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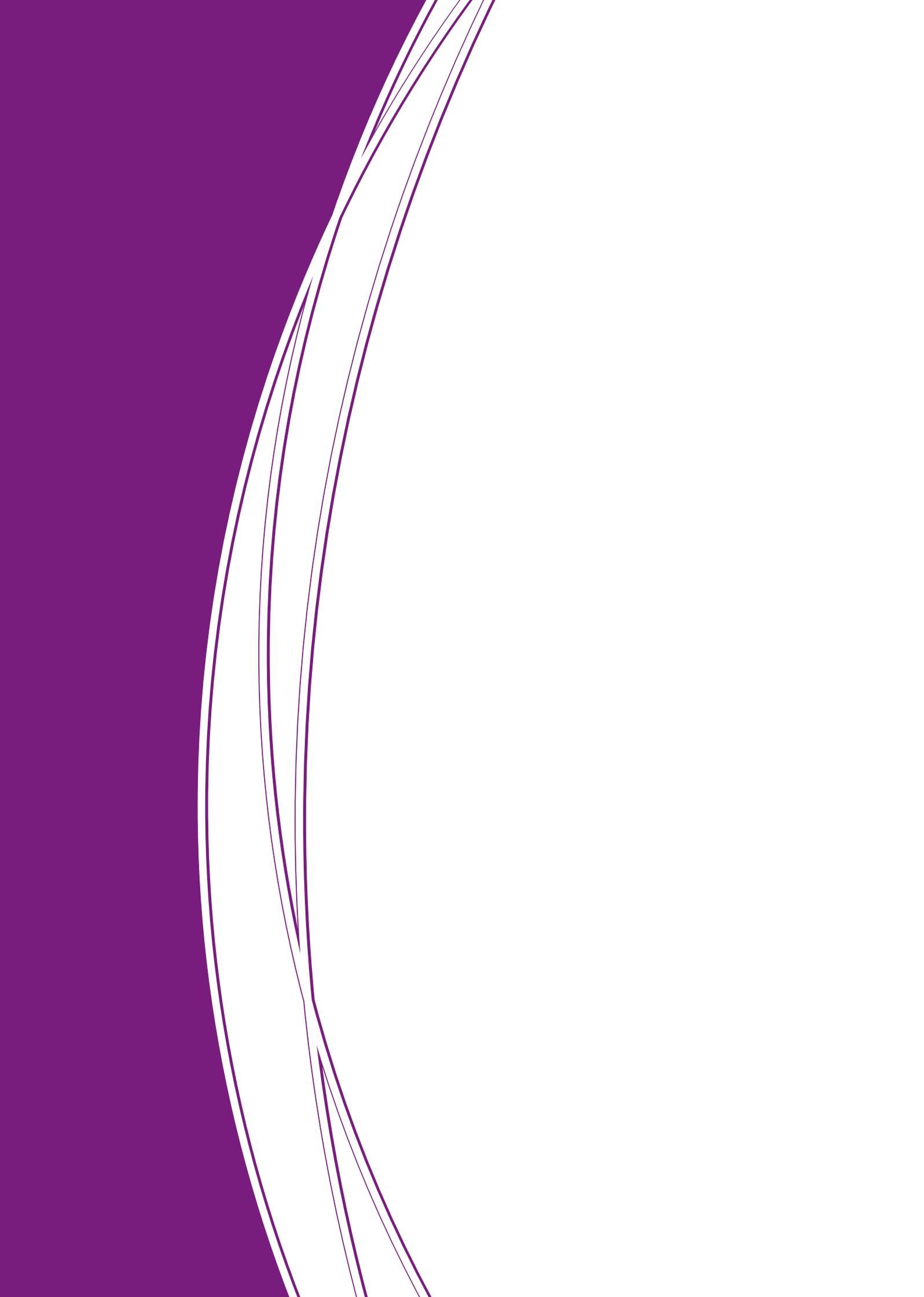


INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES



**INVESTIGATION INTO
THE CONDUCT OF A
CASINO BOOLANGLE
LOCAL ABORIGINAL
LAND COUNCIL CEO AND
ADMINISTRATIVE OFFICER**

**ICAC REPORT
FEBRUARY 2017**



ICAC

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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 Casino Boolangle Local Aboriginal Land Council chief executive officer and administrative officer.

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

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

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

Yours sincerely



The Hon Reginald Blanch AM QC
Acting Commissioner

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Summary of investigation and results

This investigation by the NSW Independent Commission Against Corruption (“the Commission”) concerned allegations that Linda Stewart, chief executive officer (CEO) of the Casino Boolangle Local Aboriginal Land Council (CBLALC), and Veronica Skinner, CBLALC administrative officer, issued fraudulent invoices and certified documents to enable them to cash cheques drawn on CBLALC bank accounts for their own benefit. The investigation was concerned with conduct that occurred between 2010 and 2012.

The Commission found that, from about late 2010 to about September 2012, Ms Stewart engaged in serious corrupt conduct by dishonestly exercising her official functions as CBLALC CEO to deceive CBLALC board members to sign cheques on the basis that they were for legitimate CBLALC purposes, which she then cashed to obtain money from the CBLALC for herself and, prior to about October 2011, Ms Skinner, to which she knew neither she nor Ms Skinner were entitled.

The Commission found that, from about late 2010 to about October 2011, Ms Skinner engaged in serious corrupt conduct by dishonestly exercising her official functions as a CBLALC employee to deceive CBLALC board members to sign cheques on the basis that they were for legitimate CBLALC purposes, which she then cashed to obtain money from the CBLALC for herself and Ms Stewart, to which she knew neither she nor Ms Stewart were entitled.

On the evidence before the Commission, it is not possible to determine the exact amount of money each of Ms Stewart and Ms Skinner improperly obtained from the CBLALC.

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 each of Ms Stewart and Ms Skinner for offences of fraud pursuant to s 192E of the *Crimes Act 1900* (“the Crimes Act”) or, in the alternative, for offences of larceny by a servant pursuant to s 156 of the Crimes Act.

The Commission has not made any corruption prevention recommendations in this report. The evidence obtained during the course of this investigation will help to inform the Commission’s forthcoming report on the governance of Local Aboriginal Land Councils (LALCs).

Recommendation that this report be made public

Pursuant to section 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 Commission's investigation, the CBLALC and the employment of Ms Stewart and Ms Skinner.

How the investigation came about

In August 2014, the Commission received a report from the NSW Police Force notifying it of suspected corrupt conduct involving Ms Stewart, former CBLALC CEO, and Ms Skinner, former administrative assistant and relieving CEO. The police report attached a letter from the auditors engaged by the CBLALC.

The audit letter noted that in the period from 1 July 2011 to 30 June 2012 a number of cheques, totalling over \$77,000, had been drawn and cashed without supporting documentation such as an invoice. There was some evidence that false invoices had been created to provide justification for the drawing of some of the cheques. The auditor's opinion was that funds had been fraudulently misappropriated and that Ms Stewart was the only person in a position to perpetrate such a fraud. The auditor noted that there might be additional transactions outside the period examined where funds had been obtained but not applied towards CBLALC operations. The police report also attached a letter from Ross James, CBLALC acting CEO, advising that further enquiries indicated that Ms Skinner may have falsified timesheets for Dwain Hickling in order to obtain a financial benefit.

The Police Force requested the Commission to investigate as "the most appropriate agency" because the activity identified by the audit:

...is directly linked to a lack of accountability as the CEO made requests and provided information to directors/signatories who in turn somewhat contributed to the commission of the frauds by authorising and signing these requests. Due to the poor response to taking action, this alleged fraudulent activity has led to ongoing and further

such fraudulent and corrupt activities. This may well have been committed for years due to the lack of corruption prevention/resistance practices put in place.

The police report noted that another reason for considering the Commission as best placed to conduct an investigation was that any investigation "...will also require forensic accounting to show the scope of the fraud and culpability of offenders. Another avenue of the investigation would be to recommend/implement corruption resistance strategies to prevent a re-occurrence, which is an important role that the ICAC undertakes..."

Why the Commission investigated

One of the Commission's principal functions, as specified in s 13(1)(a) of 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.

The matters brought to the Commission's attention by the Police Force were serious and could constitute corrupt conduct within the meaning of the ICAC Act. This is because the misappropriation of CBLALC funds by a CBLALC employee could constitute or involve the dishonest or partial exercise of official functions by the employee and also constitute or involve a breach of public trust and therefore comes within s 8(1)(b) and s 8(1)(c) of the ICAC Act. For the purposes of s 9 of the ICAC Act,

such conduct could also constitute or involve criminal offences of fraud under s 192E of the Crimes Act, disciplinary offences and grounds for dismissal.

In deciding to conduct an investigation, the Commission took into account the matters set out in the police report and the fact that the audit had only covered the period from 1 July 2011 to 30 June 2012, which left open the possibility that there were additional transactions that had not been identified. The Commission was also concerned to establish whether others had been involved in the conduct and, if so, the extent of their involvement.

Conduct of the investigation

As part of its investigation, the Commission:

- obtained documents from various sources by issuing 14 notices under s 22 of the ICAC Act requiring production of documents
- interviewed and/or took statements from a number of persons
- conducted three compulsory examinations.

During the course of the investigation, the Commission obtained evidence that, between late 2010 and about August 2012, Ms Stewart and Ms Skinner had arranged for cheques to be signed by CBLALC board members for ostensibly legitimate expenses and then cashed the cheques and retained the proceeds for their own use. There was evidence that CBLALC board members had limited financial management skills and lacked management experience, which led to them becoming overly reliant on Ms Stewart. There was other evidence that the CBLALC accounting methods in place at the relevant time made it difficult to detect the conduct of Ms Stewart and Ms Skinner.

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 matters:

- cogent evidence had been obtained in the course of the investigation up to that time supporting the allegations
- the seriousness of the allegations having particular regard to positions of trust occupied by Ms Stewart and Ms Skinner, the period over which the conduct had occurred and the amount of money involved
- the public interest in exposing corrupt conduct that affects public authorities
- the likely risk of undue prejudice to the reputations of Ms Stewart or Ms Skinner was reduced because their conduct was already reasonably known within their local community.

An additional consideration taken into account in determining to conduct a public inquiry was that the Commission's Corruption Prevention Division was undertaking a research project to examine LALC governance. This involved examining the competence of LALC boards as a primary protection against corruption. The evidence obtained in this investigation was likely to be directly relevant to that project.

The public inquiry was conducted on 4 and 5 May 2016. The Hon Megan Latham, Commissioner, presided at the public inquiry. Scott Robertson acted as Counsel Assisting the Commission. Evidence was taken from Ms Stewart, Ms Skinner, Charley van Rotterdam, CBLALC bookkeeper, and Mr James, the person who replaced



Ms Stewart as CBLALC CEO. In addition, a number of witness statements were tendered as evidence.

At the conclusion of the public inquiry, Counsel Assisting prepared submissions setting out the evidence and identifying the findings and recommendations that the Commission could make based on the evidence. These submissions were provided to relevant parties and submissions invited in response. No submissions were received in response to the submissions of Counsel Assisting. Neither Ms Stewart nor Ms Skinner requested the Commission include in this report a summary of the substance of any response to proposed adverse findings.

Casino Boolangle Local Aboriginal Land Council

The CBLALC is a LALC constituted under the *Aboriginal Land Rights Act 1983* (“the ALRA”). The CBLALC was established in 1984. Under s 51 of the ALRA, the objects of LALCs are to improve, protect and foster the best interests of all Aboriginal people within their areas.

Under the ALRA, LALCs are subject to limited direction and guidance from the NSW Aboriginal Land Council (NSWALC). Otherwise, LALCs are autonomous bodies acting under the general management of an elected board of directors and the day-to-day management of a CEO.

Ms Stewart was employed on a full-time basis as CEO of the CBLALC from about May 2008 until her resignation in September 2012. She was assisted by Ms Skinner, who was employed for two days a week as the administrative officer of the CBLALC from about May 2008 until her resignation in October 2011. From time to time, Ms Skinner also performed the role of acting CEO when Ms Stewart was absent on leave.

While Ms Stewart was CEO, the expenses of the CBLALC were mostly paid by cheque. The CBLALC had three cheque accounts. All of the CBLALC cheque books contained bearer cheques and were not pre-printed as “not negotiable”. This meant that, unless cheques were subsequently crossed as “not negotiable” or as “account payee only”, cheques issued by the CBLALC could be cashed by the person presenting the cheque to the bank.

Neither Ms Stewart nor Ms Skinner had authority to sign cheques. Instead, the CBLALC required two board members to sign a cheque. There was a requirement that supporting documentation (such as an invoice) and a form certifying that the relevant goods or services had been provided should be shown to the board members before signing a cheque. The evidence before the Commission established that there was often a failure to comply with this requirement. At the relevant time, all board members were able to sign cheques. Ms Stewart and Ms Skinner were therefore able to approach different board members at different times to sign cheques.

Many board members acknowledged that they had difficulties understanding the financial reports that Ms Stewart presented to them. The limited financial management skills and lack of management experience of board members led to them becoming overly reliant on Ms Stewart. As one board member stated, “We as Elders within the community put a lot of faith into Linda and accepted what she told us”.

Chapter 2: What happened?

This chapter examines how Ms Stewart and Ms Skinner used false invoices and other documentation to obtain CBLALC cheques, which they then cashed in order to obtain funds for their personal use.

Both Ms Stewart and Ms Skinner gave evidence at the public inquiry that they had falsified documents to support the issuing of CBLALC cheques, arranged for the cheques to be signed by CBLALC board members, cashed the cheques and used the proceeds for their own purposes. They both accepted that their acts in doing so were dishonest, involved deception, had the result of diverting money from its rightful owner and constituted a breach of the trust placed in them by the CBLALC board members and the local Aboriginal community in general.

Both Ms Stewart and Ms Skinner admitted that they were each generally aware of the other's activities in causing cheques to be falsely issued and then keeping the proceeds. They told the Commission that, at some point, they had a conversation in which it was agreed that they would split equally the proceeds of any falsely issued cheques. Despite this agreement, Ms Skinner told the Commission that she may have kept all the proceeds of cheques she cashed on occasions when Ms Stewart was absent. Ms Stewart confirmed that she kept all the proceeds of cheques she cashed after Ms Skinner ceased to be employed by the CBLALC.

On the evidence before the Commission, it is not possible to determine the exact amount of money each of Ms Stewart and Ms Skinner improperly obtained from the CBLALC or the precise period over which the conduct occurred. This is because, on some occasions, some or all of the proceeds of cashed cheques were used for legitimate CBLALC purposes. In some cases, cheques were cashed and part of the proceeds used for CBLALC purposes and the remaining proceeds were kept by Ms Stewart and Ms Skinner. Neither Ms Stewart nor Ms Skinner kept a record of CBLALC monies they improperly obtained.

Ms Stewart and Ms Skinner say that they mainly spent the funds they illegitimately gained from cashing CBLALC cheques on poker machines.

Ms Skinner told the Commission that it was while she and Ms Stewart were using the poker machines at the local Casino Retired Servicemen's Memorial (RSM) Club that they first had a discussion about cashing CBLALC cheques and keeping the proceeds.

Records obtained from the club that tracked gambling associated with Ms Stewart's membership card show that she lost \$8,560 through gambling at that club during 2010, \$62,089 in 2011 and \$74,430 in 2012. The equivalent records for Ms Skinner indicate losses of \$6,274 in 2010 and \$27,176 in 2011.

These figures do not completely record their gambling losses at this club. The club's membership card system did not commence until mid-2010, so gambling activity before then is not recorded. On some occasions, Ms Stewart did not use her membership card when gambling so any losses incurred at those times are not recorded. Ms Skinner occasionally lent her membership card to her partner or used his membership card when she gambled.

Ms Stewart's gross salary as CBLALC CEO was about \$56,000 per annum, giving her about \$873 per week after tax. Such a salary is clearly insufficient to fund the gambling losses identified above. Ms Stewart conceded that her gambling problem was predominantly funded by the money she obtained through the illegitimate cashing of CBLALC cheques between about 2010 and 2012.

The position with respect to Ms Skinner is similar. Her salary as administrative officer was about \$32,000 per annum, giving her about \$545 per week after tax. When acting as CEO, her weekly take-home pay was \$873. These amounts were not sufficient to meet her gambling losses. Although she had some limited additional income, she also had additional expenses, including repayment of loans and associated fees and expenses.

Set out below are examples of how Ms Stewart and Ms Skinner managed to improperly obtain CBLALC funds for their own use.

Site officer cheques

Site officers are engaged to assist in identifying and protecting places of Aboriginal cultural significance on construction, mining and other sites. Their work does not usually involve full-time work but rather casual work for a limited period. The CBLALC supplied site officers to companies conducting mining or other exploratory work in the local area and received payment from the companies for that service. The CBLALC paid its site officers an hourly rate.

CBLALC site officers generally completed a timesheet that was used to determine how much the CBLALC needed to pay them for their site work. Timesheets were not, however, completed in every case. Site officers typically liked to be paid on the same day they worked and, to accommodate this, it was common practice for Ms Stewart to cash a cheque and deposit the cash into the site officer's account or pay the site officer directly.

Mr van Rotterdam explained that Ms Stewart signed off on timesheets that the site officers had worked certain hours and attached a photocopy of the cheque paying that person. Often these timesheets were not signed by the site officers as they were out in the field. In some cases, there was a lack of documentation from the organisation engaging the services of the site officers to confirm what work had been done and the times over which the work had been done. Individual site officers did not keep accurate records of each day they worked as site officers. This lack of records meant that the CBLALC's financial system was unable to reconcile payments made by the CBLALC to site officers with other records.

The poor procedures around invoicing, timesheets and payment of site workers allowed Ms Stewart and Ms Skinner to cash cheques ostensibly for work completed by site officers when no work had been done. They also completed false paperwork in an attempt to hide their conduct.

Ms Stewart admitted that, from time to time, she pretended that site officers had been engaged to undertake work so that she could cause cheques to be issued even though no work had been done by those site officers. She then cashed the cheques and shared the proceeds with Ms Skinner. Ms Stewart told the Commission that this practice continued after Ms Skinner left the employment of the CBLALC; the only difference being that Ms Stewart then kept all the proceeds for her own use.

Ms Skinner gave the following evidence:

[Counsel Assisting]: Now, it's the case, isn't it, that on some occasions you arranged for a cheque to be issued in the name of a site officer, but you then cashed that cheque and kept the proceeds, or some of the proceeds, yourself. Is that right?

[A]: Yeah.

[Q]: And does it follow from what you said before that to the extent that you did that, at least while Ms Stewart was on hand, you would share those proceeds with her?

[A]: Yeah.

During the public inquiry, Ms Stewart admitted that she created five CBLALC timesheets, which ostensibly referred to work performed by Graham Randall, a site officer. She then forged Mr Randall's signature on these timesheets. The timesheets cover various periods between August 2011 and June 2012. The total amount of money paid out by the CBLALC in relation to these timesheets was \$4,208. Ms Stewart admitted that Mr Randall had not done the work referred to in these timesheets and her purpose in creating them was to "enable cheques to be issued in Graham Randall's name, which [she] would then cash". While Ms Skinner was employed by the CBLALC, the proceeds were shared with her. After she left, Ms Stewart kept all the proceeds for her own use.

Ms Stewart also admitted to forging the signature of her son, Luke Walker, on nine timesheets that indicated that he had performed site officer work. These timesheets cover various periods between June and October 2011. The total amount of money paid out by the CBLALC in relation to these timesheets was \$6,818.50. Ms Stewart's son was not a regular site officer and did relatively little site officer work for the CBLALC. Ms Stewart admitted that it was unlikely her son had actually worked the number of hours attributed to him in these timesheets and that, in fact, it was possible he had not worked at all during the relevant periods.

In light of these admissions, and Ms Stewart's general admissions that she falsified site officer timesheet records to obtain money for herself, the Commission finds that Ms Stewart obtained at least some, if not all, of the \$6,818.50 that was ostensibly payable to her son. The Commission is satisfied that, in accordance with their established practice, the monies improperly obtained by Ms Stewart in this way were shared with Ms Skinner.

Ms Skinner admitted to the Commission that she forged the signature of her de facto partner, Mr Hickling, on 21 timesheets representing a total amount of \$13,694.50. The timesheets cover various periods from 16 September 2010. She told the Commission that she had not checked whether the timesheets were accurate and had not asked Mr Hickling if they were correct. She admitted that the reason she signed the timesheets was “to ensure that there was supporting material which would support the issuing of cheques from the LALC”. She told the Commission that she did not know if Mr Hickling had done any of the work referred to in these timesheets.

There is evidence that at least some of the timesheets were used to obtain money for Ms Stewart and Ms Skinner for their own use.

Ms Stewart admitted that she issued a CBLALC invoice dated 3 September 2012 in the name of Richmond Valley Council, claiming \$2,100 (exclusive of GST) for a purported site survey performed by Mr Hickling on 3 May 2012. Ms Stewart admitted to the Commission that the CBLALC did not perform any work for Richmond Valley Council, that the invoice was false, and that she drew the invoice to account for having previously arranged for a cheque to be issued that she had cashed.

The Commission is satisfied that the forging of Mr Hickling’s signature to the 21 timesheets and the issuing of the false invoice to Richmond Valley Council were part of the scheme whereby Ms Stewart and Ms Skinner diverted CBLALC money to themselves and resulted in at least some money being so diverted. There is, however, insufficient evidence to establish the precise amount of money they obtained in this way.

There was some disagreement in the evidence of Ms Skinner and Ms Stewart as to when Mr Hickling’s timesheets were signed by Ms Skinner. Ms Skinner’s initial evidence to the Commission was that she had forged Mr Hickling’s signature to a timesheet for the period from 22 to 28 December 2011. When it was pointed out that this period was after she had left the employment of the CBLALC in October 2011, she told the Commission that she “must have” signed some of the timesheets after she left. In her later evidence, however, she said she could not recall signing any timesheets after leaving the CBLALC and had not been back to the CBLALC’s office since leaving.

Ms Stewart told the Commission that she had a “clear” recollection of Ms Skinner attending the CBLALC’s office, after she had ceased to be employed, in order to sign the timesheets at Ms Stewart’s request. Ms Stewart said that this was done in order to “prepare all our paperwork for the auditor”.

On her own admission, Ms Skinner forged Mr Hickling’s signature on each of the 21 timesheets. Some or all of the timesheets that she signed in Mr Hickling’s name were signed by her in “bulk”. There is no reason to believe that those timesheets could have been signed before the periods to which they related as the timesheet document was a template document that had the date printed on it before the signature was applied. Given this, and having regard to Ms Stewart’s evidence, the Commission is satisfied that Ms Skinner forged Mr Hickling’s signature on the nine timesheets covering the period from 22 December 2011 to 13 June 2012 after she had left the CBLALC.

William Walker is another site officer. In her evidence to the Commission, Ms Skinner admitted that she affixed a signature next to the label “Employee Signature” on William Walker’s timesheet for the period from 12 to 18 April 2012. The forged signature, however, is that of Mr Hickling, not William Walker. This may have been done by mistake when Ms Skinner was signing timesheets in “bulk” ostensibly for Mr Hickling. In any event, the evidence supports a conclusion that at least some of the proceeds of CBLALC cheques that were issued in William Walker’s name were in fact retained by Ms Stewart (but probably not Ms Skinner). In this regard, there is evidence that William Walker did not perform any site officer work for the CBLALC after November 2011 but that some \$5,993.16 in cheques had nevertheless been issued in his name after November 2011. Ms Stewart accepted that at least some of the post-November 2011 CBLALC cheques in William Walker’s name “must have been cheques that weren’t properly issued to Mr Walker” and were “likely to be cheques that [she] cashed and that [she] kept the proceeds”.

On the evidence before the Commission, it is not possible to determine the precise amount of money obtained by Ms Stewart and Ms Skinner through the falsification of timesheets. This is because there is no definitive record of the site officer work actually performed by CBLALC site officers during the relevant period or the amounts that were actually received by site officers. Although Mr James attempted to reconcile invoices, timesheets and payments to site officers during Ms Stewart’s tenure as CEO, he accepted that the reconciliation did not permit him to conclude whether all of the site officers were paid what they were entitled to be paid or whether there had been overpayments or underpayments.

The Commission is, however, satisfied that payments, ostensibly due to site officers for work they had performed on behalf of the CBLALC, were obtained by Ms Stewart and Ms Skinner and used for their own purposes. Each of Ms Stewart and Ms Skinner created false timesheets in order to assist them to obtain the proceeds of CBLALC cheques ostensibly issued as payment for site officers.

Superannuation cheques

Ms Stewart gave evidence to the Commission that, while she was CEO, she arranged for a number of cheques to be issued for superannuation payments for CBLALC employees, cashed those cheques and either kept the proceeds for her own benefit or, if Ms Skinner were working for the CBLALC at the time, shared the proceeds with Ms Skinner.

When acting as CBLALC CEO, it was part of Ms Skinner's responsibilities to ensure that employees' superannuation was paid. She accepted that there were occasions when she arranged for a cheque to be drawn to pay for superannuation but then cashed the cheque and either kept all the proceeds or shared them with Ms Stewart. One such case involved a cheque dated 10 October 2011 for \$562.73, which was drawn for the purpose of making a superannuation payment for Ms Skinner's partner.

The evidence before the Commission is insufficient to identify with any precision the amount of money obtained and used by Ms Stewart and Ms Skinner in this way.

The van Rotterdam payments

Mr van Rotterdam was contracted from about April 2009 as a bookkeeper to assist the CBLALC. He generally worked from home. He periodically issued invoices to the CBLALC for his work and received payment by way of deposit into his bank account. In 2012, he became aware that Ms Stewart had cashed a cheque for payment for his work at the CBLALC early in the month and then deposited the payment into his bank account later in the month. He told the Commission that, when he confronted Ms Stewart with this discovery, she said, "I always do that. I keep the money at the land council and then I deposit it later. I always do that".

Mr van Rotterdam told the Commission that, after this conversation, he checked the invoices he had submitted to the CBLALC for payment for his work. These checks enabled him to confirm that he had received full payment on his invoices. There were, however, CBLALC records indicating other payments had been made to him. He identified six cheques made payable to him "or bearer", ranging in date from 28 February to 20 July 2012, totalling \$8,340.35. Banking records confirm that the cheques had been cashed. It was Mr van Rotterdam's evidence to the Commission that the proceeds of these cheques, with the possible exception of \$350.35, were not received by him. The \$350.35 is part of the proceeds of a cheque dated 10 April 2012 and appears to relate to an amount claimed by Mr van Rotterdam in one of the invoices he issued to the CBLALC and for which he received payment.

Ms Stewart was asked about these cheques. She said she could not recall issuing cheques in Mr van Rotterdam's name, cashing them and keeping the proceeds but ultimately conceded that it was possible that she had cashed cheques made out to Mr van Rotterdam and kept the proceeds. This would be consistent with her actions with respect to other CBLALC cheques discussed in this chapter.

Ms Skinner was no longer employed by the CBLALC by this stage and there is no evidence that she was involved in this matter.

The Commission accepts that, with the possible exception of \$350.35, Mr van Rotterdam did not receive the proceeds of these six cheques. The Commission is satisfied that Ms Stewart arranged for the six cheques to be issued and then cashed them and, with the possible exception of \$350.35, kept the proceeds for her own use. In making this finding, the Commission takes into account that Counsel Assisting submitted that the Commission should make such a finding and Ms Stewart did not make any submission to the contrary.

The debutante ball payment

The CBLALC had planned to hold a debutante ball at the Casino RSM Club in November 2012. That event did not ultimately occur.

Mr James found that CBLALC records showed that a CBLALC cheque dated 23 August 2012 for \$1,000 had been issued payable to the Casino RSM Club for a function booking. His further enquiries established that the cheque had been cashed but the proceeds had never been received by the club.

Ms Stewart told the Commission that she created a false invoice by taking a quotation issued by the club, photocopying the club letterhead and then inserting text she created under the photocopied letterhead. She admitted that her purpose in doing so was to ensure that a cheque for \$1,000 would be signed by CBLALC board members by misleading them as to the purpose of the payment.

Ms Stewart then prepared a cheque for \$1,000 payable to "Casino RSM or bearer" and the accompanying payment authorisation. After she arranged for the cheque to be signed by two CBLALC board members, she cashed it and kept the proceeds. She did not share these proceeds with Ms Skinner, as Ms Skinner had, by then, left the employment of the CBLALC.

The Savins First National Real Estate payment

As previously noted, Ms Skinner acted as CEO when Ms Stewart was on leave.

Savins First National Real Estate (“Savins”) was the leasing agent for the property occupied by the CBLALC. The CBLALC paid its monthly rental to Savins by way of cheque.

During her evidence to the Commission, Ms Skinner was asked about a cheque dated 2 August 2011 for \$1,320 payable to “Savins First National or bearer”. She gave the following evidence:

[Counsel Assisting]: Now then this cheque you ultimately cashed. Is that right?

[Ms Skinner]: Yes.

[Q]: And you kept the proceeds?

[A]: Yep.

[Q]: That was done I think whilst Ms Stewart was on leave. Is that right?

[A]: Yep.

[Q]: And does that mean you kept 100 percent of the proceeds or did you still split them with Ms Stewart or can you not remember one way or the other?

[A]: I can't remember.

[Q]: You can't remember one way or the other?

[A]: No.

[Q]: So it's quite possible that you kept 100 percent of the proceeds of this cheque?

[A]: Yep.

Non-payment of legitimate invoices

Mr James gave evidence to the Commission regarding records relating to a cheque purporting to have been drawn to pay Schneider Nelson Plumbing. The cheque was never received by that company. He said that the proprietor of Schneider Nelson Plumbing requested the CBLALC on several occasions to pay for plumbing

work completed for the CBLALC. Mr James checked CBLALC records each time he received the request and advised Schneider Nelson Plumbing that CBLALC records indicated all bills had been paid.

Mr James ultimately ascertained that a cheque dated 31 January 2012 for \$992.20 payable to Schneider Nelson Plumbing had been cashed at the Commonwealth Bank. He spoke with the bookkeeper at Schneider Nelson Plumbing and received advice that the cheque had not been cashed by Schneider Nelson Plumbing and that the business' practice was to deposit cheques into its bank account.

During the public inquiry, Ms Stewart admitted that she arranged for the cheque, which was payable to “Schneider Nelson Plumbing or bearer” to be issued but then cashed the cheque and kept the proceeds for her own use.

An invoice issued by Hinterland Legal for acting for the CBLALC in relation to a commercial lease was recorded on CBLALC's records as having been paid by a cheque dated 24 July 2012 for \$2,000. The cheque was made payable to “Melissa Begg or bearer”. Ms Begg was a solicitor with Hinterland Legal. Ms Stewart admitted to the Commission that she caused the cheque to be issued and then cashed it and kept the proceeds for her own use.

Other cheques

Ms Stewart's evidence to the Commission was that she retained the proceeds from certain cheques after some of the proceeds had been used to meet legitimate expenses and shared the retained proceeds with Ms Skinner. For example, a cheque may have been cashed for the purchase of groceries from Woolworths or for “petty cash”. Some of the proceeds from cashing the cheque were then used to purchase items and the balance shared equally with Ms Skinner. After Ms Skinner left her employment with the CBLALC, Ms Stewart kept all of the balance proceeds.

Ms Stewart conceded that she may have also kept and shared with Ms Skinner money left over from the proceeds of cheques cashed to meet expenses associated with the National Aboriginal and Islander Day Observance Committee (NAIDOC) events. She gave the following evidence:

[Counsel Assisting]: So are you accepting from me that it's quite possible that not all of the money, referable to the cheques marked NAIDOC committee, actually went for NAIDOC events? It's possible that there was some excess left over?

[Ms Stewart]: *There could have been left over, yeah.*

[Q]: *And to the extent that there was an excess left over- -*

[A]: *Yeah.*

[Q]: *- -do we assume that the same rules apply- -*

[A]: *Yeah.*

[Q]: *- -whilst Ms Walker's there, sorry, while Ms Skinner is there, it's a 50/50 split?*

[A]: *Yeah.*

Although she had no specific recollection of having done so, Ms Skinner accepted that it was possible that she had shared money from the cashing of "petty cash" cheques and cheques cashed to meet NAIDOC expenses.

Chapter 3: Corrupt conduct and s 74A(2) statements

Corrupt conduct

The Commission's approach to making findings of corrupt conduct is set out 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 of the ICAC Act and the jurisdictional requirements of s 13(3A) of the ICAC Act. The Commission then considers whether, for the purpose of s 74BA of the ICAC Act, the conduct is sufficiently serious to warrant a finding of corrupt conduct.

For the purpose of s 9(1)(a) of the ICAC Act, the Commission considers whether, if the facts as found by the Commission 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 relation to the conduct examined in this report, it is relevant, for the purpose of s 9(1)(a) of the ICAC Act, to consider s 192E of the Crimes Act, which provides:

- (1) *A person who, by any deception, dishonestly:*
 - (a) *obtains property belonging to another, or*
 - (b) *obtains any financial advantage or causes any financial disadvantage,*

is guilty of the offence of fraud.

Maximum penalty: Imprisonment for 10 years.

- (2) *A person's obtaining of property belonging to another may be dishonest even if the person is willing to pay for the property.*
- (3) *A person may be convicted of the offence of fraud involving all or any part of a general deficiency in*

money or other property even though the deficiency is made up of any number of particular sums of money or items of other property that were obtained over a period of time.

- (4) *A conviction for the offence of fraud is an alternative verdict to a charge for the offence of larceny, or any offence that includes larceny, and a conviction for the offence of larceny, or any offence that includes larceny, is an alternative verdict to a charge for the offence of fraud.*

Linda Stewart

The Commission is satisfied that, from about late 2010 to about September 2012, Ms Stewart dishonestly exercised her official functions as CBLALC CEO to deceive CBLALC board members to sign cheques on the basis that they were for legitimate CBLALC purposes, which she then cashed to obtain money from the CBLALC for herself and, prior to about October 2011, Ms Skinner, to which she knew neither she nor Ms Skinner were entitled.

This conduct on the part of Ms Stewart is corrupt conduct for the purpose of s 8(1)(b) of the ICAC Act. This is because it is the conduct of a public official that constitutes or involves the dishonest or partial exercise of her official functions.

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

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

For the purposes of s 74BA of the ICAC Act, the

Commission is satisfied that this is serious corrupt conduct. This is because her conduct involved multiple acts over an extended period of time to obtain and retain an improper financial advantage, was performed pursuant to an agreement involving another CBLALC employee, amounted to a serious breach of trust reposed in her by the CBLALC board and the local Aboriginal community more generally, could involve a number of serious criminal offences under s 192E of the Crimes Act, which carry a maximum penalty of 10 years imprisonment, and was motivated entirely by self-interest.

Veronica Skinner

The Commission is satisfied that, from about late 2010 to about October 2011, Ms Skinner dishonestly exercised her official functions as a CBLALC employee to deceive CBLALC board members to sign cheques on the basis that they were for legitimate CBLALC purposes, which she then cashed to obtain money from the CBLALC for herself and Ms Stewart, to which she knew neither she nor Ms Stewart were entitled.

This conduct on the part of Ms Skinner is corrupt conduct for the purpose of s 8(1)(b) of the ICAC Act. This is because it is the conduct of a public official that constitutes or involves the dishonest or partial exercise of her official functions.

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

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

For the purposes of s 74BA of the ICAC Act, the Commission is satisfied that this is serious corrupt conduct. This is because her conduct involved multiple acts over an extended period of time to obtain and retain an improper financial advantage, was performed pursuant to an agreement involving another CBLALC employee, amounted to a serious breach of trust reposed in her by the CBLALC board and the local Aboriginal community more generally, could involve a number of serious criminal offences under s 192E of the Crimes Act, which carry a maximum penalty of 10 years imprisonment, and was motivated entirely by self-interest.

Section 74A(2) statements

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 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 specified 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 Ms Stewart and Ms Skinner are “affected” persons.

Both Ms Stewart and Ms Skinner made a number of admissions during the course of their evidence to the Commission. Each, however, gave their evidence subject to a declaration under s 38 of the ICAC Act. The effect of such a declaration is that their evidence cannot be used against them in any subsequent criminal proceedings, except in a prosecution for an offence under the ICAC Act.

There is, however, other admissible evidence, including the evidence of CBLALC board members, who signed relevant cheques, the evidence of Mr van Rotterdam and documentary evidence such as financial records, bank statements, timesheets, cheques, invoices and other business records.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of each of Ms Stewart and Ms Skinner for offences of fraud pursuant to s 192E of the Crimes Act or, in the alternative, for offences of larceny by a servant pursuant to s 156 of the Crimes Act. That section provides that:

Whosoever, being a clerk, or servant, steals any property belonging to, or in the possession, or power of, his or her master, or employer, or any property into or for which it has been converted, or exchanged, shall be liable to imprisonment for ten years.

Ms Stewart and Ms Skinner are no longer employed by the CBLALC. In these circumstances, consideration of the taking of disciplinary action or action with a view to dismissal does not arise.

Appendix 1: The role of the Commission

The Commission was created in response to community and Parliamentary concerns about corruption that had been revealed in, inter alia, various parts of the public sector, causing a consequent downturn in community confidence in the integrity of the public sector. It is recognised that corruption in the public sector not only undermines confidence in the bureaucracy but also has a detrimental effect on the confidence of the community in the processes of democratic government, at least at the level of government in which that corruption occurs. It is also recognised that corruption commonly indicates and promotes inefficiency, produces waste and could lead to loss of revenue.

The Commission's functions are set out in s 13, s 13A and s 14 of the ICAC Act. One of the Commission's principal functions is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

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

The Commission may also investigate conduct that may possibly involve certain criminal offences under the *Parliamentary Electorates and Elections Act 1912*, the *Election Funding, Expenditure and Disclosures Act 1981* or the *Lobbying of Government Officials Act 2011*, where such conduct has been referred by the NSW Electoral Commission to the Commission for investigation.

The Commission may report on its investigations and, where appropriate, make recommendations as to any action it believes should be taken or considered.

The Commission may make findings of fact and form opinions based on those facts as to whether any particular person has engaged in serious corrupt conduct.

The role of the Commission is to act as an agent for changing the situation that has been revealed. Through its work, the Commission can prompt the relevant public authority to recognise the need for reform or change, and then assist that public authority (and others with similar vulnerabilities) to bring about the necessary changes or reforms in procedures and systems, and, importantly, promote an ethical culture, an ethos of probity.

The Commission may form and express an opinion as to whether consideration should or should not be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of a person for a specified criminal offence. It may also state whether it is of the opinion that consideration should be given to the taking of action against a person for a specified disciplinary offence or the taking of action against a public official on specified grounds with a view to dismissing, dispensing with the services of, or otherwise terminating the services of the public official.

Appendix 2: Making corrupt conduct findings

Corrupt conduct is defined in s 7 of the ICAC Act as any conduct which falls within the description of corrupt conduct in s 8 of the ICAC Act and which is not excluded by s 9 of the ICAC Act.

Section 8 defines the general nature of corrupt conduct. Subsection 8(1) provides that corrupt conduct is:

- (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or
- (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
- (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
- (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

Subsection 8(2) specifies conduct, including the conduct of any person (whether or not a public official), that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority, and which, in addition, could involve a number of specific offences which are set out in that subsection.

Subsection 8(2A) provides that corrupt conduct is also any conduct of any person (whether or not a public official) that impairs, or that could impair, public confidence in public administration and which could involve any of the following matters:

- (a) collusive tendering,
- (b) fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety or the environment or designed to facilitate the management and commercial exploitation of resources,
- (c) dishonestly obtaining or assisting in obtaining, or dishonestly benefitting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage,
- (d) defrauding the public revenue,
- (e) fraudulently obtaining or retaining employment or appointment as a public official.

Subsection 9(1) provides that, despite s 8, conduct does not amount to corrupt conduct unless it could constitute or involve:

- (a) a criminal offence, or
- (b) a disciplinary offence, or
- (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or
- (d) in the case of conduct of a Minister of the Crown or a Member of a House of Parliament – a substantial breach of an applicable code of conduct.

Section 13(3A) of the ICAC Act provides that the Commission may make a finding that a person has engaged or is engaged in corrupt conduct of a kind described in paragraphs (a), (b), (c), or (d) of s 9(1) only if satisfied that a person has engaged or is engaging in conduct that constitutes or involves an offence or thing of the kind described in that paragraph.

Subsection 9(4) of the ICAC Act provides that, subject to subsection 9(5), the conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in s 8 is not excluded

by s 9 from being corrupt if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

Subsection 9(5) of the ICAC Act provides that the Commission is not authorised to include in a report a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection 9(4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from the ICAC Act) and the Commission identifies that law in the report.

Section 74BA of the ICAC Act provides that the Commission is not authorised to include in a report under s 74 a finding or opinion that any conduct of a specified person is corrupt conduct unless the conduct is serious corrupt conduct.

The Commission adopts the following approach in determining findings of corrupt conduct.

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of subsections 8(1), 8(2) or 8(2A) of the ICAC Act. If they do, the Commission then considers s 9 and the jurisdictional requirement of s 13(3A) and, in the case of a Minister of the Crown or a member of a House of Parliament, the jurisdictional requirements of subsection 9(5). In the case of subsection 9(1)(a) and subsection 9(5) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence. In the case of subsections 9(1)(b), 9(1)(c) and 9(1)(d) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

The Commission then considers whether, for the purpose of s 74BA of the ICAC Act, the conduct is sufficiently serious to warrant a finding of corrupt conduct.

A finding of corrupt conduct against an individual is a serious matter. It may affect the individual personally, professionally or in employment, as well as in family and social relationships. In addition, there are limited instances where judicial review will be available. These are generally limited to grounds for prerogative relief based upon jurisdictional error, denial of procedural fairness, failing

to take into account a relevant consideration or taking into account an irrelevant consideration and acting in breach of the ordinary principles governing the exercise of discretion. This situation highlights the need to exercise care in making findings of corrupt conduct.

In Australia there are only two standards of proof: one relating to criminal matters, the other to civil matters. Commission investigations, including hearings, are not criminal in their nature. Hearings are neither trials nor committals. Rather, the Commission is similar in standing to a Royal Commission and its investigations and hearings have most of the characteristics associated with a Royal Commission. The standard of proof in Royal Commissions is the civil standard, that is, on the balance of probabilities. This requires only reasonable satisfaction as opposed to satisfaction beyond reasonable doubt, as is required in criminal matters. The civil standard is the standard which has been applied consistently in the Commission when making factual findings. However, because of the seriousness of the findings which may be made, it is important to bear in mind what was said by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362:

...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 *Rejfeek 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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