

Mine Subsidence Board
Po Box 40
PICTON NSW 2571
Att: Darren Bullock



INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

4th November, 2009

Mine Subsidence Board
Po Box 40
PICTON NSW 2571
Att: Darren Bullock

Dear Sir,
RE: 21 FRASER STREET, TAHMOOR - REPAIRS

Further to our recent site inspection we have pleasure in submitting our quotation for building repairs to be carried out to the above premises as follows.

INCLUDED IN OUR QUOTATION:

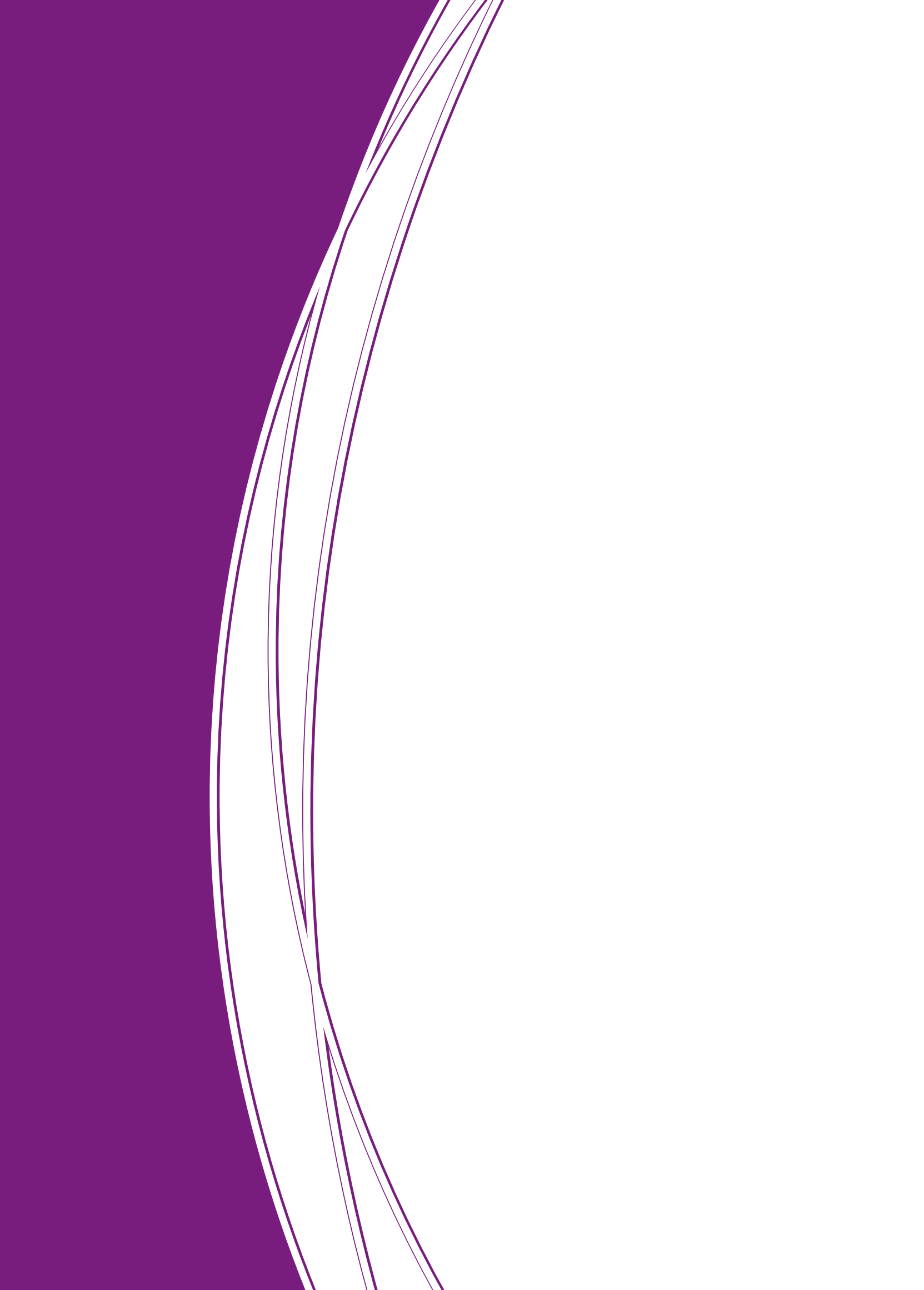
1. Jack up and pack piers under sub-floor and repair piers as required.
2. Repair roof tiles and make good skylight.
3. Ease and Adjust doors to bathroom, bedroom 2 and entry front.
4. Plasterer to repair cornices and ceilings for painters.
5. Prepare for painting and paint the following walls walls and ceilings:
 - laundry
 - kitchen
 - bedroom 2
6. Remove all rubbish from site.
7. Clean all work areas on completion.

PRICE FOR ABOVE WORKS: \$15,850.00 + gst



INVESTIGATION INTO THE CONDUCT OF A MINE SUBSIDENCE BOARD DISTRICT MANAGER

ICAC REPORT
MARCH 2016






INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

**INVESTIGATION INTO THE
CONDUCT OF A MINE
SUBSIDENCE BOARD
DISTRICT MANAGER**

**ICAC REPORT
MARCH 2016**



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r sub-floor and repair piers as required.
ed skylight



INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

The Hon Don Harwin MLC
President
Legislative Council
Parliament House
Sydney NSW 2000

The Hon Shelley Hancock MLA
Speaker
Legislative Assembly
Parliament House
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 a district manager of the Mine Subsidence Board.

I 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*.

A handwritten signature in black ink, appearing to read 'M Latham'.

Yours sincerely
The Hon Megan Latham
Commissioner

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Summary of investigation and results

This investigation by the NSW Independent Commission Against Corruption (“the Commission”) concerned a number of allegations involving Darren Bullock, district manager of the Picton office of the Mine Subsidence Board (MSB), between November 2003 and December 2014. The allegations included that Mr Bullock had received cash payments from MSB contractors as an inducement or reward for exercising his public official functions to show favour, or not to show disfavour, to certain contractors. The Commission also investigated allegations that Mr Bullock imposed upon certain contractors to submit false quotations to the MSB, with the purpose of exercising his public official functions as district manager of the MSB’s Picton office, to show favour in the provision of work to certain contractors.

The Commission’s investigation centred on three MSB contractors: Plantac Pty Ltd (“Plantac”), of which Kevin Inskip and Barbara Inskip are directors, A & DJ Building Services, a business operated by David Salmon, and Willbuilt Homes Pty Ltd (“Willbuilt Homes”), a company operated by William Kendall.

Results

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

- between 2008 and 2014, soliciting and receiving payments totalling \$314,115.50 from Mr Inskip as an inducement or reward for Mr Bullock exercising his public official functions as district manager of the MSB’s Picton office to favour, or not to show disfavour to, Mr Inskip’s business in relation to its work for the MSB (chapter 3)
- between 2006 and 2013, using his position to direct Mr Salmon to produce and submit 11 backdated A & DJ Building Services “cover quotes” (false quotations) to the MSB and then applying false “Received” date stamps to

specific A & DJ Building Services cover quotes, and using the cover quotes for the purpose of exercising his public official functions as district manager of the MSB’s Picton office, to show favour in the provision of work to Plantac by falsely representing that quotations competitive with the Plantac quotations had been sought and obtained in relation to work on those properties (chapter 4)

- between 2007 and 2015, arranging with Mr Salmon for Mr Salmon to include additional amounts totalling \$210,200 in A & DJ Building Services invoices, quotations and tenders for repairs to properties submitted to the MSB with the intention that these additional amounts would be shared equally between Mr Salmon and himself. Mr Bullock received \$83,600 from Mr Salmon as a result of this arrangement as an inducement or reward for Mr Bullock exercising his public official functions as district manager of the MSB’s Picton office, to favour, or not to show disfavour to, Mr Salmon’s business in relation to its work for the MSB (chapter 5)
- between 2007 and 2013, using his position at the MSB to direct Mr Inskip to produce and submit seven Plantac cover quotes to the MSB in relation to seven properties, for the purpose of exercising his public official functions as district manager of the MSB’s Picton office, to show favour in the provision of work to A & DJ Building Services by falsely representing that quotations competitive with the A & DJ Building Services quotations had been sought and obtained in relation to those properties (chapter 5).

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

- between 2008 and 2014, making payments

totalling \$314,115.50 to Mr Bullock as an inducement or reward for Mr Bullock exercising his public official functions as district manager of the MSB's Picton office, to favour, or not to show disfavour to, Mr Inskip's business in relation to its work for the MSB (chapter 3)

- between 2007 and 2013, at Mr Bullock's direction, producing and submitting seven Plantac cover quotes to the MSB to facilitate Mr Bullock exercising his public official functions as district manager of the MSB's Picton office, to show favour in the provision of work to A & DJ Building Services by being able to falsely represent that quotations competitive with the A & DJ Building Services quotations had been sought and obtained in relation to work on those properties (chapter 5).

The Commission found that Mrs Inskip engaged in serious corrupt conduct by facilitating the making of payments totalling \$314,115.50 to Mr Bullock between 2008 and 2014 as an inducement or reward for Mr Bullock exercising his public official functions as district manager of the MSB's Picton office to favour, or not to show disfavour to, Mr Inskip's business in relation to work for the MSB (chapter 3).

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

- between 2006 and 2013, at Mr Bullock's direction, producing and submitting 11 backdated A & DJ Building Services cover quotes to the MSB to facilitate Mr Bullock exercising his public official functions as district manager of the MSB's Picton office, to show favour in the provision of work to Plantac by being able to falsely represent that quotations competitive with the Plantac quotations had been sought and obtained in relation to work on the relevant properties (chapter 4)

- between 2007 and 2015, at Mr Bullock's direction, including additional amounts totalling \$210,200 in A & DJ Building Services invoices, quotations and tenders for repairs to MSB properties submitted to the MSB with the intention that these additional amounts would be shared equally between Mr Salmon and himself. Mr Salmon paid \$83,600 to Mr Bullock as a result of this arrangement as an inducement or reward for Mr Bullock exercising his public official functions as district manager of the MSB's Picton office, to favour, or not to show disfavour to, Mr Salmon's business in relation to its work for the MSB (chapter 5).

The Commission does not make any finding of serious corrupt conduct in respect of Mr Kendall.

Statements are made pursuant to s 74(a) 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 Mr Bullock for:

1. soliciting and receiving corrupt commissions or rewards pursuant to s 249B(1)(a) of the *Crimes Act 1900* ("the Crimes Act") in relation to the payments he received from Mr Inskip
2. misconduct in public office for disclosing confidential tender information to Mr Inskip with respect to a tender for repair works at 336 Moreton Park Road, Douglas Park
3. giving false or misleading evidence at the Commission's public inquiry on 9 April 2015, contrary to s 87(1) of the ICAC Act, when Mr Bullock denied receiving cash payments from Mr Inskip funded from an arrangement

- that involved directing Mr Inskip to inflate the cost of variations to the MSB, in return for showing preferential treatment to Mr Inskip by awarding Plantac contracts for repair works
4. giving false or misleading evidence at the Commission's public inquiry on 9 April 2015, contrary to s 87(1) of the ICAC Act, when he denied that he accessed the tender box, opened the envelopes containing tenders by Asset Trade Services and M Bruton Building Co and then told Mr Inskip the price quoted by Asset Trade Services, the lower of the two tenders, in relation to the tender for repair works at 336 Moreton Park Road, Douglas Park
 5. procuring the giving of false testimony by Mr Inskip at a compulsory examination before the Commission on 3 February 2015, contrary to s 89(a) of the ICAC Act, when, during a visit to the Inskips' home in December 2014, he coached Mr Inskip to tell the Commission that payments made to Mr Bullock were loans for in vitro fertilisation (IVF) treatment
 6. making false instruments pursuant to s 300(1) of the Crimes Act (for offences that occurred before 22 February 2010) and making false documents pursuant to s 253 of the Crimes Act (for offences that occurred from 22 February 2010) for procuring the A & DJ Building Services cover quotes from Mr Salmon
 7. making false instruments pursuant to s 300(1) of the Crimes Act for manipulating the "Received" date stamp and applying false date stamp imprints to certain A & DJ Building Services cover quotes
 8. using false instruments pursuant to s 300(2) of the Crimes Act (for offences that occurred before 22 February 2010) and using false documents pursuant to s 254 of the Crimes Act (for offences that occurred from 22 February 2010) for placing the A & DJ Building Services cover quotes on the MSB files
 9. giving false or misleading evidence at the Commission's public inquiry on 27 and 28 May 2015, contrary to s 87(1) of the ICAC Act, when he denied soliciting or receiving secret commissions from Mr Salmon
 10. giving false or misleading evidence at the Commission's public inquiry on 27 and 28 May 2015, contrary to s 87(1) of the ICAC Act, when he denied procuring A & DJ Building Services cover quotes from Mr Salmon in respect of specific properties
 11. giving false or misleading evidence at the Commission's public inquiry on 27 May 2015, contrary to s 87(1) of the ICAC Act, when he denied deliberately manipulating "Received" date stamps and deliberately applying false date stamp imprints to A & DJ Building Services cover quotes in respect of specific properties
 12. making false instruments pursuant to s 300(1) of the Crimes Act (for offences that occurred before 22 February 2010) and making false documents pursuant to s 253 of the Crimes Act (for offences that occurred after 22 February 2010) for procuring Plantac cover quotes from Mr Inskip
 13. using false instruments pursuant to s 300(2) of the Crimes Act (for offences that occurred before 22 February 2010) and s 254 of the Crimes Act (for offences that occurred from 22 February 2010) for placing the Plantac cover quotes on the MSB files
 14. soliciting and receiving corrupt commissions or rewards pursuant to s 249B(1)(a) of the Crimes Act in relation to payments he received from Mr Salmon
 15. an offence under s 351A of the Crimes Act of recruiting Mr Salmon to carry out a criminal activity, being the deletion of text messages from his mobile telephone, which detailed their arrangement to include secret commissions on specific jobs and related to the subject matter of the Commission's investigation, contrary to s 88(2)(a) of the ICAC Act
 16. giving false or misleading evidence at the Commission's public inquiry on 29 May 2015, contrary to s 87(1) of the ICAC Act, when he denied procuring cover quotes from Mr Inskip in respect of specific properties
 17. giving false or misleading evidence at the Commission's public inquiry on 28 May 2015, contrary to s 87(1) of the ICAC Act, when he denied asking Mr Salmon to delete text

messages from his mobile telephone for the purpose of destroying evidence capable of incriminating him in relation to an arrangement that involved receiving secret commissions

18. giving false or misleading evidence at the Commission's public inquiry on 9 April 2015, contrary to s 87(1) of the ICAC Act, when he denied that he invited either Mr Inskip or Mr Salmon to submit the "M Burton Co" tender as a dummy quotation when either one of them submitted their own tenders.

Chapter 7 of this report sets out the Commission's review of the corruption risks present at the time the conduct occurred. The Commission has made the following recommendations:

Recommendation 1

That the MSB strengthens its organisational capability to fulfil its obligations, including:

- securing the optimum staffing levels and staff with appropriate skills
- formalising service level agreements
- generating meaningful data for the purposes of analysis and reporting to the MSB
- improving internal and external auditing arrangements
- tightening the accounts payable system.

Recommendation 2

That the MSB builds controls into the claims and tendering processes to restrict a single user having end-to-end control and exceeding expenditure delegations.

Recommendation 3

That the MSB segregates the process and staff involved in estimating the costs of works, the allocation of contractors to undertake the works and the process of evaluating the delivery of works.

Recommendation 4

That the MSB agrees a threshold of delegated approvals and/or price for the whole-of-job remedial repairs, so that when the original scope and variations increase beyond a percentage of the agreed delegation or price, the matter is escalated for management review and approval.

Recommendation 5

That the MSB includes benchmarking as a method of better practice to verify the estimated costs of remedial work.

Recommendation 6

That the MSB routinely assesses the risk of contractor favouritism and takes steps to minimise those risks.

Recommendation 7

That the MSB takes steps to ensure increased transparency in undertaking remedial works, including the periodic assessment of the performance of contractors and value for money of work performed. Such matters are to be taken into account when determining the selection of future contractors.

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 the MSB and the responsible minister, being the minister for finance, services and property.

As required by s 111E(2) of the ICAC Act, the MSB 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 it proposes to implement any plan 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 MSB 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, 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”), the Mine Subsidence Board (MSB) and Darren Bullock, district manager of the MSB’s Picton office.

How the investigation came about

In October 2013, the Commission commenced an investigation after receiving a complaint that Mr Bullock was receiving payments from Kevin Inskip of Plantac Pty Ltd (“Plantac”) in return for showing favour to Plantac in his role as district manager of the MSB’s Picton office.

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.

When considering whether to investigate the allegations, the Commission took into account that Mr Bullock held a senior position with the MSB and could exercise a considerable amount of discretion in his dealings with MSB contractors.

The conduct reported to the Commission was serious and could, if established, constitute corrupt conduct within the meaning of the ICAC Act. In the circumstances, the Commission decided that it was in the public interest to conduct an investigation to establish whether corrupt conduct had occurred and whether there were any corruption prevention issues that needed to be addressed.

Conduct of the investigation

During the course of the investigation, the Commission:

- interviewed and/or obtained statements from a number of persons, including MSB employees and MSB contractors
- obtained documents from various sources by issuing five notices under s 21 of the ICAC Act and 79 notices under s 22 of the ICAC Act
- obtained one warrant under the relevant legislation to allow the interception of a telecommunications service
- undertook physical surveillance of persons suspected of being involved in corrupt conduct
- conducted 13 compulsory examinations.

Other allegations involving David Salmon of A & DJ Building Services and William Kendall of Willbuilt Homes Pty Ltd (“Willbuilt Homes”), came to the attention of the Commission during the course of the investigation.

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, involving a public official who exercised a considerable degree of discretion in his dealings with contractors
- the alleged corrupt conduct was said to have taken place over an extended period of time and involved a significant amount of money
- while there was a risk to the reputation of Mr Bullock 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 if the MSB's systems, policies and procedures were deficient and, if so, how they could be changed to reduce the likelihood of the occurrence of corrupt conduct in the future
- public exposure of the matter might serve as a deterrent to others or might cause other instances of similar conduct to be reported.

The public inquiry was conducted over 13 days, between 30 March and 10 April 2015, and then between 25 and 29 May 2015. Eleven witnesses gave evidence at the public inquiry. The Hon Megan Latham, Commissioner, presided at the public inquiry and Andrew Naylor 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 concerning systemic issues and the procurement practices of the MSB. The submissions were provided to all relevant parties and submissions were invited in response.

Subsequent to the receipt of submissions in response, the *Independent Commission Against Corruption Amendment Act 2015* was enacted. This amended the ICAC Act by inserting a new section 74BA, which provides that the Commission is not authorised to include in a report a finding or opinion that any conduct of a specified person is corrupt conduct unless the conduct is serious corrupt conduct. As a result of this amendment the Commission delayed preparation of this report and sought further submissions from affected parties on the issue of whether certain conduct on their part identified in the submissions of Counsel Assisting could constitute serious corrupt conduct. These submissions were received by 5 November 2015. When preparing this report, the Commission has taken into account all submissions received in response on behalf of affected persons.

Mine Subsidence Board

The MSB is a statutory authority established under the *Mine Subsidence Compensation Act 1961* ("the MSC Act"). The MSB has a number of functions under the MSC Act. Only one of the functions was relevant to the Commission's investigation; specifically, the assessment of claims from property and infrastructure owners for damage to improvements (such as residential homes) allegedly caused by mine subsidence.

The MSB's clients are mostly home owners whose properties have been damaged by mine subsidence. Compensation is paid from the Mine Subsidence Compensation Fund ("the Fund") if damage to a home is found to have been caused by mine subsidence. The MSB has a discretion to carry out remediation works or repairs to restore the damaged property to "a condition as nearly as practicable equivalent" to its condition before the mine subsidence damage occurred, rather than paying monetary compensation to the owner of the property. With the consent of the owner, the MSB may also purchase a property damaged by mine subsidence.

The MSB's procurement system is described as the Business Management System (BMS) and includes policies and procedures to facilitate the delivery of remedial and preventative works.

The operations of the MSB are funded by an industry levy on coal collieries paid into the Fund. During the financial year ending 30 June 2014, the MSB received \$27.066 million in colliery levies. The responsibility for ensuring that these funds are properly administered rests with the MSB. In the same financial year, the MSB paid out a total of \$29.328 million in claims for compensation for mine subsidence damage. In the same financial year, the MSB processed 353 claims for compensation for mine subsidence damage; 103 of these claims were dealt with by the MSB's Picton office.

The MSB consists of a chairperson and five other members, all of whom are appointed under the MSC Act.

Section 47A of the *Constitution Act 1902* precludes the MSB from employing staff. Persons may be employed in the public service under the *Government Sector Employment Act 2013* to enable the MSB to exercise its functions. Section 59 of the *Government Sector Employment Act 2013* provides that the persons so employed may be referred to as officers, employees or members of staff of the MSB.

Unless it is otherwise clear from the context, references in this report to the MSB should be taken as references to the wider organisation encompassing the staff and administrative operations.

At the time of this investigation, the MSB identified 37 staff positions, although many of these were vacant. The head office of the MSB is located within the Newcastle district office. The chief executive officer (CEO) is based in the Newcastle office. Between 1994 and 19 June 2015, the CEO was Greg Cole-Clark. The MSB's secretary, the subsidence risk engineer and the district managers of each district office report to the CEO. The CEO reports to the MSB.

At the commencement of the Commission's public inquiry, the MSB was part of a group of agencies headed by the NSW Department of Trade and Investment, Regional Infrastructure and Services. On 1 July 2015, the Department of Trade and Investment became the NSW Department of Industry, Skills and Regional Development. On the same day, responsibility for the MSB was transferred to the NSW Department of Finance, Services and Innovation.

The MSB has district offices at Newcastle, Singleton, Wyong and Picton. District managers are responsible for the management of the district offices. The MSB's Picton district office services the southern coalfields,

including the townships of Picton, Appin, Bargo, Tahmoor and Thirlmere.

The Picton office has one district manager, three district supervisors and two administrative staff. At all relevant times, the district manager was Mr Bullock. Mr Bullock was responsible for the management of the office, had carriage of his own claim files and held a financial delegation to approve expenditure from the Fund to meet the cost of repairs. District managers and district supervisors are responsible for dealing with claims for compensation for mine subsidence damage, which involves:

- conducting inspections of properties in relation to which claims have been made
- preparing claim investigation reports
- estimating the cost of repairs
- organising for quotations to be obtained from contractors (or tenders invited from contractors)
- overseeing and approving the work of building contractors and other contractors engaged by the MSB to carry out repairs.

Darren Bullock

In 1981, Mr Bullock commenced an apprenticeship with the NSW Department of Public Works to obtain a trade qualification as a carpenter. He remained with that department after he obtained his trade qualification. During that time, he was employed as a tradesman, a site supervisor and a general estimator.

Between about 1989 and 1997, Mr Bullock was employed by a banking corporation as a clerk of works and operations manager. During this time, he was involved in, or responsible for, the building and maintenance of branches of the bank.

After leaving the banking corporation in 1997, Mr Bullock worked for short periods with two private enterprise businesses. In 1998, he was employed as an insurance assessor. In 2001, he returned to the Department of Public Works as a project manager.

In November 2003, Mr Bullock was appointed to the position of district manager of the southern coalfields of the MSB. He resigned from the MSB on 6 December 2014.

Mr Bullock's credit

Mr Bullock was often evasive when answering questions and, on many occasions, he prevaricated between denials and claims of inability to remember anything. He also

gave inconsistent accounts to the Commission, which made his evidence inherently unreliable. Much of Mr Bullock's evidence was contradicted by the testimony of other witnesses and documentary evidence. He was not a credible witness. Consequently, the Commission cannot accept his evidence unless it is against his interest or is corroborated by other independent, objective evidence.

Chapter 2: Relevant MSB policies and procedures

The issue of whether Mr Bullock deliberately circumvented the MSB's policies and procedures in order to facilitate the receipt of secret commissions from Mr Inskip and Mr Salmon will be examined in subsequent chapters. It is, therefore, important to understand the relevant policies and procedures of the MSB.

Business Management System

The MSB has in place a large number of policies and procedures described as the BMS. Some of these concern procurement of building contractors to repair houses assessed as having been damaged by mine subsidence. The BMS is voluminous and difficult to understand. It is sufficient for the purpose of this report to summarise the relevant policies, procedures and financial delegations.

Procedures for claims for compensation

To make a claim, a property owner must first lodge a written compensation claim application with one of the district offices of the MSB. The application must describe the nature and extent of the damage purportedly caused by mine subsidence.

The district manager must then assign carriage of the claim to an MSB officer (either the district manager or a district supervisor). After the claim has been assigned, the relevant MSB officer inspects the property and prepares a claim investigation report. The report includes an assessment of whether the damage was caused by mine subsidence and an estimate of the cost of repairs. The claim investigation report is submitted to an MSB officer with an appropriate financial delegation to decide whether to accept or refuse the claim. If the claim is accepted, the MSB officer must also approve the amount to be spent on repairs.

When a claim for compensation for repair works is

accepted and the expenditure is approved, a contractor is engaged to carry out the repair works. The process for procurement of a contractor depends on the estimated cost of the repairs. Contractors are sent documentation, including a tender form and a scope of works document. An onsite inspection takes place and is attended by the contractors and the MSB officer managing the claim. The contractors' tenders must be lodged in the MSB's tender box by a nominated time.

The tender box must be opened by two officers: an administrative officer and an officer not involved in the claim. The details relating to each tender must be entered in the tender book. The officer with carriage of the claim is then given the opened tenders and is responsible for drafting a recommendation addressing which tender should be selected. The recommendation must then be submitted to an officer with appropriate financial delegation for consideration.

Policies relating to repair works tenders

Set out below is an overview of the relevant policies relating to the tenders for repair works and important changes to these policies over time.

Between 12 January 2005 and 30 April 2012 (inclusive):

- no tenders were required for repairs under \$1,500
- one tender was required for repairs between \$1,500 and \$5,000
- three tenders needed to be sought, but not necessarily obtained, for repairs between \$5,000 and \$10,000
- three tenders needed to be obtained for repairs between \$10,000 and \$20,000
- public tenders were required for repairs greater than \$20,000

- tenders exceeding the estimated cost of repairs by 15% had to be referred to the MSB.

Between 1 May 2012 and 30 December 2013 (inclusive):

- one selected or invited tender was required for works under \$10,000
- three selected or invited tenders were required for works between \$10,000 and \$1 million.

From January 2014 to the present:

- one selected or invited tender is required for works under \$15,000
- three selected or invited tenders are required for works between \$15,000 and \$1 million.

Financial delegations held by Mr Bullock

MSB officers exercise their financial delegations on two occasions when arranging for damaged buildings to be repaired: first, when a claim is accepted and approval for expenditure is given for repairs and, secondly, when a contractor is selected to perform the repairs.

The MSB's policies and procedures state that MSB officers must not exceed their respective financial delegations. If approval is needed for expenditure in excess of their own delegation, the matter must be referred to the next senior delegate with appropriate authority. The financial delegations held by Mr Bullock during the periods relevant to the Commission's investigation are set out below.

Between 20 January 2007 and 30 November 2011, Mr Bullock could approve claims of up to \$20,000 if the claim investigation report was prepared by a district supervisor. If the report was prepared by Mr Bullock, his financial delegation was limited to \$10,000.

From 1 December 2011, Mr Bullock could approve claims of up to \$20,000 when the claim investigation report was prepared by a district supervisor. If the report was prepared by Mr Bullock, his financial delegation was limited to \$10,000.

From 1 December 2011, Mr Bullock also held a specific financial delegation to approve Tahmoor-related claims (those that occurred in the townships of Tahmoor or Thirlmere) of up to \$50,000, when the claim investigation report was prepared by a district supervisor. If the report was prepared by Mr Bullock, his financial delegation was limited to \$10,000. The operation of the Tahmoor colliery resulted in a high number of compensation claims in that area and, as a result, a decision was made to increase the financial delegation of the district manager of the Picton office.

From 1 December 2011, Mr Bullock also held a financial delegation to approve variations to contracts of up to 15% of the accepted tender price or \$10,000, whichever was the lesser. This delegation related to accumulated variations on the contract price.

Application of the MSB's policies and procedures

Mr Bullock exercised considerable discretion in deciding to whom contracts for the repair of houses should be awarded. By his own admission, Mr Bullock often breached the MSB's policies and procedures, stating, "[w] bent the rules is probably what I'd say, and that was common practice and no one ever told us any different". Mr Bullock provided a number of explanations for having failed to comply with the MSB's policies and procedures.

Mr Bullock claimed that he breached the MSB's policies and procedures because he wanted to avoid delays that were experienced when matters were sent to Mr Cole-Clark for his approval. Mr Bullock also claimed

that, on occasion, he was given relief from certain policies and procedures by Mr Cole-Clark, including the requirement to obtain three quotations for repair works of a certain value.

In relation to the policy that was in place between 12 January 2005 and 1 May 2012, which required that tenders that exceeded the estimated cost of repairs by more than 15% be referred to the MSB, Mr Bullock said: “Yeah, I think Greg [Mr Cole-Clark] just said, look, if it’s outside your delegation you forward it to me. It didn’t matter what the limit was, no one’s ever instructed us to do anything different”.

Further, according to Mr Bullock, some policies – such as the requirement between July 2007 and 1 May 2012 to put claims of over \$20,000 out to public tender – were not implemented throughout the entire organisation. Mr Bullock told the Commission that “[i]n my whole time at the Board no one’s ever gone to public tender”. He suggested that he had received verbal authorisation from Mr Cole-Clark to not comply with this policy. He said that, “I had conversations along those lines with Greg [Mr Cole-Clark] and Greg said “look, you’re running your area. Just get the job done”...”.

Finally, Mr Bullock gave evidence that he complained to Mr Cole-Clark “on hundreds of occasions” that the MSB’s policies and procedures were unworkable in the Tahmoor area. He said he raised the issue with Mr Cole-Clark both verbally and in writing. He believed that his concerns were documented in minutes of district meetings and in letters and emails he wrote to Mr Cole-Clark. He also said that he expressed his concern about the MSB’s policies and procedures in relation to the Picton office in his monthly reports to the MSB. According to Mr Bullock, Mr Cole-Clark’s response was effectively, “[j]ust keep doing it the way you’re doing”.

Mr Cole-Clark’s evidence

Mr Cole-Clark was the CEO at all relevant times. He co-authored parts of the BMS, and the BMS was approved by him. He described the BMS as a set of “guidelines” but also stated that he expected the policies and procedures to be adhered to. He denied that there was a culture within the organisation that prioritised getting the job done over compliance with the relevant processes.

Mr Cole-Clark denied that Mr Bullock spoke with him about the way the MSB’s policies and procedures and problems applied to the Picton office. Mr Cole-Clark accepted that occasionally there were delays by him when matters were sent to him for his approval because of his “immense workload”.

During the public inquiry, Mr Cole-Clark was asked about specific breaches of the policies and procedures by him, individually, and by the organisation as a whole. Some of those examples are set out below.

Mr Cole-Clark was asked why, on 21 December 2009, he had approved a recommendation that the tender by A & DJ Building Services be accepted in relation to repair works at a property at 21 Fraser Street, Tahmoor, when there were only two quotations on the MSB file. The repairs policy required that three quotations be obtained. Mr Cole-Clark said he approved the recommendation after consultation with senior staff and was satisfied that he was acting in the “best interests” of the MSB. The evidence before the Commission suggests that Mr Cole-Clark frequently approved claims for which only two quotations had been obtained, although three were required under the BMS.

Mr Cole-Clark was questioned about his decision on 5 November 2007 to approve a recommendation by Mr Bullock that the tender by Plantac for \$21,426 be accepted in relation to repair works at a property at 42A King Street, Tahmoor. Mr Bullock had estimated the cost of repairs to be \$10,000 in a claim investigation report dated 10 October 2007. The extant repairs policy required that tenders exceeding the estimated cost of repairs by 15% be referred to the MSB. When explaining his decision to approve the recommendation without referring the matter to the MSB for its consideration, Mr Cole-Clark told the Commission that damage, particularly in areas like Tahmoor, could increase and costs could vary greatly and that “he relied upon the, the expertise and the knowledge of my staff down there and the expertise and knowledge of builders who are inspecting it”. He also said that he may have even discussed the matter with the chairperson of the MSB at the time.

Mr Cole-Clark was questioned about why there appeared to be a widespread disregard of the MSB’s repairs policy in place between 12 January 2005 and 30 April 2012, which required that public tenders be called for repair works with an estimated value greater than \$20,000. He stated he was “not quite sure” what was meant by the expression “public tender”. He denied that it meant an open tender to members of the public. The evidence before the Commission suggests that this policy was entirely disregarded within the organisation.

Did Mr Bullock deliberately circumvent the MSB’s policies and procedures?

Mr Bullock’s legal representative submitted that the Commission should make findings that Mr Bullock had the approval of Mr Cole-Clark to circumvent certain

policies and procedures or, alternatively, that Mr Bullock was forced to avoid them because of delays caused by Mr Cole-Clark. He also urged the Commission to make a finding that Mr Bullock spoke to Mr Cole-Clark about the MSB's policies and procedures and problems with their application to the Picton office. The purpose of the submission appears to be to avoid findings by the Commission that Mr Bullock deliberately circumvented the MSB's policies and procedures.

There is some evidence that there were delays experienced when matters were sent to Mr Cole-Clark for his consideration. Lynette Evans, an administrative officer at the Picton office, stated that sometimes the MSB files would take "a couple of months" to be returned from Mr Cole-Clark. Matthew Montgomery and John Rawes, district supervisors at the Picton office, both stated that the time taken to obtain a response from Mr Cole-Clark on matters requiring his consideration would vary greatly; from days to months.

On the face of the MSB files examined during the Commission's public inquiry, there are examples of Mr Cole-Clark taking months to approve Mr Bullock's recommendations. For instance, he took 11 months to respond to Mr Bullock's recommendation to accept the Plantac quotation in respect of repair works at 336 Moreton Park Road, Douglas Park, in 2011.

There are, however, many more examples of Mr Cole-Clark approving claims or tenders in an efficient and timely manner. For instance, in relation to repair works at 31 Park Street, Tahmoor, Mr Cole-Clark approved Mr Bullock's recommendation for acceptance of the Plantac quotation a day after the recommendation was made. In the circumstances, there is insufficient evidence to support a finding that Mr Bullock was forced to circumvent the MSB's policies and procedures because of delays experienced when he sent matters to Mr Cole-Clark for approval.

Finally, there is no documentary evidence of Mr Bullock ever having expressed any concern about his ability, or the capacity of the Picton office, to comply with the MSB's policies and procedures. The monthly reports prepared by Mr Bullock for the period between January 2007 and September 2014 occasionally stated that the workload at the Picton office was high but never expressed any concern about the MSB's policies and procedures and their application to the Tahmoor area. No other correspondence from Mr Bullock to Mr Cole-Clark on this issue was located by the Commission or identified by Mr Bullock.

The Commission is satisfied that Mr Bullock had knowledge of the MSB's policies and procedures and rejects his explanations for not complying with them.

He undertook an induction when he first started at the MSB, which included training in relation to the MSB's policies and procedures. While a member of the MSB staff, he also had further training on the policies and procedures, including his financial delegations.

The Commission is satisfied that Mr Bullock was aware that Mr Cole-Clark did not always require strict observance of the MSB's policies and procedures. The Commission is satisfied that Mr Bullock took advantage of this obvious weakness in management and knowingly circumvented relevant MSB policies and procedures. Whether Mr Bullock did this in order to facilitate the receipt of secret commissions from Mr Inskip and Mr Salmon is an issue that will be examined in subsequent chapters.

Chapter 3: The arrangement between Mr Bullock and Mr Inskip

This chapter examines evidence of payments of over \$314,000 made to Mr Bullock between 2008 and 2014 by Mr Inskip, a MSB contractor.

Mr Inskip is the director of Plantac, a building business that was established in 1994. Barbara Inskip is Mr Inskip's wife and also a director of Plantac. Mr Inskip first met Mr Bullock in about 1993, when Mr Bullock was working for a banking corporation. On 22 June 2005, Plantac was included on the MSB's list of selected approved contractors.

During the financial year ending 30 June 2014, Plantac received payments totalling \$541,978 from the MSB; representing 68% of its total income for that financial year. Between 1 July 2014 and 23 January 2015, Plantac received payments totalling \$147,039 from the MSB; representing 59% of its total income for that period.

The payments: Mr Inskip's evidence

Mr Inskip told the Commission that, for about seven years, he made a number of cash payments to Mr Bullock. The arrangement was instigated by Mr Bullock and involved Mr Bullock directing Mr Inskip to incorporate an amount of money into the cost of the variations to the original MSB contract price, which were then invoiced to the MSB. The additional amount of money was intended for Mr Bullock. He said he believed the last payment he made to Mr Bullock was in November 2014, in relation to the last job Plantac carried out for the MSB (although he could not recall the address of the job).

According to Mr Inskip, variations to an original contract price are often necessary because of additional, unforeseen work. If a variation was required, Mr Inskip would prepare a written variation setting out his estimation of the additional cost. He would then provide this to Mr Bullock for approval. After reviewing the

variation document, Mr Bullock would write down an amount on the document that he considered appropriate to cover the cost of the variation. Mr Inskip then took this document back to his office to "amend the amount and get the invoice typed up and sent [to the MSB]".

On Mr Inskip's direction, his wife would type up the invoices and submit them to the MSB for payment. Mr Inskip believed that his wife had kept a spreadsheet recording the amounts that were added to invoices by Mr Bullock. Mr Inskip said that the amounts requested by Mr Bullock varied.

According to Mr Inskip, Mr Bullock advised him in person when he wanted money. Mr Inskip then arranged for Mrs Inskip to withdraw cash from the Plantac bank account. He did not tell his wife to withdraw a specific amount of money stating, "Barb would just get out what she thought, an amount, and, and there was no specific um, it has to be this amount of whatever ... It was a random thing". Mrs Inskip then placed the cash in a bank envelope. Mr Inskip usually made the payments to Mr Bullock in person at building sites, but payments also took place at other locations.

Mr Inskip said he made these payments to Mr Bullock for the purpose of securing ongoing work from the MSB and, in this way, he benefitted from the arrangement.

The payments: Mrs Inskip's evidence

Mrs Inskip told the Commission that she was responsible for maintaining Plantac's accounts. She said that there had been an arrangement for "years" that involved "Darren [Bullock] put[ting] money on jobs" and money being paid to Mr Bullock. She prepared invoices that were submitted to the MSB from the handwritten documents prepared by Mr Inskip, which included "extra" amounts intended for Mr Bullock. She said she had also maintained a

spreadsheet on her computer, which was effectively a tally of the amounts that were added to the variations. She had kept the spreadsheet so she could keep an account of what was owed to Mr Bullock. The Commission was not able to obtain a copy of the spreadsheet.

Mrs Inskip said that her husband would not ask for specific amounts of money for Mr Bullock. She determined how much to withdraw from the Plantac bank account by reference to the spreadsheet. She then cashed a cheque at the bank and brought the cash home. The cash was placed in an envelope. The envelope was either given directly to Mr Inskip or kept at home to be collected by Mr Inskip.

Mrs Inskip recorded the payments to Mr Bullock in the Plantac books of accounts. She disguised the payments by attributing the payments as payments to fictitious and sometimes real suppliers or subcontractors.

A number of financial records were tendered during the course of the public inquiry, including:

- various handwritten cheque butts from the Plantac cheque account written by Mrs Inskip
- various copies of cheques written by Mrs Inskip
- Plantac business activity statement (BAS) worksheets prepared by Mrs Inskip
- GST reports extracted from Plantac accounts maintained by Plantac's accountants
- Plantac BAS worksheets produced by Plantac's accountants.

Mrs Inskip identified the amounts in Table 1 (page 20) as payments made to Mr Bullock. Mrs Inskip was able to identify these because they were cash withdrawals attributed to either fake or real suppliers or subcontractors. The fictitious suppliers used by Mrs Inskip included Don Bruce Kitchens and D+B Manufacturing. The real suppliers used by Mrs Inskip included Brush Brothers and Lamond Landscaping.

Mrs Inskip told the Commission that she was able to identify the cash payments to real suppliers as being payments to Mr Bullock because Plantac did not make cash payments to those suppliers. The absence of any corresponding invoices for the payments attributed to real suppliers tended to confirm this evidence. Mrs Inskip was, therefore, able to identify the payments in Table 1 attributed to real suppliers as cash withdrawals made for the purpose of making payments to Mr Bullock.

Mrs Inskip also attributed some payments, which were represented as being to subcontractors (people who provide labour to Plantac), as in fact being payments to Mr Bullock. She said that some subcontractors were occasionally paid in cash. She said that, if the payment was a legitimate one made in cash to a subcontractor, then there would be a corresponding invoice for that payment. There were no corresponding invoices for the relevant subcontractor payments listed in Table 1 and she was, therefore, able to identify those payments as being for Mr Bullock.

Table 1: Payments to Mr Bullock identified by Mrs Inskip

Date	Name of fictitious payee/fictitious payment description	Amount
13.02.2008	Kevin Inskip – Loan / MSB	\$2,000.00
30.04.2008	KI loan / MSB	\$4,000.00
27.05.2008	D Beard / DB	\$4,000.00
16.06.2008	Tea Gardens / MSB	\$3,600.00
11.07.2008	Don Bruce Kitchens	\$5,000.00
31.07.2008	Don Bruce Kitchens	\$5,360.00
03.11.2008	D+B Manufacturing	\$5,000.00
17.11.2008	DB Kitchens	\$8,100.00
17.12.2008	APC P/L (Painters)	\$5,000.00
06.01.2009	D&D Kitchens	\$7,200.00
20.02.2009	Withdrawal DB & Wage	\$7,350.00
12.03.2009	AC Brush Bros Painting	\$5,500.00
23.03.2009	One Stop Roofing P/L	\$4,500.00
07.05.2009	Brush Bros (Painting)	\$4,000.00
09.06.2009	Brush Bros (Painters)	\$9,450.00
11.06.2009	Brush Bros	\$7,500.00
23.09.2009	Newcolour Painting (MSB)	\$4,200.00
21.10.2009	Austral Bricks	\$4,650.00
28.01.2010	Brush Bros Painting	\$5,000.00
06.04.2010	Brush Bros	\$6,050.00
21.04.2010	Brush Bros	\$8,000.00
10.05.2010	Brush Bros	\$6,350.00
04.06.2010	Brush Bros	\$5,500.00
24.06.2010	Brush Bros (Tahmoor Shop Ctr)	\$6,550.00
10.08.2010	Brush Bros (Painting)	\$8,450.00
09.09.2010	Brush Bros (Painting)	\$5,650.00
16.09.2010	Brush Bros	\$7,955.00
30.09.2010	APC (NSW) (Tahmoor)	\$7,500.00
24.11.2010	APC (NSW) P/L	\$11,915.00
02.12.2010	APC (NSW) (Tahmoor)	\$8,255.00
17.12.2010	APC (NSW) P/L	\$7,750.00
31.01.2011	APC (NSW) (MSB)	\$5,250.00
08.02.2011	Brush Bros (MSB)	\$6,075.00
14.02.2011	APC (NSW) (MSB)	\$5,950.00
22.02.2011	Brush Bros (MSB)	\$4,300.00
17.03.2011	APC (NSW)	\$4,670.00
18.03.2011	Fowlers Carpets (MSB)	\$9,890.00

03.05.2011	APC (NSW) P/L	\$3,230.00
15.06.2011	APC (NSW) P/L (MSB Tahmoor)	\$3,700.00
03.08.2011	Sydney Labour Contracting	\$3,890.00
22.08.2011	MSB Painting	\$4,110.00
09.09.2011	Lamond Landscaping (MSB)	\$8,150.00
21.11.2011	Variplan Homes P/L	\$4,785.50
30.01.2012	AC Brush Bros – Murlak P/L (MSB)	\$4,200.00
07.03.2012	AC Brush Bros – Murlak P/L (MSB)	\$4,350.00
02.07.2012	D&D Kitchens	\$4,560.00
16.10.2012	Demoforce (MSB)	\$6,700.00
08.11.2012	Lamond Landscaping	\$4,870.00
07.12.2012	Lamond Landscaping	\$8,850.00
17.01.2013	Lamond Landscaping (MSB)	\$4,450.00
18.02.2013	Lamond Landscaping (MSB)	\$4,980.00
08.04.2013	Demoforce	\$1,980.00
01.07.2013	Handyman Timber Sales P/L	\$4,950.00
06.08.2013	Handyman Timber	\$4,840.00
07.02.2014	Handyman Timber	\$4,050.00
	Total	\$314,115.50

The payments: Mr Bullock's evidence

Mr Bullock gave evidence at the Commission at two compulsory examinations and at the public inquiry. At a compulsory examination held on 5 December 2014, Mr Bullock denied receiving any payments from Mr Inskip. He was questioned specifically about whether a cash deposit of \$2,000 into his bank account on 13 February 2008 was a payment from Mr Inskip. He was also asked whether a cash deposit of \$5,000 into his bank account on 19 December 2008 was a payment from Mr Inskip. He denied these came from Mr Inskip.

At a compulsory examination held on 12 December 2014, convened at Mr Bullock's request, he admitted to receiving two payments from Plantac in 2008. He gave evidence as follows: "Referring to that first payment I think that you said of the – I think it was the \$2,000 amount [deposited into his account on 13 February 2008] ... it was given to me [in cash by Mr Inskip] and I paid it in [to my bank account]". He said that this cash payment was a "gift" from Mr Inskip because he "was having lots of troubles getting pay increases at work and whatever and

I think, you know, he'd known me a long time and he said he could basically help me out in a way".

He said that a month or two later, he received a second payment from Mr Inskip of \$3,000. Mr Bullock said that Mr Inskip gave him this payment because they were friends and because Mr Bullock had been "whingeing about work" and "feeling down". Mr Bullock agreed that accepting money from a contractor was "the wrong thing to do".

At the public inquiry, Mr Bullock was taken through each of the transactions Mrs Inskip had identified as a payment to him. Mr Bullock initially denied receiving any payments from Mr Inskip. He denied that he and Mr Inskip had an arrangement that involved him directing Mr Inskip to inflate the cost of variations invoiced to the MSB. Mr Bullock denied providing preferential treatment to Plantac in return for payment. He said that Mr Inskip's evidence was a "fabrication".

The evidence before the Commission shows that, on numerous occasions, cash was withdrawn from the Plantac account and on the same day, or within a few days, cash in the same or similar amounts and

denominations, was deposited into bank accounts, loan accounts or credit cards associated with Mr Bullock and/or his wife, Julie Bullock. Mr Bullock was questioned about a number of these payments but maintained that any cash deposited into bank accounts, loan accounts or credit cards associated with him or his wife came from a cash reserve he kept at home. He also said that the cash deposits could have come from another bank account held by either his wife or himself.

On 13 February 2008, Mrs Inskip withdrew \$2,000 cash from the Plantac bank account. Mrs Inskip was given forty \$50 bills by the bank. Mrs Inskip identified this withdrawal as a payment to Mr Bullock. On the same day, \$2,000 was deposited into Mr Bullock's bank account in the exact denominations as those withdrawn by Mrs Inskip. It will be recalled that, at his compulsory examination on 12 December 2014, Mr Bullock had admitted to receiving \$2,000 from Mr Inskip. At the public inquiry, however, Mr Bullock denied this \$2,000 came from Mr Inskip and said he presumed the money came from a cash reserve he kept at home. He conceded that it was an extraordinary coincidence that, on the same day that \$2,000 (in 40 x \$50 bills) was withdrawn from the Plantac account, the same amount in the same denominations was deposited into his bank account from his cash reserve.

After he was questioned about the inconsistency between his evidence at the compulsory examination of 12 December 2014 and his public inquiry evidence, he initially claimed that he could not be sure that that was the same payment. He then resiled from his position of denying that he had received any cash payments from Mr Inskip. He told the Commission that he had received two payments (as referred to in his evidence at the compulsory examination on 12 December 2014) in early 2008 but told the Commission that the payments were made to him by Mr Inskip to "help him out" as he and his wife were undergoing IVF treatment. He said it had "nothing to do with work" and he claimed that he offered to pay Mr Inskip back but Mr Inskip declined the offer.

This was the first time Mr Bullock had claimed that the two payments related to IVF treatment. At the compulsory examination on 12 December 2014, Mr Bullock made no mention of IVF treatment. Mr Bullock was questioned about why he had not offered the explanation during his compulsory examination on 12 December 2014. He said, "I was trying to hide it from my wife and I was ashamed of what I'd done". He denied that his evidence about the IVF treatment was a late invention.

Mr Bullock's evidence on this issue was contradicted by his own wife's evidence. During a compulsory examination on 11 March 2015, Mrs Bullock gave evidence that, on 6 December 2014, Mr Bullock told her that he had accepted one or two payments totalling about \$4,000

from Mr Inskip "when we were going through our IVF procedure and apparently Darren had been talking to Kevin [Inskip] and explaining the emotional difficulty that we were going through and Kevin gave him \$4,000".

There is evidence that Mr Bullock had sought to influence Mr Inskip to give false evidence to the Commission that he had given some money to Mr Bullock to pay for IVF treatment. This issue is dealt with later in this chapter.

Mr Bullock was not a credible or convincing witness. He gave inconsistent accounts to the Commission about whether he received any money from Mr Inskip and the purpose of the payments.

In considering the extent of the payments received by Mr Bullock, the Commission has also taken into account the evidence concerning the cash reserve Mr Bullock said he kept at home. The Commission does not accept that the existence of any cash reserve explains the various deposits into Mr Bullock's financial accounts.

The Commission prefers the evidence of Mr Inskip and Mrs Inskip to that of Mr Bullock. Both of them made admissions against interest. Their evidence corroborated one another and was also supported by contemporaneous documentary evidence; specifically, bank statements, cheques, cheque butts, deposit and withdrawal slips, and Plantac BAS worksheets evidencing the withdrawal of cash from the Plantac cheque account and deposits into accounts operated by Mr Bullock and/or Mrs Bullock within a short space of time thereafter.

Mr Inskip gave evidence that, under the arrangement between him and Mr Bullock, Mr Bullock effectively determined the amount of payment he would receive by approving the amount of the variation to each contract. The purpose of the payments was to ensure that Mr Inskip continued to receive MSB work from Mr Bullock. The Commission accepts that evidence.

The Commission is satisfied that, between 2008 and 2014, Mr Bullock solicited and received payments totalling \$314,115.50 from Mr Inskip. The Commission is satisfied that the money paid to Mr Bullock by Mr Inskip was given and received as an inducement or reward for Mr Bullock exercising his public official functions as district manager of the MSB's Picton office to favour Mr Inskip's business in relation to its work for the MSB.

It is clear from the evidence before the Commission that Mrs Inskip had knowledge of the arrangement between Mr Inskip and Mr Bullock and assisted in that arrangement by administering the inflated invoices, arranging for cash to be obtained for Mr Bullock and hiding the payments in the Plantac accounts by ascribing them as payments to suppliers and subcontractors (some real and some fictitious). The Commission is satisfied that Mrs Inskip

was aware that the payments were made to Mr Bullock as an inducement or reward for Mr Bullock exercising his public official functions to favour Plantac.

Mr Bullock's cash reserve

During his compulsory examination on 5 December 2014, Mr Bullock told the Commission that he kept large amounts of cash at his home in a safe and a drawer. During his compulsory examination on 12 December 2014, Mr Bullock confirmed this evidence. He said that he won \$200,000 in a lottery in February 2003 and then, between March and September 2003, he withdrew cash totalling \$95,100 from his bank account and kept the money at home. He did this because he was trying to prevent his ex-wife from accessing lotto winnings and to avoid paying her more child support. He said that, between 2004 and 2007, he deposited between \$50,000 and \$55,000 of this cash reserve back into his account in "bits and pieces". On Mr Bullock's evidence, there was about \$30,000 remaining in the cash reserve by the beginning of 2008.

At his compulsory examination on 12 December 2014, Mr Bullock also provided a document summarising his financial position, including cash he had used to finance assets and holidays between January 2003 and March 2014. The document also summarised Mr Bullock's account of cash movements across his bank accounts between 2008 and 12 December 2014. Based on the figures in this document, there would have been \$145,137 in the cash reserve as at 12 December 2014.

The Commission accepts that Mr Bullock won \$200,000 in February 2003 and, subsequently, withdrew some of that money in cash. The Commission undertook its own analysis to establish how much cash Mr Bullock would have had in his cash reserve at relevant times. The purpose of the Commission's analysis was to establish if certain payments made into his bank account could have come from a cash reserve. The Commission took into account cash withdrawals and deposits from bank accounts held and/or operated by Mr Bullock and/or Mrs Bullock, cash repayments to credit cards, cash likely used to purchase various assets and fund holidays, and cash likely used to pay for home renovations and other home-related purchases for the period between 1 January 2008 and 30 November 2014. Both Mr and Mrs Bullock, gave evidence that cash from the cash reserve was used to pay for day-to-day expenses. However, the Commission's analysis did not take into account day-to-day expenses that may have been paid in cash, as reliable figures for this expenditure were not available to the Commission.

The figures offered by Mr Bullock in his document

summarising his financial position did not reconcile with the Commission's analysis. The Commission's financial analysis shows that Mr Bullock's alleged cash reserve at home would have been exhausted by April 2009. Given the analysis does not take into account cash spent on day-to-day expenses, it is likely that the cash reserve would have depleted sooner than April 2009. At the public inquiry, Mr Bullock denied that his cash reserve had depleted by April 2009.

The Commission's analysis shows that, between 1 January 2008 and 30 November 2014, Mr Bullock had unexplained income of approximately \$280,000. He denied that the unexplained income came from payments made by Mr Inskip. The Commission is satisfied that Mr Bullock had unexplained income of approximately \$280,000 and this evidence, in a general way, corroborates the evidence of payments by Mr Inskip and Mrs Inskip to Mr Bullock (as detailed in this chapter) and the evidence of payments by Mr Salmon to Mr Bullock (dealt with in chapter 5).

Did Mr Bullock improperly favour Mr Inskip?

There is evidence that Mr Bullock had improperly favoured Mr Inskip. This includes evidence that Mr Bullock revealed confidential tender information to Mr Inskip and improperly favoured him in relation to various contracts.

Release of confidential information

Mr Inskip gave evidence that, in February 2014, Mr Bullock had disclosed to him the lowest tender price submitted by a competitor in relation to a tender for repair works at 336 Moreton Park Road, Douglas Park. This enabled Mr Inskip to submit a more competitive tender which ultimately resulted in him securing the contract. Mr Bullock denied the allegation.

On 6 February 2014, Mr Bullock invited Plantac, M Bruton Building Co and Asset Trade Services to submit tenders for repairs to 336 Moreton Park Road. Three tenders needed to be obtained. The tenders closed at 2 pm on 20 February 2014.

On 20 February 2014, Mr Montgomery, a district supervisor at the Picton office, and Ms Evans, an administrative officer at the same office, opened the tender box. The tender box contained three tenders. M Bruton Building Co submitted a tender dated 16 February 2014 for \$62,500 (excluding GST). Asset Trade Services submitted a tender dated 18 February 2014 for \$50,332.83 (excluding GST). Plantac submitted a tender dated 20 February 2014 for \$48,950 (excluding GST).

Mr Montgomery told the Commission that, when he opened the tender box and removed the three envelopes, he noticed that the envelopes containing the tenders from Asset Trade Services and M Bruton Building Co had been “sticky-taped back, back together”. The third envelope containing the tender from Plantac did not have sticky tape on it.

Mr Montgomery spoke with Mr Rawes, a fellow district supervisor at the Picton office, and told him that two of the envelopes had been opened. Mr Rawes told him that, “Darren stayed back last night”. After a further conversation with Mr Rawes, in which they discussed that “something’s not right there”, Mr Montgomery retrieved the tender envelopes from the bin and put them in a drawer. Mr Montgomery produced the envelopes to the Commission and identified the envelopes as those that he retrieved from the tender box on 20 February 2014.

Mr Rawes gave evidence that he was standing behind Ms Evans when the tender box was opened. He observed that “a couple of the envelopes” had “sticky tape sealing them closed”. Mr Montgomery told him that the envelopes with sticky tape on them were from M Bruton Building Co and Asset Trade Services. The third envelope did not have sticky tape on it and contained the Plantac tender.

Mr Inskip gave evidence that, before he submitted his tender, he spoke with Mr Bullock who told him the lowest price of the other two tenders. Mr Inskip said he was not sure whether the conversation took place on the telephone or in person. After the conversation with Mr Bullock, he submitted his tender.

Call charge records were tendered during the public inquiry showing the contact between Mr Bullock and Mr Inskip’s mobile telephones between 18 and 21 February 2014. In this period, eight calls were made and five text messages were exchanged between Mr Bullock and Mr Inskip. The last call in the period occurred at 9.01 am on 20 February 2014.

Mr Bullock denied that he told Mr Inskip the amount of the tender submitted by Asset Trade Services (the lower of the two tenders), before Mr Inskip had submitted the Plantac tender. He denied that he spoke to Mr Inskip on the telephone for this purpose. He denied that he accessed the tender box, opened the envelopes containing the tenders from Asset Trade Services and M Bruton Building Co, looked at their prices, conveyed this information to Mr Inskip and then resealed the envelopes with sticky tape.

Mr Bullock’s legal representative submitted that the tender box could have been accessed by somebody other than an MSB officer and without the knowledge of anybody within the MSB. It was submitted that the tender box

was damaged, was sometimes left unsupervised and was accessible to the public.

The Commission heard evidence from Mr Bullock and other witnesses that the tender box was damaged. In issue was whether the tender box was damaged to an extent that would allow somebody, other than an MSB officer, to access it.

Gareth Davies, a district supervisor at the Picton office, gave evidence that he repaired the tender box in early 2014. He stated that before the tender box was repaired, a person could get their fingers but not their whole hand, into the tender box.

Mr Montgomery stated that the tender box is located at the front counter of the Picton office and is sometimes unsupervised. There are two locks on the tender box. At the relevant time, the keys to the tender box were kept in the drawers of Mr Bullock and Ms Evans but were accessible to everyone in the office. Mr Montgomery said that while the slot on the tender box had been slightly damaged, it did not affect the proper function of the tender box.

Mr Rawes said that the tender box was fixed to the underside of the front counter and there was a mailbox slot in the top of the counter. The front counter was sometimes unsupervised. The tender box was accessible from behind the front counter. Mr Rawes said that at some stage the box was dropped below the level of the counter and needed to be tightened. He denied that this damage meant a person could access the tender box without using the keys to open the locks on the box.

Kim Reid, an administrative officer at the Picton office, provided a statement to the Commission. Annexed to her statement were five photographs of the tender box. The photographs show that the tender box is affixed to the underside of the counter and there is a slot in the top of the counter. The photographs show that there is a small crack in the counter. Ms Reid stated that this damage did not affect the security or accessibility of the tender box.

The Commission is not satisfied that the contents of the tender box, in its damaged state, could have been accessed by somebody other than an MSB officer.

The Commission rejects Mr Bullock’s evidence and prefers the evidence of Mr Inskip. Mr Inskip’s evidence is corroborated by the evidence of Mr Montgomery and Mr Rawes, who both said the envelopes containing the tenders by M Bruton Building Co and Asset Trade Services had been opened and re-sealed before the tender box was opened. Further, Mr Bullock had access to the keys that opened the tender box. The opening of these envelopes to ascertain what prices were being quoted is consistent with Mr Inskip’s evidence that he was told by

Mr Bullock the lowest tender price. There is no reason why Mr Inskip would fabricate such evidence.

The Commission is satisfied that Mr Bullock opened the tender box and retrieved the tenders submitted by M Bruton Building Co and Asset Trade Services. It is likely that this occurred on the evening of 19 February 2014. The Commission is satisfied that Mr Bullock examined the tenders and then returned the tenders to the envelopes and re-sealed them using sticky tape. The Commission is satisfied that Mr Bullock spoke with Mr Inskip and told him the tender price submitted by Asset Trade Services. It is likely that this occurred during a telephone conversation with Mr Bullock at 9.01 am on 20 February 2014.

Although Mr Inskip's quotation was the lowest, he ultimately received more than the \$48,950 he quoted. This was because he was able to secure an additional payment for a variation to the contract.

50 Rita Street, Thirlmere

On 11 July 2013, Mr Rawes, a district supervisor at the Picton office, ostensibly prepared a claim investigation report in which the damage to the property at 50 Rita Street, Thirlmere, was assessed as having been caused by mine subsidence. The report contains a cost estimate of \$50,000 for the repairs. On the same day, Mr Rawes signed the report as the investigating officer and Mr Bullock signed the report as the reviewing officer. Three quotations needed to be obtained.

Mr Bullock held a financial delegation to approve Tahmoor-related claims of up to \$50,000 when he was the reviewing officer and the claim investigation report had been prepared by a district supervisor. If Mr Bullock had prepared the claim investigation report, he could only approve claims of up to \$10,000.

On 18 July 2013, Mr Bullock prepared a scope of works document. On 1 August 2013, Plantac submitted a quotation for \$41,660 (excluding GST). This is the only quotation that appears on the MSB file.

On 19 and 23 August 2013, Mr Bullock issued a variation instruction to Plantac requesting that Mr Inskip attend to further specified repairs at the property. On 3 September 2013, Plantac submitted an invoice for \$61,504 (excluding GST), for the contract price and the first variation. On 3 September 2013, Mr Bullock authorised payment of the invoice.

Mr Rawes gave evidence that he did not prepare the claim investigation report and he was not the investigating officer for the claim. Mr Rawes said that, on or around 11 July 2013, Mr Bullock approached him in the morning and asked him to sign the claim investigation report on

his behalf, claiming that he did not want to lose time by sending it to Mr Cole-Clark for his approval. Mr Rawes said that it was an unusual request and he felt pressure to sign the report.

Mr Rawes produced a handwritten diary note made on or about 12 July 2013 to the Commission. The note recorded that Mr Bullock had carriage of the claim and that "GCC [Greg Cole-Clark] was coming to office at lunchtime – he could of got CEO to sign claim". Mr Rawes also noted that the job had already been allocated to Plantac (before quotations had been obtained).

Mr Bullock agreed that he had carriage of the claim and that he had prevailed upon Mr Rawes to sign the claim investigation report. He also agreed that he asked Mr Rawes to sign the report so he could exercise his financial delegation to approve claims up to \$50,000 for Tahmoor-related claims. He said he wanted to "keep people happy" and "speed up the process". He said he could not remember if Mr Cole-Clark attended the Picton office on 12 July 2013. He denied that he prevailed upon Mr Rawes to sign the claim investigation report because he did not want Mr Cole-Clark to see the report.

Mr Bullock agreed that he breached the MSB's policy that required him to obtain three quotations. He also agreed that he failed to ensure that the tender had been recorded in the tender book. He also agreed that, by authorising payment of the Plantac invoice dated 3 September 2013, he authorised payment of a variation in an amount of \$19,844 (excluding GST) when he did not have a financial delegation to do so.

Mr Bullock accepted that his purpose in prevailing upon Mr Rawes to sign the claim investigation report was to allow him to exercise his financial delegation to approve claims of up to a value of \$50,000 for Tahmoor-related claims. The Commission is satisfied that his purpose in breaching his financial delegation was to enable him to accept the Plantac quotation and award the repair work to Plantac. The Commission is satisfied that Mr Bullock's failure to obtain three quotations and his breach of his financial delegation by approving the variation included in the Plantac invoice dated 3 September 2013, were all steps taken in aid of exercising his official functions to favour Plantac.

1 Connor Place, Tahmoor

On 14 January 2014, Mr Rawes signed a claim investigation report as the investigating officer for the damage to a property at 1 Connor Place, Tahmoor. The estimated cost of the repairs was \$40,000. On the same day, Mr Bullock signed the report as the reviewing officer. Mr Bullock held a financial delegation to approve Tahmoor-related claims of up to \$50,000, where the claim

investigation report had been prepared independently by a district supervisor. Three quotations needed to be obtained.

On 16 January 2014, Mr Bullock prepared a scope of works document. Plantac submitted a quotation dated 29 January 2014 in an amount of \$45,540 (excluding GST). A & DJ Building Services submitted a quotation dated 29 January 2014 in an amount of \$45,850 (excluding GST). A third quotation does not appear on the MSB file.

On 30 January 2014, Mr Bullock prepared a minute recommending that the quotation submitted by Plantac be accepted. On 11 February 2013, Mr Bullock wrote to Plantac advising that it had been selected as the successful tenderer.

Plantac submitted an invoice dated 13 February 2014 for \$35,000 (excluding GST), a progress payment towards the full cost of the contract. Mr Bullock authorised payment of the invoice on the same day. Plantac submitted an invoice for a progress payment dated 25 February 2014 for \$9,540 (excluding GST). Mr Bullock authorised payment of that invoice on the following day. Plantac submitted an invoice dated 30 April 2014 for \$4,660 (excluding GST), being the balance of the contract price and a variation of \$3,660 (excluding GST). Mr Bullock authorised payment of that invoice on the following day.

Mr Bullock agreed that he had carriage of the claim and that he had prevailed upon Mr Rawes to sign the claim investigation report as the investigating officer. He also agreed that he asked Mr Rawes to sign the report so he could exercise his financial delegation to approve claims of up to a value of \$50,000 for Tahmoor-related claims. He agreed that he had breached the MSB's repairs policy by not obtaining three quotations. He said that he wanted the repairs to be done before the owners of the property went away. He also said that there was a shortage of available contractors in the post-Christmas period and that he needed to fit it in with the road works being undertaken by council at Connor Place.

There is no dispute that Mr Bullock prepared the claim investigation report dated 14 January 2014. Mr Bullock's justification for why he prevailed upon Mr Rawes to sign the claim investigation report is rejected. The Commission is satisfied that Mr Bullock's purpose in prevailing upon Mr Rawes to sign the claim investigation report was to allow him to exercise his financial delegation to approve claims of up to a value of \$50,000 for Tahmoor-related claims. The Commission is satisfied that his purpose in breaching his financial delegation was to enable him to accept the Plantac quotation and award the repair work to Plantac. The Commission is satisfied that Mr Bullock's

failure to obtain three quotations was a step taken in aid of exercising his official functions to favour Plantac.

Did Mr Bullock seek to influence Mr Inskip to give false evidence to the Commission?

At the public inquiry, Mr Inskip gave evidence that, one evening in December 2014, Mr Bullock attended his home. According to Mr Inskip, Mr Bullock wanted him to tell the Commission that payments he made to Mr Bullock were a loan for IVF treatment. Mr Inskip told the Commission that he did not lend Mr Bullock money for IVF treatment.

In a prior compulsory examination on 3 February 2015, Mr Inskip had told the Commission that he had loaned money to Mr Bullock for IVF treatment. He gave evidence that he had made two payments of \$2,000 and \$3,000 in cash, about seven or eight years ago, and that the money was never repaid.

At a second compulsory examination on 27 March 2015, convened at Mr Inskip's request, he told the Commission that he had not loaned Mr Bullock any money for IVF treatment. He also said that, after Mr Bullock's visit to his home in December 2014, he made a "bad choice" and gave untruthful evidence to the Commission during his compulsory examination on 3 February 2015.

At the public inquiry, Mrs Inskip also gave evidence about the incident in December 2014. She said Mr Bullock attended her home and asked to speak with Mr Inskip. Mrs Inskip said that Mr Bullock had a bank statement with him and he was "under the impression that um, early in the piece he may have banked a couple of payments made by us to him". She said that she was unable to remember the amounts of the payments in Mr Bullock's bank statements but believed there had been a transfer of money from a joint account held by Mrs Inskip and her husband to Mr Bullock's account prior to 1 January 2008. She heard Mr Bullock say to Mr Inskip, "You can just say that you lent me the money for IVF".

After Mrs Inskip gave evidence at the public inquiry, the relevant bank statements for the period prior to 1 January 2008 were obtained. These bank statements were tendered in evidence towards the conclusion of the public inquiry and corroborated Mrs Inskip's evidence. Mr Bullock's bank statement recorded an electronic transfer of \$5,000 on 24 September 2007 from a joint account held by Mr Inskip and Mrs Inskip. A second transfer of \$5,000 from the same account occurred on 12 October 2007. Mr Inskip and Mrs Inskip's bank account statement shows corresponding withdrawals from their account on 24 September and 12 October 2007. As the bank statements were not

available until very late in the hearing, Mrs Inskip was not asked whether these payments were made as part of the same arrangement as the payments listed in Table 1.

At the public inquiry, Mr Bullock told the Commission that he had gone to Mr Inskip and Mrs Inskip's home in December 2014 to tell Mr Inskip that he had resigned from the MSB. He denied trying to coach Mr Inskip to give evidence to the Commission. Mr Bullock could not remember taking any document with him to the Inskips' home that showed a transfer of funds from an account held by Mr Inskip and Mrs Inskip. He denied that he went there for the purpose of trying to persuade Mr Inskip that the transfers were loans relating to IVF treatment. He agreed that the bank statements revealed two transfers of \$5,000 on 24 September and 12 October 2007 from a joint account held by Mr Inskip and Mrs Inskip to his bank account, but said, "I don't know what, what that's for. I can't remember".

Mr Bullock's evidence is rejected. Mr Inskip's evidence is corroborated by Mrs Inskip's evidence. The Commission is satisfied that Mr Bullock attended Mr Inskip and Mrs Inskip's home in December 2014 with the intention of influencing Mr Inskip to give evidence to the Commission that he had loaned Mr Bullock money for IVF treatment.

In relation to the two transfers of \$5,000 from Mr Inskip and Mrs Inskip's joint account on 24 September and 12 October 2007 to Mr Bullock's account, there is insufficient evidence that the payments were made to Mr Bullock in return for him providing preferential treatment to Plantac in his role as the district manager of the MSB's Picton office. There is no direct evidence that these two payments were part of the same arrangement as the payments listed in Table 1. While the bank statements themselves are available, there is no other evidence in the form of Plantac accounting records showing whether the payments were treated in the same or a similar way as the other payments. Further, there is no evidence that Mrs Inskip attempted to hide the payments by ascribing them in the accounts as payments to suppliers.

Corrupt conduct

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

Darren Bullock

The Commission is satisfied that, between 2008 and 2014, Mr Bullock solicited and received payments totalling \$314,115.50 from Mr Inskip as an inducement or reward for Mr Bullock exercising his public official functions as district manager of the MSB's Picton office to favour, or not to show disfavour to, Mr Inskip's business in relation to its work for the MSB. This conduct on the part of Mr Bullock is corrupt conduct for the purpose 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 1900* ("the Crimes Act"). Section 249B(1) 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 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 Bullock committed offences 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 MSB.

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

The Commission is satisfied for the purpose 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 2008 and 2014 – and involved a significant amount of money. It was significant misconduct of a public official in connection with the exercise of his public official functions having regard to Mr Bullock’s responsibilities which included exercising a considerable amount of discretion in deciding to whom contracts for the repairs of houses should be awarded by the MSB. As district manager of the MSB’s Picton office, Mr Bullock held a position of trust within the MSB. His conduct in accepting the payments from Mr Inskip was a significant breach of that trust. Mr Bullock’s conduct could have impaired public confidence in public administration given that Mr Bullock was a senior public official. The conduct was pre-meditated and involved a significant level of planning. Further, the conduct could involve offences under s 249B(1)(a) of the Crimes Act, which has a maximum penalty of seven years imprisonment and are serious indictable offences.

Kevin Inskip

The Commission is satisfied that, between 2008 and 2014, Mr Inskip made payments totalling \$314,115.50 to Mr Bullock as an inducement or reward for Mr Bullock exercising his public official functions as district manager of the MSB’s Picton office to favour, or not to show disfavour to, Mr Inskip’s business in relation to its work for the MSB. This conduct on the part of Mr Inskip is corrupt conduct for the purpose 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 Bullock’s official functions.

For the purpose of s 9(1)(a) of the ICAC Act, it is relevant to consider s 249B(2) 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 firstmentioned 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, there would be grounds on which such a tribunal would find that Mr Inskip committed offences under s 249B(2)(a) of the Crimes Act of corruptly giving a benefit to Mr Bullock as an inducement or reward for Mr Bullock showing favour, or not showing disfavour, in relation to the affairs or business of the MSB.

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 purpose 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 2008 and 2014 – and involved a significant amount of money. Mr Inskip made the payments to Mr Bullock with the intention of influencing Mr Bullock, a public official, to use his position at the MSB to favour his company, Plantac, in its dealings with the MSB. The conduct was pre-meditated and involved a significant level of planning. The conduct could involve offences under s 249B(2)(a) of the Crimes Act, which has a maximum penalty of seven years imprisonment, and are serious indictable offences.

Barbara Inskip

The Commission is satisfied that, between 2008 and 2014, Mrs Inskip facilitated the making of payments totalling \$314,115.50 to Mr Bullock as an inducement or reward for Mr Bullock exercising his public official functions as district manager of the MSB’s Picton office to favour, or not to show disfavour to, Mr Inskip’s business in relation to work for the MSB. This conduct on the part of Mrs Inskip is corrupt conduct for the purpose 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 Bullock’s official functions.

The Commission is satisfied for the purpose of s 9(1) a) of the ICAC Act that, if the facts it has found were 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 Mrs Inskip was an accessory to serious indictable offences committed by Mr Inskip pursuant to s 249B(2) (a) of the Crimes Act of corruptly giving a benefit to Mr Bullock as an inducement or reward for Mr Bullock showing favour, or not showing disfavour, in relation to the affairs or business of the MSB.

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 purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because Mrs Inskip facilitated the making of payments to Mr Bullock involving a significant amount of money. Although Mrs Inskip acted on Mr Inskip's instructions and appears to have been a reluctant participant in the scheme, she was not acting under duress and the conduct took place over a significant period of time; between approximately 2008 and 2014. The conduct was pre-meditated and involved a significant level of planning. The conduct was intended to influence a public official to favour a company of which she was a director. Further, the conduct could involve offences under s 249B(2)(a) of the Crimes Act. Such conduct may be punishable in accordance with s 347 of the Crimes Act and is liable to a maximum penalty of five years imprisonment pursuant to s 350 of the Crimes Act and, therefore, involve 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 Bullock, Mr Inskip and Mrs Inskip are "affected" persons.

Mr Bullock


The evidence Mr Bullock 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 financial records and bank statements. There is also admissible evidence in relation to Mr Bullock's position at the MSB and the fact that he was in a position to show favour, or not to show disfavour, to particular companies, and the MSB property files relating to the relevant claims. The evidence of Mr Inskip, Mrs Inskip, Mr Rawes, Ms Evans and Mr Montgomery 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 Mr Bullock for offences of soliciting and receiving corrupt commissions or rewards totalling \$314,115.50 pursuant to s 249B(1)(a) 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 Bullock for an offence of misconduct in public office for disclosing confidential tender information to Mr Inskip in respect of a tender for repair works at 336 Moreton Park Road, Douglas Park.

Consideration should also be given to obtaining the advice of the DPP with respect to the prosecution of Mr Bullock for the offences of:

- giving false or misleading evidence at the public inquiry on 9 April 2015, contrary to s 87(1) of the ICAC Act, when Mr Bullock denied receiving cash payments from Mr Inskip funded from an arrangement that involved directing Mr Inskip to inflate the cost of variations to the MSB, in return for showing preferential treatment to Mr Inskip by awarding Plantac contracts for repair works
- giving false or misleading evidence at the public inquiry on 9 April 2015, contrary to s 87(1) of the ICAC Act, when he denied that he accessed the tender box, opened the envelopes containing tenders by Asset Trade Services and M Bruton Building Co and then told Mr Inskip the price quoted by Asset Trade Services, the lower of the two tenders, in relation to the tender for repair works at 336 Moreton Park Road, Douglas Park
- procuring the giving of false testimony by Mr Inskip at a compulsory examination before the Commission on 3 February 2015, contrary to s 89(a) of the ICAC Act, when, during a visit to the Inskips' home in December 2014,



he coached Mr Inskip to tell the Commission that payments made to Mr Bullock were loans for IVF treatment.

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

Mr Inskip

Mr Inskip gave full and frank evidence with respect to his dealings with Mr Bullock, 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 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 Inskip.

Mrs Inskip

Mrs Inskip gave full and frank evidence with respect to her involvement in the arrangement, 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 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 Mrs Inskip.



Chapter 4: The arrangement between Mr Bullock and Mr Salmon

This chapter examines Mr Bullock’s involvement in the awarding of 11 repair jobs to Mr Inskip’s company, Plantac, between 2006 and 2013. It is alleged that Mr Bullock procured cover quotes from Mr Salmon of A & DJ Building Services in order to create the false impression that he had engaged in a competitive process in the course of awarding the work to Plantac, when he had not.

Mr Salmon is the principal of A & DJ Building Services, which has operated for over 20 years. Mr Salmon and Mr Bullock met over 30 years ago as apprentice carpenters at the Department of Public Works. Later, Mr Salmon was engaged as a contractor by Mr Bullock when Mr Bullock worked for a banking corporation and later for an insurance company. In May 2005, A & DJ Building Services was appointed to the MSB’s list of selected contractors.

Mr Salmon’s evidence about the false quotations

Mr Salmon gave evidence that he had an arrangement with Mr Bullock whereby he would provide A & DJ Building Services cover quotes on particular jobs. He said that Mr Bullock would provide him with a copy of a Plantac quotation for a specific job, usually by fax. After receiving the copy of the Plantac quotation, and at the direction of Mr Bullock, Mr Salmon said he would prepare a false quotation on A & DJ Building Services letterhead in an amount that was higher than the Plantac quotation. He was told by Mr Bullock what date to put on the cover quote. He then sent it to Mr Bullock. He understood that the purpose of the cover quote arrangement was to allow Plantac to win the relevant jobs.

Mr Salmon gave evidence that, on one occasion, in relation to a tender for a job at 33 York Street, Tahmoor, he was told by Mr Bullock that “the same would be done for me”; meaning that Plantac would submit cover quotes on jobs for which A & DJ Building Services was to be

selected as the successful tenderer. He said he never discussed the practice of submitting cover quotes with Mr Inskip. The allegation that Mr Inskip provided Plantac cover quotes to Mr Bullock in relation to certain jobs for which A & DJ Building Services was to be selected as the successful tenderer is examined in chapter 5.

Mr Salmon’s evidence was corroborated by records he retained at home; namely, the copies of the Plantac quotations that provided the information he needed in order to submit cover quotes. He produced the copies of the Plantac quotations to the Commission. All but one of the Plantac quotations was faxed from the MSB’s Picton office.

The properties

Table 2 (page 31) summarises the information available from the MSB’s property files in respect of 10 of the 11 properties in relation to which Mr Salmon gave evidence that he supplied A & DJ Building Services cover quotes to Mr Bullock. Evidence in relation to the 11th property is considered later in this chapter.

Mr Bullock’s evidence

Mr Bullock prevaricated between not recalling and denying that he directed Mr Salmon to submit A & DJ Building Services cover quotes in relation to the properties in Table 2. He both failed to recall and denied having faxed the Plantac quotations to Mr Salmon in relation to each of the properties. He denied the proposition that he sent Mr Salmon copies of the Plantac quotations for the purpose of Mr Salmon providing cover quotes in order to make it appear as though a genuine tender process had been undertaken. He did not proffer any explanation as to how or why the Plantac quotations had been faxed from the MSB’s Picton office to Mr Salmon.

The A & DJ Building Services cover quotes in relation to the properties numbered 1, 2, 3 and 4 in Table 2 bore

Table 2: MSB property file information

	Property	Quotations (excluding GST)	Notation on the header of the faxed copies of the Plantac quotations sent from the MSB's Picton office (provided to the Commission by Mr Salmon)	MSB Picton office "Received" date stamp imprint on the A & DJ Building Services quotations
1	6 Denison Place, Appin	Plantac quotation dated 29/06/06 for \$4,340. A & DJ Building Services quotation dated 05/07/06 for \$4,770	Sent at 5 pm on 13/07/06	"Received" date stamp imprint dated 05/07/06
2	49 Pitt Street, Tahmoor	Plantac quotation dated 29/06/06 for \$4,620. A & DJ Building Services quotation dated 05/07/06 for \$5,070	Sent at 5 pm on 13/07/06	"Received" date stamp imprint dated 05/07/06
3	16 Stuart Place, Tahmoor	Plantac quotation dated 02/11/06 for \$8,980. A & DJ Building Services quotation dated 02/11/06 for \$9,730	Sent at 10.04 am on 10/11/06	"Received" date stamp imprint dated 02/11/06
4	61 Pitt Street, Tahmoor	Plantac quotation dated 20/11/06 for \$17,768. A & DJ Building Services quotation dated 23/11/06 of \$19,620	Sent at 11.23 am on 13/12/06	"Received" date stamp imprint dated 23/11/06
5	15 Bronzewing Street, Tahmoor	Plantac quotation dated 20/02/09 for \$15,280. A & DJ Building Services quotation dated 24/02/09 for \$17,840	Sent at 9.25 am on 17/03/09	"Received" date stamp imprint is unclear
6	45 Park Street, Tahmoor	Plantac quotation dated 16/10/09 for \$25,100. A & DJ Building Services quotation dated 13/10/09 for \$27,340	No notation on the header	No "Received" date stamp. Mr Salmon said that it was faxed or handed to him by Mr Bullock
7	3 Stuart Place, Tahmoor	Plantac quotation dated 01/09/10 for \$15,880. A & DJ Building Services quotation dated 08/09/10 for \$17,440	Sent at 5.02 pm on 20/09/10	No "Received" date stamp. Handwritten note in Mr Salmon's handwriting, stating "Sent 21/9/10" indicating the date the A & DJ Building Services cover quote was submitted to the MSB
8	286 Douglas Park Drive, Douglas Park	Plantac quotation dated 01/12/10 for \$10,800. A & DJ Building Services quotation dated 03/12/10 for \$12,140	Sent at 3.25 pm on 17/12/10	"Received" date stamp imprint is unclear
9	31 Park Street, Tahmoor	Plantac quotation dated 22/12/10 for \$36,080. A & DJ Building Services quotation dated 22/12/10 for \$38,560	Sent at 1.07 pm on 22/12/10	No "Received" date stamp
10	336 Moreton Park Road, Douglas Park	Plantac quotation dated 18/06/11 for \$23,080. A & DJ Building Services quotation dated 18/06/11 for \$27,040	Sent at 1.33 pm on 05/08/11	No "Received" date stamp

the MSB Picton office “Received” date stamps that predated the dates on which Mr Salmon said he had received the copies of the Plantac quotations and the dates on which he had submitted the A & DJ Building Services cover quotes. Mr Bullock was questioned about the “Received” date stamp imprints and whether he had applied a backdated date stamp imprint. Again, Mr Bullock’s evidence regarding the application of the “Received” date stamp on A & DJ Building Services cover quotes also equivocated between denials and an inability to recall what had occurred. He also made a general denial stating: “I’ve never manipulated a date stamp if that’s what you’re asking”. Mr Bullock admitted that he had access to date stamps that were kept in the Picton office on the desks of administrative staff.

The Commission rejects Mr Bullock’s evidence that he did not use the “Received” date stamp to apply false date stamp imprints to A & DJ Building Services cover quotes. He was not a credible witness. Mr Bullock had responsibility for the claims and admitted that there were date stamps in the office to which he had access. The Commission is satisfied that an inference is available that Mr Bullock deliberately used the “Received” date stamp to apply false date stamp imprints to A & DJ Building Services cover quotes in relation to the properties numbered 1, 2, 3 and 4 in Table 2. Mr Bullock’s conduct in this regard was consistent with the finding made below that he sought to falsely represent that there had been a competitive tender process for obtaining quotations.

In respect of the properties numbered 5, 6, 9 and 10 in Table 2, the MSB’s policies and procedures required that a public tender process be undertaken for claims over \$20,000. Mr Bullock gave evidence that a public tender process had not been undertaken in the whole time he had been at the MSB. Evidence before the Commission suggests that this policy was entirely disregarded within the MSB and, in this regard, the Commission accepts Mr Bullock’s evidence.

In respect of the properties numbered 2, 3, 4, 7 and 8 in Table 2, the MSB’s policies and procedures required that Mr Bullock seek or obtain three quotations. Only two quotations appear on each of the MSB files. When questioned about this issue in respect of property 8, Mr Bullock largely accepted that he failed to comply with the MSB’s policies and procedures by only obtaining two quotations. He denied, however, that he obtained an A & DJ Building Services cover quote and failed to obtain a third quotation in order to favour Plantac by awarding it the repair work.

In respect of each of the properties numbered from 1 to 10 in Table 2, Plantac was awarded the contracts for the repair work and Mr Bullock authorised payment of the Plantac invoices, which accorded with the amounts

originally quoted by Plantac. In respect of property 5 at 15 Bronzewing Street, Tahmoor, Mr Bullock authorised payment of the contract price when he authorised payment of a Plantac invoice dated 16 March 2009 for \$15,280 (excluding GST). Then, on 27 May 2009, he authorised payment of a variation to the contract price, when he authorised payment of a Plantac invoice dated 21 May 2009 in the amount of \$59,600 (excluding GST), which was additional to the amount already paid by the MSB. At the time, Mr Bullock did not hold a financial delegation to authorise the payment of any variations to a contract price.

In respect of property 5, Mr Bullock accepted that he did not act within his financial delegation when, on 27 May 2009, he authorised payment of a Plantac invoice dated 21 May 2009 in an amount of \$59,600 (excluding GST).

The repairs at 88 Rita Street, Thirlmere

On 15 May 2013, Mr Montgomery, a district supervisor, signed a claim investigation report purporting to be the investigating officer in relation to a claim for compensation at 88 Rita Street, Thirlmere. The report assessed the damage to the property as having been caused by mine subsidence and estimated the cost of repairs to be \$50,000. At this time, Mr Bullock held a financial delegation to approve Tahmoor-related claims of up to \$50,000 when he was the reviewing officer and when the claim investigation report had been prepared by a district supervisor. On 27 May 2013, Mr Bullock prepared a scope of works document. Three genuine quotations needed to be obtained.

Three quotations appear on the MSB file. On 29 May 2013, Plantac submitted a quotation for \$47,925 (excluding GST). On the same day, a quotation was submitted by MAB Building Services Pty Ltd (“MAB Building Services”) for \$51,400 (excluding GST). MAB Building Services was not on the list of selected contractors approved by the MSB. The quotation was purportedly signed by Craig Jonas, MAB Building Services proprietor. On 30 May 2013, A & DJ Building Services submitted a quotation in an amount of \$49,590 (excluding GST).

Mr Bullock awarded the tender to Plantac. Between 2 July and 30 August 2013, Plantac submitted four invoices covering its quoted price of \$47,925 (excluding GST) and also submitted two variations totalling \$8,404 (excluding GST). Mr Bullock authorised payment of all invoices, totalling \$56,329 (excluding GST). From 1 December 2011, Mr Bullock held a financial delegation to approve variations to contracts of up to 15% of the accepted tender price or \$10,000, whichever was the lesser. This delegation related to accumulated variations

for the contract price. By approving variations to the original contract price totalling \$8,404 (excluding GST), Mr Bullock breached his financial delegation.

Mr Montgomery gave evidence that he did not have carriage of the MSB file relating to repair works at 88 Rita Street, Thirlmere, and that the claim investigation report was not prepared by him. Mr Montgomery said he was asked to sign the claim investigation report by Mr Bullock. Mr Bullock told him that he wanted to get the matter “moving” and did not want to wait for the approval of Mr Cole-Clark. Mr Montgomery said that he agreed to sign the report because he did not want to get Mr Bullock, his district manager, “offside”.

Mr Bullock agreed that he had carriage of the claim relating to 88 Rita Street, Thirlmere. He said that he had prepared the claim investigation report but had prevailed upon Mr Montgomery to sign the report. He said that he asked Mr Montgomery to misrepresent that he was the investigating officer because he did not want any delays in having the claim approved because the owners of the house were going on holidays. Mr Bullock said that it was unlikely that Mr Cole-Clark would approve the claim in a short time frame “because things just disappear in his office like a vortex”.

The Commission rejects this evidence. The Commission is satisfied that Mr Bullock’s purpose in having Mr Montgomery sign the report was not because of any genuine concern about the delays that Mr Cole-Clark may have caused. The Commission is satisfied that Mr Bullock deliberately circumvented the requirement that the claim investigation report be prepared by a district supervisor so that he could exercise his financial delegation of up to \$50,000 for Tahmoor-related claims and accept the Plantac tender.

The Commission is satisfied that Mr Bullock prevailed upon Mr Montgomery to sign the claim investigation report in relation to the property at 88 Rita Street, Thirlmere, as a step taken in aid of the provision of preferential treatment to Plantac.

Mr Salmon produced a faxed copy of the Plantac quotation that appears on the MSB file. The fax imprint on the top of the page indicates it was sent from the Picton office at 11.48 am on 5 June 2013. Mr Salmon said he was sent this document for the purpose of providing a cover quote. He said that his quotation dated 30 May 2013 was not a genuine one and had been backdated at the request of Mr Bullock.

Mr Inskip gave evidence that he submitted a cover quote on the letterhead of MAB Building Services at the request of Mr Bullock. He said that he did not sign the quotation purportedly prepared by Mr Jonas, MAB Building Services proprietor.

Mr Bullock said that he could not remember directing Mr Salmon to provide a backdated cover quote. Mr Bullock could not recall faxing the Plantac quotation to Mr Salmon. Mr Bullock denied signing the MAB Building Services quotation dated 29 May 2013 purporting to be Mr Jonas.

Did Mr Bullock direct Mr Salmon to provide cover quotes?

The Commission does not accept Mr Bullock’s evidence. He was not a credible witness. He prevaricated between not remembering and denying that he instructed Mr Salmon to submit A & DJ Building Services cover quotes. When asked whether he had faxed copies of Plantac quotations to Mr Salmon, he also equivocated between not remembering and denying that he had done so. He offered no credible alternative explanation as to why Mr Salmon was sent copies of Plantac quotations from the MSB’s Picton office.

Mr Salmon’s evidence, however, is supported by the fact that he produced from his own records copies of the Plantac quotations that he had received. Mr Salmon had no reason to lie about his involvement or that of Mr Bullock in this scheme. His evidence about the cover quotes was an admission against his interest.

The Commission is satisfied that in relation to the 10 properties in Table 2 and the property at 88 Rita Street, Thirlmere, Mr Salmon, at Mr Bullock’s direction, prepared A & DJ Building Services cover quotes and submitted them to Mr Bullock to enable Mr Bullock to falsely represent that he had obtained competitive quotations.

The Commission is satisfied that Mr Bullock caused repair work to be directly allocated to Mr Inskip’s company, Plantac, and misrepresented to other MSB officers that Plantac had competed with other businesses for the work, when it had not. By doing so, Mr Bullock conferred a substantial financial benefit on Plantac.

Was Mr Bullock rewarded in 2006?

A finding has been made in the previous chapter that, between 2008 and 2014, Mr Bullock received about \$314,000 from Mr Inskip as an inducement or reward for Mr Bullock exercising his public official functions to favour Mr Inskip’s business.

The cover quotes for properties numbered from 1 to 4 in Table 2 are for 2006 and, therefore, pre-date that arrangement. The question arises as to whether Mr Bullock received any benefit with respect to the provision of cover quotes for these properties.

In the public inquiry, Mr Inskip said that the payments to

Mr Bullock lasted for about seven years. In his compulsory examination on 27 March 2015, Mr Inskip said that the payments “probably did go back ... further than seven years”; although he qualified his answer by stating, “but, you know, there’s, there’s absolutely no record of ... that”.

It will be recalled that Mr Inskip gave evidence that payments were made to Mr Bullock in the context of variations to the contract price. No variations to the original contract price took place in relation to the properties numbered from 1 to 4 in Table 2. In the absence of direct evidence from Mr Inskip that payments were made to Mr Bullock contemporaneous to work being carried out at the properties, there is insufficient evidence to support a finding that payments were made to Mr Bullock by Mr Inskip in relation to the repair works carried out at the properties numbered 1 to 4 in 2006.

Corrupt conduct

Darren Bullock

The Commission is satisfied that, between 2006 and 2013, Mr Bullock used his position at the MSB to direct Mr Salmon to produce and submit backdated A & DJ Building Services cover quotes (false quotations) to the MSB in relation to the properties at 6 Denison Place, Appin, 49 Pitt Street, Tahmoor, 16 Stuart Place, Tahmoor, 61 Pitt Street, Tahmoor, 15 Bronzewing Street, Tahmoor, 45 Park Street, Tahmoor, 3 Stuart Place, Tahmoor, 286 Douglas Park Drive, Douglas Park, 31 Park Street, Tahmoor, 336 Moreton Park Road, Douglas Park and 88 Rita Street, Thirlmere, and, with respect to the quotations for 6 Denison Place, Appin, 49 Pitt Street, Tahmoor, 16 Stuart Place, Tahmoor and 61 Pitt Street, Tahmoor, to manipulate the “Received” date stamp to represent that those quotations had been received after the Plantac quotations, for the purpose of exercising his public official functions as district manager of the MSB’s Picton office, to show favour in the provision of work to Plantac by falsely representing that quotations competitive with the Plantac quotations had been sought and obtained in relation to work on those properties. This conduct on the part of Mr Bullock is corrupt conduct for the purpose of s 8(1)(b) of the ICAC Act as it is conduct that constitutes or involves the dishonest or partial exercise of his public official functions as district manager of the MSB’s Picton office.

For the purpose of s 9(1)(a) of the ICAC Act, it is relevant to consider s 300(1) of the Crimes Act and s 253 of the Crimes Act (currently in force). Between 1 January 2006 and 22 February 2010, the relevant offence to consider was making a false instrument pursuant to s 300 of the Crimes Act, which provided:

(1) A person who makes a false instrument, with the intention that he or she, or another person, will use it to induce another person:

- (a) to accept the instrument as genuine, and*
- (b) because of that acceptance, to do or not do some act to that other person’s, or to another person’s, prejudice,*

is liable to imprisonment for 10 years.

Section 304 of the Crimes Act provided that “a person is to be treated as making a false instrument if the person alters an instrument so as to make it false in any respect (whether or not it is false in some other respect apart from that alteration)”. Mr Bullock’s deliberate application of a false date stamp altered the cover quote and, therefore, satisfied the definition of “making” a false instrument.

From 22 February 2010, the relevant offence to consider is making a false document pursuant to s 253 of the Crimes Act, which provides:

A person who makes a false document with the intention that the person or another will use it:

- (a) to induce some person to accept it as genuine, and*
- (b) because of its being accepted as genuine:*
 - (i) to obtain any property belonging to another, or*
 - (ii) to obtain any financial advantage or cause any financial disadvantage, or*
 - (iii) to influence the exercise of a public duty,*

is guilty of the offence of forgery.

Maximum penalty: Imprisonment for 10 years.

For conduct that occurred between 1 January 2006 and 22 February 2010, 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 Bullock committed offences under s 300(1) of the Crimes Act of making a false instrument. Mr Bullock and Mr Salmon had an agreement or an understanding between themselves to make the cover quotes as part of a joint criminal enterprise and, in accordance with the continued understanding or arrangement, both Mr Bullock and Mr Salmon are equally responsible for the offences, regardless of the part played by each in the commission of the offences.

For conduct that occurred from 22 February 2010, 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 Bullock committed offences under s 253 of the Crimes Act of making a false document. As set out above, Mr Bullock and Mr Salmon had an agreement or an understanding between themselves to make the cover quotes and, consequently, Mr Bullock is as equally responsible as Mr Salmon for making the cover quotes.

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 purpose of s 74BA of the ICAC Act that Mr Bullock's conduct is serious corrupt conduct because it took place over a significant period of time – between 2006 and 2013. Further, as district manager of the MSB's Picton office, Mr Bullock held a position of trust within the MSB. His conduct was a significant breach of that trust. Also, it was significant misconduct of a public official in connection with the exercise of his public official functions, having regard to Mr Bullock's responsibilities, which included exercising a considerable amount of discretion in deciding to whom contracts for the repairs of houses should be awarded by the MSB. Mr Bullock's conduct could have impaired public confidence in public administration, given that he was a senior public official. The conduct was pre-meditated and involved a significant level of planning. Finally, Mr Bullock's conduct could involve offences pursuant to s 300 of the Crimes Act of making a false instrument (for offences that occurred between 1 January 2006 and 22 February 2010) and s 253 of the Crimes Act of making a false document (for offences that occurred from 22 February 2010). Offences pursuant to both of these sections have a maximum penalty of 10 years imprisonment and are serious indictable offences.

David Salmon

The Commission is satisfied that, between 2006 and 2013, Mr Salmon – at Mr Bullock's direction – produced and submitted backdated A & DJ Building Services cover quotes to the MSB in relation to the properties at 6 Denison Place, Appin, 49 Pitt Street, Tahmoor, 16 Stuart Place, Tahmoor, 61 Pitt Street, Tahmoor, 15 Bronzewing Street, Tahmoor, 45 Park Street, Tahmoor, 3 Stuart Place, Tahmoor, 286 Douglas Park Drive, Douglas Park, 31 Park Street, Tahmoor, 336 Moreton Park Road, Douglas Park and 88 Rita Street, Thirlmere to facilitate Mr Bullock exercising his public official functions as district manager of the MSB's Picton office, to show

favour in the provision of work to Plantac by being able to falsely represent that quotations competitive with the Plantac quotations had been sought and obtained in relation to work on those properties. This conduct on the part of Mr Salmon is corrupt conduct for the purpose 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 Bullock's official functions.

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 Salmon committed offences under s 300(1) of the Crimes Act of making a false instrument for conduct that occurred between 1 January 2006 and 22 February 2010.

For conduct that occurred from 22 February 2010, 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 Salmon committed offences under s 253 of the Crimes Act of making a false document.

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 purpose 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 approximately 2006 and 2013. Mr Salmon knowingly facilitated Mr Bullock partially and dishonestly exercising his public official functions as district manager of the MSB's Picton office by showing favour to Plantac in relation to its work for the MSB. The conduct was pre-meditated and involved a significant level of planning. Finally, Mr Salmon's conduct could involve offences pursuant to s 300 of the Crimes Act (for offences that occurred between 1 January 2006 and 22 February 2010) and s 253 of the Crimes Act (for offences that occurred from 22 February 2010). Offences pursuant to both of these sections have a maximum penalty of 10 years imprisonment and are serious indictable offences.

Section 74A(2) statement

The Commission is satisfied that Mr Bullock and Mr Salmon are “affected” persons.

Mr Bullock

The evidence Mr Bullock 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 financial records and bank statements. There is also admissible evidence in relation to Mr Bullock’s position at the MSB and the fact that he was in a position to show favour, or not to show disfavour, to specific companies and there are MSB property files relating to the relevant claims. The evidence of Mr Salmon, Mr Inskip and officers of the MSB 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 Mr Bullock for offences of making a false document pursuant to s 300(1) of the Crimes Act (for conduct that occurred before 22 February 2010) and s 253 of the Crimes Act (for conduct that occurred from 22 February 2010) of making a false document for procuring the A & DJ Building Services cover quotes from Mr Salmon.

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 Bullock of making a false instrument pursuant to s 300(1) of the Crimes Act for manipulating the “Received” date stamp and applying false date stamp imprints to certain A & DJ Building Services cover quotes.

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 Bullock for offences pursuant to s 300(2) of the Crimes Act of using a false instrument (for conduct that occurred before 22 February 2010) and s 254 of the Crimes Act of using a false document (for conduct that occurred from 22 February 2010) for placing the A & DJ Building Services cover quotes on the MSB files, intending for them to be relied on by others in demonstrating that he had attempted to comply with the tender process.

Consideration should also be given to obtaining the advice of the DPP with respect to the prosecution of Mr Bullock for the following offences:

- giving false or misleading evidence at the public inquiry on 27 and 28 May 2015, contrary to s 87(1) of the ICAC Act, when he denied

procuring A & DJ Building Services cover quotes from Mr Salmon in respect of specific properties

- giving false or misleading evidence at the public inquiry on 27 May 2015, contrary to s 87(1) of the ICAC Act, when he denied deliberately manipulating “Received” date stamps and deliberately applying false date stamp imprints to A & DJ Building Services cover quotes in respect of specific properties.

Mr Salmon

Mr Salmon gave full and frank evidence with respect to his dealings with Mr Bullock, 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 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 Salmon.

Chapter 5: Did Mr Bullock receive payments from Mr Salmon?

This chapter examines allegations that Mr Bullock agreed to receive, and did receive, payments from Mr Salmon as an inducement or reward for awarding work to A & DJ Building Services.

The payments: Mr Salmon's evidence

Mr Salmon gave evidence that, from about 2007 until early 2015, he submitted invoices to the MSB, at Mr Bullock's direction, which contained inflated claims for work that had not been performed. He said he did so with the intention that he and Mr Bullock share the additional amounts received from the MSB. It was not disputed at the public inquiry that Mr Bullock, after receiving the invoices prepared by Mr Salmon, authorised their payment. Mr Salmon said, in effect, he obtained around \$176,200 from the MSB in this fashion, which he shared equally with Mr Bullock.

According to Mr Salmon, Mr Bullock would usually direct him to add an amount of money to his invoice at the conclusion of a building or repair project. Mr Salmon said that he would often submit backdated quotations after the repair works had been completed and that these quotations included the additional amount of money requested by Mr Bullock, above the actual cost of the work. He submitted the backdated quotations by email.

Table 3 (page 40) provides details of the amounts of money Mr Salmon said he added to the real cost of the repairs and shared with Mr Bullock.

On a few occasions, Mr Salmon said that he was directed to add an amount of money to his tender or quotation at the outset of the job at onsite tender meetings. One such occasion was in relation to the property numbered 33 in Table 3. Mr Salmon said that at an onsite meeting at this property, and in the presence of Mr Inskip, who was also tendering for the work, Mr Bullock directed them to add

\$30,000 to their tender price. Mr Salmon wrote a note on his scope of works document, "\$15,000 + \$15,000", meaning that \$30,000 should be added to his tender price. Mr Salmon said that, in the event he was the successful tenderer, it was intended that this amount would be shared equally between himself and Mr Bullock.

Mr Inskip gave evidence of receiving the same direction from Mr Bullock in the presence of Mr Salmon. He understood that the additional \$30,000 was to be shared equally between Mr Bullock and the successful contractor. Mr Inskip also said that, at Mr Bullock's direction, he submitted an additional tender for the work in another contractor's name in an amount higher than his own tender. Mr Inskip was shown the tender submitted by the third contractor, called "M Burton Co". He said he did not recognise the name of the contractor and gave evidence that he may have written out some, but not all, of the details on the tender form.

The tender submitted by M Burton Co was dated 17 October 2014 for \$72,500 (excluding GST). Plantac submitted a tender dated 18 October 2014 in the amount of \$56,600 (excluding GST). Mr Inskip said he submitted a higher price than normal so he would not get the job "[be] cause I didn't feel comfortable with the whole thing". A & DJ Building Services submitted a tender dated 20 October 2014 in an amount of \$56,100 (excluding GST). Mr Salmon said that the true value of the works was \$26,100 (excluding GST). The repair work was awarded to A & DJ Building Services on Mr Bullock's recommendation. Mr Salmon said he paid Mr Bullock a total of \$10,500 in late 2014 and early 2015. He said he did not pay him the balance of \$4,500 because of concerns about the Commission's investigation.

Mr Salmon said he paid Mr Bullock in cash and usually in person. They arranged to meet at various locations to hand over the money, including a car park in a Coles supermarket in Tahmoor and at job sites. Mr Salmon said he had access to cash because he kept cash at home.

He gave evidence that that this cash originally came from the \$160,000 proceeds of sale of a swimming pool shop in 2000 or 2001. He kept cash at home in case he was no longer able to work. He did not account for the payments to Mr Bullock through any books of account.

Mr Salmon admitted that he obtained a financial benefit from the arrangement by sharing the additional amounts received from the MSB equally with Mr Bullock. He said that he did not benefit to the same degree as Mr Bullock because he used the money generated from the arrangement to defray his GST and income tax obligations. He explained that, when an invoice was inflated, he was required to pay more tax. He said he believed that, if he had not acceded to Mr Bullock's direction, then he would not have continued to receive work from the MSB.

In addition to the payments listed in Table 3, Mr Salmon said that on three occasions Mr Bullock agreed to receive payments from him totalling \$34,000. Mr Salmon did not make these payments. He said that Mr Bullock invited A & DJ Building Services to submit a tender or quotation for repair work and, on each of the three occasions, Mr Bullock directed him to add an amount of money to his tender or quotation, above the actual cost of repairs. Mr Salmon followed Mr Bullock's direction but failed to secure the repair work. Table 4 (page 41) summarises Mr Salmon's evidence about these payments.

In relation to the properties numbered 1, 2, 3, 4, 6, 7, 8, 9, 24, 33, 34 and 36 in Table 3 and Table 4, Mr Salmon produced his copies of MSB remittance advices, scope of works documents and a variation instruction and identified his handwritten contemporaneous notes on the documents as recording the additional amounts of money Mr Bullock instructed him to charge the MSB, above the cost of repairs, and in respect of which they would take an equal share.

In relation to properties numbered 5, 19, 30 and 35 in Table 3 and Table 4, Mr Salmon identified Mr Bullock's

handwriting on the scope of work documents. He said these contemporaneous notes recorded Mr Bullock's instruction to him to include additional amounts, above the cost of repairs, in his invoice to the MSB.

In relation to properties numbered from 10 to 18, from 20 to 23, from 25 to 29, 31 and 32 in Table 3, Mr Salmon said he sent a text message to Mr Bullock advising him of the real cost of the repairs. Mr Bullock responded by text message and directed him to add an additional amount of money to the job. Mr Salmon said the additional amounts identified by Mr Bullock were then reflected in Mr Salmon's invoices and backdated quotations and these amounts were to be shared equally between them.

Mr Salmon produced his handwritten transcription of the text messages to the Commission. The Commission was also able to extract the deleted text messages from Mr Salmon's mobile telephone.

The payments: Mr Bullock's evidence

Mr Bullock initially gave evidence before Mr Salmon and denied receiving any payments from him. After Mr Salmon gave evidence and the details of the text messages exchanged between Mr Bullock and Mr Salmon were tendered in evidence, Mr Bullock told the Commission that "Mr Salmon did approach me to put money on jobs for himself". He said that the money added to quotations, tenders or invoices in relation to jobs outlined in the text messages was intended for Mr Salmon alone. Mr Bullock claimed that the text messages he sent to Mr Salmon represented his estimate of the cost of the repair works.

When questioned about why a text message response to Mr Salmon – that is, "T 1000ea" – in relation to the property numbered 16 in Table 3 included the shortened

Table 3: Payments to Mr Bullock as identified by Mr Salmon

	Property	Actual cost of repairs according to Mr Salmon ¹	Amounts invoiced by Mr Salmon on behalf of A & DJ Building Services ¹	Dates Mr Bullock authorised payment	Total amounts, evenly shared between Mr Salmon and Mr Bullock ²
1	25 Patterson Street, Tahmoor	\$80	\$280	09/03/07	\$200
2	14 Stuart Place, Tahmoor	\$1,880	\$3,880	09/03/07	\$2,000
3	34 King Street, Tahmoor	\$24,210	\$40,210	02/10/07	\$16,000
4	42 King Street, Tahmoor	\$3,840	\$6,840	28/11/07	\$3,000
5	42C King Street, Tahmoor	\$4,320	\$7,320	28/11/07	\$3,000
6	34B King Street, Tahmoor	\$1,080	\$5,080	06/08/08	\$4,000
7	31 King Street, Tahmoor	\$4,510	\$10,510	04/08/08	\$6,000
8	21 Fraser Street, Tahmoor	\$4,540	\$14,540	18/12/09	\$10,000
9	43 Abelia Street, Tahmoor	\$6,190	\$17,900	24/11/09	\$10,000 ³
10	23B Abelia Street, Tahmoor	\$2,780	\$4,780	30/09/11	\$2,000
11	19 Courtland Avenue, Tahmoor	\$1,060	\$3,060	25/11/11	\$2,000
12	8 Stuart Place, Tahmoor	\$1,280	\$3,280	29/02/12	\$2,000
13	435 Brooks Point Road, Appin-House 5	\$5,640	\$8,640	10/05/12	\$3,000
14	435 Brooks Point Road, Appin-House 6	\$920	\$4,920	22/05/12	\$4,000
15	3 Stuart Place, Tahmoor	\$12,440	\$18,440	20/07/12	\$6,000
16	25 Tickle Drive, Thirlmere	\$600	\$2,600	06/09/12	\$2,000
17	5A Huen Place, Tahmoor	\$3,770	\$7,770	06/09/12	\$4,000
18	20 Milne Street, Tahmoor (2012)	\$4,890	\$12,890	06/09/12	\$8,000
19	20 Milne Street, Tahmoor (2014)	\$5,080	\$14,280	14/07/14	\$9,200
20	16 Castlereagh Street, Tahmoor	\$1,640	\$5,040	22/10/12	\$3,400
21	71 Greenacre Drive, Tahmoor	\$14,370	\$24,370	04/12/12	\$10,000
22	100 Brundah Road, Thirlmere	\$2,310	\$4,710	23/01/13	\$2,400
23	74 Hilton Park Road, Tahmoor	\$4,860	\$6,860	23/01/13	\$2,000
24	2 Abelia Street, Tahmoor	\$7,790	\$11,790	12/07/13	\$4,000
25	3B Tahmoor Road, Tahmoor	\$4,460	\$8,460	02/10/13	\$4,000
26	33 York Street, Tahmoor	\$11,660	\$21,660	13/02/14	\$10,000
27	Tahmoor Town Centre (chequer plate)	\$1,270	\$3,270	11/02/14	\$2,000
28	Tahmoor Town Centre (void repairs)	\$2,520	\$4,520	21/03/14	\$2,000
29	Tahmoor Town Centre (tile repairs)	\$1,560	\$2,560	21/03/14	\$1,000
30	1 Oxley Grove, Tahmoor	\$14,526	\$17,550	18/07/14	\$3,000 ³
31	10B Abelia Street, Tahmoor	\$3,240	\$5,270	01/10/14	\$2,000 ³
32	3B Connor Place, Tahmoor	\$3,670	\$7,670	01/10/14	\$4,000
33	47 Abelia Street, Tahmoor	\$26,100	\$56,100	10/11/14	\$30,000 (\$10,500 paid to Mr Bullock)
	Total				\$176,200

¹Excluding GST

²Unless otherwise indicated

³In relation to properties numbered 9, 30 and 31, Mr Salmon submitted invoices to the MSB that were more than the actual cost of repairs estimated by him, inclusive of the additional amounts that were to be shared equally between Mr Bullock and Mr Salmon.

Table 4: Further payments suggested by Mr Bullock as identified by Mr Salmon

	Property	Actual cost of repairs according to Mr Salmon (excluding GST)	Amounts tendered by Mr Salmon for repair work (excluding GST)	Amounts suggested by Mr Bullock to be shared equally with Mr Salmon
34	125 Thirlmere Way, Tahmoor	\$10,600	\$36,900	\$24,000 ⁴
35	42A King Street, Tahmoor	\$16,920	\$22,920	\$6,000
36	35 King Street, Tahmoor	\$3,260	\$7,260	\$4,000
	Total			\$34,000

⁴In relation to property number 34, Mr Salmon submitted a tender to the MSB that was more than the actual cost of repairs estimated by him, inclusive of the additional amounts that were to be shared equally between Mr Bullock and Mr Salmon.

form of the word “each” and gave the impression that he was to receive funds from the arrangement, Mr Bullock claimed that, “it was Dave’s initiation and it was a jumbled up way of – it didn’t matter if it was ‘each’ or ‘electrician’ or ‘plumber’ or whatever it happened to be the total figure was the estimated cost of the job”. Although he accepted that his text message with the word “each” gave the impression that he was to receive funds from the arrangement, he denied that this was the case. At another point in his evidence, he gave this explanation for his text message responses to Mr Salmon: “[b]ecause he [Mr Salmon] told me to jumble things up and make it all different things and whether it was combined figures or one figure or added ‘each’ on the end of or add ‘electrician’ on there, he’d know what it was”.

Mr Bullock also said that Mr Salmon also requested money in relation to two further jobs in relation to the properties numbered 19 and 30 in Table 3. He admitted that he had written the amounts on the scope of works documents in relation to those jobs but claimed the figures represented his estimate of the cost of the repairs. He denied Mr Salmon’s evidence that the figures written by Mr Bullock on the scope of works documents represented a direction to submit a quotation in an amount under the figure that he had written down, with the difference between the actual cost of the work and the amount written down representing the payment that was to be shared equally between them.

Mr Bullock said that Mr Salmon initiated the arrangement to inflate the cost of repairs and he agreed to participate in it because he and Mr Salmon had been friends for a long time and for other personal reasons.

He denied instructing Mr Salmon and Mr Inskip to add \$30,000 to their respective tenders in relation to the property numbered 33 in Table 3. Mr Bullock denied that he met Mr Salmon and Mr Inskip onsite and invited either one of them to fill in the tender form by the third tenderer M Burton Co. He denied that Mr Inskip took up his invitation.

Mr Bullock denied agreeing to receive, or receiving, payments from Mr Salmon. Mr Bullock denied that he met Mr Salmon in cafes, car parks and building sites for the purpose of receiving cash payments as part of the arrangement.

As previously noted, Mr Bullock presented as an unconvincing witness who lacked credit. After hearing Mr Salmon’s evidence and in order to explain the notes made by Mr Bullock on the properties numbered 19 and 30 as well as the text messages, the Commission is left with the impression that Mr Bullock – in an attempt to explain away his actions – falsely claimed that Mr Salmon had approached him for money. The Commission rejects Mr Bullock’s evidence.

Mr Salmon’s evidence is supported by other evidence

Mr Salmon was a credible witness. His evidence was against his own interests and, in relation to the properties numbered from 1 to 9, 19, 24, 33, 34, 35 and 36 in Table 3 and Table 4, supported by his contemporaneous handwritten notes on the MSB remittance advices, the scope of works documents and a variation instruction. On most of these documents, Mr Salmon had written two equal monetary amounts separated by a plus sign. These entries are entirely consistent with Mr Salmon’s evidence that he received instructions from Mr Bullock to improperly obtain additional amounts of money from the MSB that were to be equally shared between himself and Mr Bullock. Mr Bullock identified his own handwriting on the scope of works documents associated with properties numbered 19 and 30.

Mr Salmon’s evidence is also supported by the exchange of text messages. Mr Bullock said that the text messages he sent to Mr Salmon represented his estimated cost of the works. The Commission rejects this evidence. Mr Bullock sent the text messages to Mr Salmon either

on the day or shortly before Mr Salmon submitted his invoices to the MSB. Mr Salmon's estimate of the cost of repairs in his messages to Mr Bullock and the amounts referred to by Mr Bullock in his replies to Mr Salmon equal the total amounts claimed in the A & DJ Building Services invoices prepared by Mr Salmon. This evidence supports there being an agreement between Mr Salmon and Mr Bullock to inflate the cost of repairs in the A & DJ Building Services invoices.

The contents of the text messages are also inconsistent with Mr Bullock's claim that they represented his cost of the repair works and are consistent with an arrangement to share the inflated amounts claimed in the invoices equally. Mr Salmon said, and the Commission accepts, that the content of the text messages evidenced the amounts of money to be divided between them. He explained that references to "electrician" and "electrical" and "plumber" and "plumbing" were references to himself and Mr Bullock.

In relation to property number 11 in Table 3, Mr Salmon sent a text message to Mr Bullock: "[Owner's name] 1st visit \$300 + g 2nd visit \$760 + g (repair & paint)". Mr Bullock's response was, "One invoice 1000 4 electrician & plumber". The Commission is satisfied and accepts Mr Salmon's evidence that Mr Bullock's message signified that Mr Salmon and Mr Bullock were to receive \$1,000 each. This is consistent with Mr Salmon submitting an invoice to the MSB for an amount of \$3,060 (excluding GST), which is \$2,000 more than the \$1,060 he had identified as the real cost of the repairs in the text messages.

In relation to property number 25 in Table 3, Mr Salmon sent a text message to Mr Bullock, "4460+", which, according to Mr Salmon, represented the actual cost of the repair works. Mr Bullock responded, "2000 electrical & 2000 plumbing". The Commission is satisfied, and accepts Mr Salmon's evidence, that Mr Bullock's message signified that Mr Salmon and Mr Bullock were to receive \$2,000 each. This is consistent with Mr Salmon submitting an invoice to the MSB for an amount of \$8,460 (excluding GST), which is \$4,000 more than the \$4,460 he had identified as the real cost of the repairs in the text messages.

On other occasions, Mr Bullock sent text messages to Mr Salmon nominating an amount followed by the expression, "ea", "each" or "both ways". The Commission is satisfied that the expression "ea", used by Mr Bullock, is an abbreviation of "each" and represented Mr Bullock's instruction to Mr Salmon to inflate the amount of the invoice by an amount they could equally share. The Commission is satisfied that Mr Bullock used the expression "both ways" in the same manner.

In the case of the properties numbered 26 and 27 in Table 3, Mr Salmon said, and the Commission accepts, that Mr Bullock's messages to him, "5000 both trades" and "1000 both trades" were a coded instruction for Mr Salmon to add \$10,000 and \$2,000 respectively to the cost of the repair jobs and this amount was to be shared between them equally. In the case of the properties numbered 28 and 29 in Table 3, Mr Salmon said, and the Commission accepts, that Mr Bullock's messages to him, "1000 & 500 ea trade" were a coded instruction for Mr Salmon to add \$2,000 and \$1,000 respectively to the cost of the repair jobs and this amount was to be shared between them equally. In relation to the property numbered 32 in Table 3, Mr Bullock's message to Mr Salmon, "2 + 2" is consistent with Mr Salmon's evidence that the additional amounts were to be shared equally between himself and Mr Bullock.

In relation to properties numbered 19 and 30 in Table 3, Mr Bullock did not dispute that he wrote the figures on the scope of works documents ("15000" and "18000") but claimed that these represented that the estimate of the cost of the repairs for each of those properties was \$15,000 and \$18,000 respectively. The Commission accepts Mr Salmon's evidence that he was directed by Mr Bullock to increase the true cost of the works to amounts under \$15,000 and \$18,000 in relation to these properties, with the difference between the true cost of the repairs and the quoted amount representing the amount to be shared equally between them.

In relation to property number 19 in Table 3, Mr Salmon gave evidence, and the Commission accepts, that the true cost of the works was \$5,080 (excluding GST) and the amount of \$14,280 (excluding GST) invoiced to the MSB was inflated by \$9,200, which was to be shared equally between Mr Salmon and Mr Bullock. In relation to property number 30 in Table 3, Mr Salmon gave evidence, and the Commission accepts, that the true cost of the works was \$14,526 (excluding GST) and the amount of \$17,550 (excluding GST) invoiced to the MSB was inflated by \$3,000, which was to be shared equally between Mr Salmon and Mr Bullock.

Other evidence supports the conclusion that Mr Bullock instructed Mr Salmon to inflate his invoices for the purpose of sharing the additional amounts of money. In relation to the properties numbered 3, 6, 7, 31, 32 and 34 in Table 3 and Table 4, Mr Salmon's estimate of the true cost of repairs was far less than the estimated cost of repairs in the claim investigation reports prepared by Mr Bullock. Mr Bullock denied deliberately inflating the estimated cost of repairs in the claim investigation reports to make provision for the receipt of payments from Mr Salmon. By his own admission, Mr Bullock had significant experience as a building costs assessor from

his work at the MSB and previous positions, including his position at a banking corporation. The difference in cost estimates remains unexplained. The Commission is satisfied that Mr Bullock deliberately inflated the estimated cost of the repairs to make provision for the sharing of payments between himself and Mr Salmon.

The Commission is satisfied that, in relation to properties 1 to 33 in Table 3, Mr Bullock received payments totalling \$83,600 from Mr Salmon. The Commission accepts Mr Salmon's evidence that he met regularly with Mr Bullock to pay him his share and these payments were made from a store of cash kept at Mr Salmon's home. The Commission is satisfied that, in relation to properties 34, 35 and 36 in Table 4, Mr Bullock suggested that Mr Salmon inflate the cost of the work by amounts totalling \$34,000, which was to be shared equally between Mr Bullock and Mr Salmon, but did not receive any payments with respect to these properties.

Mr Inskip gave evidence that Mr Bullock provided him with copies of A & DJ Building Services quotations in relation to the properties numbered 4, 5, 8, 9, 10, 12 and 21 in Table 3 and asked him to provide cover quotes. Mr Inskip agreed that he was asked by Mr Bullock to submit backdated cover quotes in relation to specific jobs. Mr Inskip said, on most occasions, Mr Bullock handed him the A & DJ Building Services quotations in person and he submitted the cover quotes after this time. Mr Bullock denied that he asked Mr Inskip to provide cover quotes in relation to these jobs.

The Commission rejects his evidence and accepts Mr Inskip's evidence. Mr Inskip was a credible witness who gave evidence against interest. The Commission is satisfied that, in each case, the cover quote was obtained in order to make it appear to anyone reading the MSB file that a genuine competitive tender process had been undertaken when arranging for repair works to be carried out at the properties.

Did Mr Bullock instruct Mr Salmon to delete SMS messages?

Mr Salmon said that Mr Bullock, after becoming aware of the Commission's investigation, instructed him to delete the text messages exchanged between Mr Bullock and himself. As detailed above, the text messages revealed directions from Mr Bullock to Mr Salmon to add additional amounts to the real cost of the repair work. According to Mr Salmon, he met Mr Bullock at a park at Camden in late November 2014, and discussed the Commission's investigation. Mr Salmon said that, "[a]nd ah, as a part of that discussion it was brought up about these text messages back and forward and that it should be deleted". Mr Salmon agreed to delete the messages.

He did not do so immediately. In about January 2015, he took steps to delete the text messages from his mobile telephone but wrote them down before doing so because he wanted to retain a record of them.

Mr Bullock said he remembered meeting with Mr Salmon but denied instructing Mr Salmon to delete the text messages. He denied speaking about the Commission's investigation with Mr Salmon and denied that he was attempting to have evidence destroyed that would incriminate him in relation to the arrangement with Mr Salmon to receive secret commissions.

The Commission rejects this evidence. Mr Salmon's recollection of these events was sound. The Commission is satisfied that Mr Bullock instructed Mr Salmon to delete the messages for the purpose of obstructing the Commission's investigation.

Corrupt conduct

Darren Bullock

The Commission is satisfied that, between 2007 and 2015, Mr Bullock arranged with Mr Salmon for Mr Salmon to include additional amounts totalling \$210,200 in A & DJ Building Services invoices, quotations and tenders for repairs to properties submitted to the MSB with the intention that these additional amounts would be shared equally between Mr Salmon and himself. Mr Bullock received \$83,600 from Mr Salmon as a result of this arrangement as an inducement or reward for exercising his public official functions as district manager of the MSB's Picton office, to favour, or not to show disfavour to, Mr Salmon's business in relation to its work for the MSB. This conduct on the part of Mr Bullock is corrupt conduct for the purpose 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.

The Commission is satisfied that 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 Bullock committed offences under s 249B(1)(a) of the Crimes Act of corruptly receiving, or corruptly agreeing with Mr Salmon to receive, benefits as an inducement or reward for showing favour, or not showing disfavour, in relation to the affairs or business of the MSB.

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 purpose of

s 74BA of the ICAC Act that this is serious corrupt conduct because it took place over a significant period of time; between 2007 and 2015. The conduct also involved a significant amount of money. Further, it was significant misconduct of a public official in connection with the exercise of his public official functions, having regard to Mr Bullock's responsibilities, which included exercising a considerable amount of discretion in deciding to whom contracts for the repairs of houses should be awarded by the MSB. As district manager of the MSB's Picton office, Mr Bullock held a position of trust within the MSB. His conduct in accepting the payments from Mr Salmon was a significant breach of that trust. Mr Bullock's conduct could have impaired public confidence in public administration, given that Mr Bullock was a senior public official. The conduct was pre-meditated and involved a significant level of planning. Finally, Mr Bullock's conduct could involve offences pursuant to s 249B(1)(a) of the Crimes Act of corruptly receiving, or corruptly agreeing with Mr Salmon to receive, benefits as an inducement or reward for showing favour, or not showing disfavour, in relation to the affairs or business of the MSB. These offences have a maximum penalty of seven years imprisonment and are serious indictable offences.

The Commission is satisfied that, between 2007 and 2013, Mr Bullock used his position at the MSB to direct Mr Inskip to submit Plantac cover quotes (false quotations) to the MSB in relation to the properties at 42 King Street, Tahmoor, 42C King Street, Tahmoor, 21 Fraser Street, Tahmoor, 43 Abelia Street, Tahmoor, 23B Abelia Street, Tahmoor, 8 Stuart Place, Tahmoor and 71 Greenacre Drive, Tahmoor, for the purpose of exercising his public official functions as district manager of the MSB's Picton office, to show favour in the provision of work to A & DJ Building Services by falsely representing that quotations competitive with the A & DJ Building Services quotations had been sought and obtained in relation to those properties. This conduct on the part of Mr Bullock is corrupt conduct for the purpose of s 8(1)(b) of the ICAC Act as it is conduct that constitutes or involves the dishonest or partial exercise of his public official functions as district manager of the MSB's Picton office.

For conduct that occurred between 1 January 2006 and 22 February 2010, 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 Bullock committed offences under s 300(1) of the Crimes Act of making a false instrument. Mr Bullock and Mr Inskip had an agreement or an understanding between themselves to make the cover quotes as part

of a joint criminal enterprise and in accordance with the continued understanding or arrangement, both Mr Bullock and Mr Inskip are equally responsible for the offences, regardless of the part placed by each in the commission of the offences.

For conduct that occurred from 22 February 2010, 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 Bullock committed offences under s 253 of the Crimes Act of making a false document. As set out above, Mr Bullock and Mr Salmon had an agreement or an understanding between themselves to make the cover quotes and, consequently, Mr Bullock is as equally responsible as Mr Salmon for making the cover quotes.

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 purpose 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 2007 and 2013. It was significant misconduct of a public official in connection with the exercise of his public official functions, having regard to Mr Bullock's responsibilities, which included exercising a considerable amount of discretion in deciding to whom contracts for the repairs of houses should be awarded by the MSB. As district manager of the MSB's Picton office, Mr Bullock held a position of trust within the MSB. His conduct in procuring non-genuine quotations from Mr Inskip to favour the provision of work to A & DJ Building Services was a significant breach of that trust. Given that Mr Bullock was a senior public official, Mr Bullock's conduct could have impaired public confidence in public administration. The conduct was pre-meditated and involved a significant level of planning. Finally, Mr Bullock's conduct could involve offences pursuant to s 300(1) of the Crimes Act of making a false instrument (for offences that occurred between 1 January 2006 and 22 February 2010) and s 253 of the Crimes Act of making a false document (for offences that occurred from 22 February 2010). Offences pursuant to both of these sections have a maximum penalty of 10 years imprisonment and are serious indictable offences.

David Salmon

The Commission is satisfied that, between 2007 and 2015, Mr Salmon – at Mr Bullock's direction – included additional amounts totalling \$210,200 in A & DJ Building Services invoices, quotations and tenders for repairs to properties submitted to the MSB with the intention that these additional amounts would be shared equally

between Mr Bullock and himself. Mr Salmon paid \$83,600 to Mr Bullock as a result of the arrangement. Mr Salmon gave this money to Mr Bullock as an inducement or reward for Mr Bullock exercising his public official functions as district manager of the MSB's Picton office, to favour, or not to show disfavour to, Mr Salmon's business in relation to its work for the MSB. This conduct on the part of Mr Salmon is corrupt conduct for the purpose 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 Bullock's official functions.

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 Salmon committed offences under s 249B(2)(a) of the Crimes Act of corruptly giving or offering benefits to Mr Bullock as an inducement or reward for Mr Bullock showing favour, or not showing disfavour, in relation to the affairs or business of the MSB.

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 purpose 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 approximately 2007 and 2015 – and involved a significant amount of money. Mr Salmon made the payments to Mr Bullock with the intention of influencing Mr Bullock, a public official, to use his position at the MSB to favour his company, A & DJ Building Services, in its dealings with the MSB. The conduct was pre-meditated and involved a significant level of planning. Finally, Mr Salmon's conduct could involve offences under s 249B(2)(a) of the Crimes Act of corruptly giving or offering benefits as an inducement or reward for showing favour, or not showing disfavour, in relation to the affairs or business of the MSB. These offences have a maximum penalty of seven years imprisonment and are serious indictable offences.

Kevin Inskip

The Commission is satisfied that, between 2007 and 2013, Mr Inskip – at Mr Bullock's direction – produced and submitted Plantac cover quotes to the MSB in relation to the properties at 42 King Street, Tahmoor, 42C King Street, Tahmoor, 21 Fraser Street, Tahmoor, 43 Abelia Street, Tahmoor, 23B Abelia Street, Tahmoor, 8 Stuart Place, Tahmoor and 71 Greenacre Drive, Tahmoor to facilitate Mr Bullock exercising his public official functions as district manager of the MSB's Picton office, to show favour in the provision of work to A & DJ Building

Services by being able to falsely represent that quotations competitive with the A & DJ Building Services quotations had been sought and obtained in relation to work on those properties. This conduct on the part of Mr Inskip is corrupt conduct for the purpose 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 Bullock's official functions.

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 Inskip committed offences under s 300(1) of the Crimes Act of making a false instrument for offences that occurred between 1 January 2006 and 22 February 2010.

For offences that occurred from 22 February 2010, 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 Inskip committed offences under s 253 of the Crimes Act of making a false document.

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 purpose 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 2007 and 2013. The conduct was pre-meditated and involved a significant level of planning. As a result of receiving non-genuine quotations from Mr Inskip, Mr Inskip knew that Mr Bullock would partially and dishonestly exercise his public official functions as district manager of the MSB's Picton office by showing favour to A & DJ Building Services in relation to its work for the MSB. Finally, Mr Inskip's conduct could involve offences under s 300(1) of the Crimes Act of making a false instrument (for offences that occurred between 1 January 2006 and 22 February 2010) and s 253 of the Crimes Act of making a false document (for offences that occurred from 22 February 2010). Offences pursuant to both of these sections have a maximum penalty of 10 years imprisonment and are serious indictable offences.

Section 74A(2) statement

The Commission is satisfied that Mr Bullock, Mr Salmon and Mr Inskip are “affected” persons.

Mr Bullock

The evidence Mr Bullock gave was the subject of a declaration under s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act. There is, however, other admissible evidence that would be available, including the records produced by Mr Salmon and the extraction report of the text messages. There is also admissible evidence in relation to Mr Bullock’s position at the MSB and the fact that he was in a position to show favour, or not to show disfavour, to particular companies. The evidence of Mr Salmon and Mr Inskip 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 Mr Bullock for offences of corruptly receiving, or corruptly agreeing with Mr Salmon to receive, benefits as an inducement or reward for showing favour, or not showing disfavour, in relation to the affairs or business of the MSB, pursuant to s 249B(1) (a) 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 Bullock for offences of making a false instrument pursuant to s 300(1) of the Crimes Act for procuring Plantac cover quotes from Mr Inskip (for conduct that occurred before 22 February 2010). 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 Bullock for offences of making a false document pursuant to s 253 of the Crimes Act for procuring Plantac cover quotes from Mr Inskip (for offences that occurred from 22 February 2010).

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 Bullock for offences of using false instruments pursuant to s 300(2) of the Crimes Act for placing the Plantac cover quotes on the MSB files (for conduct that occurred before 22 February 2010). 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 Bullock for offences of using false instruments pursuant to s 254 of the Crimes Act for placing the Plantac cover quotes on the MSB files (for offences that occurred from 22 February 2010).

Consideration should also be given to obtaining the advice of the DPP with respect to the prosecution of Mr Bullock for an offence under s 351A of the Crimes Act of recruiting Mr Salmon to carry out a criminal activity, being the deletion of text messages from his mobile telephone, which detailed their arrangement to include secret commissions on specific jobs and related to the subject matter of the Commission’s investigation contrary to s 88(2)(a) of the ICAC Act.

Consideration should also be given to obtaining the advice of the DPP with respect to the prosecution of Mr Bullock for the following offences:

- giving false or misleading evidence at the public inquiry on 27 and 28 May 2015, contrary to s 87(1) of the ICAC Act, when he denied soliciting or receiving secret commissions from Mr Salmon
- giving false or misleading evidence at the public inquiry on 29 May 2015, contrary to s 87(1) of the ICAC Act, when he denied procuring cover quotes from Mr Inskip in respect of specific properties
- giving false or misleading evidence at the public inquiry on 28 May 2015, contrary to s 87(1) of the ICAC Act, when he denied asking Mr Salmon to delete text messages from his mobile telephone for the purpose of destroying evidence capable of incriminating him in relation to an arrangement that involved receiving secret commissions
- giving false or misleading evidence at the public inquiry on 9 April 2015, contrary to s 87(1) of the ICAC Act, when he denied that he invited either Mr Inskip or Mr Salmon to submit the “M Burton Co” tender as a dummy quotation when either one of them submitted their own tenders.

Mr Salmon

Mr Salmon gave full and frank evidence to the Commission with respect to his dealings with Mr Bullock, 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 Salmon.

Mr Inskip

Mr Inskip gave full and frank evidence to the Commission with respect to his dealings with Mr Bullock, 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 Inskip.

Chapter 6: The arrangement between Mr Bullock and Mr Kendall

This chapter examines an allegation that Mr Bullock arranged for a false invoice to be submitted to the MSB to cover the cost of work done to his home in 2013.

William Kendall is the principal of Willbuilt Homes Pty Ltd ("Willbuilt Homes"). In June 2009, Willbuilt Homes was appointed to the MSB's list of selected contractors. In August 2010, Mr Bullock engaged Willbuilt Homes to carry out renovations at his home; specifically, the construction of a pool bungalow. In 2013, Mr Bullock had further renovation work carried out at his home by Willbuilt Homes.

The 2013 home renovations

Mr Kendall gave evidence that, in late 2013, Mr Bullock engaged him to build a wall in the bedroom at his home. He said his apprentice, his tradesmen and himself worked on the construction of the wall and the value of the work was \$3,000. According to Mr Kendall, Mr Bullock did not pay him for the work but directed him to incorporate the cost of the work in an invoice to the MSB for variations undertaken by Mr Kendall as part of repair works to a property at 1B Tahmoor Road, Tahmoor. When questioned about whether Mr Bullock or he (himself) had the idea to bill the MSB for the work in Mr Bullock's bedroom, Mr Kendall initially said, "I don't think it was ever spoken about". He then said that he believed Mr Bullock, "[mi]ght have said something along the lines, 'Just add it to the vary [variation]'". He believed this conversation took place at a time while work was taking place at Mr Bullock's home.

Mr Kendall submitted an invoice dated 14 November 2013 to the MSB in the amount of \$8,700 (excluding GST) for variations for additional work carried out at 1B Tahmoor Road, Tahmoor. The invoice was paid by the MSB.

At a compulsory examination held on 5 December 2014, Mr Bullock agreed that he had renovation work carried out to his home in October 2013 but denied that Willbuilt

Homes was involved.

During the public inquiry, after it was put to Mr Bullock that Willbuilt Homes built a petition wall in his bedroom, Mr Bullock conceded that Willbuilt Homes had "helped" with the construction of a wall in his bedroom. He said, however, that he did the majority of the work himself. He said that Mr Kendall and his apprentice assisted him for about three or four hours. Mr Bullock agreed that the evidence he gave at the compulsory examination about the 2013 renovations was incorrect but denied it was a deliberate lie, stating, "No, I wasn't. It was insignificant. It was a \$200 job". He claimed that he paid Mr Kendall \$200 cash for the work. He denied that the value of the work carried out by Mr Kendall was a lot more than \$200. He denied that he had a conversation with Mr Kendall during which he directed him to include the cost of the wall in his invoice to the MSB for variations to the original contract price relating to a job at 1B Tahmoor Road, Tahmoor.

The Commission rejects Mr Bullock's denials. Mr Bullock gave inconsistent accounts at his compulsory examination and the public inquiry in relation to the same issue. Mr Kendall's evidence is an admission against interest and is preferred. The Commission is satisfied that Mr Bullock directed Mr Kendall to include the cost of the bedroom renovation work, being \$3,000, in an invoice dated 14 November 2013 for repair works carried out by Willbuilt Homes at 1B Tahmoor Road, Tahmoor. The Commission is satisfied that Mr Bullock's conduct in this instance was consistent with his other conduct of using his position as the district manager of the MSB's Picton office to obtain private financial gain for himself, as outlined in chapters 3, 4 and 5 of this report.

Corrupt conduct

Darren Bullock

The Commission is satisfied that, between October and 14 November 2013, Mr Bullock directed Mr Kendall to submit a false invoice to the MSB – namely, the Willbuilt Homes invoice dated 14 November 2013 – for a property at 1B Tahmoor Road, Tahmoor, which was deliberately inflated to include an additional amount of \$3,000 for renovation work undertaken by Willbuilt Homes for Mr Bullock at his home.

The Commission is not satisfied that this conduct on the part of Mr Bullock is serious corrupt conduct. While the Commission is satisfied that the amount of money involved was more than a token amount, in the context of the other findings of serious corrupt conduct outlined in this report, the amount involved is not as significant.

William Kendall

The Commission does not make a finding of corrupt conduct against Mr Kendall. If it were not for Mr Kendall's admission, the Commission would not have otherwise known that the Willbuilt Homes invoice dated 14 November 2013 for a property at 1B Tahmoor Road, Tahmoor, had been deliberately inflated to include an additional amount of \$3,000 for renovation work undertaken by Willbuilt Homes for Mr Bullock at his home. The Commission accepts Mr Kendall's evidence that the invoice was inflated upon Mr Bullock's direction and is satisfied that it was a one-off error of judgment on the part of Mr Kendall.

Section 74A(2) statement

The Commission is satisfied that Mr Bullock and Mr Kendall are "affected" persons.

Mr Kendall's evidence was the subject of a declaration under s 38 of the ICAC Act and, therefore, cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. There is insufficient admissible evidence to seek the advice of the DPP regarding any offences relating to the inflation of the Willbuilt Homes invoice dated 14 November 2013.

There is insufficient admissible evidence to seek the advice of the DPP regarding any offences in respect of Mr Bullock relating to the inflation of the Willbuilt Homes invoice dated 14 November 2013.

Chapter 7: Corruption prevention

As stated in chapter 1, unless it is otherwise clear from the context, references in this chapter to the MSB should be taken as references to the wider organisation encompassing the staff and administrative operations. References to the board denote the chairperson and five other members who are appointed under the MSC Act.

The purpose of this chapter is to provide an analysis of the policies and systems that provided an opportunity for corrupt conduct to occur, and to make recommendations for reforms in processing claims for remedial works caused by mine subsidence in NSW. Since the corrupt conduct identified in this report came to light, the MSB has implemented several interim measures to address corruption risks in assessing the need for and scoping the cost of repair work, allocating contractors and evaluating the delivery of works. Some aspects of the process, however, merit further consideration, and these issues are addressed in this chapter.

Over a number of years, Mr Bullock bypassed financial delegations and competitive tendering processes in order to favour contractors Plantac Pty Ltd (Mr Inskip) and A & DJ Building Services (Mr Salmon). He arranged with contractors to submit inflated quotations, tenders and invoices, and backdated cover quotes (false quotations) to the MSB.

During the public inquiry, it was evident that the MSB end-to-end claims management process lacked satisfactory controls to prevent corruption. The procedures for claims for compensation and repairs to properties damaged by mine subsidence are described in chapter 2 of this report.

Briefly, this process begins when a claim is received by the MSB and involves an onsite inspection of the mine subsidence damage by an MSB officer. If the damage is assessed as having been caused by mine subsidence, the claim investigation report will include an estimate of the cost of repairs. If the claim for compensation for repair

works is accepted, a contractor will be engaged to carry out the repair works. Multiple claims for compensation arising from the same mine subsidence event are not unusual and, therefore, variations to the original estimated costs are expected. Finally, the contractor will submit an invoice to the MSB for payment and an evaluation of client satisfaction is undertaken.

A lack of integration between several parts of the process allowed corrupt conduct in the MSB to occur. This included:

- a lack of organisational capability to efficiently and effectively process and control the claims received, which resulted in limited oversight and relative ease for Mr Bullock to workaround policies and procedures in allocating work to contractors
- inadequate segregation in the claims and tendering processes, which gave Mr Bullock unfettered control at key stages of the MSB's claims processes, allowing him to favour certain contractors with whom he had an arrangement
- failure to undertake a proper needs analysis of claims received, including using price benchmarks and tight scope of works to monitor variations and costs, which allowed Mr Bullock to inflate quotations and invoices
- the omission of an adequate contractor management process to evaluate contractor performance (for example, the failure to link quality and delivery of works through staff and client satisfaction to verify that the service provided matched the cost), which meant Mr Bullock was able to inflate costs without detection.

Had the risks in relation to the above weaknesses been properly assessed and managed, it is highly unlikely that corruption on the scale perpetrated by Mr Bullock would

have occurred. These risks and systemic weaknesses, together with the Commission's recommendations for reform, are discussed below.

On 1 July 2015, the MSB was transferred from the then NSW Department of Trade and Investment, Regional Infrastructure and Services (the Department of Trade and Investment) to the NSW Department of Finance, Services and Innovation (the Department of Finance).

MSB organisational capability

Structure and staffing

A contributing factor to Mr Bullock's conduct is the large number of unfilled and temporary positions throughout the MSB that affected operational efficiency across all parts of the organisation. Without the required number of staff with appropriate skills to not only manage contractors but to also analyse claims data, it was inevitable that aspects of control would be compromised.

In his evidence during the public inquiry, Mr Bullock claimed that it was often necessary to workaround processes in the interests of "getting the job done". Mr Bullock's explanation for breaching the MSB's policies and procedures is rejected.

When Mr Bullock's conduct became known, the MSB initiated several reviews, including a review of the staffing component as a means of strengthening the organisation's capability and oversight. This review identified a total of 18 staff vacancies out of 37 positions. However, according to a statement produced by Kylie Hargreaves, then chairperson of the board, a staff level of around 37 was required to be operationally efficient. The MSB would be less exposed to corruption if staffing levels are adequate. In principle, the board agreed that all vacancies would be filled, including those acting in temporary positions. Recruitment is now a matter for the Department of Finance to take forward.

Service level agreement

Small organisations like the MSB lack the capacity to undertake all the necessary back-office support functions without compromising the effective oversight and management of staff. The responsibility for compliance and oversight ultimately lies with the board and the CEO. However, the allocation of limited resources in the MSB that were directed at fulfilling back-office support functions (such as finance and information technology) meant that less than adequate attention was given to reporting to the board. This lack of effective oversight provided Mr Bullock with an opportunity to not comply with his financial delegations and MSB policies and procedures, and allowed his relationships with Mr Inskip and Mr Salmon to go unnoticed.

During the period under investigation, no formal service level agreement existed between the MSB and the Department of Trade and Investment. The MSB relied on the Department of Trade and Investment for limited service support, such as human resources, payroll and accounts payable. At one point in July 2014, the then director general of the department offered to formalise the provision of corporate and shared services to the MSB, including support services with regard to policy, systems, procurement, financial accounting and reporting. At the time of the public inquiry, this issue remained unresolved. Support services from the Department of Trade and Investment may have lifted the back-office pressure from the MSB and allowed it to focus on overseeing its core functions.

In light of the current investigation and administrative changes, the MSB and the Department of Finance have committed in principle to the review, redesign, and implementation of process and organisational arrangements. Since then, a service level agreement between the MSB and the Department of Finance is being negotiated to provide a range of support services. This kind of back-office support will allow the MSB to

focus more effectively on overseeing its core functions, including risk monitoring.

Internal and external auditing

In addition to promoting transparency and accuracy in financial disclosures, one of the functions of an audit is to test and identify risks within organisational systems. The lack of robust controls around internal auditing processes was made evident during the inquiry. In his evidence, Mr Cole-Clark said that the external auditors “would let people know that they’re going to an office on a day”.

Internal audits were conducted by MSB staff from other offices. District supervisors Mr Rawes and Mr Montgomery, and Ms Evans, an administrative officer at the MSB, gave evidence that they had been involved in conducting internal audits at other MSB district offices with the purpose of checking whether MSB property files complied with the MSB’s policies and procedures. According to Ms Evans, in relation to internal audits conducted at the Picton office, Mr Bullock would select the files or he would ask her to select them. In the absence of the internal auditors being given random access to files, it is unlikely that the extent of systemic weaknesses would ever have been exposed, and there would have been greater capacity to hide evidence of corrupt conduct.

There was also evidence before the Commission that recommendations of external audit reports were not implemented. In July 2009, an IAB Services report to the MSB entitled Management of Board Repairs examined the controls and procedures for the management of the MSB’s repairer contractors. The report concluded that there was a moderate risk of collusion between MSB employees and contractors to gain unfair access to particular work and a moderate risk of loss of competitive pricing opportunities. This risk relates directly to Mr Bullock’s conduct. The audit findings gave the MSB an opportunity to review and act on the suggestions of the IAB. When questioned, however, Mr Cole-Clark was unable to say what action had been taken by the MSB in reviewing or responding to this report.

While audits can test organisational systems and identify risks, they can only benefit an organisation if the reports are acted on. Ms Hargreaves gave evidence to the Commission that the MSB had committed to report any findings from future internal and external auditing reports, and further progress on implementing the recommendations from those audits would be reported to the board on a quarterly basis.

Systems for managing claims and allocating work to contractors

According to a statement provided by Mr Cole-Clark, several verification points exist in the MSB framework to maintain the integrity of the system. The Commission, however, has identified several points in the MSB information management system and software that can be improved upon.

Another report by the IAB in March 2012, entitled Property Management System, identified inadequacies in the MSB’s information systems. The MSB’s systems, for example, fail to adequately capture:

- all relevant documentation and data, in respect of photographing the mine subsidence damage before and after the works have been completed
- any disputed claims between the client and the MSB
- appeals processes
- unresolved claims
- customer feedback and satisfaction
- performance of contractors
- emergency repairs.

Some of the above types of data are not collated in any form at all, thereby limiting the potential control that can be generated from the effective use of data analytics. At the time, the system failed to track costs, monitor contractor selection and usage and detect patterns and cost of variations.

The Property Management System (PMS) is the principal database utilised by MSB but is limited in its capability. The PMS cannot generate comprehensive reports because mandatory fields in the database do not exist for this purpose. The PMS is also limited in audit log capability by not requiring mandatory work flows and data entry. At the time, this affected the MSB’s ability to review individual claims and detect staff who workaround processes designed to control risks such as favouritism.

MSB staff delegations were designed as a key control to ensure no particular delegate has unfettered control over expenditure. In a statement provided to the Commission, Mr Cole-Clark stated that “the requirements of the Schedule C delegations are well-known to all staff and I understand and expect are referred to by most on a daily basis”. He also stated that, when an invoice is received from a contractor, a “Compensation Claim Payment Form” will be prepared. At this time, an MSB officer is required to certify that the expenditure is within their delegation and the processing of the payment is carried out by the accounts payable section of the MSB.

Mr Cole-Clark stated that “if the form is signed and appears within the appropriate delegation and there is supporting invoice documentation, the payment will be processed”. Neither of these paper-based controls, however, prevented Mr Bullock from substantially exceeding his financial delegation.

Following a Public Works review of the MSB’s procurement management processes (concluded in August 2015), the Department of Finance and the MSB have proposed to improve systems for estimating, reviewing and approving contract variations, and detecting breaches of delegations. As a matter of routine reporting, the board will now receive data on claims broken down by dollar value, number of jobs awarded to a contractor, and region. The MSB will also review the type of repair, variations to quotations and patterns of allocation of work to contractors. Such sophisticated use of data analytics will help prevent corrupt conduct where, for example, where work is repeatedly awarded to the same contractors.

Accounts payable systems

When remedial works are completed, the contractor lodges an invoice to the MSB to cover the cost of initial works and any further invoice/s for variations made to the cost of repairs. Payment is initially approved by an MSB officer with the appropriate delegation, and the invoice is then forwarded to MSB head office in Newcastle for processing.

The current system in place to verify that accounting documentation matches approvals and delegations does not provide the necessary corruption controls to prevent payments being made beyond the limits on financial delegations. This was evidenced by the failure of the system to detect that Mr Bullock authorised payments of inflated invoices and exceed his financial delegations without the appropriate approvals or documentation.

The design of an organisation’s accounts payable system should include the ability to check the veracity of payments. Ideally, the system would limit the ability of one person being able to authorise the payments made. Better practice organisations achieve this by requiring documentation to be matched from various sources, such as purchase order, invoice and receipt of services. In better practice organisations, the verification of services is segregated from the contract manager. These best practice models are outlined in the Commission’s publication, *Safeguarding public money: The importance of controlling invoice payments*.

Recommendation 1

That the MSB strengthens its organisational capability to fulfil its obligations, including:

- **securing the optimum staffing levels and staff with appropriate skills**
- **formalising service level agreements**
- **generating meaningful data for the purposes of analysis and reporting to the MSB**
- **improving internal and external auditing arrangements**
- **tightening the accounts payable system.**

Process design and segregation of duties

During the public inquiry, it was demonstrated that Mr Bullock could have end-to-end control of the management of a claim, as follows:

- beginning with an inspection and specification of works
- providing an estimation of costs and the selection of a contractor
- approving and costing variations to estimations
- authorising invoices for payment.

Mr Bullock took advantage of the lack of segregation of these key activities to favour Plantac and A & DJ Building Services.

Systems that are structured to segregate responsibility for key activities can help to minimise risks of a public official favouring a particular contractor. No public official should ever have sufficient control across all key activities and processes to improperly favour specific contractors.

A common theme throughout the investigation is that the MSB lacked visibility of Mr Bullock’s activities due to the insufficient data being captured during the MSB’s claims processes. The lack of visibility meant that Mr Bullock was able to manipulate costs estimates, select contractors, and authorise payments without interference. An organisation’s visibility of, and ability to monitor and control, staff workflows affects the opportunity of one person to exercise unfettered end-to-end control. Segregation, therefore, becomes more important where there is limited visibility and control.

A challenge for small organisations is to ensure that in-built segregations between the people responsible for key activities are not resource-intensive. Segregation is less about increasing the bureaucratic burden by generating requirements such as additional sign-offs and more about making it difficult for any individual to obtain end-to-end control over the claims process. Segregation can take several forms, including personnel, geographic,

information sources, tasks and approvals.

Segregations are generally required in the claims process between each of the following activities:

- determining the scope of works, including estimating the costs
- selecting and allocating work to contractors
- verifying that services are delivered to scope
- scrutinising budgets.

It is advised that the MSB maps process tasks to identify risks and natural segregations that are not a resource burden.

Small organisations with limited resources, like the MSB, need to ensure their structure and processes are tight. These organisations can benefit from using process maps to review and identify risk areas. A process map also allows for the identification of inefficiencies that may be exploited.

The MSB can achieve efficiencies and segregation, for example, by centralising the tendering process and allocating the work to contractors across several district offices. Segregation of these key activities creates a personnel and physical separation of duties while creating efficiencies by allowing district offices to focus on frontline services. Other activities, such as claims management and verifying the delivery of services, however, cannot easily be centralised. Rather, these activities are better devolved to frontline staff and may be undertaken by different officers. Verifying the delivery of services, including evaluating the performance of the contractors, is a key activity as whole-of-job costs can then be checked against approved works and works completed. Scrutinising budgets can identify inefficiencies as well as possible favouritism or overcharging.

The MSB has begun the process of segregating a number of key activities by using the eQuote system and tenderer selection panels of the NSW Department of Public Works. These provide a degree of segregation between the costing of remedial works and the allocation of contractors to perform those works. As part of proposed reforms, board members will now receive a “finance dashboard” that monitors year-to-date use of, and expenditure on, contractors. Dashboard reporting increases visibility and the possibility to identify over-use or favouritism of a contractor.

The Commission is aware that several options are being considered as part of the MSB organisational review, with a particular view to segregating the processes of determining the need, scope and costs of works, from tendering works, and confirmation and review of works.

Recommendation 2

That the MSB builds controls into the claims and tendering processes to restrict a single user having end-to-end control and exceeding expenditure delegations.

Recommendation 3

That the MSB segregates the process and staff involved in estimating the costs of works, the allocation of contractors to undertake the works and the process of evaluating the delivery of works.

Scoping and cost of remedial work

The MSB lacks sufficient controls and management review in the scoping of works. A loose scope of works can create opportunities for a contractor to collude with public officials to claim excessive contract variations for work that has already been included in the original scope of works. Conversely, a tight scope of works can be used in establishing costs, monitoring variations and evaluating service delivery against costs. This can help detect falsely modified repair costs and variations to those costs.

Mr Cole-Clark’s reliance on financial delegations as a control was misguided and an insufficient control, which resulted in Mr Bullock effectively having unfettered control over the claims process. Information provided by Mr Cole-Clark during the public inquiry suggests that individual MSB officers understood work costs, but that the MSB, as an organisation, did not. This was evidenced by the failure of the MSB to demonstrate that the process of estimating costs and variations was fair and accurate by referring to comparability methods. Mr Cole-Clark acknowledged that he relied “on other people who’ve got the expertise” when approving expenditure. MSB staff also had access to Cordell’s Building Estimator, which provides a guide to average building industry costs. However, Mr Cole-Clark noted in his evidence that, “Cordell’s is not used for all claims estimates; smaller, simple claims can often be accurately estimated by district staff based on their qualifications and experience”.

Mr Cole-Clark gave evidence that he relied on supporting documentation as a true and accurate source when asked to approve expenditure. In many instances, however, the supporting documentation was provided by Mr Bullock, who inflated cost estimates and arranged with Mr Inskip and Mr Salmon to submit cover quotes and inflated quotations, tenders and invoices.

Mr Bullock’s conduct may have been detected had the MSB been better informed about how much it should be paying for repair works. Cost benchmarks provide an independent check drawn from multiple sources and

are a necessary corruption prevention tool to ensure organisational efficiency (by providing assurance on value for money and expenditure) and increase the possibility of detecting overcharging.

Contractor competition is the means by which organisations can accurately rely on market prices, as contractors compete to provide their services for a realistic but profitable rate. The competitive nature of contractors in the business of mine subsidence repairs is fairly predictable and well understood by the MSB, and this should have made overcharging difficult. However, because Mr Bullock was selective in favouring a limited number of contractors, in the absence of benchmarking, there was no realistic measure to gauge whether costs were accurate.

The MSB's over-reliance on experienced staff and quotations did not produce a reliable benchmark or comparability of costs. Without incurring excessive costs, various independent checks and methods of benchmarking could be included in the process of estimating the costs. The MSB is in an advantageous position; it has many years of experience in estimating costs and engaging contractors to conduct remedial works, across multiple locations, and with multiple contractors to establish benchmarks across several districts in NSW. In order to maximise its position, the MSB needs to improve its systems in collating and analysing financial data.

Recommendation 4

That the MSB agrees a threshold of delegated approvals and/or price for the whole-of-job remedial repairs, so that when the original scope and variations increase beyond a percentage of the agreed delegation or price, the matter is escalated for management review and approval.

Recommendation 5

That the MSB includes benchmarking as a method of better practice to verify the estimated costs of remedial work.

Selection of contractors

Evidence provided during the public inquiry exposed weaknesses in the MSB's method of selecting contractors. The MSB process allows for the claims officer to invite contractors from a preferred contractors list to tender, and also to select the successful tenderer. The lack of segregation and control around this process allowed Mr Bullock to form improper relationships with Mr Salmon and Mr Inskip.

The MSB tender policy advocates that a method of rotation should be used to select contractors that

would prevent favouritism and preferential treatment of contractors. In practice, this was not always possible due to the known poor performance or lack of availability of some contractors.

The MSB did not detect, or chose to ignore, the failure to rotate contractors. If the policy to rotate contractors had been properly implemented, the risk of preferential treatment of contractors may have been flagged. While Mr Cole-Clark regularly approved Mr Bullock's recommendation to award work to a specific contractor, he had no way of verifying the rotation of contractors beyond Mr Bullock's verbal assurances that the contractor had been rotated. In effect, the policy and approvals provided little oversight of Mr Bullock's work, as the MSB did not have a way to monitor contractor use, as outlined above.

Mr Cole-Clark acknowledged that, if an MSB employee were involved in successive steps of the procurement process, there would be a risk of a corrupt relationship developing between that employee and a contractor.

An organisation can identify potential favouritism of contractors in several ways. An agency may analyse expenditure on contractors both by staff and by district against the percentage a contractor is used on all jobs. The use of e-tendering can provide greater oversight of contractor selection if data is used to the MSB's advantage.

The NSW Public Works review led to several recommendations, including the use of procurement plans, adhering to a strict rotational system, consideration of centralising the tender selection process, the use of e-tendering, and segregation of key activities. The MSB has already implemented some of the recommendations, including the use of e-tendering. Further, use of the financial dashboard by the MSB can provide the board with data that can be used to detect favouritism.

Recommendation 6

That the MSB routinely assesses the risk of contractor favouritism and takes steps to minimise those risks.

Verification and review of remedial work

As noted earlier in this chapter, in better practice organisations, the verification of services is segregated from the contract manager, which helps to provide information to accounts payable units. A strong verification and review system can also contribute to a detailed contractor performance profile that identifies trends such as poor quality and excessive costs. When considered with other data, poor quality and excessive costs can be indicators of corruption or management issues.

A strong verification process may have alerted the organisation to Mr Bullock's conduct if the completed works were checked against items such as scope of works, variations and final invoice to ensure that the payment for the work undertaken was reasonable. If these checks had been done, given the size of the inflated costs, the risk of detection for Mr Bullock would have been increased and may have prevented his conduct.

Verification and reviews can also be used to develop contractor performance profiles, which can affect the allocation of future work. The MSB has a process in place for the ongoing review and reporting of unsatisfactory contractor performance. Poor-performing contractors may be required to show cause and may be removed from the selected tender list.

In his statement to the Commission, Mr Cole-Clark referred to a client satisfaction survey and client involvement in final inspections following completion of works, but little evidence was provided as to its application. Once again, this was a paper-based solution that did not translate into any practical benefit.

The evidence suggests, however, that the MSB had no means to manage staff satisfaction of a contractor's performance. In practice, contractors were selected from the list based on staff perceptions and previous experience. Mr Montgomery gave evidence that the selection of a contractor was influenced by community sensitivity; for example, if a staff member had a bad experience with a contractor and excessive variations had been noted, then staff might not use that contractor as often.

Ms Hargreaves has indicated that the organisation is developing ways to capture quality data for reporting purposes. A robust system of complaints management, with verification of staff and client satisfaction as the claim file is nearing completion, would act as a further control on the effective delivery of work and value for money.

In conjunction with other data, the MSB could develop a more detailed contractor performance profile that identifies trends like poor quality and excessive costs. It is anticipated that this data, collated at the district level, would be contained in monthly reports to the CEO and, in turn, would be aggregated for reporting purposes to regular meetings of the board.

Recommendation 7

That the MSB takes steps to ensure increased transparency in undertaking remedial works, including the periodic assessment of the performance of contractors and value for money of work performed. Such matters are to be taken into account when determining the selection of future contractors

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 the MSB and the responsible minister, being the minister for finance, services and property.

As required by s 111E(2) of the ICAC Act, the MSB 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 it proposes to implement any plan 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 MSB 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, for public viewing.

Appendix 1: The role of the Commission

The Commission was created in response to community and Parliamentary concerns about corruption which had been revealed in, inter alia, various parts of the public service, causing a consequent downturn in community confidence in the integrity of that service. It is recognised that corruption in the public service 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 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 Electoral Commission to the Commission for investigation.

The Commission may report on its investigations and, when 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 corrupt conduct.

The role of the Commission is to act as an agent for changing the situation which 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:

...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.



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