to disclose the receipt of payments from Gardens2NV to anyone in Council management.

Ms Marshall said that Mr Foo asked her directly for money on behalf of Mark Goodman but she had also been told by Mr Floudas that he had been asked for money for Mark Goodman by Mr Foo. She was not sure how much money had been provided to Mark Goodman. Ms Marshall said that Gardens2NV was reimbursed that money through false Gardens2NV invoices, which were discussed with Mr Foo.

Mr Floudas gave evidence that Mr Foo asked him for money for Mark Goodman. He was told by Mr Foo: “[i]t will look good for us too, to look after them because then we get more work and if we don’t we’re not going to get anymore work because, you know, there’s other people that can do your job and can come here and do the work”. Mr Floudas was responsible for providing Mr Foo with the cash payments intended for Mark Goodman. He believed that this money had been repaid to Gardens2NV through false invoices submitted to the Council but gave evidence that Ms Marshall was responsible for dealing with invoicing.

Mr Foo told the Commission that he lent Mark Goodman money but, when he could no longer lend him money, Mark Goodman suggested that they approach a contractor. Mr Foo approached Gardens2NV because Mr Foo dealt with them directly and said that Mr Floudas did not mind “helping out” and that Mr Floudas told him, “[s]ince Mark [Goodman] is giving us some work we have to look after him”. Mr Foo delivered fortnightly cash payments of \$500 to \$1,000 in envelopes to Mark Goodman. Mr Foo told the Commission that he realised it was not a loan when it was not repaid.

Mr Foo initially stated that the payments started in late 2014 but later accepted that they started in about mid-2015, after Mark Goodman’s wife required an operation. He estimated that he provided Mark Goodman with around \$20,000 to \$30,000 but he did not explain how he came to that figure. Mr Foo eventually accepted that the payments made to Mark Goodman by Gardens2NV were recouped through false invoicing, and Mr Foo accepted that he and Ms Marshall sat down and worked out how to inflate Gardens2NV invoices to cover the debt.

The Commission accepts the evidence of Mark Goodman that, over a few months from mid-2015, he received cash payments totalling between \$8,000 and \$10,000

from Gardens2NV through Mr Foo. Mark Goodman’s evidence was an admission against interest. His evidence was consistent and credible. There is no evidence that Mark Goodman did anything in return for these payments or that he knowingly authorised the payment of false Gardens2NV invoices.

Mr Foo’s evidence, that it was Mark Goodman’s idea to seek money from Gardens2NV, is rejected. Mr Foo was a generally unreliable witness and the evidence before the Commission (which is detailed below) was that he and Ms Baccam initiated another scheme involving Gardens2NV receiving payment from the Council as a result of false invoices.

The Commission accepts the evidence of Ms Marshall and Mr Floudas that Mr Floudas provided cash payments to Mr Foo, which they understood were intended for Mark Goodman. The Commission accepts Ms Marshall’s evidence, that this money was recouped through false invoicing, which she arranged with Mr Foo. Both Ms Marshall and Mr Floudas were credible witnesses.

The Commission is satisfied that Mr Foo instigated the plan to obtain money from Gardens2NV for Mark Goodman.

## **Ms Baccam**

It was common ground that Gardens2NV undertook private landscaping and gardening work for Ms Baccam at her home and that Ms Baccam failed to pay Gardens2NV for that work.

Mr Floudas gave evidence that he reached an agreement with Ms Baccam and Mr Foo to the effect that Gardens 2NV would recover the money owed to it by Ms Baccam for this work by issuing false invoices to the Council, which would then be paid by the Council. He said that Ms Marshall was responsible for issuing the false invoices to the Council.

Ms Marshall told the Commission that she was told by Mr Floudas that it was proposed that Gardens2NV should recover the money owed to it by Ms Baccam through false invoices submitted to the Council. She said the money for the work undertaken by Gardens2NV for Ms Baccam was ultimately paid by the Council.

Ms Marshall also told the Commission that Mr Floudas asked her to provide cash payments to Ms Baccam. She usually gave the cash to Mr Floudas to give to Ms Baccam but, on a few occasions, she gave it directly to Ms Baccam. Mr Floudas said he received cash from Ms Marshall to provide to Ms Baccam. Ms Marshall and Mr Floudas did not dispute that Gardens2NV recovered these payments to Ms Baccam by issuing false Gardens2NV invoices to the Council. Ms Marshall inserted the reference “M” or

"MB" on the false invoices to distinguish them from genuine invoices. The use of these letters is explained by the fact that "M" is the first letter of Ms Baccam's first name and "B" is the first letter of her surname.

Ms Marshall kept some contemporaneous notes reflecting some of the payments to Ms Baccam. Ms Marshall's 2014 diary noted payments totalling \$65,400 made to Ms Baccam and her 2015 cash payment log noted payments totalling \$14,560 made to Ms Baccam. Ms Marshall estimated that between about 2013 and October 2015, Ms Baccam was provided with cash payments totalling between \$100,000 and \$110,000.

Ms Marshall said that she tried to resist making payments to Ms Baccam but "[w]e'd be bullied, they'd [*sic*] be indications that we wouldn't be able to continue work at the Council, a lot of repercussions" and Gardens2NV invoices for legitimate work would not be paid. She told the Commission that she was told this by Mr Foo and that conversations of this nature were also reported to her by Mr Floudas.

Ms Baccam gave evidence on two occasions at the public inquiry. On the first occasion, she admitted to creating and submitting false Gardens2NV invoices for gardening products that were purchased by the Council for her own personal use and for Mr Goodman's use. She also admitted that false invoices were also submitted to the Council by Ms Marshall for work that was carried out at her house that was not related to Council work. These invoices had her initials "MB" in the invoice number. She approved all these false Gardens2NV invoices for payment by the Council. She said that sometimes Mr Foo was aware that the Council was paying for work carried out at her house and that, on other occasions, he was not aware. She initially denied receiving any money directly from Gardens2NV.

On the second occasion, Ms Baccam admitted to producing false Gardens2NV invoices herself and receiving the cash proceeds of those invoices. She also admitted to receiving cash payments from Gardens2NV but claimed that Mr Floudas kept 40 per cent of the proceeds for himself. Mr Floudas' evidence was that all cash payments went to Ms Baccam.

Mr Foo's evidence about his knowledge of and involvement in false invoicing changed considerably throughout the public inquiry. At first, he denied having any knowledge of or involvement in false invoices submitted by Gardens2NV. He also denied knowledge of or involvement in Ms Baccam receiving cash from Gardens2NV.

Later in his evidence, Mr Foo admitted that he had lied about his knowledge of false invoicing through Gardens2NV. He admitted that he knew that Ms Baccam received cash payments from Gardens2NV and that Gardens2NV did work at her house that was paid for by the Council through

false invoicing. He accepted that he was involved in the preparation of false invoices to the Council and that he assisted Ms Marshall to draft the false invoices to cover the work carried out by Gardens2NV at Ms Baccam's house. Mr Foo, however, denied that he threatened to take work from Gardens2NV if payments were not made.

The evidence of Ms Marshall and Mr Floudas is accepted. Ms Marshall's evidence in particular was clear, consistent and was supported by contemporaneous records.

Ms Baccam changed her evidence significantly throughout the course of the public inquiry. The Commission accepts her admissions that she:

- created and submitted false Gardens2NV invoices for gardening products for her own personal use that were paid for by the Council
- approved Council payment of false Gardens2NV invoices to cover the cost of landscaping work carried out by Gardens2NV at her house
- produced false Gardens2NV invoices, which she used to obtain money from the Council.

These were admissions against interest. Her evidence, that she shared the proceeds of the cash payments she received from Gardens2NV with Mr Floudas, is rejected. She was not a credible witness and her evidence on this point is not supported by any other objective evidence.

Mr Foo was not a credible witness. The Commission does not accept his denial of threatening to remove work from Gardens2NV if that business refused to make cash payments. The Commission does accept his admission that he collaborated with Ms Marshall to draft the false invoices to recoup the money for works carried out by Gardens2NV at Ms Baccam's house.

The Commission is satisfied that, between 2013 and October 2015, Ms Baccam received cash payments of up to \$110,000 from Ms Marshall and Mr Floudas, and that false Gardens2NV invoices were submitted to the Council for the purpose of recouping these cash payments made to Ms Baccam.

### Mr Foo

Ms Marshall gave evidence that, between around 2012 to 2013 and October 2015, cash payments totalling between \$100,000 and \$110,000 were paid to Mr Foo, and in addition, Mr Foo received further weekly payments of between \$200 and \$500 a week. According to Ms Marshall, "[w]ell, you could be paying him for last week and he'd be talking about next week in the same breath". Ms Marshall said that cash payments to Mr Foo were provided to him in an envelope by either herself or Mr Floudas. She said that Gardens2NV was reimbursed

for these payments through issuing false invoices to the Council, which were paid by the Council.

Ms Marshall gave evidence that she used the code “BB-GC” in the invoice number for some of the false invoices submitted to the Council from the proceeds of which it was intended to pay Mr Foo. Ms Marshall said those initials represented “Botany Bay Gary Council” because Mr Foo told her that the money was intended for Mr Goodman and others. Ms Marshall noted, however, that “you could never believe what he [Mr Foo] was actually saying”. She did not know what happened to the money after it was provided to Mr Foo.

Ms Marshall kept contemporaneous notes of some of the payments made to Mr Foo. Her 2014 diary reflected payments to Mr Foo totalling \$15,810 and her 2015 cash payment log reflected payments totalling \$93,190 to Mr Foo and contained notes such as, “Malcolm-Mark”, “Malcolm (Mark/Somebody...)” and “Malcom-Gift Vouchers”. These notes are consistent with Mr Foo’s representations to Ms Marshall that some of the payments were intended for others.

According to Ms Marshall, Mr Foo told her that if Gardens2NV did not “comply”, then it would lose its contract with the Council. She understood compliance to mean providing Mr Foo with cash payments.

Ms Marshall told the Commission that Gardens2NV was asked by Mr Foo to purchase white goods, electronic goods, gift cards and flowers for special occasions. Ms Marshall was told by Mr Foo that these items were for various people.

Mr Floudas told the Commission that cash payments were made to Mr Foo and that Ms Marshall had an arrangement whereby false invoices would be submitted to the Council to cover the payments. He said that Ms Marshall made the decision about what money to give Mr Foo. He said that Ms Marshall was responsible for invoicing and he “didn’t deal with the financial side of it”.

Mr Foo gave evidence on two occasions at the public inquiry. On the first occasion, he told the Commission that he was responsible for dealing with Gardens2NV. He accepted that he had the ability to control whether Gardens2NV received Council work. He denied threatening anyone at Gardens2NV that it would lose Council work if cash payments were not made.

Mr Foo initially told the Commission that he approved the payment of invoices, including Gardens2NV invoices, after he had checked that the work had been done. He said that all Gardens2NV invoices came to him and that each Gardens2NV invoice accurately reflected work that Gardens2NV had completed for the Council. Mr Foo said that he sat down with Ms Marshall every Saturday

to ensure that invoices submitted by Gardens2NV were correct. Notwithstanding this evidence, he accepted he assisted Ms Marshall to draft false Gardens2NV invoices.

After discussing in detail the process he would undertake to approve invoices, Mr Foo then claimed that he did not have authority to authorise the payment of invoices and that all Gardens2NV invoices needed to go to Mark Goodman for approval of payment. Mr Foo said that, after he had checked the work had been completed, he sent the invoice to Mark Goodman to satisfy himself that the work had been done before approving the invoice for payment. The Commission notes, however, that the Gardens2NV invoices with the code “BB-GC”, which were identified by Ms Marshall as false Gardens2NV invoices, were approved for payment by Mr Foo.

After initial denials, Mr Foo admitted he was aware that Ms Baccam received cash payments from Gardens2NV and that Gardens2NV was doing work at her house that was being paid for by the Council through false invoicing.

On the second occasion that he gave evidence before the public inquiry, Mr Foo was confronted with Ms Marshall’s evidence that cash payments were made to him. He said that he received cash in envelopes from Ms Marshall for about two years but that he kept only one payment of \$400 from Gardens2NV and that the rest of the money went to Mark Goodman. He denied receiving any further payments. He said that the gift cards were purchased for Council staff for Christmas presents.

For the reasons set out above, the Commission is satisfied that Mark Goodman received between \$8,000 and \$10,000 from Gardens2NV through Mr Foo.

The Commission accepts Mr Foo’s evidence that he assisted Ms Marshall to draft false Gardens2NV invoices for submission to the Council. Mr Foo’s evidence, that he only retained a payment of \$400 from Gardens2NV on one occasion, is rejected. He was an unreliable witness. He gave inconsistent evidence and admitted that he had lied about his knowledge of false invoicing through Gardens2NV. The Commission does not accept his evidence that all the remaining money went to Mark Goodman. Ms Marshall’s contemporaneous notes reflect payments totalling around \$109,000 to Mr Foo for 2014 and 2015. Even in his evidence, Mr Foo claimed that only between \$20,000 and \$30,000 of the money he received from Gardens2NV was given to Mark Goodman.

The Commission is satisfied that, other than Mark Goodman, the only beneficiary of the cash payments by Gardens2NV to Mr Foo was Mr Foo himself. There is insufficient evidence to support a finding that any other person received money from Mr Foo. Indeed, Mr Foo did not advance that evidence at the public inquiry and claimed the only other beneficiary was Mark Goodman.

The Commission accepts the evidence of Ms Marshall and Mr Floudas, both of whom were credible witnesses. The Commission is satisfied that, between around 2012 to 2013 and October 2015, Mr Foo received cash payments in excess of \$109,000 from Gardens2NV. While Mr Foo gave between \$8,000 and \$10,000 of this money to Mark Goodman, the rest was retained by him for his own use.

The evidence of Ms Marshall and Mr Floudas, which the Commission accepts, was that Ms Baccam and Mr Foo were the Council employees involved in the scheme to obtain cash payments and other benefits from Gardens2NV, and also had knowledge of, and involvement in, the submission of false Gardens2NV invoices to the Council. Ms Marshall said she understood that Mark Goodman, Mr Foo and Ms Baccam could authorise the payment of Gardens2NV invoices.

Ms Baccam made admissions to authorising the payment of false Gardens2NV invoices that she knew to be false.

Mr Foo admitted to drafting false Gardens2NV invoices with Ms Marshall but did not admit to authorising the payment of false Gardens2NV invoices. The evidence of Mark Goodman, which the Commission accepts, was that he approved Gardens2NV invoices, only when he had received the advice of the supervisor responsible for dealing with Gardens2NV; that person being Mr Foo.

On this basis, the Commission is satisfied that Mr Foo, by representing to Mark Goodman that work had been done or goods had been provided to the Council when it had not, facilitated the payment of false Gardens2NV invoices by the Council.

## Corrupt conduct

### Marny Baccam

Between around 2013 and October 2015, Ms Baccam dishonestly exercised her public official functions as a Council clerical assistant by arranging for the payment of invoices by the Council that she knew to be false. The false invoices were from, or purported to be from, Ari Landscape Solutions (for \$245,751), Al-Furat and Gardens2NV. She did so in order to obtain the invoiced amounts from the Council for her own benefit and the benefit of others.

This conduct on the part of Ms Baccam is corrupt conduct for the purposes of s 8(1)(b) of the ICAC Act because it is conduct that involves the dishonest exercise of Ms Baccam's official functions.

Ms Baccam's conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt

and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Ms Baccam committed criminal offences of fraud under s 92E of the Crimes Act.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct because the conduct took place over a significant period of time and involved a significant amount of money. Ms Baccam was motivated by greed. As an administrative officer responsible for processing the payment of invoices, Ms Baccam held a position of trust within the Council and her conduct involved a significant breach of that trust. The conduct was premeditated and involved a significant level of planning. Furthermore, the conduct could involve offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

### Malcolm Foo

Between around 2012 to 2013 and October 2015, Mr Foo dishonestly exercised his public official functions as a Council officer by arranging for the payment by Council of false Gardens2NV invoices, which he knew to be false, in order to obtain the invoiced amounts for his own benefit and the benefit of others, including Gardens2NV.

This conduct on the part of Mr Foo is corrupt conduct for the purposes of s 8(1)(b) of the ICAC Act because it is conduct that involves the dishonest exercise of Mr Foo's official functions.

Mr Foo's conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Foo committed criminal offences of fraud under s 192E of the Crimes Act.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct because the conduct took place over a significant period of time and involved a significant amount of money. Mr Foo was motivated by greed. As a Council officer with authority to approve the payment of invoices, Mr Foo held a position of trust within the Council and his conduct involved a significant breach of that trust. The conduct was premeditated and involved a significant level of planning. Furthermore, the conduct could involve



offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

### **Mark Goodman**

The only reliable evidence implicating Mark Goodman in any wrongdoing is his evidence that, over a few months in 2015, he received money from Gardens2NV and failed to declare to anyone at the Council that he had done so. There was no evidence that he engaged in any other impropriety. It is in the public interest to encourage witnesses to tell the truth about matters that the Commission investigates. In the circumstances, the Commission does not make a finding of corrupt conduct against Mark Goodman.

### **Lyndal Marshall**

Between 2013 and October 2015, Ms Marshall, in agreement with Ms Baccam and Mr Foo, created and submitted to the Council for payment false Gardens2NV invoices totalling approximately between \$200,000 and \$220,000 for work she knew had not been done, knowing that Ms Baccam and Mr Foo would use their positions at the Council to dishonestly arrange payment of the invoices. Ms Marshall participated in this agreement in order to obtain money from the Council to recoup money paid to Ms Baccam and Mr Foo, including money given to Mr Foo for Mark Goodman.

This conduct is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because Ms Marshall's conduct adversely affected the honest exercise of Ms Baccam and Mr Foo's official functions.

Ms Marshall's conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Ms Marshall committed criminal offences of fraud under s 192E of the Crimes Act.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The conduct is serious because the conduct took place over a significant period of time and involved a significant amount of money. The conduct was premeditated and involved a significant level of planning. If proved on admissible evidence to the criminal standard by an appropriate tribunal, this conduct could involve offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

### **Robert Floudas**

Between 2013 and October 2015, Mr Floudas was party to an agreement between Ms Marshall, Ms Baccam and Mr Foo whereby false Gardens2NV invoices, totalling approximately between \$200,000 and \$220,000, were submitted to the Council for payment for work that had not been done, knowing that Ms Baccam and Mr Foo would use their positions at the Council to dishonestly arrange payment of the invoices. Mr Floudas participated in this agreement in order to obtain money from the Council to recoup money paid to Ms Baccam and Mr Foo, including money given to Mr Foo for Mark Goodman.

This conduct is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because Mr Floudas' conduct adversely affected the honest exercise of Ms Baccam and Mr Foo's official functions.

Mr Floudas' conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Floudas committed criminal offences of fraud under s 192E of the Crimes Act.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The conduct is serious because the conduct took place over a significant period of time and involved a significant amount of money. Furthermore, the conduct was premeditated and involved a significant level of planning. If proved on admissible evidence to the criminal standard by an appropriate tribunal, this conduct could involve offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

### **Siddik Hussein**

Mr Hussein collaborated with Ms Baccam to create false Al-Furat invoices to be paid by the Council for work he knew had not been done, knowing that Ms Baccam would use her position at the Council to dishonestly arrange for payment of the invoices. He submitted the false invoices to the Council so that he could share the proceeds of the payment with Ms Baccam.

This conduct is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because Mr Hussein's conduct adversely affected the honest exercise of Ms Baccam's official functions.

Mr Hussein's conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts

it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Hussein committed criminal offences of fraud under s 192E of the Crimes Act.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The conduct is serious because it was premeditated and involved a significant level of planning. If proved on admissible evidence to the criminal standard by an appropriate tribunal, this conduct could involve offences pursuant to s 192E of the Crimes Act, which have a maximum penalty of 10 years imprisonment, meaning they are serious indictable offences.

## Section 74A(2) statement

The Commission is satisfied that Ms Baccam, Mr Foo, Mark Goodman, Ms Marshall, Mr Floudas and Mr Hussein are “affected” persons for the purposes of s 74A(2) of the ICAC Act.

### Ms Baccam

The evidence Ms Baccam gave was the subject of a declaration under s 38 of the ICAC Act and therefore cannot be used against her in criminal proceedings except for offences under the ICAC Act. There is, however, other admissible evidence that would be available, including lawfully intercepted telephone calls, financial records and bank statements. There is also admissible evidence in relation to Ms Baccam's position at the Council and the fact that she was in a position to show, or not to show, disfavour to particular companies. The evidence of Ms Marshall and Mr Floudas would also potentially be available to the DPP.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Baccam for offences of fraud pursuant to s 192E of the Crimes Act.

Consideration should also be given to obtaining the advice of the DPP with respect to the prosecution of Ms Baccam for an offence of giving false or misleading evidence at a compulsory examination on 10 December 2015, contrary to s 87(1) of the ICAC Act, when she denied submitting false invoices to the Council other than the false invoices submitted through Ari Landscape Solutions.

Ms Baccam resigned from her position at the Council prior to disciplinary action being taken. The Commission, therefore, makes no recommendation in relation to the consideration of disciplinary or dismissal action.

### Mr Foo

The evidence Mr Foo gave was the subject of a declaration under s 38 of the ICAC Act and therefore cannot be used against him in criminal proceedings, except for offences under the ICAC Act. There is, however, other admissible evidence that would be available, including the Gardens2NV records and potentially the evidence of Ms Marshall and Mr Floudas. There is also admissible evidence in relation to Mr Foo's position at the Council and the fact that he was in a position to show, or not to show, disfavour to particular companies.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Foo for offences of fraud pursuant to s 192E of the Crimes Act.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Foo for offences of soliciting and receiving a corrupt commission or reward from Gardens2NV pursuant to s 249B(1)(a) of the Crimes Act.

Consideration should also be given to obtaining the advice of the DPP with respect to the prosecution of Mr Foo for an offence of giving false or misleading evidence at the public inquiry on 7 March 2016, contrary to s 87(1) of the ICAC Act, when he denied involvement in, or knowledge of, false invoicing by Gardens2NV.

Mr Foo's employment at the Council was terminated prior to disciplinary action being taken. The Commission, therefore, makes no recommendation in relation to the consideration of disciplinary or dismissal action.

### Mark Goodman

The evidence Mark Goodman gave was the subject of a declaration under s 38 of the ICAC Act and therefore cannot be used against him in criminal proceedings, except for offences under the ICAC Act.

The Commission is of the opinion that there is insufficient evidence to consider obtaining the advice of the DPP with respect to the prosecution of Mark Goodman for any criminal offence.

### Mr Hussein

The evidence Mr Hussein gave was the subject of a declaration under s 38 of the ICAC Act and therefore cannot be used against him in criminal proceedings except for offences under the ICAC Act. There is, however, other admissible evidence that would be available, including lawfully intercepted telephone calls, financial records and bank statements.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Hussein for offences of fraud pursuant to s 192E of the Crimes Act for his role in drafting, submitting and authorising the payment of false invoices by the Council.

### **Ms Marshall**

Ms Marshall gave full and frank evidence with respect to her dealings with Ms Baccam and Mr Foo, even though it implicated her in potential criminal and corrupt conduct. It is in the public interest to encourage witnesses to tell the truth about matters that the Commission investigates. In the circumstances, the Commission is of the opinion that it is not in the public interest to seek the advice of the DPP in relation to the prosecution of Ms Marshall.

### **Mr Floudas**

Mr Floudas gave full and frank evidence with respect to his involvement in the arrangement, even though it implicated him in potential criminal and corrupt conduct. It is in the public interest to encourage witnesses to tell the truth about matters that the Commission investigates. In the circumstances, the Commission is of the opinion that it is not in the public interest to seek the advice of the DPP in relation to the prosecution of Mr Floudas.

## Chapter 4: Awareness of Mr Goodman's misconduct by others

This chapter examines allegations that Ms Mishra, while a senior accounting officer at the Council, and Ms Cullinane, while the deputy general manager at the Council, were aware of certain aspects of Mr Goodman's misconduct.

### What did Ms Mishra know?

Ms Mishra commenced employment with the Council in 1994 as a clerk in the finance division. She held various positions in this division before becoming a senior accounting officer. Her employment with the Council was terminated in December 2015. She was responsible for dealing with the Council's assets, and for distributing Cabcharge cards and vouchers and fuel cards.

In about 2009, she became romantically involved with Mr Goodman. She told the Commission that the relationship had been "on and off" since then. Ms Mishra's and Mr Goodman's assets were intertwined. They held a joint bank account until the end of 2015.

In around 2012, Ms Mishra was given a Mercedes-Benz vehicle by Mr Goodman. Mr Goodman was responsible for making repayments on the vehicle until late 2015, at which time Ms Mishra took over responsibility for making the payments. Ms Mishra gave evidence that Mr Goodman had contributed the deposit of \$123,000 for an off-the-plan apartment they were to purchase together.

She said that Mr Goodman gave her \$200 every week as a contribution to living expenses, paid her telephone bills, and arranged for work to be carried out at her home by both Mr Gajic and Mr Subeski. She understood Mr Goodman was going to pay for that work. She estimated that the value of Mr Subeski's work was about \$10,000 and Mr Gajic's work was about \$50,000. Ms Mishra claimed that she did not have an understanding of Mr Goodman's financial situation but that she was aware that his credit cards were exhausted and he had asked her to lend him money.

Mr Goodman agreed that he gave Ms Mishra \$200 a week to assist with her living expenses and that he had also recently assisted her to purchase an apartment. He also paid her mobile telephone account. Mr Goodman gave evidence that Ms Mishra did not know about the false invoicing schemes at the Council in which he was involved.

A number of lawfully intercepted telephone conversations were played during the course of the public inquiry, which reveal that Ms Mishra confronted Mr Goodman on a number of occasions concerning misuse of Council funds. One such conversation took place on 8 September 2015:

*MISHRA: When I want Alex [Subeski] he's not, you can't see him, you can't find him. But you and Marny [Baccam] when you people need money you can find Jovane invoices. Huh? Huh?*

*GOODMAN: I was just. I was just talking I was just talking to him one minute ago.*

*MISHRA: Huh? And then and then you and Marny rip the Council off in thousands.*

*GOODMAN: Oh bullshit Suman stop that.*

*MISHRA: And when I want money it's in \$50?*

*GOODMAN: Yeah we'll see.*

*MISHRA: We'll see how long this will go for. Okay we'll see.*

*GOODMAN: Bye.*

When questioned about this telephone call, Ms Mishra told the Commission that she threatened Mr Goodman on a number of occasions. She agreed that she threatened him because she believed that he and Ms Baccam were stealing money from the Council through false invoices. She denied that her statement, "[a]nd when I want money it's in \$50?", reflected a complaint that she was not receiving enough money from Mr Goodman.



In another lawfully intercepted telephone conversation of 15 September 2015, Ms Mishra tells Mr Goodman:

*MISHRA: If you want four women look after them then you (unintelligible) do you think I'm dumb?*

*GOODMAN: Suman, I don't know what you're talking about.*

*MISHRA: What is that invoice sitting on your desk for \$7,000 (unintelligible)?*

*GOODMAN: I've gotta get Malcolm [Foo] to come up and sign them I got about three of them here to sign the fucking things.*

*MISHRA: Why is it there, why you? It shouldn't come to you to begin with, it should go to Steven.*

*GOODMAN: I'm a nobody. Who?*

*MISHRA: You're not the boss of the business unit.*

*GOODMAN: Stuart [Dutton] doesn't sign them Malcolm does.*

*MISHRA: You've got nothing to do with that but you've got all your fingers and all your toes in it ... Because you are a safe haven, because you make so much money out of the place.*

*GOODMAN: I can't help if your super is not done.*

*MISHRA: You and Marny.*

*GOODMAN: Bullshit.*

*MISHRA: That's why she's still in your life and you know why.*

In her evidence to the Commission, Ms Mishra said that she had seen a \$7,000 invoice on Mr Goodman's desk that she was concerned was a false invoice and that was the invoice to which she was referring in her telephone conversation with Mr Goodman. She said that she told

Mr Goodman, "you make so much money out of the place", because Mr Goodman was stealing so much money from the Council through false invoicing.

In another telephone conversation, Ms Mishra told Mr Goodman: "You make enough money from Sam [Alexander], Telstra [Teletec invoices] and Joe [Freitas]". Ms Mishra said that she had heard rumours within the Council that Mr Goodman benefitted through false invoices submitted to the Council by Mr Alexander's company, Teletec, and Mr Freitas' company, Elias & Son Smash Repairs.

Ms Mishra agreed that she stood to lose a significant financial benefit if Mr Goodman's involvement in obtaining money through false invoicing was exposed. She said that, despite this, she had complained to Ms Cullinane about Mr Goodman's conduct but nothing was done and she was scared that she would lose her job if she complained to the general manager, Ms Kirchner. She accepted that she knew from code of conduct training that, if internal reporting did not garner an appropriate response, then a complaint should be escalated to an outside body. She accepted that she did not do this.

Ms Mishra's evidence about raising Mr Goodman's conduct with Ms Cullinane was uncorroborated. Ms Cullinane was not asked about this at the public inquiry. In these circumstances, the Commission does not consider there is sufficient reliable evidence to find that Ms Mishra did report the matter to Ms Cullinane.

The Commission is satisfied that Ms Mishra knew that Mr Goodman was obtaining money through the submission of false invoices to the Council. During the lawfully intercepted telephone conversations recorded by the Commission, she was able to identify to Mr Goodman specific companies such as Elias & Son Smash Repairs, Jovane and Teletec as companies with whom Mr Goodman was engaging in false invoicing. She told Mr Goodman that he and Ms Baccam submitted false invoices to the

Council. These allegations by Ms Mishra were correct. The evidence before the Commission establishes that Mr Frietas through Elias & Son Smash Repairs, Mr Subeski through Jovane, Mr Alexander through Teletec, and Ms Baccam through Ari Landscape Solutions, all submitted false invoices to the Council as part of their arrangements with Mr Goodman. Ms Mishra ultimately admitted she knew Mr Goodman and Ms Baccam were obtaining money from the Council through the submission of false invoices. The Commission is satisfied that, in her initial evidence to the Commission, Ms Mishra lied about her knowledge of Mr Goodman's false invoicing schemes when she told the Commission that she only had suspicions and no first-hand knowledge of his involvement in false invoicing.

## What did Ms Cullinane know?

From 1997, Ms Cullinane was the deputy general manager of the Council. Mr Goodman reported directly to her. She was involved in a relationship with Mr Goodman between approximately 1996 and 2002.

Mr Byrnes, former financial accountant at the Council, gave evidence about concerns he had raised with Ms Cullinane on a number of occasions about Mr Goodman's conduct. These are dealt with below. Mr Byrnes was the second-in-charge of the finance division. Mr Byrnes told the Commission that he struggled with the need to report issues about Mr Goodman as he had some concerns about his health and was also concerned about possible reprisal action against him. Mr Byrnes did not make any file notes of the conversations he told the Commission he had with Ms Cullinane.

## The cheques

Mr Byrnes told the Commission that, in about May or June 2007, Mr Thompson, the Council's system administrator, told him that Mr Goodman had been asking him to sign blank Council cheques. Mr Thompson told him that Mr Goodman completed the cheques and countersigned them. Mr Byrnes said that Mr Thompson advised him that the details on the cheques were different from the details on the invoices or the vouchers provided by Mr Goodman.

In his evidence to the Commission, Mr Thompson confirmed that he had spoken with Mr Byrnes about Mr Goodman demanding he sign blank Council cheques without supporting documentation justifying the issuing of the cheques. Mr Byrnes told him he could raise the matters with Ms Cullinane.

Mr Byrnes said he told Ms Cullinane that Mr Goodman had asked Mr Thompson to sign blank Council cheques and that the details on the cheques were different from the details on the invoices or the vouchers provided

by Mr Goodman. The same day or the following day, Mr Byrnes met with Ms Cullinane and Mr Goodman. He could not recall what was said by Mr Goodman but, in his view, Mr Goodman did not deny the allegation but also did not provide an adequate explanation. Mr Byrnes said that, at some time later, Ms Cullinane sent an email stating that Mr Thompson and Mr Goodman were not to co-sign cheques. In his evidence to the Commission, Mr Thompson confirmed that such an email was sent by Ms Cullinane.

In a statement tendered in evidence, Mr Byrnes states that, "[i]t wasn't easy to go to Ms Cullinane because I knew Ms Cullinane and Gary Goodman were friends, and because I knew Goodman was friendly with the Council's [then] general manager Peter Fitzgerald. I thought I was taking a risk by reporting potentially improper conduct by Goodman".

In his evidence to the Commission, Mr Goodman agreed that he asked Mr Thompson to sign blank Council cheques and some of those were used by him to improperly obtain money from the Council. He also agreed that he asked Mr Thompson to countersign cheques with false supporting documentation. He was not asked whether he met with Ms Cullinane and Mr Byrnes.

Ms Cullinane denied that the issue of Mr Goodman asking Council staff to sign blank cheques was brought to her attention by Mr Byrnes. She said that, if the issue had been raised with her, she would have taken it to Mr Fitzgerald. She said that she issued a direction that cheques should be co-signed by Mr Goodman and Mr Byrnes, and only in their absence should cheques be signed by her and Mr Thompson. She told the Commission that the reason for this instruction was not because of any misconduct alleged by Mr Byrnes or Mr Thompson, but because Mr Goodman and Mr Byrnes were the two most senior employees in the finance division and it was appropriate that they were responsible for co-signing cheques.

## Bank account details

Mr Byrnes gave evidence that, in about March or May 2009 or 2010, Mr Thompson told him that the CND Computers bank account number, into which the Council deposited money in payment of CND Computers invoices, was the same as the bank account number used by Mr Goodman to receive his pay from the Council. Mr Byrnes told the Commission that Mr Thompson produced a document with details of the relevant transactions and told him the amount involved was over \$1 million. Mr Byrnes said he and Mr Thompson met with Ms Cullinane to discuss this issue and provided her with the document. According to Mr Byrnes, Ms Cullinane

was “shocked and wondered why this was happening ... she didn’t say anything more than that”. Mr Byrnes did not have any further discussions with Ms Cullinane about this matter.

In his evidence to the Commission, Mr Thompson agreed that he raised this matter with Mr Byrnes, that they both met with Ms Cullinane to discuss the matter, and that he provided Ms Cullinane with a document setting out details of the relevant transactions. He did not hear anything further about the matter.

Ms Cullinane denied that she was ever told that the CND Computers bank account, into which the Council deposited money in payment of CND Computers invoices, was the same bank account used by Mr Goodman to receive his pay from the Council. She said that the issue of excessive expenditure in relation to camera and security systems was discussed at a meeting with Mr Goodman and Mr Fitzgerald and that Mr Byrnes had brought that issue to her attention. CND Computers was one of the companies discussed at this meeting.

As dealt with in chapter 2, Mr Goodman received payments totalling approximately \$2,097,022 through false CND Computers invoices submitted to the Council. Mr Goodman received the last payment from false invoices related to CND Computers in June 2011.

## The credit cards

Mr Byrnes gave evidence that, in late 2011 or early 2012, Mr Thompson spoke to him about certain entries on Mr Fitzgerald’s corporate credit card statements that appeared to be associated with Mr Goodman’s company, Gas Motorsports. Mr Byrnes said he then brought this matter to Ms Cullinane’s attention. He told her that some of the transactions on the credit cards appeared to be connected to Mr Goodman. Mr Byrnes could not recall Ms Cullinane’s response, but said he left it with her to investigate further.

Mr Thompson confirmed that he raised this matter with Mr Byrnes. Mr Byrnes told him he would speak to Ms Cullinane about the matter.

Ms Cullinane denied that she knew about expenditure by Mr Goodman on Mr Fitzgerald’s credit card, including expenses relating to Mr Goodman’s company, Gas Motorsports.

Mr Goodman told the Commission that, in about 2011, Ms Cullinane had identified a number of transactions on Mr Fitzgerald’s corporate credit cards, which Mr Goodman had made, that were personal in nature. He said she told him he had to repay the money but he had not done so. He said this occurred at the time Ms Cullinane was taking steps to acquit Mr Fitzgerald’s

credit card accounts upon his retirement. Mr Goodman gave this evidence after Ms Cullinane had given her evidence and she was not questioned about his evidence on this issue.

The Commission notes that Mr Byrnes and Mr Thompson gave evidence about this issue prior to the Commission undertaking any analysis in relation to expenditure on the corporate credit card. A subsequent analysis undertaken by the Commission showed that, between 30 December 2011 and 16 January 2012, transactions for Gas Motorsports totalling \$28,300 were made on Mr Fitzgerald’s credit cards. Mr Goodman accepted that he was responsible for these transactions.

## The Cabcharge and fuel cards

Mr Byrnes told the Commission that, in August 2014, an issue was raised with him about Mr Goodman’s use of a Council Cabcharge card. He said there were large amounts charged to Mr Goodman’s Cabcharge card for single trips. He said that Ms Mishra, Mr Thompson or Sharon Dale, the creditor’s clerk, may have raised the issue with him. He could not recall what he specifically said to Ms Cullinane, but believed he had the invoice for Mr Goodman’s Cabcharge card and showed that to her. He believed that Ms Cullinane took the issue up with Ms Kirchner. Mr Byrnes understood that, as a result, Mr Goodman had been asked to repay money to the Council.

Mr Thompson gave evidence that he believed that Ms Mishra raised the issue with him and he took the issue to Mr Byrnes because the charges appeared irregular. He believed that Mr Goodman may have been asked to repay about \$20,000 to the Council.

Ms Cullinane said that she could not recall how she found out about the Cabcharge card issue but believed that Mr Byrnes brought it to her attention. Ms Cullinane accepted that she was the person who advised Mr Goodman that the Cabcharge expenses needed to be paid back, but denied that she was aware of the amount that needed to be paid back to the Council. She said that she asked Mr Byrnes to extract all the Cabcharge records and provide those to Mr Goodman. She told the Commission that Mr Goodman also told her that he had used the Council fuel cards for purposes he was not entitled to, and agreed to pay back that money to the Council as well.

Ms Kirchner provided a statement to the Commission in which she recalled that, in 2014, Ms Cullinane raised an issue with her concerning Mr Goodman’s misuse of Cabcharge cards over the previous month. She recalled that the amount involved was approximately \$3,000 and she instructed Ms Cullinane to ask Mr Goodman to repay the amount owed.

Mr Goodman gave evidence that he was instructed to pay back \$20,000 for misuse of his Council Cabcharge card. He believed that the instruction came from Ms Cullinane and Ms Kirchner. He never paid any money back to the Council for misusing his Cabcharge card. Mr Goodman also said that he was required by Ms Cullinane to pay back money to the Council for expenditure on a Council fuel card, for items such as cigarettes, for which he was not entitled to use the fuel card. Mr Goodman claimed that he started to pay this money back to the Council on a monthly basis.

### **Paying invoices without supporting documentation**

Mr Byrnes told the Commission that he saw that an amount had been paid by the Council to Teletec for a "reimbursement" but he could not locate any evidence that Teletec had paid anything on behalf of the Council. He said he showed the Teletec invoice to Ms Cullinane and told her that there was no supporting documentation to indicate that Teletec had paid anything on behalf of the Council. Mr Byrnes said that this occurred in August or September 2015; although, he later conceded it could have been after that time.

Mr Thompson recalled that a payment had been made to Teletec without supporting documentation. He believed that he spoke to Mr Byrnes and was "pretty sure" that Mr Byrnes took up the issue with Ms Cullinane.

Ms Cullinane was not asked specifically about this Teletec invoice but generally denied that Mr Byrnes and Mr Thompson raised specific concerns with her about Mr Goodman's conduct. She gave evidence that, "There was a couple of issues I'd raised in relation to Gary in terms of some conduct issues but they were addressed, but if you're asking me was there any fraudulent or anything of that nature, the answer is no, I was never aware".

Mr Goodman gave evidence that Ms Cullinane had told him that she had reviewed a couple of Teletec invoices and told him the details provided for the Teletec invoices were poor. He was unable to recall the details of the conversation.

### **Ms Cullinane's submissions**

If accepted by the Commission, the evidence of Mr Byrnes and Mr Thompson would establish that a number of complaints were made to Ms Cullinane about the conduct of Mr Goodman.

Ms Cullinane's legal representatives provided lengthy submissions in relation to the issue of her knowledge of the allegations made by Mr Byrnes and Mr Thompson. In summary, the submissions seek to impugn the credibility

of both Mr Thompson and Mr Byrnes, with particular focus on Mr Thompson's credibility. It was submitted that Ms Cullinane's evidence should be preferred to that of Mr Byrnes and Mr Thompson on a number of bases.

It was submitted that Mr Thompson's evidence should be approached with caution because he processed invoices he knew were fraudulent. The Commission rejects this submission. A finding that Mr Thompson was knowingly involved in processing false invoices was not contended by Counsel Assisting and such a finding is not available on the evidence. Furthermore, Mr Goodman gave evidence that he did not believe that Mr Thompson was aware of any of his "illegal activity".

It was submitted that Mr Thompson abrogated specific management directives from Ms Cullinane not to co-sign cheques and knowingly facilitated the payment of service providers in cash (in relation to MB Consulting cheques which is dealt with in chapter 6), flouted processes for co-authorisation of electronic funds transfer payments by entering codes for himself and Mr Goodman, and made entries into the payroll system for the payouts of leave without the authority of the payroll department.

Mr Thompson accepts that he continued to co-sign cheques with Mr Goodman after Ms Cullinane issued a direction that this should only be done in the absence of Mr Byrnes and that he facilitated the payment of service providers in cash. The submission, that Mr Thompson did not always comply with proper processes, is accepted but does not provide a reasonable basis for rejecting his evidence about complaints made to Mr Byrnes and/or Ms Cullinane about Mr Goodman's conduct. It also ignores Mr Thompson's evidence, which the Commission accepts, that Mr Goodman was overbearing and demanded Mr Thompson comply with his directions.

The submissions made on behalf of Ms Cullinane also noted that Mr Thompson was counselled about a disciplinary matter involving Ms Mishra in 2010. The Commission understands the submission to suggest that Mr Thompson's credit is impugned because he was questioned about a disciplinary matter involving Ms Mishra several years beforehand. The Commission rejects any such imputation. Ms Mishra's conduct was the focus of the disciplinary matter and not the conduct of Mr Thompson.

It was submitted that Mr Thompson's evidence was inconsistent, implausible and untrue because, in his statement to the Council's internal investigators, he did not mention any concern about CND Computers invoices. The Commission accepts that Mr Thompson did not mention such concerns. The Commission does not accept that this renders Mr Thompson's evidence inconsistent, implausible or untrue. Mr Thompson gave consistent and credible evidence at the public inquiry.



It was also submitted that Mr Thompson's evidence was inconsistent, implausible and untrue because his evidence that there had been approximately \$1 million of fraudulent payments made to Mr Goodman through CND Computers invoices in 2009 is not supported by the evidence. The evidence before the Commission has established that the following amounts were credited to bank accounts associated with Mr Goodman for invoices associated with CND Computers (and its trading name CND 360 Vision) for the period between 18 October 2007 and 15 June 2011:

- 18 October 2007 – 19 May 2010: CND Computers (Creditor No 302547) – \$1,120,789.60
- 31 January 2008 – 15 April 2009: CND 360 Vision (Creditor No 302750) – \$399,441.34
- 26 May 2010 – 15 June 2011: CND Computers (Creditor No 986) – \$576,790.80.

These figures corroborate Mr Thompson's evidence and show that the fraud commenced in 2007, well before the complaint was made to Ms Cullinane in 2009 or 2010 by Mr Byrnes.

It was submitted that Mr Thompson's evidence, that false CND Computers invoices had the same bank account number as that used by Mr Goodman to receive his pay, was not supported by the documentary evidence. That submission is contrary to the evidence before the Commission. The Council's general ledger tendered in evidence shows that false CND 360 Vision invoices were paid into the same bank account into which Mr Goodman's pay was deposited by Council.

It was submitted that Mr Byrnes was not a credible witness because he did not disclose in his statement to the Commission that he had the Council pay for the cost of the repairs to his son's car in 2009. This submission is not an accurate reflection of the evidence. The statement prepared by Mr Byrnes, and tendered in evidence, did disclose this incident to the Commission. In his evidence, Mr Byrnes said his son was involved in an accident and he spoke with Council contractor Mr Freitas about repairing his son's car. Mr Byrnes said it was not until he was collating Elias & Son Smash Repairs invoices to be supplied to the Commission that he became aware that the Council had paid for the repairs to his son's vehicle when he noticed the registration number of his son's vehicle on an Elias & Son Smash Repairs invoice. He sought legal advice and ultimately volunteered this information to the Commission at the public inquiry. The evidence does not establish that Mr Byrnes was aware, at the time the repairs were undertaken, that the Council had paid for the repairs.

The evidence of Mr Byrnes and Mr Thompson corroborated one another and was clear and consistent. They were both credible witnesses. On the basis of the evidence of Mr Byrnes and Mr Thompson, the Commission is satisfied that there is sufficient evidence to support the following findings:

- In about May or June 2007, Mr Byrnes told Ms Cullinane that Mr Goodman had asked Mr Thompson to sign blank Council cheques and that the details on the cheques were different from the details on the invoices or the vouchers provided by Mr Goodman.
- In about March or May 2009 or 2010, Mr Byrnes and Mr Thompson met with Ms Cullinane and told her that the bank account details used by Mr Goodman in the payroll system matched the bank account number used by Council contractor, CND Computers, and into which the Council deposited payment on account of CND Computers invoices.
- In late 2011 or early 2012, Mr Byrnes told Ms Cullinane that there were transactions on Mr Fitzgerald's corporate credit card statements relating to Mr Goodman's company, Gas Motorsports.
- In or about late August or September 2015, Mr Byrnes told Ms Cullinane that a Teletec invoice had been paid without appropriate documentation.

## Mr Goodman and Ms Cullinane

During a lawfully intercepted telephone conversation between Ms Cullinane and Mr Goodman on 2 October 2015, Mr Goodman told Ms Cullinane that he was intending to leave the Council. The following exchange between them took place, during which Mr Goodman referred to Ms Cullinane by the nickname of "Bambi":

*CULLINANE: Yeah, yeah, yeah, yeah that's alright, but that's fine right, but seriously like do you honestly think that somebody's not going to look at some of the financial stuff here over the last (unintelligible).*

*GOODMAN: Oh Bambi I, I don't know, I don't know, I don't know.*

*CULLINANE: But Gary how would –*

*GOODMAN: We try to do everything fucking right.*

*CULLINANE: But Gary how would you explain the cabcharge. Like how do you explain-*

*GOODMAN: No I'm paying that back hopefully on Tuesday. I'm gonna give you a bundle of money.*

....

*CULLINANE: But, but Gary you know I'm not being – I'm not trying to be mean when I say this, but at the end of the day and that's fine, say it's all paid back, but if somebody went through that, like somebody may make a different judgment call than you.*

*GOODMAN: Yep no doubt.*

*CULLINANE: You know at the end of the day seriously you can't afford to leave.*

*GOODMAN: Fuck don't say that.*

*CULLINANE: No, honestly you cannot afford to leave!*

*GOODMAN: Anyway talk to me Tuesday Bam please, please Bambi, please.*

*CULLINANE: Like seriously you might leave but you'll end up in gaol Gary.*

*GOODMAN: Yeah alright I won't leave, I won't leave.*

Ms Cullinane was asked about this conversation at the public inquiry. She said that when she said, "seriously like do you honestly think that somebody's not going to look at some of the financial stuff here", she was referring only to Mr Goodman's misuse of the Cabcharge card. She said that when she said, "Honestly, you can't afford to leave", she was referring to Mr Goodman's conduct in relation to the Cabcharge card and fuel card being discovered. She claimed that she said "Like seriously you might leave but you'll end up in gaol Gary" because Mr Goodman had not paid the Council the money he owed in relation to the Cabcharge card and she was trying to encourage Mr Goodman to pay that money back. She claimed, however, that she did not know how much he needed to repay for misusing his Council Cabcharge card. She denied knowledge of other serious misconduct engaged in by Mr Goodman.

The Commission does not accept that Ms Cullinane's awareness of Mr Goodman's misconduct was limited to his misuse of his Council Cabcharge card and Council fuel card. According to her evidence, the misuse of Mr Goodman's Cabcharge card and fuel card had been dealt with by her, and Mr Goodman had been instructed to repay the Council for any misuse of those cards. Based on the evidence of Mr Byrnes and Ms Kirchner, it is clear that this occurred in about August 2014, and that at least the issue of Mr Goodman's misuse of his Cabcharge cards, if not necessarily the extent of that misuse, had been brought to Ms Kirchner's attention and dealt with by her. That being the case, there was no reason, in September 2015, for Ms Cullinane to be concerned that

Mr Goodman might "end up in gaol" over that issue. Her telephone discussion with Mr Goodman indicates a greater comprehension of Mr Goodman's misuse of Council resources and that his misuse of those resources was to such a degree and of such seriousness that, if convicted of an offence relating to that misuse, he would receive a custodial sentence.

At the public inquiry, Ms Cullinane accepted there had been no internal disciplinary proceedings undertaken against Mr Goodman, nothing noted on his personnel file, nothing reported to the police in relation to the Cabcharge card issue, and the Council did not consider garnishing his wages to repay the money. She claimed to not know the figure that Mr Goodman was required to repay and told the Commission that she asked Mr Byrnes to advise Mr Goodman how much needed to be paid back. She accepted that she was not in a position to classify the level of misconduct engaged in by Mr Goodman because she claimed that she did not know the total amount owed to the Council by Mr Goodman. Ms Cullinane claimed that she used the word "gaol" to encourage him to pay the money back to the Council.

### The "shit file" meeting

As set out in chapter 2, Mr Goodman and Mr Mark were involved in providing false invoices to the Council. On 13 September 2015, the Commission lawfully intercepted a telephone discussion between them, in which Mr Goodman discussed a meeting with Ms Cullinane. Mr Goodman told Mr Mark that Ms Cullinane had prepared what he referred to as a "shit file" on him and Mr Mark:

*GOODMAN: I, I went through this. You don't know what I went through with [Ms Cullinane]. Fuck me dead. She had everything Keith [Mark], she fucking proved to me time—oh fuck it was disastrous. Like I just sat there looking—Peter's [Fitzgerald] just looking at me, I'm thinking oh fucking hell he knew (laughs). Oh shit. Ohhh god.*

*MARK: Some of the old ones I was gonna um, from Tuesday I was gonna, gonna get together a dossier um, and some of the things I've already just looked at. Um, I, I was thinking I don't know how they got through. Like the 60 grand for microwave upgrades -*

*GOODMAN: Yep, yep, yep, yep.*

*MARK: - one of the things, I thought Jesus how, how did that get through. You got to appreciate -*

*GOODMAN: She had, she had the lot. She had fucking everything.*

*MARK: Yeah.*



*GOODMAN: I was gone six ways and Sunday. Anyway.*

*MARK: Well you don't want to give her any more ammunition for Christ's sake.*

Mr Goodman told the Commission that what he had said to Mr Mark about Ms Cullinane may not have been entirely accurate but he maintained that, in about 2009 or 2010, he had admitted to her and others that he knew some false invoices were submitted to the Council by Mr Mark. Mr Goodman said that he made no record of the meeting and the issue of who benefitted from the false invoicing was not discussed and no further investigation took place.

He said that this meeting, at which he had told Ms Cullinane about the submission of false invoices, she had a folder full of documents, including CND Computers and Truck Service Centre invoices, and expenses such as credit card expenditure. Mr Goodman said that the meeting was about spending too much money in these areas and also the legitimacy of the invoices. He also said that he could not be sure which companies were discussed at this meeting. He later said that a number of issues were raised at this meeting, including excessive expenditure on fuel cards, cameras, computers, expenses at the Business Unit, refreshments, tools, and payments to Officeworks and Bunnings.

Ms Cullinane said that, several years ago, she told Mr Goodman to stop using Computer Intersections for commercial reasons; namely, that she did not see a need to change from the Council's current suppliers to deal with a company in Queensland to purchase printer cartridges or computers. Ms Cullinane denied that she was aware that Mr Goodman was involved in the false invoicing of the Council. Ms Cullinane denied that she ever attended a meeting in relation to excessive expenditure or false invoicing at which Mr Goodman had apologised and cried.

While the extent of Ms Cullinane's knowledge of Mr Goodman's misconduct remains unclear, the Commission is satisfied that Ms Cullinane's warning to Mr Goodman – "but seriously like do you honestly think that somebody's not going to look at some of the financial stuff here over the last (unintelligible)" – reflects that she knew of misconduct on the part of Mr Goodman beyond his use of the Cabcharge and fuel cards and that his departure from the Council would expose the misconduct he had engaged in. This finding is supported by the evidence of Mr Byrnes and Mr Thompson of various complaints made to Ms Cullinane over a number of years (as set out above).

Ms Cullinane's legal representatives submitted that the Commission did not examine the involvement of other employees, including Mr Thompson and Mr Byrnes, in

facilitating the payment of false CND Computers invoices to Mr Goodman. It was submitted that logs from the Council's authority system would reveal the identity of the persons involved in inputting Mr Goodman's bank account details into the system and "the logs may also reveal whether those involved in entering this information were knowingly involved in facilitating Mr Goodman's fraud". The basis for the submission appears to be that Mr Goodman was not computer literate and therefore needed assistance to perpetuate the payment of false CND Computers invoices to him by the Council. Again, it is difficult to understand this submission, which ignores the evidence tendered in the public inquiry, of the telephone interception between Mr Goodman and Ms Baccam of 1 September 2015:

*BACCAM: Hello.*

*GOODMAN: Yeah. Tell Sharon [Dale], make sure Sharon knows about the new bank account.*

*BACCAM: Yeah, yeah I already put it, I will ring her yeah. Hmm.*

*GOODMAN: Tell her now because she's processing them now.*

*BACCAM: Yeah okay. I know, I know.*

*GOODMAN: Just say Malcolm, just say Malcolm brought some invoices up to Gary. New bank account. I just rang you and told you. Okay?*

*BACCAM: Yeah Hmm. Yep okay. Um you want me to do another one or no that's enough for today (unintelligible).*

*GOODMAN: Bye.*

Ms Dale was a creditor's clerk at the Council. There is no suggestion of impropriety on her part. This telephone interception clearly shows that Mr Goodman could easily arrange for bank account numbers in Council's system to be changed.

Furthermore, it is difficult to understand the submission, that evidence showing who inputted the bank account numbers, would reveal whether those involved in entering this information were "knowingly involved in facilitating Mr Goodman's fraud". This jump in logic is not explained in Ms Cullinane's submission. Yet, Ms Cullinane's representatives submit that:

*Given the fact that further evidence might bear upon the assessment of the legitimacy of an arrangement or a state of affairs or the credibility of witnesses and those are matters not explored, the Commission should identify the limits of the inquiry undertaken and Ms Cullinane given the benefit of any doubt*

*or gaps in the evidence. If the Commission does not propose to do so, then Ms Cullinane should be afforded procedural fairness by providing to her an opportunity to have those matters further explored and examined by the Commission.*

The Commission rejects this submission. Ms Cullinane's representatives failed to demonstrate the nexus between the identity of the person who enters the bank account numbers and their purported involvement in Mr Goodman's fraud.

## Corrupt conduct

### Suman Mishra

Counsel Assisting did not make any submissions to the Commission that Ms Mishra should be found to have engaged in corrupt conduct in relation to her knowledge of Mr Goodman's misconduct. In these circumstances, the Commission has not considered whether it would be open to make any such findings.

### Lorraine Cullinane

Ms Cullinane was generally aware that Mr Goodman misused his position as Council's CFO to financially benefit himself to such a degree and of such seriousness that, if his conduct was exposed, he would receive a custodial sentence. Her knowledge included, but was not limited to, his misuse of the Council's Cabcharge cards and fuel card. Ms Cullinane wilfully and dishonestly failed in her duty as the Council's deputy general manager to cause the taking of disciplinary proceedings against Mr Goodman or to report his misconduct to the NSW Police Force.

This conduct is corrupt conduct for the purposes of s 8(1)(b) of the ICAC Act because it is conduct that constitutes or involves the dishonest or partial exercise of Ms Cullinane's official functions.

In considering s 9(1)(a) of the ICAC Act, it is relevant to have regard to the common law offence of misconduct in public office. The elements of this offence have been considered in *R v Quach* (2010) 201 A Crim R 522. Redlich JA (with whom Ashley JA and Hansen AJA agreed) said at 535 that the elements were as follows:

- 1) *a public official;*
- 2) *in the course of or connected to his public office;*
- 3) *wilfully misconducts himself, by act or omission, for example, by wilfully neglecting or failing to perform his or her duty;*
- 4) *without reasonable excuse or justification; and*

- 5) *where such misconduct is serious and meriting criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those objects.*

The offence is made out if the public official is reckless as to whether their conduct was a breach of their duties as a public official or where the public official knows their conduct was such a breach (see *R v Obeid (No. 11)* [2016] NSWSC 974).

Ms Cullinane's conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Ms Cullinane committed a criminal offence of misconduct in public office.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The conduct is serious because Ms Cullinane held a position of trust within the Council and the conduct identified involved a significant breach of that trust. Furthermore, Ms Cullinane's conduct could have impaired public confidence in public administration given that, as the deputy general manager, she was a senior public official. Her conduct could involve the common law offence of misconduct in public office and the penalty for this offence is at large. Finally, she was aware that Mr Goodman's misconduct involved the misuse of public monies.

## Section 74A(2) statement

The Commission is satisfied that Ms Mishra and Ms Cullinane are "affected" persons.

### Ms Mishra

The evidence Ms Mishra gave was the subject of a direction under s 38 of the ICAC Act and, therefore, cannot be used against her in criminal proceedings, except for offences under the ICAC Act.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Mishra for giving false evidence at the public inquiry contrary to s 87(1) of the ICAC Act, when she denied knowledge of Mr Goodman's involvement in false invoicing.

Given that Ms Mishra no longer works for the Council, the issue of whether consideration should be given to the taking of action against her for a disciplinary offence or the taking of action with a view to her dismissal, does not arise.

## Ms Cullinane

The evidence Ms Cullinane gave was the subject of a declaration under s 38 of the ICAC Act and therefore cannot be used against her in criminal proceedings, except for offences under the ICAC Act. There is, however, admissible evidence available, including a lawfully intercepted telephone call. There is also admissible evidence in relation to Ms Cullinane's position at the Council. The evidence of Mr Byrnes and Mr Thompson would also potentially be available to the DPP.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Cullinane for an offence of misconduct in public office.

Given that Ms Cullinane no longer works for the Council, the issue of whether consideration should be given to the taking of action against her for a disciplinary offence or the taking of action with a view to her dismissal, does not arise.

## Chapter 5: The ex gratia payments and other benefits received by Ms Cullinane

This chapter examines an allegation that, while the deputy general manager at the Council, Ms Cullinane received ex gratia payments totalling around \$800,000 to which she knew she was not entitled. This chapter also examines allegations that the Council paid for two Lexus vehicles and an alarm and security system for Ms Cullinane to which she was not entitled.

In 1993, Ms Cullinane commenced working for the Council in a contract position. In about 1995, she acted in the role of director of corporate services, and, in 1996 or 1997, she was permanently appointed to the role of director of corporate and community services. In late 1997, she became the deputy general manager. Mr Goodman reported directly to Ms Cullinane.

Ms Cullinane and Mr Goodman were involved in a relationship between approximately 1996 and 2002. They had also previously shared business interests, including owning video store businesses between about 1993 and 1997.

### The ex gratia payments

Between 1997 and 2015, Ms Cullinane was paid over \$800,000 through the Council's creditor system. That system was used by the Council to facilitate the payment of invoices and accounts. Payments made through this system did not have tax deducted by the Council.

Mr Goodman gave evidence that Ms Cullinane negotiated with Mr Fitzgerald to be paid the same superannuation as a former Council employee, John Maree, on a similar wage and the payments made to her through the creditor system were intended to compensate her for not being in the more lucrative superannuation scheme enjoyed by Mr Maree. Mr Goodman believed that Ms Cullinane was not eligible for that superannuation scheme through Council bungling. He explained that, "because the general manager or the deputy did not put a report up to Council she missed out going into that lucrative scheme through

no fault of her own". He calculated that, in order to be appropriately compensated, she would need to receive additional payments of between \$38,000 and \$47,000 every year. The exact amount would depend on her salary. Mr Goodman said the payments were made directly to Ms Cullinane from the Council's general account and were not paid into her superannuation account or through the Council's payroll system. Mr Goodman said he was responsible for calculating and making the payments to Ms Cullinane on behalf of the Council. Mr Goodman gave evidence that he "probably" made the decision to make the payments through the creditor system and the effect of the payments being made through that system was that tax would not be deducted by the Council.

During her evidence to the Commission, Ms Cullinane described the payments as "an ex-gratia payment(s) based on a superannuation calculation". She said Mr Fitzgerald approved an arrangement whereby she received these payments because she was ineligible for the defined benefits superannuation scheme. A defined benefits superannuation scheme is a type of superannuation scheme that guarantees a specified income upon retirement. The income is based on the employee's salary as at the time of retirement. Ms Cullinane agreed that she had received the ex gratia payments on an annual basis for about 20 years. The amounts she received ranged from \$38,000 to \$45,000 each year. Ms Cullinane gave evidence that, "[y]ou know, in my view and has always been my view that that payment was a legitimate payment to be made. It was offered to me by the general manager. I accepted it by the general manager and it's been paid ever since". She assumed that details of the arrangement had been placed on her personnel file.

The Council's financial records variously described these payments as "superannuation", "supplementary superannuation", "sup payment" and "superannuation contribution". For the sake of clarity, in this chapter, the payments will be described as "ex gratia payments".

The main issue for determination is whether Ms Cullinane, with the assistance of Mr Goodman, received the ex gratia payments knowing that she was not entitled to them. The Commission considered the following issues:

- How much did Ms Cullinane receive?
- Were the ex gratia payments subject to an approved arrangement between Ms Cullinane and the Council?
- Did the external auditors approve the ex gratia payments?
- Did Ms Cullinane receive payments to which she knew she was not entitled?
- Did Ms Cullinane deliberately avoid paying tax on the ex gratia payments?

### How much did Ms Cullinane receive?

The evidence of Mr Goodman is that Ms Cullinane received the ex gratia payments from 1997 for a period of about 20 years. The Council's records tendered during the public inquiry only reflect payments made through the creditor system for between 2003 and 2014. These records are set out below.

On most occasions, the payments were made directly to Ms Cullinane's bank account by way of electronic transfer; although, on a few occasions the payments were made by cheque. Between 5 September 2003 and 22 October 2014, payments totalling \$652,785.54 were made to Ms Cullinane.

PER BOTANY BAY CITY COUNCIL RECORDS				
CREDITOR	INVOICE DATE	AMOUNT	METHOD OF PAYMENT	DESCRIPTION
110016-Lorraine CULLINANE	05-Sep-03	\$ 43,391.92	Cheque no. 66532	Superannuation
110016-Lorraine CULLINANE	09-Jul-04	\$ 45,591.62	Cheque no. 74729	Supp Payment
110016-Lorraine CULLINANE	13-May-06	\$ 46,933.95	Cheque no. 85202	Supplementary Superannuation
110016-Lorraine CULLINANE	30-Jun-07	\$ 48,352.50	Electronic transfer	Supplementary Superannuation
110016-Lorraine CULLINANE	10-Mar-08	\$ 50,397.80	Cheque no. 96761	Supplementary Super
110016-Lorraine CULLINANE	16-Oct-08	\$ 50,397.80	Electronic transfer	Supplementary Super
110016-Lorraine CULLINANE	17-Mar-09	\$ 54,917.61	Electronic transfer	Supplementary Super
110016-Lorraine CULLINANE	30-Jul-09	\$ 56,196.00	Electronic transfer	Supplementary Super
110016-Lorraine CULLINANE	08-Dec-09	\$ 18,892.16	Cheque no. 103555	Superannuation
110016-Lorraine CULLINANE	09-Apr-10	\$ 41,895.00	Electronic transfer	Superannuation
1619-Lorraine CULLINANE	17-Mar-11	\$ 60,180.75	Electronic transfer	Superannuation
1619-Lorraine CULLINANE	30-Jun-12	\$ 44,162.05	Electronic transfer	Superannuation
1619-Lorraine CULLINANE	22-Oct-14	\$ 91,476.38	Electronic transfer	Superannuation Contribution



Only one of the cheques listed in the Council's records as paid to Ms Cullinane was in evidence before the Commission; namely, the cheque dated 8 December 2009 in an amount of \$18,892.16. The cheque is made payable to Ms Cullinane but is endorsed "Please pay cash". It is signed by Mr Goodman and Mr Thompson. There is no evidence before the Commission as to who cashed the cheque.

In her evidence to the Commission, Ms Cullinane accepted that some of the earlier payments to her were made by cash cheque. She said that she did not question the method of payment because she believed tax had been taken out. She was not questioned about later payments purportedly made by cheque.

Ms Cullinane's banking records only record the electronic transfer payments totalling \$447,578.09. The other payments, totalling \$205,207.45, are not recorded as deposits in her banking records.

The Commission cannot be satisfied that Ms Cullinane received any of the cheque payments. Mr Goodman gave evidence that he was able to cash cheques that were marked non-negotiable and made out to an entity called MB Consulting (these payments are dealt with in chapter 6). The Commission cannot discount the possibility that he cashed some or all of the cheques recorded in the Council's records as paid to Ms Cullinane; particularly given the evidence that at least one of these cheques was endorsed for cash payment.

On the basis of the Council's records and banking records, the Commission is satisfied that, between 2007 and 2015, Ms Cullinane received ex gratia payments totalling at least \$447,578.09. Given her estimate that she received between \$38,000 and \$45,000 a year over about 20 years, the actual amount she received would have been considerably higher than the \$447,578.09 indicated by the relevant records.

The electronic transfer amounts received by Ms Cullinane vary from \$48,000 in June 2007 to \$91,000 in October 2014. In 2009, Ms Cullinane received more than one electronic payment. Ms Cullinane said that the ex gratia payments were not always made on an annual basis and, on some occasions, what she received represented two years of the ex gratia payments. There is evidence before the Commission that the payment of \$91,476.38 on 22 October 2014 represented the ex gratia payments for 2012 and 2013 (this payment is dealt with below). Ms Cullinane accepted that she had received creditor remittance advices by email when an ex gratia payment was made through the creditor system by the Council; although, she could not recall how long that system had been in place.

A creditor remittance advice is a notification reflecting the payment made. Ms Cullinane further stated that she

did not notice that she had received some of the ex gratia payments because she did not check her bank balance and did not realise that money had gone into her account. She gave evidence that she was financially comfortable and had no need to check her bank balance. She said that she did not use internet banking. At the time of the public inquiry, she had approximately \$1.9 million in her bank account. The extracts of Ms Cullinane's bank statements in evidence before the Commission show that, in October 2014, she had approximately \$1.1 million in one account. Ms Cullinane said that she could not tell from the Council records which transactions related to which period.

### Were the ex gratia payments subject to an approved arrangement between Ms Cullinane and the Council?

The Commission sought to establish the nature of the arrangement between Ms Cullinane and the Council. This proved difficult because of the lack of paperwork held by the Council and because the purported arrangement had commenced almost 20 years before the public inquiry.

The only relevant documents located by the Commission appear on Ms Cullinane's personnel file and are copies of two emails from February 1997, written by Mr Goodman to Mr Fitzgerald, then general manager. Ms Cullinane is neither the author nor a recipient of these emails.

The first email from Mr Goodman to Mr Fitzgerald was sent at 4.07 pm on 3 February 1997 and was titled "L Cullinane Superannuation Contribution":

*Following a request from L Cullinane the following amount has been calculated in leiu [sic] of superannuation contributions on her behalf by Council. It is understood that Lorraine was to be employed on the same terms and conditions as that applicable to the Director of Operational Services. On this basis her maximum superannuation contribution at the 9% level would be \$121.50 per week. This would effectively require Council to contribute a weekly amount of \$303.75 or 2.5 times her own contribution. Deducted from this is the superannuation [sic] levy that Council must pay for all employees irrespective of their non-membership of any superannuation scheme, at present this rate is 6% of gross earnings, or \$81.00 per week.*

*Maximum amount of Council Contribution...\$303.75  
Less Superannuation Levy.....\$81.00  
Amount in leiu [sic] of superannuation.....\$222.75*

*Regards*

*G Goodman*



Mr Maree was the director of operational services referred to in the email.

On 28 February 1997, Mr Goodman sent an email to Mr Fitzgerald containing details of Ms Cullinane's salary package:

*The following information is supplied regarding the salary package for L Cullinane*

*Salary...Same as J Maree..... 1350.00*

*Car Allowance..... 175.08*

*Superannuation as per memo.....222.75*

*Total..... 1747.83*

*For Your Approval*

*Regards*

*G Goodman*

It was accepted by Mr Fitzgerald that his signature appears on the copy of the email of 28 February 1997 in Ms Cullinane's personnel file, with a handwritten note, "Agreed and approved. 28/2/97". A number of other handwritten notations appear on this email by unidentified authors such as: "Paid through the payroll from 31/1/1997. Previously paid through creditors week ending 28/2/1997" and "Pay office please commence pay from 31/1/97. Start date effective 23/10/1996".

The email of 28 February 1997 represents a breakdown of the salary package to be paid to Ms Cullinane and includes the additional \$222.75 "Superannuation as per memo". The memo referred to is the email from Mr Goodman to Mr Fitzgerald of 3 February 1997. The email of 28 February 1997 shows that it was intended that the additional \$222.75 was to be paid to Ms Cullinane as part of her salary package. The email itself does not explicitly state how the amounts were to be paid to Ms Cullinane but the Commission accepts that, because the \$222.75 per week was to be paid as part of the salary package, it was intended that this amount be paid to Ms Cullinane through the Council's payroll system. This is consistent with the handwritten notes on the 28 February 1997 email. The effect of paying the amount through the payroll system was that tax would be deducted before payment was made to Ms Cullinane.

A document on Ms Cullinane's personnel file titled "Employee Details" indicates that, at least for the period between 23 October 1996 and 9 November 1997, she did in fact receive the ex gratia payments through the payroll system. The "Employee Details" document includes a breakdown of Ms Cullinane's gross salary of \$1,572.75 for that period: "Sal. 1350 + Super 222.75 + Car Allowance 175.08". The amount of \$222.75 is consistent

with the amount noted in Mr Goodman's emails of 3 and 28 February 1997. The document shows that between 23 October 1996 and 9 November 1997, Ms Cullinane received a payment of \$222.75 as part of her gross salary.

Ms Cullinane gave evidence that she was not party to the email correspondence between Mr Goodman and Mr Fitzgerald and said she had no knowledge of it. The emails of 3 February and 28 February 1997 appear on her personnel file to which she did not have access until shortly before the public inquiry. She gave evidence that:

*My belief was that the ex-gratia payments were being paid through the creditors [system], I left those calculations to Mr Goodman to make, I trusted they were right, I received them but I never checked them, but I wasn't aware of the earlier emails or notes that you showed me on my file and I never at any stage understood they were being paid through payroll. I thought those payments were always being paid through creditors.*

She denied that she was aware that she was not entitled to the ex gratia payments paid to her through the creditors system.

Ms Cullinane said that, when Mr Fitzgerald retired from the Council in 2011, she asked him to make sure that all of her conditions of employment had been documented and he assured her that they had been. She did not ask Mr Fitzgerald for a copy of the relevant documents for her own records. She did not inform the new general manager, Ms Kirchner, about the ex gratia payments because she believed it was Mr Fitzgerald's responsibility to do so. When the issue was raised by the Council's human resources manager in July 2015, Ms Cullinane advised this person that the payment was an annual payment approved by Mr Fitzgerald and the details of the arrangement would be located on her personnel file.

Mr Goodman told the Commission that he believed the arrangement was originally documented on the "Council file" but that the relevant documentation was no longer on the file. He believed that the documentation did exist because he gave it to the late external auditor, Norm Mah Chut of Spencer Steer (now Hill Rogers Spencer Steer). Mr Goodman said that, although the external auditor and others had approved the payments, there was nothing on the Council's file to reflect that approval. Mr Goodman gave evidence that he assumed that Ms Kirchner had been informed of the payments by Mr Fitzgerald when he retired.

Mr Fitzgerald accepted that the email of 28 February 1997 represented his approval of the ex gratia payments to be made as part of Ms Cullinane's salary package. He said it was within his authority to reach such an agreement with Ms Cullinane. Mr Fitzgerald agreed that Ms Cullinane

asked him to check on her personnel file that there was a document that related to the payments and “the document that I checked that was there was one that had Mr [John] Maree paid the same salary and it went line by line and then there was an amount which I presume it was derived from this document”. Mr Fitzgerald agreed that he was referring to the email of 28 February 1997. Mr Fitzgerald said that Ms Cullinane’s personnel file was kept in his office.

Mr Fitzgerald gave evidence that, to the best of his knowledge, he did not approve the making of the ex gratia payments through the creditor system. Mr Fitzgerald agreed that there was no basis for him to approve an employee receiving an annual payment through the creditor system. He agreed that approval of such a payment through that system would have been outside of his authority.

The Commission is satisfied that the emails of 3 and 28 February 1997 represent Mr Fitzgerald’s approval of ex gratia payments to Ms Cullinane through the Council’s payroll system. The Commission was unable to locate any documentation that represented authorisation of the payments of the ex gratia payments to Ms Cullinane through the creditor system.

The evidence, however, does not support a finding that Ms Cullinane was aware that the approval required payments to be made through the payroll system or that she was aware that the payments were indeed made through the payroll system for a period of time. The relevant documents appear on Ms Cullinane’s personnel file to which she did not have access.

The Commission accepts Mr Goodman’s evidence that he “probably” made the decision to process the payments through the creditor system for tax purposes. This evidence is supported by the objective evidence available to the Commission (outlined in further detail below) that Mr Goodman was responsible for calculating and processing the payments. There is no evidence that Mr Fitzgerald, Ms Cullinane or anybody else played a role in the decision to process the payment through the creditor system.

The arrangement purportedly took place some 20 years ago. Given the passage of time and the Council’s generally poor recordkeeping, the Commission cannot be satisfied to the requisite standard that the agreement relating to the payments of the ex gratia payments made through the creditor system was undocumented at the time it was made.

However, there is also insufficient evidence to support a finding that Mr Fitzgerald provided authorisation for the ex gratia payments to be made through the creditor system. He could not recall doing so and there is no objective evidence to support such a finding.

Mr Fitzgerald’s evidence was that he would not have the authority to make such a payment.

### Did the external auditors approve the ex gratia payments?

Ms Cullinane said that Mr Chut, who worked for Spencer Steer, the Council’s external auditor, had approved the ex gratia payments on two occasions and that he had described the payment as “generous but legal”.

Mr Goodman gave evidence that the payments had been approved by Mr Chut and agreed that Mr Chut had described the payments as “generous but legal”.

After this evidence was given at the public inquiry, records were obtained from the external auditors now known as Hill Rogers Spencer Steer.

One of these records, a note addressed to “Botany Council” regarding the “Lump Sum Payment to LC”, and dated 23 December 2004, was produced to the Commission. The author of the file note is not noted on the document. It is set out below:

*An amount of \$45,591.92 was paid to LC by cheque during the 2004 financial year. As per the memo from the General Manager, this is the net amount with the Council bearing the tax consequences. No amount was included on LC’s group certificate and no tax was accounted for or paid to the ATO.*

*Reconciliation:*

*Amount paid by cheque to LC 45,591.92*

*Grossed-up amount 88,528.00*

*Tax at 47% 42,936.08*

*Net amount 45,591.92*

*As this amount was paid in cash, it would ordinarily be classified as wages. Therefore, gross amount should have been included in the group certificate and taxed accordingly.*

*As per our discussions, you have to [sic] decided to account for the tax payable by amending the 2004 FBT return. This can be achieved by treating the amount paid as an expense payment benefit, whereby the payment is treated as a reimbursement of expenses incurred by the employee. In this case, substantiation of the specific expenses is not required, but some form of letter or memo should be obtained from the employee stating the payment represented an expense payment benefit.*

*Recommended action:*

1. *Have the 2004 FBT return amended per our calculations. A completed amendment request has been sent to you that can be faxed directly to the ATO.*

2. *Request LC to prepare a memo that can be filed with the FBT calculations. As a guide, the memo should include the following:*

*-as per discussions with XXXXXXXXX, I request to be reimbursed for various expenses I have incurred such as (as example, interest on mortgage, telephone bills, etc)*

*-the amount of the reimbursement—\$45,591.92*

*-a statement that the amount is to be treated as an expense payment fringe benefit for taxation purposes.*

3. *LC's group certificate should be amended, whereby the reportable fringe benefits amount should be increased by \$88,525.*

Another Spencer Steer document shows that the payment to Ms Cullinane of \$45,591.92 was paid by cheque number 665532. It will be recalled that the Council's records show that a payment of \$45,591.62 was made to Ms Cullinane by way of cheque number 74729 in 2004. That amount and cheque number are different from those recorded in the Spencer Steer document.

Ms Cullinane's legal representatives submitted that the 2004 Spencer Steer file note objectively demonstrates that the ex gratia arrangement was disclosed to, considered and approved by, the Council's external auditor.

The submission is rejected for the following reasons. First, there is nothing in the file note that refers to the payment as an ex gratia payment or that it had been made to compensate her for not having been included in a superannuation scheme. There is nothing in the file note to show an agreement that the Council would pay tax on large cash payments to Ms Cullinane from 1997 onwards. The 2004 memorandum makes clear that cash payments to employees, unless for reimbursements, must be made through payroll and taxed accordingly. There is nothing in the file note that confirms that there was an agreement for payments to be made on an ongoing basis and outside the payroll system. Finally, Ms Cullinane's submission fails to point to compliance with the directives outlined in the memo. No letter was obtained from Ms Cullinane stating the payment was an "expense payment benefit", nor is there evidence that her group certificate was amended.

The Commission is satisfied that the file note dated 23 December 2004 establishes only that the external auditors were aware of one cash payment that was made to Ms Cullinane and that the payment, based on

discussions with Mr Fitzgerald, was to be treated as a reimbursement of expenses.

The Commission is satisfied that there are no contemporaneous records in evidence before the Commission that the external auditor approved the payment of ex gratia payments to Ms Cullinane. The evidence of Ms Cullinane and Mr Goodman was that they believed that the ex gratia payments had been approved by the external auditor. The basis on which the payments were purportedly approved cannot be established because of the lack of relevant contemporaneous records. Again, given the passage of time, the Commission is not able to make a finding that the external auditor did not, at some time, consider the ex gratia payments made to Ms Cullinane.

### **Did Ms Cullinane receive payments to which she was not entitled?**

By July 2015, enquiries were being made at the Council about the nature of the ex gratia payments to Ms Cullinane.

#### **Mr Goodman contacts Mr Fitzgerald**

At 4.45 pm on 27 July 2015, Mr Goodman contacted Mr Fitzgerald by telephone. The conversation was lawfully intercepted and reveals that questions were being asked about the nature of the ex gratia payments by the human resources manager and Ms Kirchner, the general manager:

*GOODMAN: We might need to get a letter from you about Lorraine's super.*

*FITZGERALD: Righto what's happening?*

*GOODMAN: She was gonna ring you.*

*FITZGERALD: Right.*

*GOODMAN: And we had the Personnel Manager kicking up a stink that there's nothing on the file. I said hang on we've been paying this for 20 years. Ah, no, no, no...*

*GOODMAN: ...I can't remember, I think I might've charged Lorraine's super wrong. I charged the wrong account.*

*FITZGERALD: Right okay.*

*GOODMAN: And the new [human resources manager] said, what's this? I said it's an arrangement, you know, I just told them the story and anyway doesn't matter. Ah, there is, there's very scant details on file so –*

*FITZGERALD: Yeah.*

*GOODMAN: I was talking to Lorraine I said*

probably better to see [Mr Fitzgerald], get a proper letter from when it all started and say this is what it's about, this is how we're doing it and it's allowable. Rather than you know, having nothing you know what I mean even though. As I said, the auditor who signed it off is dead now so we're totally fucked. Remember Norm [Mah Chut] went through all that shit and said yeah, all fine but now he's fucking dead.

FITZGERALD: Yeah, but his signature must be somewhere.

GOODMAN: Oh, we can't find it.

FITZGERALD: Oh okay righto.

GOODMAN: It's not on the file that's the main thing.

FITZGERALD: Righto, yeah

GOODMAN: It doesn't matter it's (unintelligible) or a handwritten thing saying yes this is what – and the process is there if anyone looks at it in the future. I spoke to Lara [Kirchner] about it, but Lara didn't know what it was I said this is what it is blah, blah, blah. I said it was based on what a previous Director – John Maree was getting and we pay it to her, we've been paying it for 20 years.

FITZGERALD: Yeah.

GOODMAN: Oh, have we, I didn't know about it. It doesn't matter whether she knew or not, um, that's between you and [Mr Fitzgerald], not me.

FITZGERALD: But, but more importantly she doesn't have to know.

GOODMAN: That's right exactly.

FITZGERALD: Yeah, yeah.

GOODMAN: But I said look Lorraine the easiest way is ring [Mr Fitzgerald], Lara [Kirchner] said I think he's in Queensland ... And um, you can get a letter off him, and fucking, you know.

FITZGERALD: And you know that's going to be on my bill –

GOODMAN: Yeah that's fine.

The telephone call is difficult to understand because Mr Goodman refers both to what he was saying to Ms Kirchner and what Ms Kirchner was saying to him without identifying the speaker. Nevertheless, the telephone call represents Mr Goodman seeking confirmation from Mr Fitzgerald of what he refers to as the 20-year arrangement in relation to the ex gratia payments to Ms Cullinane. Mr Goodman requests that Mr Fitzgerald provide a letter about the payments. For his part,

Mr Fitzgerald does not expressly agree to provide a letter for Ms Cullinane. In his evidence, Mr Goodman agreed that Mr Fitzgerald never provided the letter he sought.

Mr Fitzgerald's evidence was that, in August 2015, in a meeting which Ms Kirchner requested with him, she raised Ms Cullinane's superannuation payments and he advised her that she should check what was on the file.

Ms Kirchner provided a statement to the Commission in which she states that, in around July to September 2015, Ms Cullinane advised her that the ex gratia payments had been approved by Mr Fitzgerald. Ms Kirchner states that, in about late August or early September 2015, Mr Fitzgerald verified that he had approved the payments to Ms Cullinane and that he would try to find any relevant documentation. Mr Fitzgerald did not produce any documentation to her.

### Mr Goodman contacts Ms Cullinane

Mr Goodman prepared a memorandum addressed to Ms Kirchner, dated 27 July 2015, and titled "Confidential report on Equivalent Superannuation Payments". The memorandum is set out below:

Lara,

I provide the following report in relation to Superannuation equivalent payments made to Councils [sic] Deputy General Manager.

Following the employment of Councils [sic] Deputy General Manager, it was determined that as a condition of her employment she be paid an amount equivalent to a superannuation calculation. This amount was based on a similar calculation to the General Managers [sic] package.

The General Managers [sic] Supplementary Superannuation package was prepared by an external salary consultant and both calculations were subject to separate audit by Councils [sic] signing Audit Partner.

I now provide details of the payment made on 22 October 2014 with the calculation. This calculation is 9% of the annual salary multiplied by 2.5 times. This is the nett payment.

2011 salary \$203,177 x 9% = \$44,275.73  
2013 salary \$209,780 x 9% = \$47,200.50

TOTAL DUE \$91,475.72

Voucher payment \$91,476.00

Regards

Gary Goodman  
Chief Financial Officer  
City of Botany Bay Council



The “voucher payment” of \$91,476 identified in this memorandum is the same as the amount paid into Ms Cullinane’s bank account by way of electronic transfer on 22 October 2014. Mr Goodman agreed that he wrote this memorandum and said that he did not believe that he received any assistance when drafting it. It appears that Mr Goodman made an error in the memorandum as the evidence before the Commission is that Ms Cullinane’s salary of \$203,177 reflects her 2012 salary and not her 2011 salary as stated in the memorandum. The Commission is satisfied that the two payments totalling \$91,476 represented the ex gratia payments for 2012 and 2013, and not for 2011 and 2013 as stated in Mr Goodman’s memorandum.

Ms Cullinane agreed that Ms Kirchner and the human resources manager were making enquiries about the ex gratia payments with Mr Goodman. She denied speaking to Mr Goodman about Ms Kirchner’s enquiries. She denied that she was aware that Mr Goodman had to prepare a memorandum for Ms Kirchner and stated that she was not involved in its preparation and was not aware of its existence until Ms Kirchner showed it to her. She agreed that it would have been highly improper for her to be involved in the preparation of this document given she was the beneficiary of the arrangement.

A lawfully intercepted telephone call made at 2.49 pm on 28 July 2015 revealed that Ms Cullinane and Mr Goodman did in fact discuss the memorandum and that Ms Cullinane made suggestions to Mr Goodman as to the contents. Mr Goodman can be heard typing the memorandum as they speak. During the telephone conversation, Mr Goodman described the document he was preparing as an email. It is clear from the contents of the conversation set out below that he was preparing the memorandum dated 27 July 2015. It is necessary to set out a large extract of the conversation in order to show the context of certain comments made by Ms Cullinane. The extract is set out below:

*CULLINANE: Darl.*

*GOODMAN: Yeah, you there?*

*CULLINANE: Yep.*

*GOODMAN: Um, I’m just doing an email to Lara -*

*CULLINANE: To Lara?*

*GOODMAN: Yeah, she rang me this morning about your super.*

*CULLINANE: Oh, yeah.*

*GOODMAN: She wants, she wants it all fixed up today and put to bed. I said okay I can do that. Um,*

*I’ve reworked out your calculation, your calculation was spot on to the dollar.*

*CULLINANE: Yep.*

*GOODMAN: Um, now I’m just writing an email now I just want to run it by you before I send anything. I said I’m providing the following report in relation to superannuation equivalent payments made to Council’s Deputy General Manager. Following the employment of Council’s, I haven’t used your name here, Council’s Deputy General Manager, it was determined that she had suffered a loss of superannuation benefits due to inaction on her employment by Council’s Mayor. The Deputy -*

*CULLINANE: No, no don’t don’t put that.*

*GOODMAN: But I thought it was though. He, he, he, he, Peter had to get approval from the Mayor, I know that, for any employment, and we eventually did it by resolution of Council.*

*CULLINANE: No, no but I don’t, I don’t think we want to say that, because see the Mayor was very—the, the, the Mayor—I think the Mayor appointed me, um, I, I can’t remember but I think all you need really to say is, um, you know -*

*GOODMAN: Due to inaction on her permanent employment, that’s what I’m saying.*

*CULLINANE: No but, but why can’t we say it was just a condition of employment.*

*GOODMAN: I can do that, yeah.*

*CULLINANE: You know like at the end of the day you—can’t we just say it was—if it was negotiated as part of her -*

*GOODMAN: Okay, okay following of the employment of the Deputy General Manager it was determined that as a condition of her employment -*

*CULLINANE: - she would receive -*

*GOODMAN: - I’m going to make this short.*

*CULLINANE: Yeah, because don’t give ‘em too much information,*

*GOODMAN: No, I know, I know.*

*CULLINANE: because then something comes back and somebody says well that’s -*

*...*

*- just listen to me for a minute though. Somebody comes back and goes through all the dates and then*



says, well no that's not true the defined benefits system ended a year earlier, so how did that come into it. Just, just say it was, it was -

GOODMAN: No, no you're right, you're right, you're right; a condition of her employment.

CULLINANE: Just say this was, this was negoti—this, this was approved as part of her condition of employment.

GOODMAN: - so the condition of her employment (unintelligible) she be paid, paid an amount, an amount equivalent to a superannuation -

CULLINANE: Calculation.

GOODMAN: - calculation. Superannuation calculation.

CULLINANE: And I think all you have to say then is, this amount was based -

GOODMAN: Yep.

CULLINANE: - on a similar calculation, or the same calculation or similar calculation.

GOODMAN: This amount was based—yep.

CULLINANE: - on a similar calculation to the General Manager's -

GOODMAN: - calculation to the General Manager's, Manager's package.

CULLINANE: Yeah, um, yeah, um, which, which, which, um, which was, um, which you understand or which was, um, prepared by an external -

GOODMAN: Visitor.

CULLINANE: - external, um consultant.

GOODMAN: - the General Manager's superannuation—ah, what did they call Peter's, they called Peter's, um, supplementary superannuation, supplementary.

CULLINANE: Yeah, and I think, and I think we just say that it was, um prepared by an external consultant and audited by, audited and, um, um -

GOODMAN: The General Manager's supplementary superannuation package was -

CULLINANE: No, yeah, yeah, but but I think at the end of the day you've got to be clear that, that's not actually true because Norm audited mine as well.

GOODMAN: No, no that's what I'm gonna say no, no, because I said the amount was based on

a similar calculation to the General Manager's package. The General Manager's supplementary superannuation package was prepared by an external auditor, an external consultant, salary consultant -

CULLINANE: And both, and and both calculations.

GOODMAN: And both calculations were audited by Council's, both calculations -

CULLINANE: Were audited -

GOODMAN: - were audited -

CULLINANE: - and deemed, um, um, I don't want to put legal but I don't want to put appropriate either and was—oh, just put audited that's it.

GOODMAN: Audited -

CULLINANE: By the, by the external auditor.

GOODMAN: And audited, and were audited and approved.

CULLINANE: No I don't know if approved is right. Um, it was audit, subject to audit by the external auditor.

GOODMAN: It was subject to audit -

CULLINANE: By Council's external auditor.

GOODMAN: Fuck! Subject to—I just put subject to audit that's it.

CULLINANE: Yeah, audit yeah.

GOODMAN: This was completed by Council's, um -

CULLINANE: Well just put, by, by audit, by, well, by, by, yeah. Um audit, audit, yeah, um -

GOODMAN: The General Manager commenced officially on the—when did you start here?

CULLINANE: I don't know. But I don't, but, but see I know the date on my record is different than the date I started (unintelligible).

GOODMAN: We know, we know.

CULLINANE: But, but, but is that all she needs? I mean all she needs is to say that the audit was done, that, that it was approved payment -

GOODMAN: Okay, well, how, how about this, this is what I'm gonna say. I provide the following report in relation to superannuation equivalent payments made to Council's Deputy General Manager. Following employment of Council's Deputy General Manager it was determined that as a condition of

her employment, she be paid an amount equivalent to a superannuation calculation. This calculation this amount was based on a similar calculations [sic] in the General Manager's Supplementary superannuation package. The General Manager's supplementary superannuation package was prepared by an external consultant, and both calculations were subject to audit. That's it.

CULLINANE: Yeah.

GOODMAN: I now provide details of the, of the calculation that's it.

CULLINANE: Yeah, and just leave it quite simple, because sometimes you can put more information in and it and it and it hangs us.

GOODMAN: No I understand it raises, it raises more questions.

CULLINANE: That's right.

GOODMAN: So the General Manager's supplementary superannuation was prepared by an external salary consultant and both calculations were subject to full -

CULLINANE: Yeah, and then put the thing these payments, payment, payments have been made in accordance with the approval, the approvals granted. Yep I don't know why she's so hot to trot to do it today, but if she wants to get it—she might just want to get it out of the road.

GOODMAN: She's going away she just wants it finished.

During her evidence at the public inquiry, Ms Cullinane said that she could not recall this conversation or that she had been involved in the preparation of the memorandum. She agreed that Mr Goodman was preparing a memorandum for Ms Kirchner during the conversation and she accepted that she should not have had any involvement in the preparation of the document. After some questioning, she agreed that her conduct in relation to the preparation of the memorandum was highly improper because the memorandum related directly to a significant ongoing payment she had been receiving from the Council. She accepted that it was a joint effort between her and Mr Goodman to prepare the memorandum.

Ms Cullinane said she told Mr Goodman “don't give 'em too much information” because he had a tendency to add too much information. She denied that her use of the term “and it hangs us” was an expression of concern that further enquiries might be problematic for her. She said that her use of the words “hangs us” was simply “a poor

choice of words”. She denied that she was concerned about enquiries being made about the ex gratia payments and stated that:

*It wasn't something that I was in collusion with Mr Goodman over, it was none of that. I received a payment for those periods of time what [sic] I genuinely believed I was entitled to. I believe it was approved by the general manager, I believe it was subject to a fringe benefits tax and I didn't believe that I had to declare it.*

She said that she wanted to make sure that Mr Goodman put accurate information in the memorandum.

There are aspects of the telephone call that are concerning to the Commission. Equally, there are parts of the telephone call that corroborate the evidence given by Ms Cullinane and Mr Goodman. There is no doubt that Ms Cullinane and Mr Goodman are speaking candidly to one another during this conversation. The aspects that corroborate the evidence given by Ms Cullinane and Mr Goodman are that they believe the payments were a condition of Ms Cullinane's employment and that the payments were audited by Mr Chut.

There are, however, parts of the conversation that raise questions about the arrangement. Ms Cullinane encourages Mr Goodman to not “give 'em too much information because then something comes back and somebody says, well no that's not true the defined benefits system ended a year earlier, so how did that come into it”, and tells Mr Goodman to, “just leave it quite simple, because sometimes you can put more information in and it and it and it hangs us”.

The Commission does not accept that Ms Cullinane's use of the words “and it hangs us” simply represented a poor choice of words on her part. The Commission is satisfied that she used those words because she had concerns about further enquiries being made about the ex gratia payments. The nature of those concerns is not clear to the Commission given the evidence advanced by both Ms Cullinane and Mr Goodman at the public inquiry was that she was entitled to these payments because she had missed out on a more lucrative superannuation scheme, known as the defined benefits scheme. Ms Cullinane was, of course, aware by the time of this conversation that there were no documents on her personnel file to support the receipt of the ex gratia payments through the creditor system.

Ms Cullinane's legal representatives submitted that Mr Goodman called Ms Cullinane and that there was no evidence of premeditation by Ms Cullinane. It was submitted in the context of the telephone conversation that Ms Cullinane appeared to want Mr Goodman to

record the exact terms of the agreement and ensure that he was confined to the actual events as they had been agreed at the time.

The Commission is satisfied that Mr Goodman did contact Ms Cullinane and asked to “run it [the memorandum] by” Ms Cullinane before he sent it to Ms Kirchner, and Ms Cullinane did not initiate the conversation. The Commission is satisfied, however, that Ms Cullinane effectively dictated to Mr Goodman what details should be included and those that should be excluded in the memorandum. Ms Cullinane was concerned about Mr Goodman’s original proposed wording that Ms Cullinane had “suffered a loss of superannuation benefits due to inaction on her employment by Council’s Mayor”, and told Mr Goodman to not “give ‘em too much information” because somebody could ask questions about when the defined benefits scheme had closed.

The Commission is satisfied that Ms Cullinane’s contributions to the memorandum were deliberate and careful. The Commission, however, is not satisfied that the evidence, including the telephone call of 28 July 2015, provides sufficient evidence to support a finding that Ms Cullinane received payments to which she was not entitled.

### **Did Ms Cullinane deliberately avoid paying tax on the payments?**

Ms Cullinane said that Mr Goodman had told her the tax on the ex gratia payments had been paid by the Council through fringe benefits tax. She therefore assumed the payments she received were net payments in relation to which she did not have to pay tax. She was not aware of any written document that stated that tax would be paid by the Council and agreed that she had never seen evidence that tax had been paid by the Council. She said she did not believe that she had a duty to disclose the receipt of the ex gratia payments to the Australian Taxation Office because she believed that the Council was paying tax on those payments on her behalf through fringe benefits tax. She denied being aware that tax returns included a provision for fringe benefits tax, stating, “I don’t do my own tax”.

Mr Goodman said he believed that he “probably” made the decision not to pay the amounts through the Council’s payroll system and in effect this meant that tax was not paid on these amounts by the Council except for one occasion in 2014. In relation to the payment of \$91,476.38 of 22 October 2014, which represented two ex gratia payments, Mr Goodman arranged for the Council to pay tax on Ms Cullinane’s behalf through fringe benefits tax. He told Ms Cullinane he had paid the tax on her behalf on this occasion. Mr Goodman said that on more than

one occasion he told Ms Cullinane that tax had been paid in relation to the ex gratia payments but then said that this conversation was in relation to the 2014 payment of fringe benefits tax. Mr Goodman also said that he never told her that tax should be paid by her in relation to the payments but he did assert that he told Ms Cullinane that the payments should be paid into an approved superannuation fund.

The Commission is not satisfied that Ms Cullinane intentionally avoided paying tax.

### **The ex gratia payments – conclusion**

From the outset, the Commission’s efforts to establish the facts about the arrangement in relation to the ex gratia payments were hampered by the passage of time and the lack of documentation held by the Council. These factors inevitably made the Commission’s task considerably more difficult.

The objective evidence available to the Commission, namely the emails of 3 and 28 February 1997 and the lawfully intercepted telephone call of 28 July 2015, show that:

- Mr Fitzgerald approved an arrangement for additional payments to Ms Cullinane to be made as part of her salary package
- Mr Goodman and Ms Cullinane believed the payments were a condition of her employment and they had been approved by Mr Chut.

The Commission is not satisfied to the requisite standard that Ms Cullinane did not believe she was not entitled to receive the ex gratia payments.

### **The Lexus vehicles**

Mr Goodman gave evidence that a black Lexus IS250 motor vehicle was purchased for Ms Cullinane by the Council and registered in her name. He said that Mr Fitzgerald authorised the purchase. Mr Goodman believed the car cost around \$60,000. Mr Goodman said that Ms Cullinane already had a Council car and was not entitled to have the Lexus vehicle purchased for her by the Council. He believed that this happened in about 2009, a few years prior to Mr Fitzgerald’s retirement from the Council in 2011, but could not be sure of the date.

Ms Cullinane agreed that she had received one car purchased by the Council using Council funds in 2009 or 2010. She initially said that the 2010 Lexus vehicle was purchased in lieu of an ex gratia payment and an adjustment to a salary increase. Ms Cullinane said she and Mr Fitzgerald had agreed that, instead of a salary increase and an ex gratia payment for the relevant year, she would receive a car. She did not know whether this agreement

had been documented. She said that she did not recall the value of the vehicle. When she first gave evidence, she said that she only had one Lexus vehicle registered in her name, which was a vehicle purchased in April 2010.

After a break in proceedings, Ms Cullinane gave evidence that she had in fact owned two Lexus vehicles. One purchased in 2007 and one purchased in 2010. She then said that the 2007 Lexus had been purchased partly in lieu of an ex gratia payment from the Council and partly in lieu of a salary increase. She said that she assumed that she traded in the 2007 Lexus for the 2010 Lexus and she did not know if she or the Council paid the balance of the purchase price for the new car. She could not explain why she was entitled to such an ex gratia payment in 2007.

Mr Fitzgerald could not recall approving the purchase of a Lexus vehicle for Ms Cullinane using Council funds. His evidence was that to approve such use of Council funds “you’d have to have a very good reason as to why you’d do it” and documentation to support the decision to approve such a purchase, such as an invoice or quotation. He could not recall Ms Cullinane ever coming to him and asking to receive a car rather than an ex gratia payment.

Records obtained by the Commission from Roads and Maritime Services (RMS) establish that two Lexus vehicles were registered in Ms Cullinane’s name. On 21 December 2007, a Lexus vehicle was purchased in her name for \$76,000 from Lexus of Chatswood. On 10 April 2010, a Lexus IS250 was purchased in her name for \$71,400 from Lexus of Chatswood. The available records from the RMS do not show who paid for the vehicles.

Lexus of Chatswood produced a contract for the purchase of a Lexus IS250 dated 17 March 2010. The contract shows that a 2007 Lexus IS250 was traded in for \$50,000 and the purchaser paid \$25,000 for the new vehicle. Ms Cullinane is named as the purchaser. Ms Cullinane gave evidence about the trade-in of the 2007 Lexus for the 2010 Lexus before the Lexus of Chatswood records were available. Her evidence about the trade in is corroborated by these records.

There are no other records in evidence before the Commission in relation to the two vehicles.

The only evidence before the Commission that the Council paid for a Lexus vehicle for Ms Cullinane comes from Mr Goodman and Ms Cullinane.

Mr Goodman claimed that the Lexus vehicle was purchased in 2009 for \$60,000 with Mr Fitzgerald’s approval. Ms Cullinane claimed that the 2007 Lexus vehicle was purchased by the Council in lieu of a salary

adjustment and an ex gratia payment and this was approved by Mr Fitzgerald.

There is a lack of objective, independent evidence about the circumstances surrounding the purchase of the 2007 Lexus vehicle. Ms Cullinane’s evidence about the purchase of this vehicle was vague. She claimed to have forgotten that she owned two Lexus vehicles. Mr Goodman’s evidence was typically unreliable in relation to the year of purchase and the amount for which it was purchased. Ms Cullinane gave evidence that she received the 2007 Lexus vehicle in lieu of an ex gratia payment and a salary increase. Ms Cullinane received an ex gratia payment on 11 July 2007, which was paid by the Council on 30 June 2007, but again it is not possible for the Commission to establish which payments correspond with which years without supporting documentation.

There is insufficient evidence to establish that Mr Fitzgerald approved the purchase of any Lexus vehicle for Ms Cullinane.

The Commission is satisfied that the provision of the 2007 Lexus vehicle to Ms Cullinane reflects the culture of entitlement that was pervasive at the Council and also reveals a lack of appropriate or adequate internal procedures surrounding the use of Council funds.

## The security and alarm system

Mr Goodman told the Commission that in the mid-2000s, Ms Cullinane had concerns about security at her home. He said that someone had tried to break into her home and he was concerned about her safety. Mr Goodman said he arranged for the installation of a top-of-the-range security and camera system at her home for about \$50,000. He initially stated that he believed that this was paid for by the Council through false invoicing but then said that he was not sure whether this was the case. He claimed that Mr Fitzgerald had approved the work. Mr Goodman had no knowledge of Ms Cullinane contributing any money towards the bill. Mr Goodman believed that he told her that the Council would pay for the work. He was not sure whether Ms Cullinane’s security concerns were related to her work. Mr Goodman said that he had not seen a policy called the security of servant’s policy.

Ms Cullinane said that she had a security system installed in her house in around 2003 and this was paid for by the Council. There were about seven cameras and an alarm system installed by Kevin Maton of Emu Alarms. Ms Cullinane said that the Council’s security of servant’s policy effectively said that, if a member or senior officer of the Council raised concerns about their safety, then the



general manager could authorise a review of that security and incur the necessary expenditure to reduce the risk to that member or officer of the Council. She said that while it was not written in the policy “there would have to be some element of concern that was work related or could be work related” to enliven the discretion and expenditure under the policy.

She believed the policy had been used to the benefit of other people at the Council. She presumed the policy was still in force at the time of the public inquiry but she had not had reason to look at it for a long time. She maintained that she would not have accepted the benefit unless she believed it met the criteria of the policy. She had not seen the policy for a number of years, probably since 2003. She accessed the policy through the policy register that was kept in the administration area.

She said that she discussed her security concerns with Mr Goodman and Mr Fitzgerald and sought their advice about the issue. Ms Cullinane said that she felt she was being followed and somebody had been around her home. She did not know whether there was a direct link with her Council work. She did not report the matter to the police.

There was no written record reflecting her discussions with Mr Fitzgerald about her personal welfare and any purported link with work. Ms Cullinane presumed that the Emu Alarms invoice for the work undertaken in relation to the installation of the security and alarm system recorded that the Council had paid for works done at her house. She assumed that the Emu Alarms invoice would have been approved by Mr Fitzgerald pursuant to the Council’s security of servant’s policy. She also said the Council may have kept the documentation regarding the purchase of the security system on the security of servant’s file. She did not fill out any documentation herself and was not aware if Mr Fitzgerald had made any notes of the conversations with her. She did not consider that this was an inappropriate use of Council money.

Mr Fitzgerald gave evidence that he “would have approved it [the alarm system] but I don’t know if I did”. Mr Fitzgerald said that Ms Cullinane had come to see him on a number of occasions about being “followed from work and followed from home, somebody sitting outside her house, and generally she believed entering her house while it was under construction”. This was occurring when her house was being renovated. Mr Fitzgerald said that Ms Cullinane reported that she was followed from work by a man and later saw the same man at her home. He said that Ms Cullinane told him that she observed someone following her out of the Council property and she saw the same person at her house on more than one occasion. He did not advise her to tell the police.

He did not make a record of his concern for the safety of Ms Cullinane.

Mr Fitzgerald said that the Council had a written policy that related to the security of servants. He said this policy was kept with the rest of what was then known as the corporate plan and there were many copies throughout the whole of the Council. At the public inquiry, he said he had not seen the policy for over a decade but believed it gave him the authority to approve a reasonable alarm system or security system. He agreed that the policy only authorised expenditure when the risk to the employee was work-related “or arises out of their work”.

Mr Fitzgerald could not recall whether he had approved the installation of the security or payment for the system by the Council. There is no documentary evidence available that assists in establishing one way or the other.

Mr Maton told the Commission that an alarm system and a camera system were installed at Ms Cullinane’s home. Mr Maton recalled: “I believe she was having issues being harassed”. He believed that the work was carried out in around 2003 and the value of the total work was \$20,000. He invoiced the Council for the work and was paid by the Council. He could not recall what details he wrote on the invoice but said it would most probably have recorded: “supply and installation of camera and alarm system at Lorraine’s place or that address”. He received instructions from Mr Goodman to install the system.

No documents authorising the payment and no invoices have been located. This is not particularly surprising given the transaction took place in 2003.

The Council was unable to locate a security of servant’s policy. The Commission does not consider that this necessarily leads to a conclusion that the policy did not exist. The policy was an historical one and it is clear to the Commission that the Council did not have a robust system of recordkeeping.

However, even if a policy existed, there needed to be a connection between any security issue and work in order to justify the Council incurring any expense. Ms Cullinane was unable to assert that there was such a connection. Mr Fitzgerald could not recall approving the security and alarm system but did think there had been some security concerns involving Ms Cullinane and the effect of his evidence was that, in his view, there was a sufficient connection to work.

Given the lack of objective evidence, the Commission is not satisfied that Ms Cullinane improperly arranged for the Council to pay for the installation of an alarm and security system at her home.



## **Section 74A(2) statement**

The Commission is satisfied that Ms Cullinane, Mr Goodman and Mr Fitzgerald are “affected” persons. The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with regard to the prosecution of any of Mr Goodman, Ms Cullinane or Mr Fitzgerald for any offence in relation to the matters canvassed in this chapter.

## Chapter 6: Use of the Council's credit cards and other issues

This chapter examines allegations that Mr Goodman and Mr Fitzgerald misused Council corporate credit cards for their own personal benefit, that Mr Fitzgerald authorised the purchase of a Lexus vehicle using Council funds for Ms Baccam, and that Mr Fitzgerald received cash payments from the Council to which he was not entitled through either MB Consulting or Bloggs Consulting.

Mr Fitzgerald commenced working for the Council in 1988 as the director of personnel. In 1993, he was appointed to the role of deputy general manager. From 1997 to 2011, he was the general manager of the Council. Prior to commencing at the Council, Mr Fitzgerald was the mayor of Drummoyne Council.

### Mr Fitzgerald's Council credit cards

Mr Fitzgerald was issued with three Council corporate credit cards: namely, one Diners Club credit card and two Commonwealth Bank MasterCard credit cards.

In his evidence to the Commission, Mr Goodman accepted that the statements for these cards were not seen by Mr Fitzgerald. He told the Commission that the Diners Club statements were sent to him (Mr Goodman) and he placed them in the bottom drawer of his desk. They stayed there until it came time to conduct an audit at which time he would arrange for someone to put the statements in order and reconcile them and then transfer the money from a suspense account to the correct costing areas. Mr Goodman said that Mr Byrnes received the MasterCard statements. Mr Goodman said that he approved the payment of all the corporate credit card expenses.

Based on the Council's review of the credit card statements, the Council's legal representatives submitted that, between 2002 and 2012, the total amount of expenditure on the three credit cards totalled over \$2.4 million.

### Mr Goodman's use of Council credit cards

During the public inquiry, Mr Goodman admitted that he used the Council credit cards issued to Mr Fitzgerald for his personal expenditure. This included transactions at Abruzzo Ceramics, Australian Native Landscapes, Balmain Rentals, Davidsons Nurseries, Gas Motorsport, Go Fast Bits, Haltech and Mabuzi. Although he did not have possession of the credit cards, he was able to use the card numbers for these transactions. He also authorised the payment by the Council of the credit card accounts.

The Commission obtained available records, including invoices and receipts from merchants, in relation to transactions that were connected to Mr Goodman and were not related to Council business.

Mr Goodman was provided with an opportunity to review the relevant records and to respond to the supplementary submissions of Counsel Assisting, which set out the transactions identified as personal expenditure by Mr Goodman. The submissions in reply from Mr Goodman's legal representatives do not provide a detailed response to Counsel Assisting's supplementary submissions but accept that the transactions set out in the supplementary submissions were personal expenses incurred by Mr Goodman. His legal representatives submitted that:

*Mr Goodman has decided not to engage in preparing a detailed account of the funds misappropriated from Council and instead, remits same back to the Commission and the Botany Bay Council ... Mr Goodman submits that, albeit at the Commission [sic] Inquiry he conceded that he has engaged in corrupt activities involving the Council credit card issued to Mr Fitzgerald, such activities were not possible nor took place without the knowledge and the direction of his superior, Mr Peter Fitzgerald. This, it is submitted, does not exonerate Mr Goodman's behaviour.*

On the basis of Mr Goodman's admissions at the public inquiry, the Commission is satisfied that the transactions listed below were personal expenditure by Mr Goodman.

MERCHANT	PERIOD	AMOUNT
Abruzzo Ceramics	8/5/10 – 6/10/10	\$10,896.00
Australian Native Landscapes	1/7/09 – 22/12/10	\$45,853.51
Balmain Rentals	31/9/09 – 14/10/10	\$131,298.99
Davidson's Nurseries	19/9/09 – 18/12/10	\$97,938.19
Gas Motorsport	30/12/11 – 16/1/12	\$28,300.00
Go Fast Bits	28/5/09 – 31/5/10	\$30,501.00
Haltech	15/1/10 – 13/12/11	\$64,727.23
Mabuzi	3/12/07 – 7/9/11	\$39,545.08
<b>TOTAL</b>		<b>\$449,060</b>

The Commission is also satisfied that Mr Goodman used Mr Fitzgerald's corporate credit cards for personal expenditure in relation to the following transactions.

- Relevant credit card statements record payments to Elegant Garden World totalling \$11,507.09. The invoices for Elegant Garden World were directed to Garden Extra, a business associated with Mr Goodman's relatives and the items purchased were garden supplies and equipment, which clearly related to that gardening business. Mr Goodman made admissions to using the credit cards to assist Garden Extra because it was in financial trouble.
- The statements record payments to Hypertune totalling \$16,574.03. The Hypertune invoices were directed to Mr Goodman's business, Gas Motorsport, and the items purchased were related to Mr Goodman's interest in car racing.

- The statements record payments to Kennards Self Storage Wetherill Park totalling \$33,654.25. Mr Goodman admitted that this storage facility had been used to store a personal vehicle for three months. He claimed that the storage facility was otherwise used for Council purposes to store furniture. This evidence is rejected on the basis that the documents produced by Kennards show that, in December 2015, two months after Mr Goodman's departure from the Council, the storage unit was found to be unlocked and empty. In other words, no Council property was located in the storage unit. Furthermore, Wetherill Park is not proximate to the Council but is to Mr Goodman's other business interests.
- The statements record payments to Link International for \$25,947.25. The Link International invoices were directed to Mr Goodman's business, Gas Motorsport, and the items purchased relate to his interest in car racing and not Council business.
- The statements record payments to Midel totalling \$14,090. The Midel invoices were directed to Gas Motorsport and not to the Council and clearly relate to Mr Goodman's interest in car racing and not Council business.
- The statements record payments to Mr Fothergill's Seeds totalling \$4,492.25. The invoices for Mr Fothergill's Seeds were directed to Garden Extra, a business associated with Mr Goodman's relatives and the items purchased were garden supplies and equipment that clearly related to the gardening business and not Council business.
- The statements record payments to Plantmark totalling \$6,188.98. The Plantmark invoices were directed to Garden Extra and the items purchased were garden supplies and equipment

that clearly related to the gardening business and not Council business.

- The statements record a payment to Sutto's Motorcycle Supply of \$11,995. The Sutto's Motorcycle Supply invoice for this transaction relates to the purchase of a Polaris Sportsman four-wheel bike. The invoice is addressed to Mr Goodman at his workshop address and clearly has no relation to Council business.
- The statements record payments to Terracotta Trading Company totalling \$7,996.48. The Terracotta Trading Company invoices for these transactions are addressed to Garden Extra and are not related to Council business.
- The statements record payments to Western Clutch Service totalling \$14,256. The Western Clutch Service invoices for these transactions are addressed to Gas Motorsport and are not related to Council business.
- The statements record payments to Wurth Australia totalling \$24,330.44. The Wurth Australia invoices were directed to Mr Goodman's Gas Motorsport and the items purchased were related to Mr Goodman's interest in car racing. The transactions did not relate to Council business.

These transactions are set out in the table below.

MERCHANT	PERIOD	AMOUNT
Elegant Garden World	21/12/09 – 28/9/10	\$11,507.09
Hypertune	10/10/09 – 24/3/10	\$16,574.03
Kennards Self Storage Wetherill Park	3/12/03 – 6/10/10	\$33,654.25
Link International	11/3/09 – 12/1/12	\$25,947.25
Midel	2/3/10 – 9/6/10	\$14,090
Mr Fothergill's Seeds	10/11/09 – 21/9/10	\$4,492.25
Plantmark	4/11/09 – 21/11/09	\$6,188.98
Sutto's Motorcycle Supply	20/12/11	\$11,995
Terracotta Trading Company	25/3/10 – 15/10/10	\$7,996.48
Western Clutch Service	4/6/09 – 6/1/12	\$14,256
Wurth Australia	15/4/09 – 15/12/11	\$24,330.44
<b>TOTAL</b>		<b>\$171,031.77</b>

Mr Goodman's evidence, about whether Mr Fitzgerald was aware that he used the Council credit cards issued in Mr Fitzgerald's name for personal purposes, was inconsistent and unreliable. He initially stated that he did not know if Mr Fitzgerald was aware of his misuse of the corporate credit cards. Later in his evidence, he said that he had an unspoken understanding with Mr Fitzgerald that Council credit cards could be used for personal purposes. At yet another point in his evidence, Mr Goodman claimed that Mr Fitzgerald was aware that he was using the Council's credit cards for non-Council purposes and claimed that on one occasion Mr Fitzgerald told him, "I don't care what you do, just cover it up".

Mr Fitzgerald denied allowing Mr Goodman to use the Council's corporate credit cards to pay for his personal expenses. Mr Fitzgerald claimed that he did not have access to the credit card statements. Mr Goodman confirmed that Mr Fitzgerald did not have access to the credit card statements. In those circumstances, it is unlikely that Mr Fitzgerald would have become aware of unauthorised use of the credit cards through reading the statements. Apart from Mr Goodman's evidence, there is no evidence that Mr Fitzgerald was aware of Mr Goodman's misuse of his credit cards.

The Commission is not satisfied, on the basis only of Mr Goodman's evidence, that Mr Fitzgerald was aware that Mr Goodman used the Council's credit cards to pay his personal expenses.

The Commission is satisfied that between December 2003 and January 2012, Mr Goodman misused the Council's credit cards to incur personal expenditure of \$620,091.77.

### Mr Fitzgerald's use of Council credit cards

Mr Goodman alleged that there was unusually high expenditure, totalling more than \$400,000 a year, on the Council credit cards issued in Mr Fitzgerald's name. He also alleged that a Sydney city GPO Box was used to receive some of the credit card statements so that they would not be seen by other Council officers.

Mr Fitzgerald said that the GPO Box in the city was used for confidential documents such as legal documents as well as credit card statements. It was a box held by the Council. Mr Fitzgerald did not know why the statements were sent to a GPO Box in the city and Mr Fitzgerald gave evidence it was not a decision made by him.

The evidence does not establish that the GPO Box was used by Mr Fitzgerald for the purpose of concealing the credit card expenditure from the Council. The statements were addressed to accounts payable and were not addressed to Mr Fitzgerald. There was no evidence that

Mr Fitzgerald was responsible for arranging to have the credit card statements forwarded to the GPO Box in the city. In any event, it was Mr Goodman's evidence that he took possession of the Diners Club statements and none of the credit card statements were provided to Mr Fitzgerald.

### How much did Mr Fitzgerald incur in personal expenditure on the credit cards?

The Commission undertook an analysis of the credit card expenditure and obtained available records, which revealed that it was likely that Mr Fitzgerald had also used the corporate credit cards for personal expenditure. Mr Fitzgerald retired from the Council in 2011 and there were only limited available records. The Council could not provide any records, such as invoices or requests for payments, relating to these transactions.

At the public inquiry, Mr Fitzgerald was questioned about a number of transactions on the credit cards. He was unable to indicate whether some of the expenditure was personal in nature or related to Council business without access to the relevant documents. The Commission decided to deal with the issue of credit card expenditure through the submission process and allowed Mr Fitzgerald to provide a statement to the Commission dealing with the transactions on the credit card statements that appeared to be personal expenditure.

Mr Fitzgerald provided a statement to the Commission in which he accepted the following transactions were personal expenditure:

MERCHANT	PERIOD	AMOUNT
Huett Marine	22/12/08	\$4,000
Bridge Mowers & Chainsaw Centre	24/2/06 – 17/10/07	\$9,014
Sydney City Motorcycles	25/1/07	\$6,525
Discovery Parks (formerly Aspen Parks)	4/5/11	\$3,339.63
Mercedes-Benz	11/11/07 – 6/4/11	\$5,067.65
Balmain Motorcycles	21/8/10 – 20/5/11	\$819.25
<b>TOTAL</b>		<b>\$28,765.53</b>

The credit card statements also recorded payments totalling \$6,510.90 to Virgin Australia between 26 June 2009 and 8 January 2011. In his statement, Mr Fitzgerald asserted that there was insufficient material relating to the transactions for Virgin Australia and he was unable to state whether the transactions were personal in nature

or Council-related. A breakdown of the flights taken and the passengers booked on the flights was provided to Mr Fitzgerald in Counsel Assisting's supplementary submissions. The flights relied upon by the Commission were not taken by Mr Fitzgerald but by his wife and other relatives. Mr Fitzgerald's submissions in reply to the supplementary submissions did not shed any light on whether he accepted the flights taken with Virgin Australia were personal in nature. Given that Mr Fitzgerald's wife and relatives did not work for the Council or have any Council function, the Commission is satisfied that the Virgin Australia payments were not related to Council work.

The records also recorded a payment of \$942 to Viator on 23 November 2004. The payment was for a trip for Mr Fitzgerald's relations. For the same reasons as given above, the Commission is satisfied this transaction was not work-related.

The Commission is satisfied that the evidence before the Commission establishes that between November 2004 and May 2011, Mr Fitzgerald used the Council's corporate credit cards for personal expenditure totalling approximately \$36,200.00. In making this finding, the Commission notes that Mr Fitzgerald was only asked to examine the credit card expenditure for which the Commission had been able to obtain vendor receipts.

### Mr Fitzgerald's justification

Mr Fitzgerald claimed that his use of the Council's credit cards to incur non-work related expenses was not improper because he was contractually entitled to charge Council up to \$20,000 of personal expenses each year. He said this entitlement arose from clause 3.5 of schedule F of his 2006 contract, which he claimed provided for a \$20,000 allowance to be used entirely at his discretion. Mr Fitzgerald's 2006 employment contract with the Council was for the period from 1 June 2006 to 18 September 2011. It contained generous entitlements, some of which were broad in scope. Clause 3.5 provides:

#### Loyalty Retention Clause

*Further to the Council's resolution to appoint the General Manager on a fixed term contract, Council recognises the benefit of long-term employees. Council is mindful of the external roles a long-term General Manager will be involved within both the local community/business groups as well as state and national organisations.*

*Council seeks to retain effective staff. An annual allowance of \$20,000 is to be available to the General Manager to use as he determines from time to time. Council recognises the benefits of travel and study to help compare our City to others and to drive the best outcomes for the City by introducing the best available.*



*In addition to his normal Local Government responsibilities, the General Manager is also responsible for profitably operating business units which compete in a commercial environment.*

Clause 3.1 of schedule F deals with travel expenses. It provides:

*All reasonable expenses, including out of pocket, accommodation and travelling expenses, incurred in connection with the General Manager's duties or approved professional development, shall be paid by the Council. Council may require the employee to provide an itemised account, invoices, receipts or a declaration in relation to claims upon Council under this Clause. A senior officer will from time to time, and at least annually, review the amounts paid and acquitted against these expenses and allowances.*

Clause 3.2 of schedule F also deals with travel expenses. It provides:

*In relation to travel, the General Manager shall have access to Cabcharge or to a Council vehicle or Council vehicle and driver where circumstances deem it expedient to do so.*

*With regard to airline or other travel, the standard of entitlement shall be that comparable with business class or Mayoral entitlement save where accompanying the Mayor or Councillor/s when standard of travel shall be commensurate.*

*The General Manager will determine the use of cards, advances and pre-payments.*

Mr Fitzgerald gave evidence that he could use the \$20,000 annual allowance for personal expenditure provided it was "within reason". When questioned about what he meant by "within reason" and what parameters existed, Mr Fitzgerald said, "Well, I don't know what, what limits it would put on me but at every time you must act reasonably", and then clarified that provided he did not exceed \$20,000 limit then this would be considered "within reason". His evidence was that clause 3.5 was a retention allowance to ensure that he did not move to another place of employment.

Mr Fitzgerald acknowledged that he was responsible for three corporate credit cards and that Council money was being used to pay for them. Despite this, he did not keep a record of what he spent on the credit cards for personal use. He told the Commission that, "to the best of my knowledge", he did not incur more than \$20,000 in personal expenditure on his Council-issued credit cards in any one year. Mr Fitzgerald said that he did not know whether there was a tally kept of how much was spent in relation to his \$20,000 allowance and stated, "I would have expected that the accounting function would have

done that". When asked to identify who was going through his credit card account to do that, he said, "Well, there was a number of people in the accounting function doing that". Mr Fitzgerald gave evidence that:

*It was my expectation that the credit card – all of, all of the debits on the credit card would have been acquitted to a cost centre each month and I was also told by Mr Goodman that the external auditors every year or every second year did a check of the credit cards and not once did he raise with me any problems with those cards.*

He said that, at the end of his tenure at the Council, a reconciliation took place when Ms Cullinane provided him with recent credit card statements and allocated them to cost centres.

Mr Fitzgerald gave evidence that he believed that the Council did not have a credit card policy in place. His evidence was confirmed in the May 2010 audit management letter addressed to him. The letter recommended that the Council develop a comprehensive policy regarding the use of credit cards, including the circumstances in which cards may and may not be used including credit limits and reconciliation procedures which provide for maintenance of a register of cards and card limits. Ms Kirchner introduced a credit card policy at the Council in June 2012.

### **Did Mr Fitzgerald misuse his corporate credits cards?**

The available records before the Commission do not establish that Mr Fitzgerald exceeded the \$20,000 annual limit he believed he was entitled to use for discretionary expenditure under the terms of his contract. The issue for determination is whether Mr Fitzgerald reasonably believed that clause 3.5 entitled him to charge personal expenditure on his Council credit cards.

Counsel Assisting submitted that a reasonable person, when reading the loyalty retention clause, would understand that it was designed for work-related travel and study and, if the clause was designed to facilitate purely discretionary expenditure, there is no reasonable explanation for the inclusion of the sentence, "Council recognises the benefits of travel and study to help compare our City to others and to drive the best outcomes for the City by introducing the best available". Counsel Assisting submitted that clause 3.5 permitted Mr Fitzgerald to spend an amount of money up to \$20,000 in relation to travel and study, which was connected to his work with the Council, and it did not allow him to spend the money as he saw fit on purely discretionary expenditure.

Mr Fitzgerald's legal representatives submitted that clause 3.5 should be interpreted broadly and that the loyalty retention clause was not limited by subsequent wording

to travel or study. Mr Fitzgerald's legal representatives submitted that Mr Fitzgerald was entitled to spend up to \$20,000 per annum on what he saw fit. In support of this, it was submitted that, given clauses 3.1 and 3.2 deal with travel expenses, there is no need for travelling expenses to be dealt with again under clause 3.5, and an interpretation that did so would require the Commission to assume that the parties had agreed to add a further clause to deal with travelling expenses.

In the Commission's view, clause 3.5 of Mr Fitzgerald's 2006 contract of employment is ambiguous, poorly worded and can be interpreted in more than one way. The Commission is not satisfied that the first two sentences of the clause – "Council seeks to retain effective staff. An annual allowance of \$20,000 is to be available to the General Manager to use as he determines from time to time" – are limited to travel- and study-related expenditure by the inclusion of the third sentence: "Council recognises the benefits of travel and study to help compare our City to others and to drive the best outcomes for the City by introducing the best available". In the circumstances, the Commission is satisfied that Mr Fitzgerald's interpretation of clause 3.5, namely, that it allowed him to spend an annual allowance of \$20,000 on discretionary expenditure, was reasonable.

Furthermore, there is other evidence before the Commission that supports the conclusion that Mr Fitzgerald's understanding of clause 3.5 was reasonable. In reaching this conclusion, the Commission has taken into account a memorandum dated 23 December 2004 from the Council's auditors addressed to "Botany Council". It provides:

*As part of his remuneration package, the General Manager receives the following amounts:*

*Superannuation supplement 20,000.00  
Paid directly to a superannuation fund—no tax issues*

*Allowances*

<i>Motor vehicle</i>	<i>12,000.00</i>
<i>Civic</i>	<i>6,000.00</i>
<i>General (as per Council resolution)</i>	<i><u>20,000.00</u></i>
	<i>38,000.00</i>

*These amounts were not paid during the 2004 financial year. The GM incurred private expenditure on his Council credits [sic] cards. In the 2005 financial year, this private expenditure was deducted from the allowances due to him. The balance of the allowance was paid to the GM.*

*The three allowances listed above should be taxed (as per PAYG schedules) and included on the group certificate in the year they are paid.*

*Although, the GM incurred private expenditure on the Council's credit card, this is NOT subject to FB as the use of the credit cards is merely a method of payment of the allowances.*

*Although the allowances related to the 2004 financial year, the actual setting off of the credit card expenditure did not incur [sic] until the 2005 financial year. Therefore, the payment of the allowances was not considered paid until the 2005 financial year.*

<i>Reconciliation</i>	
<i>Allowances due (per above)</i>	<i>38,000.00</i>
<i>Tax at 48.5%</i>	<i><u>18,430.00</u></i>
<i>After tax amount due</i>	<i>19,570.00</i>
<i>Credit card expenditure</i>	
<i>Diners Club</i>	<i>4,593.70</i>
<i>Master Card #1</i>	<i>15,386.83</i>
<i>Master Card #2</i>	<i><u>12,694.18</u></i>
	<i>32,674.71</i>
<i>Net amount due</i>	<i>19,570.00</i>
<i>Less credit card expenditure</i>	<i><u>32,674.71</u></i>
<i>Net amount overpaid</i>	<i>13,104.71</i>

*Recommended action:*

*1. Include the following amounts on GM's 2005 group certificate:*

<i>Salaries and wages</i>	<i>38,000.00</i>
<i>PAYG Tax deducted</i>	<i>18,430.00</i>

*2. Make arrangements with the GM to recover the overpayment and ensure the appropriate amount of tax is deducted.*

*3. Pay the PAYG relating to the allowances to the ATO on the next BAS.*

This memorandum provides evidence that, in 2004, the Council's external auditor was aware that Mr Fitzgerald used the corporate credit cards for personal expenditure because allowances payable under the terms of his remuneration package had not been paid to him. In the Commission's view, the 2004 memorandum provides limited corroboration of Mr Fitzgerald's evidence that he believed he was entitled to charge the Council up to \$20,000 in personal expenses each year.

It is unclear why Mr Fitzgerald, as the general manager, did not take steps to check that the credit card statements were acquitted and the expenditure audited. It is not clear how Mr Fitzgerald expected that the credit card statements should be acquitted, particularly when he gave evidence that he did not keep a record of personal expenditure on

the credit cards and there is no evidence of any relevant receipts or supporting documentation being provided to the accounts section. Mr Fitzgerald's submissions in reply do not cast any light on that point. Rather, Mr Fitzgerald's legal representatives submitted that Mr Fitzgerald provided a statement in relation to particular transactions on the credit card statements without reference to the original Council records. It is unclear to the Commission what records Mr Fitzgerald expected the Council to retain when his evidence was that he did not keep a record of personal expenditure and did not take steps to ensure the credit cards were properly acquitted.

Mr Goodman gave evidence, however, that Mr Fitzgerald did not see the credit card statements and that he – rather than Mr Fitzgerald – approved them for payment. There is also no evidence before the Commission that Mr Fitzgerald was contacted by any member of the accounting staff in relation to any aspect of his credit card expenditure. Further, there was no Council corporate credit card policy in force at the time that set out the proper procedure in relation to the use of the corporate credit cards.

### Payments recorded on the Fujitsu system

On the last day of the public inquiry, the Council produced a spreadsheet located in its Fujitsu financial system, the previous financial system of the Council. The spreadsheet shows that, between November 2005 and July 2009, the Council drew a number of cheques for \$20,000 payable to the St George bank for "Travel Expenses" or "Travelling Expenses". The cheques total \$160,000.

It is not evident from the face of the document that the payments were received by Mr Fitzgerald. The payments appear to be made to the St George bank. The figure of \$20,000 for "Travel Expenses" or "Travelling Expenses" corresponded with the figure under the loyalty retention clause at clause 3.5 of Mr Fitzgerald's 2006 contract. The spreadsheet also reflected payments of \$20,000 for "Supplementary Superannuation" and "Superannuation" and payments of \$12,000 for "Car Allowance". These figures were also consistent with the amounts allowed under Mr Fitzgerald's remuneration package. The descriptions given for some of the payments were "GM Supplementary Super" and "GM Car Allowance". The letters "GM" are likely to represent "General Manager".

Mr Fitzgerald said he did not know what "travel expenses" meant and that he wanted an opportunity to reconcile the payments set out in the spreadsheet against his bank statements. He reiterated that, "I wouldn't use the [corporate credit] card unless I believe I had the entitlement".

The Commission sought to obtain available records from financial institutions to establish whether the payments identified in the spreadsheet were received by Mr Fitzgerald. One cheque (cheque number

102559) for "Travel Expenses" dated 30 July 2009 in an amount of \$20,000 was produced to the Commission. This cheque was paid into Mr Fitzgerald's bank account on 16 November 2009. The Commission was not able to obtain any other cheques. In these circumstances, the Commission is not satisfied that Mr Fitzgerald received the other payments between November 2005 and July 2009 for "Travel Expenses" and "Travelling Expenses" set out in the spreadsheet.

The Commission is not satisfied that the payment by cheque dated 30 July 2009 for "Travel Expenses" relates to Mr Fitzgerald's entitlements under clause 3.5 of his 2006 contract. Beyond the amount paid to Mr Fitzgerald, being \$20,000, there is no evidence before the Commission that this payment was connected with that entitlement.

### Payments to Bloggs Consulting or MB Consulting

Mr Goodman gave evidence that he provided cash payments to Mr Fitzgerald, totalling \$8,400 a month over a period of 10 years, purportedly for consulting work carried out for an entity called Bloggs Consulting. Mr Goodman did not know of any legitimate work carried out by Bloggs Consulting but he said, on one occasion, Mr Fitzgerald introduced him to a person called "Mr Bloggs". Mr Goodman suspected that Mr Fitzgerald kept the payments himself but was never directly told this by Mr Fitzgerald. Mr Goodman claimed that Mr Fitzgerald gave him blank invoices and told him: "[I]f you need one you can fill it out ... to justify a payment". According to Mr Goodman, the payments were made every month for about 10 years. Mr Goodman denied that he was the recipient of the payments.

Mr Goodman said that, each month, after receiving instructions from Mr Fitzgerald to arrange payment to Bloggs Consulting, he approached either Mr Thompson or Mr Byrnes to countersign two cheques. The cheques were cashed at the bank. Mr Goodman said he arranged for two cheques, each of \$4,200, to be cashed and would generally place \$4,200 cash in two separate envelopes. He gave the cash to Mr Fitzgerald in his office or to Mr Fitzgerald's secretary in an envelope marked "Confidential".

During the public inquiry, the Council produced records relating to payments to an entity called MB Consulting. Between 11 August 2003 and 12 November 2010, MB Consulting received around \$300,000 from the Council for consultancy services. Each payment to MB Consulting was for an amount of \$4,200.

Mr Goodman initially told the Commission that he did not recognise the name MB Consulting. At a later stage in his evidence, he said that Bloggs Consulting may have been called MB Consulting.

Each cheque made out to MB Consulting in evidence before the Commission, was co-signed by Mr Goodman and Mr Thompson. Mr Thompson worked in the finance division as the systems administrator. The cheques were marked “non-negotiable”, which signified that they were not supposed to be cashed. However, each cheque was noted, “Please pay cash”. Mr Goodman said that the Council employees from the finance division were able to cash those cheques, “as we did with any petty cash cheque, any travelling allowance cheques that were paid to the general manager, any other cheques, we could cash them. We had an arrangement with the bank”. Mr Goodman agreed that this was because it was a local bank and the bank knew the Council representatives.

Mr Thompson accepted that, between 2003 and 2010, he co-signed cheques made out to MB Consulting. Mr Thompson said that he or Mr Goodman wrote “Please pay cash” on the cheque. Mr Thompson then provided the cheques to Mr Goodman and Mr Goodman arranged for someone to cash the cheques. At the time, Mr Goodman told him that he gave the cash to Mr Fitzgerald. Mr Thompson said he did not know anything about MB Consulting but was told by Mr Goodman that MB Consulting provided consultancy services for the Council.

Mr Byrnes, the finance division’s financial accountant, could not recall preparing cheques, at the request of Mr Goodman, for MB Consulting. Mr Byrnes said that he could recall the entity MB Consulting and was aware that cheques were drawn for MB Consulting or Bloggs Consulting and paid as cash to Mr Goodman. He understood from Mr Goodman that the cash was given to Mr Fitzgerald.

Mr Fitzgerald did not know of an entity called Bloggs Consulting or MB Consulting. He denied receiving cash payments of around \$8,000 from Mr Goodman. He denied providing Mr Goodman with blank invoices for Mr Goodman to use as he saw fit. He denied asking Mr Goodman to draw cheques for MB Consulting or Bloggs Consulting.

Mr Goodman was not a credible witness. There is no independent, objective evidence to corroborate the allegation that the cash payments made by the Council to MB Consulting or Bloggs Consulting were provided to Mr Fitzgerald. In the circumstances, there is insufficient reliable evidence to support such a finding.

## A Lexus for Ms Baccam

Mr Goodman alleged that Mr Fitzgerald instructed him to use Council funds to pay for a Lexus vehicle intended for Ms Baccam. He claimed that he received a telephone call from Mr Fitzgerald instructing him to take Ms Baccam to a car auction house, either Pickles Auctions or Auto Auctions. Mr Goodman claimed that Mr Fitzgerald walked Ms Baccam through the cars and told her to pick

one. She chose a silver Lexus vehicle, which was paid for with Council funds. Mr Goodman believed that the car was registered in the Council’s name. Mr Goodman authorised the payment. He estimated that Ms Baccam had the vehicle for about four years until Mr Fitzgerald instructed him to sell it, and the proceeds of the sale went to the Council. He later said that Ms Baccam only had the car for about 12 months. According to Mr Goodman, Leong Seng, former Council contractor, was present when the Lexus vehicle was purchased for Ms Baccam.

Ms Baccam gave evidence that she did have possession of a Lexus vehicle that was purchased by the Council. She said that she met Mr Fitzgerald at an auction house and Mr Fitzgerald asked her to pick out the car she wanted. She picked a Lexus vehicle, which was then purchased. She claimed that Mr Goodman, Mr Fitzgerald’s son and Mr Seng were also at the auction house. She said that Mr Goodman told her that Mr Fitzgerald had approved the purchase of the vehicle by the Council. She said that she drove the car for almost a year.

Mr Fitzgerald denied that he authorised the purchase of a Lexus vehicle for Ms Baccam or that he instructed Mr Goodman to sell the Lexus vehicle.

Mr Fitzgerald said that he did attend Pickles Auctions in Belmore eight or nine years ago because his son wanted to purchase a car. He gave evidence that he telephoned Mr Freitas of Elias & Son Smash Repairs to seek his professional opinion about a car. Mr Fitzgerald said that Mr Freitas, Mr Goodman, Mr Seng and Ms Baccam all attended the auction house. He stated:

*My only conversation and discussion were about the cars that I was interested in my son to buy. And my son subsequently bought one of those cars. There was nothing in any conversation I had with anybody that could be construed that I gave any person permission to buy Marny Baccam a car with Council funds.*

Mr Freitas did not recall anything about a Lexus vehicle purchased for Ms Baccam. Mr Seng told the Commission he was aware that Ms Baccam had possession of a Lexus vehicle but he was not present when the Lexus vehicle was purchased.

There are no records in evidence before the Commission relating to a Lexus vehicle held in the Council’s name.

Mr Goodman and Ms Baccam were not credible witnesses. They both admitted to involvement in serious misconduct through false invoicing schemes. Mr Fitzgerald denied that he authorised the purchase of a Lexus vehicle for Ms Baccam. In the absence of any independent objective corroboration of their evidence, the Commission is not satisfied that Mr Fitzgerald authorised the purchase of a Lexus vehicle for Ms Baccam using Council funds.



## Corrupt conduct

### Gary Goodman

Between December 2003 and January 2012, Mr Goodman wilfully and intentionally used Council corporate credit cards, issued in Mr Fitzgerald's name, to incur personal expenditure of \$620,091.77, knowing that he was not entitled to do so, and then authorised the payment by the Council of the credit card accounts relating to that expenditure.

This conduct on the part of Mr Goodman is corrupt conduct for the purposes of s 8(1)(b) of the ICAC Act because it is conduct that involves the dishonest exercise of his official functions as CFO of the Council.

Mr Goodman's conduct also comes within s 9(1)(a) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Goodman committed criminal offences of fraud under s 192E of the Crimes Act (for offences that occurred from 22 February 2010) and s 178BB of the Crimes Act (for offences that occurred before 22 February 2010).

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct because the conduct took place over a significant period of time, between December 2003 and January 2012. The conduct involved a significant amount of money and the Council's credit cards were used as a source of funds as and when Mr Goodman wanted. As CFO, Mr Goodman held a position of trust within the Council and his conduct involved a significant breach of that trust. The conduct was premeditated and involved a significant level of planning. Given that Mr Goodman

was a senior public official, Mr Goodman's conduct could have impaired public confidence in public administration. Furthermore, the conduct could involve offences pursuant to s 192E of the Crimes Act (for offences that occurred from 22 February 2010), which have a maximum penalty of 10 years imprisonment and are serious indictable offences, and s 178BB of the Crimes Act (for offences that occurred before 22 February 2010), which have a maximum penalty of five years imprisonment, meaning they are serious indictable offences.

### Section 74A(2) statement

The Commission is satisfied that Mr Goodman and Mr Fitzgerald are "affected" persons.

### Mr Goodman

The evidence Mr Goodman gave was the subject of a declaration under s 38 of the ICAC Act and, therefore, cannot be used against him in criminal proceedings, except for offences under the ICAC Act. There is other admissible evidence, however, that would be available, including Council records, invoices and credit card statements. There is also admissible evidence in relation to Mr Goodman's position at the Council and the fact that he was in a position to access the credit card numbers and authorise the payment of the credit card accounts by the Council.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Goodman for offences of fraud pursuant to s 192E of the Crimes Act (for offences that occurred from 22 February 2010) and s 178BB of the Crimes Act (for offences that occurred before 22 February 2010).

### Mr Fitzgerald

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with regard to the prosecution of Mr Fitzgerald for any offence.



## Chapter 7: Corruption prevention

The scale, breadth and duration of corruption at the Council cannot be attributed to a few rogue individuals alone. Overwhelming failures in the Council's procedures and governance framework created significant opportunities for corruption, and Mr Goodman and others took full advantage.

Mr Goodman exercised extraordinary, and often exclusive, control over many of the Council's high-risk financial functions. These functions were characterised by an almost total lack of formal processes. Procurement was ad hoc, with little oversight, payment procedures were poorly controlled, the accounts management system was accessible only by a few key staff within the finance division, the use of valuable Council resources (such as vehicles) was effectively unmonitored, and there were no independent checks on the use of credit, taxi and other charge cards. Mr Goodman's influence over such poorly controlled processes created an environment that was exceptionally vulnerable to the scale of corruption that occurred.

Such obvious and serious control failures were able to persist for as long as they did because the Council's governance mechanisms were not functioning effectively. Key financial and operational staff lacked the necessary capabilities to perform their roles. The internal audit function was prevented from examining many of the areas exploited by Mr Goodman and the significant issues it did discover were ignored. The Council's external auditor identified numerous serious control failures, but did not report them to either the Council's audit committee or elected body, leaving many to persist for years. The audit committee members themselves did not actively seek any information on the effectiveness of the Council's control framework. In short, the Council's governance mechanisms did not function effectively, thereby allowing the control failures exploited by Mr Goodman to persist unabated.

In NSW, the elected body of a council is primarily responsible for overseeing the governance of their administrations; similar to how corporate boards oversee

corporations. Unlike corporate boards, however, elected bodies have limited access to their administrations, may lack the skills and experience to provide effective oversight, and are not incentivised to ensure good governance. Furthermore, despite persistent and overwhelming control failings and the failure of the Council's governance mechanisms to resolve them, the Council was not subject to sufficient external regulatory intervention. While the minister for local government ("the Minister") may intervene in local councils to rectify maladministration, his or her capacity for detecting and investigating via the Office of Local Government (OLG) was limited. Consequently, the governance model for local government at the time of the corrupt conduct did not facilitate effective oversight by elected bodies or intervention by the Minister to ensure good quality governance and administrative practice within local councils.

This chapter articulates the systemic failures, both within and beyond the Council, which allowed or facilitated the corrupt conduct of Mr Goodman and others. Since the Council has recently been amalgamated, recommendations relating to Council processes and governance arrangements are made to Bayside Council. Recommendations concerning the local council governance framework are made to the NSW Government.

### Mr Goodman's extraordinary control of Council processes

Transparency and efficiency are natural antidotes to corruption. Transparency is the antithesis of corruption's secrecy, subterfuge and privacy; when actions can be hidden, corruption can flourish undetected. Likewise, efficiency is the counter to the organisational waste from which the corrupt can profit without arousing suspicion by affecting the organisation's bottom line. To prevent corruption, systems and controls are best designed to ensure that an organisation's financial operations

and its decision-making are transparent and efficient. The Council's systems and controls ensured neither.

Mr Goodman's corruption was possible because he exercised extraordinary influence over the Council's financial operations, with few controls and little oversight. He controlled budgets and expenditure, had effective end-to-end control of vulnerable financial processes, and was uninhibited by what was a poor and ineffective set of organisational controls. He was able to easily conceal the majority of his conduct and exploit the inefficiency created by the lack of effective organisational controls.

### **The finance division had overwhelming control over expenditure**

To a great extent, Mr Goodman's corruption was possible because his actions were concealed. He had almost complete control and visibility of the Council's finances and related processes. This status quo meant few others could view the Council's accounts and detect missing funds or flag Mr Goodman's unauthorised expenditure, thereby leaving Mr Goodman to continue his conduct largely unchallenged.

#### **Budgets and expenditure**

The Council's finance division managed all aspects of the Council's finances. It had absolute control of a range of Council processes; from the development of budgets to the monitoring of expenditure. No managers outside this division had direct access to their budgets. While these managers were able to request this information from Mr Goodman or Mr Thompson, requests were sometimes denied or ignored, and at least one manager was content never to request it at all.

This domination allowed Mr Goodman to use his position as head of the finance division to unilaterally set excessive budgets that allowed his misappropriation of funds. The lack of access to budget or expenditure information by other Council officers prevented anyone from outside the finance division from detecting that funds were missing.

#### **Use of charge cards**

One obvious example of how Mr Goodman's unilateral control over the Council's finances facilitated his corruption was his misuse of Council credit and charge cards. In under 17 months, Mr Goodman incurred Cabcharge expenditure in excess of \$49,000, and in nine years, he misused Mr Fitzgerald's credit card to a sum in excess of \$620,000. Furthermore, Mr Goodman misused fuel cards for unauthorised private expenditure.

The misuse of these cards was made possible by Mr Goodman's sole role in approving charge card expenditure. Charges on the Council's credit, taxi and fuel cards were all approved by Mr Goodman alone and

not subject to scrutiny. Combined with his exclusive role in overseeing the Council's accounts, there was little chance any inappropriate expenditure on the cards would be detected, regardless of the amounts spent. With the exception of his misuse of taxi charges, detected incidentally, the Council detected none of the inappropriate card expenditure, despite its size.

#### **Critical financial segregations were absent**

Some financial processes involving the transfer of money from an agency into private hands are so risky that they should not be under the exclusive control of any one individual. In most agencies, these payment processes are subject to segregation of duties as a means of preventing the misappropriation. Examples of processes that ought to be segregated include modifying the vendor master file (VMF), procure-to-pay arrangements, and developing budgets and monitoring expenditure against budgets.

The Council had minimal segregations in place to manage the risks associated with these processes. Additions and changes to the VMF could be performed by individual officers without oversight. Council officers sometimes solely determined need, selected a supplier, certified delivery and approved payment in relation to the same procurement transaction. As discussed, Mr Goodman had complete control over developing budgets and monitoring expenditure against them. Furthermore, additional corruption opportunities arose from a lack of segregation across many of the Council's financial processes.

#### **Vendor master file**

The VMF is a list of an organisation's suppliers, usually linked with the accounts payable system. The VMF represents a significant control on the payment of invoices because a vendor and its bank accounts details must be on the VMF before it can be paid. In order to benefit from a false invoice, a corrupt official therefore needs to either cause a (possibly fictitious) supplier to be added to the VMF, or to manipulate the bank account details of an existing supplier on the VMF.

Since a poorly controlled VMF creates serious corruption opportunities, a variety of segregation and review-based controls should be employed to ensure its integrity. For instance, the process of adding new vendors to the VMF is best segregated across multiple individuals, as is the process of modifying vendor details within the VMF to create counter-checks to ensure that vendors listed are genuine and their details are correct. Additionally, changes to the VMF may be periodically reviewed and dormant vendors deleted to prevent them being used as a vehicle for making corrupt payments.

Until at least mid-2015, the Council's VMF was not subject to any segregation or review-based controls.

In practice, accounts payable clerks would add vendors without any review by others and without checking that key details, such as vendors' ABNs, were genuine.

The lack of safeguards surrounding the VMF facilitated some of the corrupt conduct exposed by the Commission. Non-genuine vendors were added to the file and bank details of dormant vendors were changed to those of Mr Goodman. Since there was no periodic review of changes to the VMF and dormant vendors were not deleted, this allowed payments made to Mr Goodman and others to appear legitimate.

Authorising invoices for payment is also an area for which segregation of duties is critical. For instance, it is better practice to prevent one individual from both approving a payment to a supplier and certifying that that supplier has delivered the relevant goods or services. Similarly, a three-way match process – that is, matching the purchase order, invoice and delivery verification – was not in operation at the Council.

At the Council, the same official responsible for approving the purchase of the goods or service in question often certified their delivery. Indeed, for a given supplier engagement, a whole series of processes was often performed by one individual. For instance, in relation to a specific engagement, the acting manager of the Business Unit typically allowed his supervisors to determine need, procure the contractor, sign off on the contractor's work, and then authorise the invoice for payment, often without oversight.

The effect of this lack of segregation was to create opportunities for corrupt invoicing that were ultimately exploited. For instance, Ms Baccam was able to create and authorise false invoices without needing other officers' involvement.

### **Segregation across financial processes**

While each of the above examples of the lack of segregation within a process creates control weaknesses, the effect is amplified where one individual has control over several processes. End-to-end control over either procure-to-pay or budgeting can create corruption opportunities, but having simultaneous end-to-end control over both processes creates further opportunities and substantially reduces the threat of detection. Such an arrangement allows a person to engage easily in corrupt schemes without needing to collude with others. As such, Mr Goodman was able to fatten budgets to cover his misappropriation, as well as approve fraudulent invoices, thereby concealing fraudulent payments.

The Council's financial management was typified by a lack of segregation across its financial processes. Mr Thompson's responsibilities sometimes included

creating purchase orders, processing invoices, authorising invoices for payment, performing account and bank reconciliations, performing the electronic transfer of funds to Council suppliers and producing all reports on the financial accounts. He could also make changes to the accounting system, including the VMF, without oversight. Having end-to-end control over such a large number of high-risk processes created enormous corruption opportunities that were exploited by Mr Goodman.

## **RECOMMENDATION 1**

**That Bayside Council reviews its financial processes and makes any necessary changes to ensure that:**

- **its vendor master file is subject to appropriate segregation and review-based controls**
- **sufficient segregations exist in its invoice payment processes (including the introduction of a three-way match arrangement) to manage the risks associated with fraudulent payments**
- **operational managers have visibility over, and involvement in, setting budgets and monitoring expenditure against these budgets**
- **adequate segregations exist across different financial processes.**

### **Loose processes that were vulnerable to corruption**

Corruption is difficult to perpetrate where an organisation's processes are efficient and well controlled. In such an environment, improper conduct, such as misappropriation of funds or misuse of assets, is either prevented from happening or quickly detected. By contrast, processes that are loose create opportunities for corruption and make detection difficult.

The Council processes relevant to this investigation were characterised by inadequate controls, which greatly facilitated Mr Goodman's corruption. High-risk functions such as procurement and invoice payment were performed in an ad hoc and uncontrolled manner, often relying entirely on the discretion of single officers, even when relevant policy documents existed. The situation allowed Mr Goodman to determine how many of these processes were performed, thereby amplifying his influence over the Council's finances. With few safeguards governing vulnerable processes, it is unsurprising that many were repeatedly subverted to corrupt ends.

### Procure-to-pay

The vast majority of funds misappropriated from the Council were corruptly obtained via invoice payment fraud. The Council's lack of controls over its procurement function afforded Mr Goodman and others ample opportunity for this corruption. Such conduct was only possible because Mr Goodman had the ability to engage particular suppliers, with whom he had a pre-existing relationship, without question.

The procure-to-pay system at the Council was, in practice, loose and ad hoc. As a matter of course, market testing did not occur, financial delegations were breached, and invoices were approved either without purchase orders or via purchase orders that lacked supporting documentation. In effect, standard controls designed to prevent corruption were frequently ignored, leaving a high-risk function extremely vulnerable to corruption.

The Council had no formal processes in place to ensure that staff tested the market when engaging suppliers. While a procurement policy was introduced in 2012, and the Council had a list of preferred suppliers, in practice nothing prevented staff from engaging whichever supplier they saw fit. Suppliers could be paid when they submitted an invoice, regardless of whether a purchase order had been raised or goods and services delivered. For example, Mr Goodman authorised the payment of millions of dollars of fraudulent invoices to companies operated by Mr Mark, Mr Subeski, Mr Freitas, Mr Alexander and Mr Gajic. Similarly, Ms Baccam was able to establish a company, have it added to the VME, then create, submit and authorise false invoices for the company, and receive payment.

The Council did have a list of financial delegations but it was either ignored, not made available, or unknown. Instead, staff relied on the verbal direction of Mr Goodman to know who could approve what level of expenditure. The situation meant that, while invoices were usually checked to ensure they had been appropriately authorised, it was Mr Goodman alone who determined who held such authorisation. The result was that numerous invoices were paid despite the authorising officers lacking sufficient official delegation. This included Ms Baccam (who had no financial delegation but approved thousands of dollars in false invoices), Mr Thompson (who also had no written financial delegation), and Mark Goodman (who authorised purchases with what he believed to be a \$50,000 delegation, despite having no delegation specified on the Council's list of delegations).

There were also few controls on the verification and payment of invoices to ensure their authenticity. In practice, purchase orders were created on the basis of a telephone call from a staff member without checking that the purchase was justified or that an appropriate procurement process had been followed.

Moreover, numerous invoices were approved without any purchase order first being raised.

### Fleet management

The Commission's investigation also revealed that Council-owned vehicles were commonly used for private purposes, including by people not employed by the Council. On occasion, the Council was required to pay traffic infringements relating to Council vehicles because the driver could not be identified. This was possible because the finance division exclusively managed the Council's vehicle fleet and there was, in practice, no policy governing, or system for monitoring, vehicle use.

Similarly, the Council lacked a robust system to ensure that vehicles were disposed of appropriately or within appropriate timeframes. Such freedom and lack of oversight provided clear opportunity to misuse a valuable resource.

### Credit cards

The Council's lack of specific policies or procedures governing credit card use gave Mr Goodman exceptional discretion over their use.

The Council's credit card policy was not introduced until 2012 and no policies existed for the other charge cards at least until the time of the Commission's public inquiry. While the Council's code of conduct required staff to act properly and ethically and to not use Council resources for private benefit, this was inadequate to specify what was, or was not, appropriate card use, leaving this to Mr Goodman alone to determine.

## RECOMMENDATION 2

**That Bayside Council undertakes a review of the control frameworks governing processes that are vulnerable to corruption (including those related to procurement, invoice payment, fleet management and charge-card usage) and implements any recommendations arising from the review.**

### The recruitment and capabilities of key Council staff

Mr Goodman was able to establish and control ad hoc processes that facilitated his corrupt conduct in part because Council staff lacked the requisite skills and experience to perform their roles effectively. This lack of skills and experience allowed Mr Goodman to determine the nature of many of the Council's financial processes without question.

The lack of relevant skills among Council staff who had financial responsibilities was striking. Mr Byrnes, the Council's financial accountant, had no accounting



qualifications. Mr Thompson, who administered the Council's financial system, had no formal computing qualifications. Mark Goodman headed the Business Unit despite having had no managerial, financial, or other relevant skills or experience. Indeed, Mr Goodman himself was appointed CFO despite having no accounting qualifications and only limited accounts payable experience.

Unskilled and unqualified staff are less likely to identify and question deficient processes. At the Council, a number of such staff stated that they simply followed the status quo, rather than seeking any formal guidance. They were also unaware of standard, robust methods of financial management. For instance, Mr Thompson acquiesced to many of Mr Goodman's highly unusual requests surrounding the approval of payments and signing of cheques. Comparatively, the Council's qualified financial coordinator, who was employed in February 2015, immediately developed serious concerns about the lack of adequate controls across processes within the finance division.

Under-skilled staff were able to obtain their positions at the Council because recruitment processes were informal and often subject to influence by senior Council staff. A number of Council staff involved in the investigation had been hired and/or promoted without a robust, competitive process having taken place. Indeed, Mr Goodman, Mr Thompson, Mr Byrnes, Ms Baccam and Mark Goodman all had a prior association with either Mr Fitzgerald or Mr Goodman before commencing employment at the Council, and appear to have been engaged without a genuine competitive, merit-based selection process. Mr Foo also noted that there was "no formal recruitment process for staff at the Business Unit" and, with no roles advertised, "staff just bring their mates to work".

A stand out example of how poor recruitment processes facilitated Mr Goodman's corruption was the promotion of Mark Goodman to the acting manager of the Business Unit. Initially employed as a gardener and labourer without a competitive selection process, Mark Goodman was promoted to acting head of the Business Unit without any further interview, selection process or additional training, and despite his lack of management or financial training or experience. Once appointed, he did not ask to see budgets for the Business Unit, admitted to being unable to read or understand financial statements, did not read consultant or audit reports about the Business Unit, and believed that Business Unit operations were generally good and in no need of improvement. He also referred all financial matters back to the finance division to deal with. His lack of understanding of robust controls, basic financial management and unquestioning acceptance of the status quo contributed to the enormous

freedom Mr Goodman had to misappropriate millions of dollars from the Business Unit without detection.

### RECOMMENDATION 3

**That Bayside Council reviews the position descriptions of key operational and financial roles to ensure that they include the required skill sets and qualifications.**

## The Council's governance mechanisms were ineffective

The Commission's findings concerning the serious and extensive control failures at the Council call into question the efficacy of the Council's governance mechanisms. That Mr Goodman could exploit them since at least 1997 without being detected, or the failures remedied, indicates that the Council's governance framework failed comprehensively.

At the Council, there were weaknesses across a wide variety of governance processes and functions, including those involving the general manager, the internal audit function, external audit, and the operation of the audit committee. Each of these had a role in detecting and remediating poor internal controls and each was ultimately unsuccessful.

### The role of the general manager

General managers are responsible for ensuring that effective controls are in place to ensure sound financial management. More specifically, clause 209 of the Local Government (General) Regulation 2005 requires council general managers to ensure that:

*(b) effective measures are taken to secure the effective, efficient and economical management of financial operations within each division of the council's administration, and*

*(c) authorising and recording procedures are established to provide effective control over the council's assets, liabilities, revenue and expenditure and secure the accuracy of the accounting records, including a proper division of accounting responsibilities among the council's staff,*

Also, the Standard Contract of Employment for General Managers, enforced by the *Local Government Act 1993* ("the LGA"), states that general managers must maintain satisfactory operation of a council's internal controls, reporting systems including public interest disclosures, grievance procedures, the documentation of decision-making, and sound financial management.



While Mr Fitzgerald introduced the Council's procurement policy in 2010 and Ms Kirchner introduced a number of policies (such as credit card, cash-handling, payment of expenses, assets and materials disposal, and a fraud and corruption prevention policy), the pervasive corrupt conduct of Mr Goodman and others continued. Audit reports also continually highlighted that some policies were not being followed and that fundamental control failings remained.

Introducing these policies did not prevent the corrupt conduct of Mr Goodman and others because these policies were, in some cases, inadequate and not enforced or supported by a sound control framework. The Council's procurement policy contained no requirement for independent sign-off on procurement decisions, making it easy to ignore the policy's requirements for obtaining quotes or conducting tenders. Mr Goodman and others also ignored the Council's assets and materials disposal policy, code of conduct, and fraud and corruption prevention policy; all with little consequence.

The Commission's investigation demonstrates that the introduction of policies and, in Ms Kirchner's case, the provision of related training, is not sufficient to ensure an adequate control framework is in place and operating effectively. General managers, and the elected bodies that oversee them, must also obtain independent assurance that such controls are both adequate and working as intended. Where they are operating effectively, internal and external audit may provide such assurance,

## RECOMMENDATION 4

**That Bayside Council ensures that the implementation of both internal and external audit recommendations is considered by the elected body when evaluating the performance of the general manager.**

### Internal audit

One key element of the Council's governance framework was its internal audit function. The function's role in providing independent assurance on the effectiveness of internal controls and the risk management framework was, however, severely curtailed. The internal audit function lacked independence from the Council's management and was largely ignored by the Council's audit committee.

### Lack of independence

The independence of an internal audit is a critical feature in ensuring its effectiveness. Any audit function must be independent of the areas it audits to prevent management interference in the scope, conduct and/or reporting of relevant audits.

In local government, the independence of the internal audit function is achieved by having the head of the internal audit report administratively to a council's general manager but functionally to its audit committee. In practice, this means that the audit function is directed by, and reports to, the council's audit committee while the general manager is responsible for the internal auditor's day-to-day operations. Although general managers may delegate this responsibility, this should only occur where the internal auditor's ability to act without interference is not impaired.

The internal audit function at the Council was not sufficiently independent of the Council's management. Both functionally and administratively, the internal auditor reported to Ms Cullinane, the deputy general manager. This created a conflict of interest, since Ms Cullinane was responsible for both the internal auditor's employment and a number of business areas under the internal auditor's remit, and had the ability to influence how the internal audit function was performed.

Ms Cullinane influenced the target of internal audits, independently of the audit committee, by selecting which of the business areas listed on the Council's audit plan were to be audited. She also directed the internal auditor to conduct audits that were not listed on the audit plan. Ms Cullinane was able to do this because the Council's audit plan contained no risk ratings and did not specify an order for audits. This was despite the Internal Audit Guidelines of the OLG recommending that, "internal audit plans ... be based on a risk assessment of the council's key ... areas to determine an appropriate timing and frequency of [audits]".

Ms Cullinane also restricted the scope of these audits by directing the internal auditor not to examine the financial aspects of the business areas being audited. With financial transactions and associated financial loss representing one of the predominant risks faced by a council, this direction significantly impaired the effectiveness of the internal audit function. Notably, the fact that these audit reports did not examine financial aspects was not considered by the Council's audit committee.

Ms Cullinane also exercised substantial control over the flow of information between the internal auditor and the audit committee. She both received and reviewed internal audit reports before they were sent to the audit committee and presented report results to the audit committee. While the internal auditor attended meetings, she never did so without having Ms Cullinane present and rarely directly addressed meetings. Tellingly, despite having concerns about this arrangement based on her previous experience, the internal auditor told the Commission that she did not feel sufficiently comfortable to raise her concerns since she did not have direct access to the audit committee and Ms Cullinane was always present at meetings.

The result of Ms Cullinane's influence was that the Council's audits were neither systematic nor independent. The target, scope and reporting of audits were all controlled by Ms Cullinane, who had a vested interest in their outcomes due to her responsibility for areas under the remit of the internal audit function. These limitations meant that the internal audit function was severely curtailed in its ability to provide independent assurance of the adequacy of, and compliance with, the Council's internal control systems.

## RECOMMENDATION 5

**That Bayside Council undertakes a risk assessment (including an assessment of fraud and corruption risks) to inform its internal audit plan.**

## RECOMMENDATION 6

**That Bayside Council ensures that its internal audit function operates independently from management by reporting functionally to its audit committee.**

### Failure to implement recommendations

Even when the Council's internal auditor was able to make recommendations to the audit committee, these recommendations were often not implemented. While the audit committee was responsible for monitoring the implementation of audit recommendations, it did not have any system for doing so. This, essentially, allowed recommendations to be ignored.

A salient example was provided by a 2013 internal audit report to the Business Unit. This report identified serious failings in the Business Unit's procurement processes, noting that, "the ... issues show non-compliance with the purchasing process and suggest an overall breakdown in the purchasing process ... This gives rise to a risk of fraudulent behaviour". The report made various recommendations, including clearly segregating individuals raising purchase requisitions and those approving purchase orders, formally documenting procedures in respect of the purchase process, and embedding a management verification control to review the accuracy of pricing calculations. Although these issues were rated of highest importance, weaknesses in the relevant procurement processes persisted until at least October 2015. Moreover, neither the internal auditor nor Councillor George Glinatsis, who both served on the audit committee and chaired the Council's subcommittee to which it reported, could confirm whether the recommendations had been implemented when they appeared at the Commission's public inquiry nearly eight months later.

As a result of a failure to implement internal audit recommendations, the control weaknesses from which Mr Goodman profited persisted – some, for many years

– despite being identified and reported by the Council's internal audit function.

## RECOMMENDATION 7

**That Bayside Council ensures it has a robust system in place to monitor and report on the implementation of internal audit recommendations that is independent from management.**

### External audit

While controls and risk management are the focus of an organisation's internal audit, an external audit provides independent assurance that an organisation's annual financial reports are free from material misstatement (significant error). To achieve this, the external auditors examine not only the financial accounts but also conduct analyses of an organisation's financial processes and transactions. This is to ensure that the organisation has appropriate financial controls in place and that it is operating effectively.

The analyses of financial processes and transactions are performed as part of interim audits, which focus on evaluating the organisation's accounting systems and internal controls. Such audits are conducted at a number of points throughout the financial year, and the identified control deficiencies are summarised in an annual "management letter", together with recommendations on how to remedy these deficiencies.

Prior to issuing a final management letter, auditors typically issue a draft to the organisation's CFO for comment. This allows the CFO to rectify issues identified or ask that some issues are removed if identified in error by the auditor. The CFO's comments are added to the management letter before the auditor issues a final version. Responsibility for addressing the control failures then falls to the organisation (although Australian Auditing Standards require auditors to conduct more detailed analyses if significant control deficiencies are detected) if fraud is suspected or if significant deficiencies identified in previous letters have not been addressed.

Management letters produced by the external audit firm engaged by the Council from 2009 to 2015 identified numerous, serious and recurrent failures in the Council's accounting systems. Despite this, the auditor did not consider it necessary to conduct more thorough examinations of areas associated with the conduct of Mr Goodman and others, including:

- the lack of a procurement policy (2009 and 2010)
- the procurement policy not being followed and staff failing to adequately understand it (2012 and 2013)
- payments being authorised beyond delegations,

and without the conduct of a legally required tender process (2012, 2013, 2014 and 2015)

- inadequate documentation to support the payment of invoices and a lack of independent review of such payments (2009, 2010, 2011, 2012, 2014 and 2015)
- a failure to independently review allocations of costs between the Council's various accounts (2009, 2010, 2011, 2012, 2013, 2014 and 2015)
- bank reconciliations not being done on a timely basis, not being independently reviewed, and not reconciling by substantial amounts (2009, 2010, 2011, 2012, 2013, 2014 and 2015)
- a lack of independent review of the VMF's integrity and no regular reports of changes made to it (2009, 2010, 2011, 2012, 2014 and 2015)
- a lack of role segregations in the finance division with one officer having responsibility for numerous financial tasks as well as having systems administrator privileges (2014 and 2015)
- a lack of a credit card policy (2009, 2010, 2013 and 2014).

From 2009 to 2013, management letters were issued only to the general manager, and in 2014 and 2015, draft letters were issued only to Mr Goodman (and copied to Ms Cullinane). Neither the Council's audit committee nor its elected body ever received the letters. This was a significant oversight and substantially reduced the possibility that the issues identified in the letters would be addressed.

Australian Auditing Standards ("the Standards") require auditors to report significant internal control deficiencies identified during audits to those in the agency charged with governance. "Those charged with governance" are considered "person(s) or organisation(s) ... with responsibility for overseeing the strategic direction of the entity and obligations related to the accountability of the entity" and, further, that they differ from those charged with management that the Standards consider as "person(s) with executive responsibility for the conduct of the entity's operations". While this would seem to require auditors to report management letters, or information to their effect, to councils' elected bodies, the Standards also allow auditors to "determine the appropriate person(s) within the entity's governance structure with whom to communicate".

The Council's external auditor considered Mr Goodman to be "charged with governance" and that communicating the control deficiencies identified during interim audits to him alone satisfied the auditor's obligations under the Standards. This was notwithstanding Mr Goodman's failure to respond to draft letters in both 2014 and 2015, and both letters noting a number of serious issues

considered by the auditor to be "fraud risk(s)" and "particularly concerning". The auditor had a number of opportunities to raise the issues with both the audit committee and the elected body of the Council, since he met with both annually and issued reports to them that made reference to the letters, but he did not consider it his responsibility or obligation to do so.

Despite knowing of their existence, senior members of the Council (such as the elected body and senior staff members) also failed to seek management letters. And, despite it being explicitly recommended in the Internal Audit Guidelines, the audit committee never sought management letters or enquired as to their contents. Mr Glinatsis, an experienced auditor and member of both the elected body and audit committee, told the Commission that he felt that, if issues of concern were identified in audits, then they should have been brought to the audit committee's attention by either the auditor or any of the management representatives present at meetings. Similarly, Ms Kirchner told the Commission she felt that, if audits identified issues of concern, that they should have been brought to her attention by Mr Goodman, Ms Cullinane or the auditor. Ms Kirchner did not query the failure to issue management letters in 2014 and 2015, as she assumed they were being dealt with by Ms Cullinane and Mr Goodman, and assumed that, since no serious issues were brought to her attention, that none had been identified.

The failure of the elected body and audit committee to consider external audit reports concerning systemic weaknesses in financial processes exposed a critical failure in the Council's governance framework. The Commission is of the view that stronger measures are required to ensure that elected bodies and audit committees are made aware of any issues facing their councils that are identified in audits.

*The Local Government Amendment (Governance and Planning) Act 2016* was assented to on 30 August 2016. From 1 October 2016, the principal Act provides that the Auditor-General of the Audit Office of NSW is the auditor for a council and may appoint a person or firm to be a council's auditor. In practice, the Auditor-General will be overseeing a number of vetted commercial firms to undertake this work. This change should bring about an increase in both the quality and consistency of council audits. In particular, the Audit Office will ensure that governance and control weaknesses identified during audits are reported to those charged with both governance and management, including elected bodies, audit committees, general managers, and the CFOs of councils. Furthermore, where issues are considered sufficiently significant, the Auditor-General will report them to the Minister.

The Commission fully supports the Auditor-General taking responsibility for council audits. Had the present system been in place prior to the period that is the subject of this investigation, it is likely that the elected body and audit committee would have at least been aware of the systemic weaknesses from which Mr Goodman and others profited.

### **The Council's audit committee**

The Council's audit committee was established in May 2011 in response to the release of the OLG's Internal Audit Guidelines in September 2010. The guidelines state that an audit committee is a "crucial component of corporate governance [and] is fundamental to assisting the General Manager and council with their oversight function to: ensure all key controls are operating effectively".

In establishing its audit committee, it was the Council's intention to adhere to the guidelines, but in practice it operated in a manner that vastly deviated from them. The audit committee's charter stated that its objective was to "provide independent assurance and assistance to the City of Botany Bay on risk management, control, governance, and external accountability responsibilities". Mr Glinatsis, the Council representative on the audit committee, told the Commission that the audit committee discharged its responsibilities under its charter by "agreeing to a triennial Audit Plan ... reviewing the progress of audits underway and any follow up to completed audits and reviewing financial information". He also told the Commission that he believed that the committee had discharged its duties according to the charter.

Contrary to the explicit advice of the Internal Audit Guidelines, the Council's audit committee never examined management letters, did not ensure that the internal audit function was independent, never met with internal and external auditors independently of management, and did not monitor the implementation of internal audit recommendations. It also had never met four times a year despite being explicitly required to do so by its charter. The result was that it could not fulfil its responsibilities; in particular (as mentioned above), the responsibility of reviewing internal audit reports to ensure that timely responses were made to the issues they identified.

More broadly, the Internal Audit Guidelines state that the "audit committee should report regularly to the council on the management of risk and internal controls"; a requirement echoed in the charter of the Council's audit committee. Despite being the chair of the Council subcommittee to which the audit committee reported, Mr Glinatsis told the Commission that the audit committee had never reported anything concerning the management of risk or the operation of internal controls to

the Council's subcommittee because there were no risks of which the audit committee was aware. The Commission is of the view that this lack of reporting does not satisfy the charter's requirement to report to the governing body "on the management of risk and internal controls".

A properly functioning audit committee is a key mechanism to ensuring that an organisation can detect and remedy the control failings that were exploited by Mr Goodman and others. The operations of the Council's audit committee were manifestly inadequate in this regard. Indeed, the main responsibilities that the audit committee did fulfil were ratifying the Council's audit plan and reviewing the Council's annual financial statement; neither of which were adequate to remedy the overwhelming systemic control deficiencies from which Mr Goodman and others so easily profited.

### **RECOMMENDATION 8**

**That the general manager of Bayside Council conducts a review of the audit committee's effectiveness and the adequacy of its arrangements to ensure that it fulfils the responsibilities of its charter and provides sufficient assistance to Bayside Council's governing body on governance processes.**

### **Governance framework of local government did not improve the Council's resistance to corruption**

The overwhelming failure of the Council's governance mechanisms to detect and remedy its myriad of control failings raises serious questions about the effectiveness of council oversight more generally. The failure of the local government oversight framework at the time of the corrupt conduct to detect or remedy the Council's control and governance weaknesses suggests that the system could not provide adequate assurance that the Council was meeting its legislated standards of governance and administration.

The Commission is of the view that there were two key areas affecting oversight of the Council and NSW councils in general. First, while elected bodies are primarily responsible for council governance, it is questionable whether they are, in practice, able to do so. Secondly, while the OLG can take compliance actions to enforce governance standards, its ability to detect control and governance deficiencies within councils was limited at the time of the corrupt conduct that is the subject of this investigation.

This part of the chapter outlines the limitations of both elected bodies and the OLG at the time of the corrupt conduct to effectively oversee and enforce good



governance in council administrations. It concludes that, despite recent changes, the framework currently in place provides less assurance than that provided by the corresponding framework for state government agencies.

### The effectiveness of elected bodies to oversee council administrations

Notwithstanding a general manager's responsibility for ensuring effective operation of a council's internal controls, ultimate responsibility for ensuring good governance practices in a council lies with the governing body. The role is similar, although not directly comparable, to directors of a corporate board who have responsibility for both the strategic direction of the organisation and for ensuring that the organisation has appropriate controls and risk oversight mechanisms.

Despite having similar responsibilities to corporate board members, councillors are generally not able to oversee their administrations to the same extent that corporate board members are able to oversee the operation of their companies. This reduced capacity for oversight arises from several sources; namely, that councillors generally:

- have limited visibility over council operations
- have limited ability to obtain relevant information from council staff
- may be less incentivised to ensure good governance within their council
- may not have demonstrated skills and experience in management and corporate governance given that they are elected rather than appointed.

Elected bodies are restricted in their visibility of their administration's governance arrangements, particularly in terms of financial controls and risk management practices, because there are few requirements that they be provided with such information. In fact, the only reports elected bodies *must* receive on financial governance are the annual external audit reports on the financial statements and conduct of the audit; neither of which necessarily convey control or risk management evaluations.

At the time of the conduct that is the subject of this investigation, whatever additional information each governing body received on its financial or risk governance, such as internal audit reports or external audit management letters, was largely left to each council to determine (albeit with guidance provided by the OLG). Furthermore, some councillors may not believe that they are even entitled to receive such information, as one councillor claimed during the public inquiry. The result is that elected bodies can easily be ignorant of serious control failings within council.

Elected bodies are also limited in their ability to obtain information not routinely provided to them. To prevent undue interference in council administrations, councillors can only contact staff in accordance with the policy and procedure of their council, and this is sometimes limited to just the general manager. With some elected bodies unable to directly contact other administrative staff, they are often heavily reliant on general managers to inform them of the operation of the council's internal controls and overseeing mechanisms. However, since one of the general manager's standard contract provisions is to maintain satisfactory operation of internal controls, documentation of decision-making and sound financial management, they may be motivated not to report negative information about organisational controls. Councillors are therefore sometimes reliant on a single source of information about governance controls that can, potentially, be biased or incomplete.

Even when elected bodies do receive comprehensive operational and risk-related information regarding their councils, they may not be sufficiently incentivised to exercise their governance responsibilities. Councillors do not receive financial remuneration commensurate with their councils' performance. Instead, councillors are likely to be primarily motivated to serve their constituents and achieve re-election; an end more likely achieved by delivering services and improving amenities rather than diligently overseeing their council's governance.

Furthermore, councillors do not necessarily possess the skills and experience required to effectively oversee controls and risk management. Corporate board directors are appointed by peers based on a prior track record of success in a related field. As a consequence, they usually possess relevant business administration skills, including the knowledge and ability to seek and interpret independent information on the effectiveness of controls. In contrast, councillors are elected by the general public based on considerations that are often different from their skills or experience in overseeing organisational operations. The process for appointing local councillors therefore may not attract individuals skilled in corporate governance.

The result of these limitations is that elected bodies could easily be unaware of serious administrative failings affecting their councils and lack either the competence or incentive to respond effectively. For example, Mr Glinatsis was unaware of the failures at the Council, and believed, despite his auditing background, that actively seeking information on the Council's governance practices was inappropriate. He and the governing body could therefore not act on what they did not know or suspect; that this was possible raises serious questions about whether elected bodies are well-placed to fulfil the oversight role with which they are charged under the LGA.



## The effectiveness of the Minister and OLG to oversee council administrations

While the Minister is broadly responsible for overseeing local government in NSW, including the administration of the LGA and associated regulation, the OLG is the administrative body that gives effect to the Minister's responsibilities. This means that, although responsibility for ensuring good governance lies with the elected body of a council and the general manager, the Minister, via the OLG, may intervene to force councils to comply with their legislative obligations.

Despite these powers, the OLG's ability to detect a council's non-compliance with its legislative obligations has been limited. Previously, the OLG conducted occasional reviews of councils to evaluate their governance controls and operations. The purpose of these "Better Practice Reviews" was to provide recommendations to councils to assist them to improve their governance controls and operations, but the reviews were not in-depth audits of council operations.

In its May 2013 report, the OLG identified some governance failures at the Council as part of its Better Practice Review program, including that the Council "broaden the role of the audit committee/internal auditor to include organisational audits", but referred the issues back to the Council for action. In any event, OLG has now ceased the Better Practice Review program.

To date, audited financial statements are the main periodic source of financial and governance information that the OLG receives from councils. As has been demonstrated by the Commission's investigation, these may not facilitate the detection of abject control failures or serious corruption. The OLG does receive other sources of information that could prompt investigation, such as complaints about councils, but the receipt of such information is, necessarily, ad hoc. While the OLG will now have access to a wider source of information about financial control failures at a council as a result of recent reforms, at the time of the corrupt conduct it could not reliably detect significant failings.

Although the OLG does have extensive powers to intervene in local councils, its capacity to conduct the requisite investigations is curtailed due to limited resources. The OLG can investigate councils and issue mandatory directives for improvement (known as "performance improvement orders"), suspend or disqualify councillors, or conduct public inquiries. Given the intensive nature of investigations, however, the OLG's capacity to investigate all matters of which it is aware, and therefore its ability to exercise these powers, is restricted. Consequently, the use of investigations and formal powers to detect and remedy severe governance failings across the sector cannot be relied on as the sole answer.

As a result of the limitations associated with the effectiveness of elected bodies and the OLG in overseeing local councils, the Commission believes that further reform is required (see below).

## Comparison between local and state government

Compared with state government agencies, local councils in NSW are subject to less rigorous governance requirements. Since the state government is ultimately financially liable for local councils, it is reasonable that the direction of local councils be of comparable sophistication to that which applies to state government agencies.

One key difference between state government agencies and local councils is the extent to which each is subject to direction regarding administrative practices and governance requirements. State government agencies are subject to mandatory directives on their administration and governance by the NSW Department of Premier and Cabinet and NSW Treasury. In contrast, local councils are more often subject to "guidelines" that are mandatory to consider but not mandatory to follow.

Another key difference is state government agencies have much more stringent requirements for audit committees than local councils. With regard to state government agencies, audit committees are mandatory and their composition and operation are governed by strict requirements, with agency heads required to attest each year that these requirements have been met. Committee members are also selected from prequalified skill-based panels overseen by the NSW Government.

The Commission notes that the NSW Government has recently introduced a number of changes to improve the oversight of local councils. As mentioned above, the Auditor-General has been made responsible for the external audits of local councils. This means, inter alia, that the Audit Office will ensure that elected bodies, general managers and audit committees are informed of governance and control weaknesses that are identified in audits. Where councils do not respond to draft letters, final letters will be issued regardless, and, where councils do not remedy issues identified without showing cause, the Auditor-General has the ability to escalate the matter to the Minister. The Auditor-General also has a specific requirement to communicate to the Minister any matters he or she considers sufficiently significant. Finally, the Auditor-General now also has the power to conduct performance audits of the local government sector and report findings to the NSW Parliament.

Moreover, it will also be compulsory for local councils to establish an audit, risk and improvement committee, which will be responsible for reviewing a number of

aspects of a council's operations, including fraud control, financial management and governance.

Despite these improvements, however, as a general proposition, local councils are still subject to less direction than state government agencies. Key differences remain, such as specific requirements around the operation of audit committees and the lack of mandatory administration and governance directives.

## RECOMMENDATION 9

**That the NSW Government considers adopting a model of local council oversight that is comparable to that applicable to state government agencies. This model could include:**

- **mandatory administration and governance directives similar to those that apply to state government agencies**
- **requirements concerning the composition and operation of audit committees that are similar to those that apply to state government agencies**
- **the requirement for council general managers to attest that audit committees are operating in accordance with requirements.**

These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E of the ICAC Act, will be furnished to Bayside Council, the OLG and the responsible minister.

As required by s 111E(2) of the ICAC Act, Bayside Council and the OLG must inform the Commission in writing within three months (or such longer period as the Commission may agree in writing) after receiving the recommendations, whether they propose to implement any plans of action in response to the recommendations and, if so, of the plan of action.

In the event a plan of action is prepared, the agency is required to provide a written report to the Commission of its progress in implementing the plan 12 months after informing the Commission of the plan. If the plan has not been fully implemented by then, a further written report must be provided 12 months after the first report.

The Commission will publish the response to its recommendations, any plan of action and progress reports on its implementation on the Commission's website, [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au), for public viewing.

# Appendix 1: The role of the Commission

The Commission was created in response to community and Parliamentary concerns about corruption that had been revealed in, inter alia, various parts of the public sector, causing a consequent downturn in community confidence in the integrity of the public sector. It is recognised that corruption in the public sector not only undermines confidence in the bureaucracy but also has a detrimental effect on the confidence of the community in the processes of democratic government, at least at the level of government in which that corruption occurs. It is also recognised that corruption commonly indicates and promotes inefficiency, produces waste and could lead to loss of revenue.

The Commission's functions are set out in s 13, s 13A and s 14 of the ICAC Act. One of the Commission's principal functions is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

- i. corrupt conduct (as defined by the ICAC Act), or
- ii. conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or
- iii. conduct connected with corrupt conduct, may have occurred, may be occurring or may be about to occur.

The Commission may also investigate conduct that may possibly involve certain criminal offences under the *Parliamentary Electorates and Elections Act 1912*, the *Election Funding, Expenditure and Disclosures Act 1981* or the *Lobbying of Government Officials Act 2011*, where such conduct has been referred by the NSW Electoral Commission to the Commission for investigation.

The Commission may report on its investigations and, where appropriate, make recommendations as to any action it believes should be taken or considered.

The Commission may make findings of fact and form opinions based on those facts as to whether any particular person has engaged in serious corrupt conduct.

The role of the Commission is to act as an agent for changing the situation that has been revealed. Through its work, the Commission can prompt the relevant public authority to recognise the need for reform or change, and then assist that public authority (and others with similar vulnerabilities) to bring about the necessary changes or reforms in procedures and systems, and, importantly, promote an ethical culture, an ethos of probity.

The Commission may form and express an opinion as to whether consideration should or should not be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of a person for a specified criminal offence. It may also state whether it is of the opinion that consideration should be given to the taking of action against a person for a specified disciplinary offence or the taking of action against a public official on specified grounds with a view to dismissing, dispensing with the services of, or otherwise terminating the services of the public official.

## Appendix 2: Making corrupt conduct findings

Corrupt conduct is defined in s 7 of the ICAC Act as any conduct which falls within the description of corrupt conduct in s 8 of the ICAC Act and which is not excluded by s 9 of the ICAC Act.

Section 8 defines the general nature of corrupt conduct. Subsection 8(1) provides that corrupt conduct is:

- (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or
- (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
- (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
- (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

Subsection 8(2) specifies conduct, including the conduct of any person (whether or not a public official), that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority, and which, in addition, could involve a number of specific offences which are set out in that subsection.

Subsection 8(2A) provides that corrupt conduct is also any conduct of any person (whether or not a public official) that impairs, or that could impair, public confidence in public administration and which could involve any of the following matters:

- (a) collusive tendering,
- (b) fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety or the environment or designed to facilitate the management and commercial exploitation of resources,
- (c) dishonestly obtaining or assisting in obtaining, or dishonestly benefitting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage,
- (d) defrauding the public revenue,
- (e) fraudulently obtaining or retaining employment or appointment as a public official.

Subsection 9(1) provides that, despite s 8, conduct does not amount to corrupt conduct unless it could constitute or involve:

- (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.

Section 13(3A) of the ICAC Act provides that the Commission may make a finding that a person has engaged or is engaged in corrupt conduct of a kind described in paragraphs (a), (b), (c), or (d) of s 9(1) only if satisfied that a person has engaged or is engaging in conduct that constitutes or involves an offence or thing of the kind described in that paragraph.

Subsection 9(4) of the ICAC Act provides that, subject to subsection 9(5), the conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in s 8 is not excluded

by s 9 from being corrupt if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

Subsection 9(5) of the ICAC Act provides that the Commission is not authorised to include in a report a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection 9(4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from the ICAC Act) and the Commission identifies that law in the report.

Section 74BA of the ICAC Act provides that the Commission is not authorised to include in a report under s 74 a finding or opinion that any conduct of a specified person is corrupt conduct unless the conduct is serious corrupt conduct.

The Commission adopts the following approach in determining findings of corrupt conduct.

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of subsections 8(1), 8(2) or 8(2A) of the ICAC Act. If they do, the Commission then considers s 9 and the jurisdictional requirement of s 13(3A) and, in the case of a Minister of the Crown or a member of a House of Parliament, the jurisdictional requirements of subsection 9(5). In the case of subsection 9(1)(a) and subsection 9(5) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence. In the case of subsections 9(1)(b), 9(1)(c) and 9(1)(d) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the requisite


standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

The Commission then considers whether, for the purpose of s 74BA of the ICAC Act, the conduct is sufficiently serious to warrant a finding of corrupt conduct.

A finding of corrupt conduct against an individual is a serious matter. It may affect the individual personally, professionally or in employment, as well as in family and social relationships. In addition, there are limited instances where judicial review will be available. These are generally limited to grounds for prerogative relief based upon jurisdictional error, denial of procedural fairness, failing to take into account a relevant consideration or taking into account an irrelevant consideration and acting in breach of the ordinary principles governing the exercise of discretion. This situation highlights the need to exercise care in making findings of corrupt conduct.

In Australia there are only two standards of proof: one relating to criminal matters, the other to civil matters. Commission investigations, including hearings, are not criminal in their nature. Hearings are neither trials nor committals. Rather, the Commission is similar in standing to a Royal Commission and its investigations and hearings have most of the characteristics associated with a Royal Commission. The standard of proof in Royal Commissions is the civil standard, that is, on the balance of probabilities. This requires only reasonable satisfaction as opposed to satisfaction beyond reasonable doubt, as is required in criminal matters. The civil standard is the standard which has been applied consistently in the Commission when making factual findings. However, because of the seriousness of the findings which may be made, it is important to bear in mind what was said by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362:





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*...reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or fact to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.*

This formulation is, as the High Court pointed out in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171, to be understood:

*...as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct.*

See also *Rejtek v McElroy* (1965) 112 CLR 517, the *Report of the Royal Commission of inquiry into matters in relation to electoral redistribution, Queensland, 1977* (McGregor J) and the *Report of the Royal Commission into An Attempt to Bribe a Member of the House of Assembly, and Other Matters* (Hon W Carter QC, Tasmania, 1991).

Findings of fact and corrupt conduct set out in this report have been made applying the principles detailed in this Appendix.

## Appendix 3: Summary of responses to proposed findings

Counsel Assisting the Commission made written submissions setting out, inter alia, what adverse findings it was contended were open to the Commission to make against various parties. These were provided to relevant legal representatives on 12 July 2016, 30 September 2016 and 13 April 2017, and submissions in reply were received from a number of parties.

In addition, further submissions were provided to Ms Cullinane's legal representatives on 1 June 2017. The submissions concerned whether there was sufficient evidence to make a finding that Ms Cullinane engaged in serious corrupt conduct by failing to act on her knowledge of Mr Goodman's misconduct. Submissions in response to those submissions were received on 23 June 2017.

Mr Alexander and Ms Cullinane requested that the Commission include in this report a summary of the substance of their responses.

Mr Alexander's submissions in response were received on 4 August 2016.

Ms Cullinane's submissions in response were received on 22 August 2016, 5 September 2016 and 23 June 2017.

The Commission considers that, in the circumstances, Mr Alexander and Ms Cullinane had a reasonable opportunity to respond to proposed adverse findings.

The Commission did not accept all of the adverse findings contended for by Counsel Assisting. It is not necessary to summarise the substance of responses in relation to those adverse findings. The substance of the responses of Mr Alexander and Ms Cullinane in relation to adverse findings made by the Commission in this report is summarised below.

### Mr Alexander

Mr Alexander's legal representatives submitted that:

- the evidence is unclear as to the duration of the arrangement to create false invoices between Mr Goodman and Mr Alexander and therefore there can be no finding that Mr Alexander's conduct took place over a significant period of time and no conclusion that Mr Alexander engaged in serious corrupt conduct in relation to false invoicing
- as the evidence is unclear as to the amount of money involved and insufficient to show that a significant amount of money was involved, there can be no finding that Mr Alexander engaged in serious corrupt conduct
- there is no evidence of premeditation in Mr Alexander's conduct and therefore there can be no conclusion that Mr Alexander engaged in serious corrupt conduct in relation to false invoicing
- there was no evidence that Mr Alexander's conduct was premeditated and involved a significant level of planning and there can be no conclusion that Mr Alexander engaged in serious corrupt conduct in relation to false invoicing
- a finding that Mr Alexander's conduct was sufficiently serious to warrant a finding of corrupt conduct because, if proved on admissible evidence to the criminal standard by an appropriate tribunal, it could involve offences pursuant to s 192E of the Crimes Act that have a maximum penalty of 10 years, meaning they are serious indictable offences, should not be made because maximum penalties address the worst conduct by the worst offender and are not always a reliable indicator of "seriousness". Furthermore, it was submitted that any offence under s 192E of the Crimes Act would likely be dealt with summarily and therefore the conduct in which Mr Alexander engaged is not "serious corrupt conduct".

These submissions are set out in more detail and dealt with in chapter 2 of the report.

In the alternative, Mr Alexander's representatives submitted that there is insufficient evidence for consideration to be given for prosecution in relation to an offence under s 192E of the Crimes Act. This submission is set out in more detail and dealt with in chapter 2 of the report.

Mr Alexander's legal representatives submitted that Mr Alexander voluntarily made numerous admissions against his interests after "the penny dropped" and as a result of a revelation of his involvement with Mr Goodman rather than his position becoming untenable. Furthermore, it was submitted that it is in the interests of the Commission to encourage witnesses to be truthful and forthcoming and the Commission should therefore exercise its discretion not to refer Mr Alexander to the DPP for consideration to be given for prosecution in relation to an offence under s 87 of the ICAC Act of giving false and misleading evidence. This submission is set out in more detail and dealt with in chapter 2 of the report.

## Ms Cullinane

The substance of the response in relation to the adverse findings made by the Commission in relation to Ms Cullinane in chapter 4 is summarised below.

Ms Cullinane's response disputed any finding of corrupt conduct that she knew of Mr Goodman's misconduct and failed to act on that knowledge for the following reasons:

- it would be a denial of procedural fairness if a finding of corrupt conduct were made because it was not until 1 June 2017 that Ms Cullinane was given notice of any such proposed adverse finding
- making such a finding would involve jurisdictional error because the submissions of Counsel Assisting of 12 July 2016, 30 September 2016 and 13 April 2017 had not recommended any such finding or that her conduct could constitute a common law offence of misconduct in public office and it would be:

*irrational and illogical and in excess of jurisdiction for the Commission, led by a new Commissioner with no personal knowledge of the demeanour and credit of the witness or first-hand familiarity with the material, to not adhere to the ruling of the previous Commissioner, and ignore the actual submission of Counsel Assisting, to proceed on an entirely different basis*

- the Commission has no jurisdiction to make a finding of corrupt conduct because there were no

matters identified as, or submitted to be, serious corrupt conduct in respect of Ms Cullinane

- there were inadequacies in the Commission's investigation, particularly in the examination of the allegations against her and the reliability and cogency of the evidence of Mr Byrnes and Mr Thompson.

## Procedural fairness

Ms Cullinane's legal representatives submitted that there had been no notion that the Commission was considering an adverse finding against Ms Cullinane based on the common law offence of misconduct in public office in the "terms of reference" for the public inquiry, the opening of Counsel Assisting, the scope and conduct of and nature of the questioning in the public inquiry, and the submissions previous to those of 1 June 2017. It was submitted that she did not have an adequate opportunity to consider and respond to the proposed adverse finding because, without proper notice, she was not in a position to identify all further relevant evidence that she may have sought leave to call.

The Commission rejects that submission. The rules of procedural fairness require that notice be provided of possible adverse findings. The Commission considers that the further submissions of 1 June 2017 provided reasonable notice of the relevant proposed adverse finding.

It was also submitted that no assurance had been given that the Commission had provided all material capable of being exculpatory of Ms Cullinane, Ms Cullinane had not been given access to transcripts of any compulsory examinations (including her own), and that a relevant witness, Ms Kirchner, had not been called.

The Commission rejects these submissions. Material relevant to the Commission's findings, and which was subsequently relied upon by the Commission, was made available during the course of the public inquiry and the legal representatives for Ms Cullinane had access to that material. Ms Kirchner's statement was tendered in evidence during the public inquiry. She was not called as a witness because no person had a positive case to advance with respect to her. In any event, the only evidence of Ms Kirchner's relied upon in chapter 4 is that Ms Cullinane spoke to her in 2014 about Mr Goodman's misuse of Cabcharge cards. Ms Cullinane admitted that she knew Mr Goodman had misused his Cabcharge cards and said that she had asked him to repay the money to the Council.

It was submitted that the Commissioner who presided at the public inquiry had given an assurance that no finding of corrupt conduct would be made against Ms Cullinane. That submission is based on the following response from then Commissioner, the Hon Megan Latham, to a question from counsel for Ms Cullinane as

to what approach Counsel Assisting might take “as to Ms Cullinane’s culpability for the offending of others”:

*[Commissioner]: Well I don’t think anyone is going to sheet it all home to her. I mean the fact is that as I understand it, I mean—Ms Gerace, can I just—*

*[Ms Gerace]: Commissioner, can I just develop that point—*

*[Commissioner]: Look can I just say this. As you well know, I mean this Commission is in the business of making appropriate corrupt conduct findings if we get to the requisite level of proof. There might be a degree of negligence here but that’s not our remit. I mean, it’s just not. I mean to the extent that people can be criticised for things failing on their watch well so be it. But I don’t understand anybody to suggest, now Counsel Assisting might want to correct me, but I don’t understand anybody to suggest that the mere fact that these corrupt practices continued under the watch of Ms Cullinane and for that matter, Mr Fitzgerald, justifies any kind of finding of corrupt conduct against either of them. So I’m just wondering what the point is?*

It is clear from this exchange that Ms Latham was referring to a situation where, at its highest, the evidence pointed to negligence on the part of Ms Cullinane. The finding of serious corrupt conduct against Ms Cullinane is not based on negligence but her awareness that Mr Goodman misused his position to financially benefit himself and her wilful failure to take appropriate action.

### **Jurisdictional error**

To the extent this submission relied upon the absence in the submissions of Counsel Assisting of 12 July 2016, 30 September 2016 and 13 April 2017 that a finding of serious corrupt conduct should be made against Ms Cullinane, the argument is addressed above.

The Commission rejects the submission that it would be “irrational and illogical and in excess of jurisdiction” for a new Commissioner to make an adverse finding. As demonstrated in chapter 4, the findings are based on an assessment of the available evidence, including admissions made by Ms Cullinane and the objective evidence of the relevant telephone interceptions.

### **Inadequacies in the Commission’s investigation**

It was submitted that the Commission’s investigation was deficient, including in its examination of the allegations against Ms Cullinane and the reliability and cogency of the evidence of Mr Byrnes and Mr Thompson about their raising of matters with Ms Cullinane. It was submitted that significant conversations were not examined or identified in detail as to when they might have occurred or what was actually said, and that there were no relevant contemporaneous emails and business records adduced or examined that might have been corroborative. Submissions were made that Mr Thompson’s evidence should be approached with caution and was inconsistent or implausible, and that Mr Byrnes was not a credible witness.

The Commission rejects these submissions. The reliability of Mr Byrnes and Mr Thompson as witnesses is addressed in chapter 4 of the report.

Ms Cullinane’s legal representatives submitted that a telephone call between her and Mr Goodman on 2 October 2015 did not support any proposed finding in relation to Ms Cullinane’s knowledge of Mr Goodman’s conduct beyond the misuse of his Cabcharge and fuel cards, and noted that the only creditor mentioned was Cabcharge. It was submitted that it was Ms Cullinane, on becoming aware of these issues, that reported these matters to Ms Kirchner and that Ms Kirchner was not examined about what she was told or what investigations had occurred. It was submitted that this telephone call showed Ms Cullinane seeking to compel Mr Goodman to repay those monies, which was entirely inconsistent with any conclusion of misconduct in public office.

The Commission rejects these submissions and is satisfied that the conversation indicates that Ms Cullinane’s knowledge of Mr Goodman’s misconduct was not as limited as submitted on behalf of Ms Cullinane. This is addressed in chapter 4 of the report.

Ms Cullinane’s legal representatives submitted that there were critical omissions in the consideration given to how the elements of the offence of misconduct in public office were satisfied as they related to Ms Cullinane. It was submitted that there was no evidence that Ms Cullinane held a “public office”, and no delegation of any relevant function to Ms Cullinane by Council’s general manager. In particular, it was submitted that Ms Cullinane had no responsibility for “policing” Mr Goodman’s actions, and whose conduct in the management of Council’s finances was overseen and supervised by others.

The Commission rejects these submissions. There is no doubt that Ms Cullinane is or was a public officer at the material time by reason of her employment

by the Council. The Commission is satisfied that Ms Cullinane's duty as a public officer, given her position as Council's deputy general manager, included considering and taking appropriate action in relation to corrupt and criminal conduct by other Council officers that she was aware of or which was reported to her. As deputy general manager, that public duty was not confined by what was explicitly defined or delegated to her as her day-to-day or operational management responsibilities. It is also the duty of any person to report known criminality and not to give comfort or advice to the perpetrator.











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