

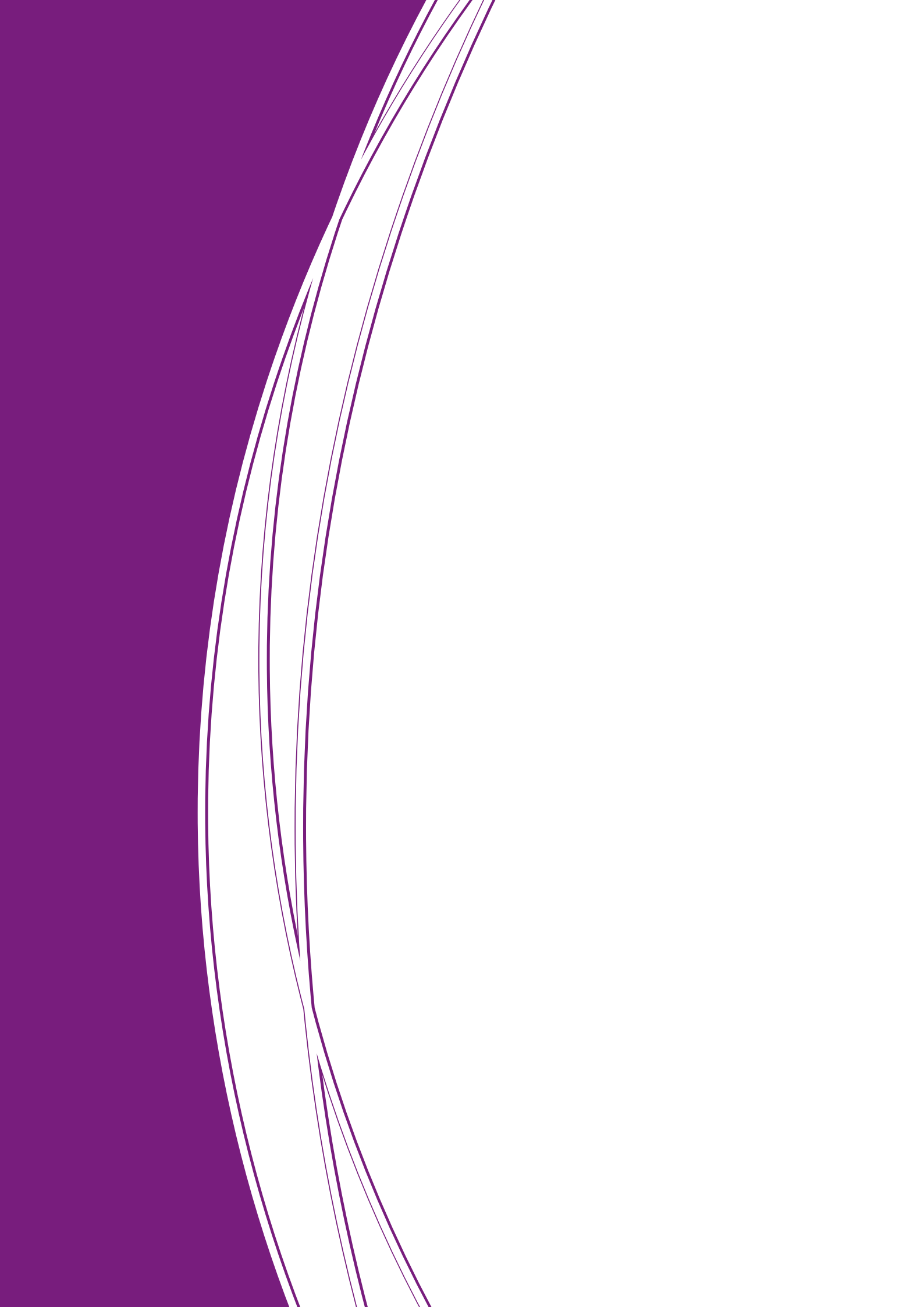


INDEPENDENT COMMISSION
AGAINST CORRUPTION



INVESTIGATION INTO ALLEGATIONS THAT STAFF FROM A NUMBER OF LOCAL COUNCILS AND OTHER PUBLIC AUTHORITIES ACCEPTED SECRET BENEFITS FROM SUPPLIERS AND THAT STAFF FROM TWO LOCAL COUNCILS FACILITATED PAYMENT OF FALSE INVOICES FROM SUPPLIERS

ICAC REPORT
OCTOBER 2012





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In accordance with section 74 of the *Independent Commission Against Corruption Act 1988* I am pleased to present the Commission's report on its investigation into allegations that employees of a number of local councils and other public authorities accepted secret benefits from companies which supplied goods to the public authorities in return for the employees placing orders with the companies. The investigation also examined allegations that employees of Bathurst Regional Council and Yass Valley Council facilitated payment of false invoices generated by some of the companies with whom they dealt, in return for corrupt payments.

I presided at the public inquiry held in aid of this 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 section 78(2) of the *Independent Commission Against Corruption Act 1988*.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Ipp', is positioned above the name of the Commissioner.

The Hon David Ipp AO QC
Commissioner

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Summary of investigation and results

The investigation

This report concerns allegations that employees of numerous local councils and other public authorities in NSW accepted secret benefits, including gift vouchers and other gifts, from companies that supplied goods to the public authorities, in return for the employees placing orders and continuing favourable business relationships with the companies.

The report also deals with allegations that Geoffrey Hadley, former senior council storeperson at Bathurst Regional Council, and Kerry Smith, former storeperson at Yass Valley Council, facilitated payment of false invoices generated by some of the companies with whom they dealt, in return for corrupt payments. The corrupt payments received by Mr Hadley exceeded \$300,000 and the corrupt payments received by Mr Smith exceeded \$23,000.

In NSW, most local councils and public authorities have a code of conduct and a gift register. Many have a policy banning the receipt of gifts and provide training to their staff on this policy. Despite this, the investigation by the Independent Commission Against Corruption (“the Commission”) found that a large number of public officials across 110 agencies took gifts without declaring them, contrary to such policy and training. The gifts accepted far exceeded any reasonable concept of token value, and included holidays, television sets, camcorders, DVD players, iPads, iPhones, coats and gift vouchers.

The Commission found that agencies generally focused on having rules in place around the acceptance of gifts, but did not consider corruption risks in the broader relationship between buyer and supplier, and the opportunity for corruption in their procurement and inventory management systems. It was weaknesses in these systems that allowed the provision of gifts and benefits to escalate to the serious corrupt conduct by Mr Hadley and Mr Smith involving false invoices being submitted in return for cash kickbacks,

which the evidence suggests may have cost the councils involved over \$1.5 million, combined.

Results

Corrupt conduct findings have been made against 41 people in this report.

In respect of suppliers to the public authorities investigated during the public inquiry, the Commission found that the following people engaged in corrupt conduct through their involvement in offering gifts and benefits to public officials as an inducement for those officials to continue placing orders with their companies or as a reward for placing orders with their companies:

- Eron Fisher, Richard Pearce, Douglas Quinn and Martin Slade of Hilindi Pty Ltd trading as R&R Tape Supplies
- Ronald Butow, Paul Goldin, Ellis Kahn, Jody Parker and Mark Moskow of Momar Australia Pty Ltd
- Gary Blackford, Robert Epps, Peter La-Vite, Sri Ramachandran and Jacqueline Verdeyen of NCH Australia Pty Ltd trading as Chemsearch and Mantek.

In respect of employees of the public authorities investigated during the public inquiry, the Commission found that the following persons engaged in corrupt conduct by receiving gifts and benefits from supplier companies, as an inducement to continue placing orders with these companies or as a reward for placing orders with these companies:

- Glen Lapham of Ballina Shire Council
- Graham Gibbons of Bathurst Regional Council
- Anthony Harman of Broken Hill City Council
- Ronita Tompsett of Burwood Council

- Robert Vagne of Byron Shire Council
- Donald Harris of the Council of the City of Botany Bay
- Jeffrey Duncum, Edwin Roger Martin, Robert Nies, and Christopher Myers of the Council of the City of Sydney
- Steven McMurtrie and Lee Warner of Lithgow City Council
- Maxwell Bancroft and Amjad Maaya of Liverpool City Council
- Mathew Kelly of Narrandera Shire Council
- Peter Evans and Peter Lewis of Orange City Council
- Phillip Burnie of the Roads and Traffic Authority
- Mark Ward of Walgett Shire Council
- Scott Ingwersen and Peter Naidoo of Waverley Council
- Kerry Smith of the Yass Valley Council.

These findings are set out in chapter 2 of this report.

The Commission also found that Geoffrey Hadley, Robin Newman, Kerry Smith, Michael Stokes (Universal Telemarketing Services Pty Ltd) and Paul Wright (PAE Industries) engaged in corrupt conduct in relation to false invoices issued to Bathurst Regional Council and/or Yass Valley Council, and that John Morgan (Universal Cartridges Pty Ltd), Richard Pearce and Douglas Quinn engaged in corrupt conduct in relation to making corrupt payments to a public official at Bathurst Regional Council.

These findings are set out in chapter 3 of this report.

Chapters 2 and 3 of the report also contain statements, pursuant to section 74A(2) of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act"), as to

whether the Commission is of the opinion that the advice of the Director of Public Prosecutions (DPP) should be obtained with respect to the prosecution of the persons named above for any criminal offences.

The Commission is of the opinion that the advice of the DPP should be obtained with respect to the prosecution of the nine persons identified below for the following offences:

- Phillip Burnie and Jacqueline Verdeyen for the offence of giving false or misleading evidence at a hearing of the Commission under section 87(1) of the ICAC Act
- Glen Lapham for the offence of wilfully obstructing or hindering the Commission's exercise of its functions under section 80(a) of the ICAC Act, the offence of making a false statement to an officer of the Commission under section 80(c) of the ICAC Act, and the offence of giving false or misleading evidence at a hearing of the Commission under section 87(1) of the ICAC Act
- Mathew Kelly for the offence of making a false statement to an officer of the Commission under section 80(c) of the ICAC Act, and the offence of giving false or misleading evidence at a hearing of the Commission under section 87(1) of the ICAC Act
- Michael Stokes for the offence of offering a corrupt benefit under section 249B(2) of the *Crimes Act 1900* ("the Crimes Act"), the offence of obtaining financial advantage by deception under section 178BA of the Crimes Act, and the offence of obtaining financial advantage by false or misleading statements under section 178BB of the Crimes Act
- Paul Wright for the offence of offering a corrupt benefit under section 249B(2) of the Crimes Act, the offence of obtaining financial advantage by deception under section 178BA of the Crimes Act, the offence of obtaining financial advantage by false or misleading statements under section 178BB of the Crimes Act,

the offence of making a false statement to an officer of the Commission under section 80(c) of the ICAC Act, and the offence of giving false or misleading evidence at a hearing of the Commission under section 87(1) of the ICAC Act

- Richard Pearce for the offence of offering a corrupt benefit under section 249B(2) of the Crimes Act
- John Morgan for the offence of offering a corrupt benefit under section 249B(2) of the Crimes Act, and the offence of giving false or misleading evidence at a hearing of the Commission under section 87(1) of the ICAC Act
- Kerry Smith for the offence of receiving a corrupt benefit under section 249B(1) of the Crimes Act, the offence of obtaining financial advantage by deception under section 178BA of the Crimes Act, and the offence of obtaining financial advantage by false or misleading statements under section 178BB of the Crimes Act.

Chapter 4 sets out the Commission's corruption prevention response to the conduct disclosed during the investigation. The Commission has made 15 corruption prevention recommendations to all councils in NSW, as it is evident that the conduct uncovered in this investigation is systemic and all councils should take action to mitigate these risks. While the recommendations are mainly aimed at local councils, the Commission considers that other public authorities can also learn from this investigation and they are encouraged to read this report and the recommendations contained herein.

Recommendation 1

That councils communicate to suppliers a clear set of supplier behaviour expectations and the associated consequences for non-compliance.

Recommendation 2

That councils develop a proactive and comprehensive supplier engagement framework.

Recommendation 3

That councils review their codes and policies on gifts and benefits to ensure they effectively communicate expected behaviour in a way that the intended audience can easily grasp.

Recommendation 4

That councils ensure that their policy provides that all staff who hold financial delegations are prohibited from receiving gifts of any kind.

Recommendation 5

That councils ensure that staff training on gifts has a focus on the disciplinary consequences of accepting gifts.

Recommendation 6

That councils assess which of their staff members operate in an environment where relational selling is commonplace, and equip these staff members to recognise and respond to these sales tactics, including the offer of gifts.

Recommendation 7

That councils, if they have not already done so, analyse their procurement processes to identify points of corruption risk and take steps to improve the design of their procurement processes.

Recommendation 8

That councils, if they have not already done so, consider introducing e-procurement as an efficient method of controlling possible vulnerabilities in their system.

Recommendation 9

That councils, if they have not already done so, review which reports are available to the managers of stores and ensure they (councils) can generate a report showing the orders placed by any individual across all cost centres.

Recommendation 10

That councils, if they have not already done so, analyse inventory management systems with a view to improving controls and reducing waste.

Recommendation 11

That councils examine options for control of their pull-based inventory and implement an option that is suitable for their operations.

Recommendation 12

That councils, if they have not already done so, organise their stores so that all items are labelled clearly, stock is securely stored and movement of all goods in or out of the store is recorded on an integrated inventory management system.

Recommendation 13

That councils ensure stocktakes are conducted independently of store officers and by staff knowledgeable about the principles of stocktaking.

Recommendation 14

That council management assesses the residual risk in its store and, if appropriate for the organisation, conducts random spot checks or cycle counts of select aspects of inventory management.

Recommendation 15

That councils, if they have not already done so, consider the risks highlighted by this report, namely,

- relational selling and gift giving
- procurement processes
- inventory management,

and, where they consider the council is at risk, add these topics to their internal audit programs.

In December 2011, the Commission produced a report on procurement called *Corruption risks in NSW Government procurement – The management challenge*. The conclusions and recommendations of this investigation report should be read in conjunction with that report on procurement.

While the corruption prevention recommendations that the Commission has made in this matter could provide assistance to all NSW councils and public authorities, they are formally directed to the 14 councils in respect of whom evidence was called at the public inquiry, as these are the councils where the corruption prevention issues identified during the inquiry largely arose.

These recommendations are made pursuant to section 13(3)(b) of the ICAC Act and, as required by section 111E of the ICAC Act, will be furnished to the relevant councils and the Minister for Local Government.

As required by section 111E(2) of the ICAC Act, the councils must inform the Commission in writing within three months (or such longer period as the Commission may agree to in writing) after receiving the recommendations whether they propose 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 councils are required to provide a written report to the Commission of their 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 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 background information concerning the Commission's investigation.

How the investigation came about

On 1 December 2008, Bathurst Regional Council (BRC) received an anonymous email, dated 29 November 2008. The email alleged that BRC had been “ripped off” in the amount of \$400,000 over a period of six years by BRC's senior council storeperson, Geoffrey Hadley, and two companies, Pinnacle Traders Pty Ltd (“Pinnacle”) and Universal Telemarketing Services Pty Ltd (UTS).

On 11 December 2008, the Commission received a report on the above allegations from BRC pursuant to section 11 of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”). This section imposes a duty on the principal officer of a public authority to report any possible corrupt conduct to the Commission.

BRC followed the section 11 report with an internal investigation, which revealed incidents of non-compliance with purchasing and stores procedures at BRC between 2003 and 2009. The investigation also showed that, during this period, some goods were ordered in excessive quantities and certain invoices were paid for goods that were never received, resulting in possible financial loss to BRC of nearly \$1 million. It was suspected that Mr Hadley and Robin Newman, an employee of UTS and director of Pinnacle at the time, were involved.

BRC provided this information to the NSW Police, which proceeded to investigate the matter. Both Mr Hadley and Mr Newman made admissions to the NSW Police that they had an arrangement whereby Mr Newman issued invoices for goods that were not in fact delivered and Mr Hadley facilitated payment of these invoices by BRC, with the two men sharing the profits. The investigation by the NSW Police also indicated that there may have been other companies, in addition to the companies associated with


Mr Newman, who engaged in similar conduct in collusion with Mr Hadley.

In April 2009 and October 2009 respectively, BRC and the NSW Police provided the information gathered from their investigations to the Commission. This led to the Commission commencing its investigation in November 2009.

Following the investigation by the NSW Police, Mr Hadley was charged with a number of counts of receiving corrupt benefits and using false instruments with intent under the *Crimes Act 1900* (“the Crimes Act”). Mr Newman was also charged with a number of counts of giving corrupt benefits and making false instruments with intent under the Crimes Act. These charges related to corrupt dealings concerning Mr Hadley, Mr Newman and a fictitious company created by Mr Newman, Robin Newman Pty Ltd, involving false invoices in the total amount of \$757,467.¹⁵ Both Mr Hadley and Mr Newman pleaded guilty to these charges and were each sentenced to four years' imprisonment on 13 April 2011.

History and outline of the Commission's investigation

In the course of its investigation, the Commission obtained evidence suggesting that, in addition to Mr Newman, Michael Stokes, then director of UTS, John Morgan, director of Universal Cartridges Pty Ltd (“Universal”), Richard Pearce, director of Hilindi Pty Ltd trading as R&R Tape Supplies (“R&R”), and Paul Wright, then a sole trader under the business name PAE Industries (“PAE”), had issued invoices to BRC and/or Yass Valley Council (YVC) for which the relevant goods were either not delivered or only partly delivered, or on which the prices of the goods were deliberately inflated. The Commission also obtained evidence indicating that Mr Hadley and Kerry Smith, then a storeperson at YVC, facilitated payment of these invoices in return for payments to them by the relevant businesses.



The Commission's examination of the conduct of these businesses gave rise to a suspicion that the provision of incentives to public officials by businesses that supplied goods to local councils and other public authorities in NSW might be widespread. It appeared that these benefits were provided as a secret reward to public officials for ordering goods, ordering greater quantities of goods or continuing to order goods from these suppliers.

The sheer scale and pervasiveness of the alleged corrupt conduct resulted in an extensive investigation by the Commission, which continued for a period of almost two years. During this time, the Commission closely examined the conduct of three supplier companies, R&R, Momar Australia Pty Ltd ("Momar") and NCH Australia Pty Ltd ("NCH") trading as Chemsearch and Mantek, and obtained evidence that they had offered gifts and benefits to public officials employed by a total of 110 NSW public authorities, being 88 local councils and 22 other government agencies.

The Commission obtained evidence indicating that gifts in excess of \$116,000, including gift vouchers totalling at least \$64,380, were provided to public officials working for the majority of the 110 authorities over the period reviewed.

The Commission investigated the conduct of relevant employees of 15 of the 110 public authorities identified, and obtained evidence supporting the allegation that they had accepted gifts and benefits from suppliers. These 15 public authorities were:

1. Ballina Shire Council
2. Bathurst Regional Council
3. Broken Hill City Council
4. Burwood Council
5. Byron Shire Council
6. Council of the City of Botany Bay

7. Council of the City of Sydney
8. Lithgow City Council
9. Liverpool City Council
10. Narrandera Shire Council
11. Orange City Council
12. Roads and Traffic Authority
13. Walgett Shire Council
14. Waverley Council
15. Yass Valley Council

These authorities were selected after assessing a number of factors, including whether at least one employee from each of them had allegedly received gifts and benefits from suppliers in the total amount equal to or greater than a threshold amount set by the Commission. These employees and other relevant witnesses were called to give evidence at the subsequent public inquiry. Once a decision had been made to investigate more fully a particular public authority because one or more employees had allegedly received gifts and benefits equal to or greater than the threshold amount, the Commission determined that a full investigation into that public authority should be carried out. In the course of the investigations, other employees of the 15 public authorities who had also allegedly received gifts or benefits were called to give evidence at the public inquiry even though the amount involved in respect of some of those employees was less than the threshold.

Given the finite resources and time at the Commission's disposal, the Commission determined not to call witnesses from the remaining 95 public authorities at the public inquiry to examine the information that suggested that employees of those public authorities may have received gifts and benefits from suppliers.

The 95 public authorities were identified in the course of the public inquiry for the purpose of demonstrating the

scale of the practice of suppliers providing gifts and benefits to public officials in NSW public sector agencies. It was made clear by the Commission during the public inquiry that, since the people at these 95 public authorities who appeared in the records of the relevant supplier companies as having received gifts were not going to be called to give evidence at the public inquiry and given an opportunity to respond to the information obtained, no corrupt conduct findings or adverse inferences would be made by the Commission against these individuals. They were therefore not “affected” persons for the purposes of the ICAC Act, which defines an “affected” person in section 74A(3) 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 concerned.

The 95 public authorities have now been reduced to a total of 91 organisations following the amalgamation of agencies and other changes. Relevant evidence in the possession of the Commission was provided to each of these 91 public authorities to enable them to conduct their own investigations and deal with the matters as they saw fit.

Submissions were made on behalf of some of the public officials whose conduct was examined at the public inquiry that it was unfair that they were exposed to investigation by the Commission and possible corrupt conduct findings, while other public officials were dealt with by referral to their respective agencies for action. The Commission has outlined above the methods it used to determine which matters should be examined during the public inquiry, and the reasons for that procedure, and does not accept that it has acted unfairly in this regard.

Many of the public authorities to whom matters were referred subsequently reported the outcomes of their investigations and enquiries to the Commission. In a number of cases, the relevant employee admitted having received gifts from suppliers and was disciplined. Some employees were demoted, others had their pay deducted, and some received “first and final warning letters” or were subjected to other appropriate action by the relevant public authority.

In some cases, the relevant employee denied the allegations and no evidence could be found to the contrary. In other cases, the relevant employee admitted receiving the gift in question but was found to have engaged in no wrongdoing. This was because, in some cases, the gift was:

- declared
- received in circumstances that did not render its acceptance contrary to the applicable code of conduct
- received and used by the employee’s spouse without the employee’s knowledge

- returned to the relevant supplier
- put to use for the employer organisation’s purposes, or
- otherwise dealt with in an appropriate or acceptable manner.

There were also instances where the allegations could not be investigated because the individuals concerned could not be located, as they had already left the employ of the relevant organisation or for other reasons.

Many of the 91 public authorities provided the Commission with details of corruption prevention measures that were implemented following their internal investigation of the allegations. Most organisations focused on reminding staff of the policies and procedures in place around gifts and, in a number of cases, staff training was conducted. Some organisations contacted suppliers to remind them that gifts were not acceptable or introduced rules about dealing with visiting salespeople. In a number of cases, reviews of procurement policies were undertaken.

The Commission’s corruption prevention recommendations are detailed in chapter 4.

Why the Commission investigated

One of the Commission’s principal functions, as specified in section 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, while Appendix 2 sets out the definition of corrupt conduct under the ICAC Act.

The conduct reported to the Commission was serious and could, if established, constitute corrupt conduct within the meaning of the ICAC Act. Accordingly, the Commission decided that it was in the public interest to conduct an investigation for the purpose of establishing 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:

- obtained information and documents from various public authorities, financial institutions and other sources by issuing 70 notices under section 21 of the ICAC Act (requiring a public authority or public official to provide a statement of information) and 101 notices under section 22 of the ICAC Act (requiring production of documents)
- obtained and executed five search warrants under section 40 of the ICAC Act
- interviewed and obtained statements from a large number of witnesses
- conducted 31 compulsory examinations.

The public inquiry

Taking into account the evidence obtained during the investigation and each of the matters set out in section 31(2) of the ICAC Act, the Commission determined that it was in the public interest to hold a public inquiry having regard to the following considerations:

- the serious nature of the matters being investigated, which involved allegations of a widespread practice of public officials accepting secret benefits from suppliers, and allegations that employees of two local councils facilitated payment of false invoices issued by individuals associated with suppliers in return for corrupt payments
- the availability of evidence that supported the above allegations
- the desirability of exposing any corrupt conduct for the purpose of educating and deterring others who might be minded to engage in similar conduct
- the risk of prejudice to the reputation of persons who would be called to give evidence at the public inquiry not being, in the circumstances, undue
- the public interest in identifying weaknesses in existing procurement processes in NSW public authorities in order to encourage reform.

The public inquiry commenced on 4 October 2011 and was conducted over 14 days. The Hon David Ipp AO QC, Commissioner, presided at the inquiry. Stephen Campbell SC (as he then was) acted as Counsel Assisting the Commission. A total of 55 witnesses gave evidence.

At the conclusion of the public inquiry, Counsel Assisting the Commission prepared submissions setting out

the evidence and the findings and recommendations the Commission could make based on the evidence. These submissions were provided to all relevant parties. The responses received by the Commission to these submissions have been taken into account in preparing this report.

Public officials

Each of the relevant employees of the 15 public authorities who are referred to in this report, and in respect of whom the Commission makes the findings set out in chapters 2 and 3 of this report, are “public officials” for the purposes of the ICAC Act.

Corrupt conduct findings

In making findings of fact and corrupt conduct, the Commission applies the civil standard of proof of reasonable satisfaction taking into account the decisions in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362 and *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171.

Corrupt conduct is defined in sections 8 and 9 of the ICAC Act. The Commission’s approach to making findings of corrupt conduct is set out in Appendix 2.

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 sections 8(1) or 8(2) of the ICAC Act. If they do, the Commission then considers section 9 and the jurisdictional requirements of section 13(3A) of the ICAC Act.

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. In the case of subsection 9(1)(b), 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 committed a disciplinary offence.

Section 74A(2) statements

In making a public report, the Commission is required by the provisions of section 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 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 section 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 concerned.

In the following chapters of this report, section 74A(2) statements are made in respect of all affected persons.



Chapter 2: Gifts provided to NSW public officials

This investigation by the Commission uncovered a corrupt practice that appears to be endemic in the process of selling in bulk, where profits are dependent on repeat business. The practice is insidious because it proceeds on the pretence of friendship and is cloaked with false values that are used to seduce buyers.

Many of the salespeople whose conduct was investigated by the Commission were specifically trained in a selling process called the “Gears of Selling”. This process encouraged salespeople to pretend to have a friendship with the buyers. They were trained to ask questions about a buyer’s family, interests and health, and to portray an interest in these matters that they did not really have. This is apparent from the fact that once a buyer left his or her position, the interest and concern disappeared.

In most cases, the process started with gifts worth modest amounts, but the size of the gifts increased with the value of orders placed by buyers on behalf of their agencies. Once the value of the gifts increased, salespeople would suggest that the gifts should be sent to the buyers’ homes, rather than their work. Concealing the receipt of gifts in this way inculcated a greater feeling of gratitude in the recipients, and also a fear of being found out. Buyers then fell further into the grip of the salespeople and, in some cases, began placing larger and larger orders to achieve more valuable gifts.

Many of the matters investigated by the Commission involved the provision of gift vouchers in various denominations to public officials. These gift vouchers could be spent at various stores, including Harvey Norman, Liquorland and Coles/Myer. The Commission is satisfied, and most of the recipients agreed, that the provision of gift vouchers, in these circumstances, is equivalent to the acceptance of cash by a public official.

Although some of the companies involved in this conduct sought to justify the provision of gifts and benefits on the basis that it was a “loyalty program”, the people who received the gifts and benefits were not the people who

should have received the benefit of any loyalty program. In each case, the “buyers” were public officials who were not the true customers. At all times, the true customers were the public sector agencies by whom the buyers were employed. These agencies, not their employees, were the true customers and the rightful recipients of any gifts or benefits available.

Despite the relatively modest size of some of the gifts and benefits received by public officials in this matter, the overall cost of the conduct examined is significant and, in some cases, devastating. This includes the costs to the councils involved, with evidence given of both over-ordering and under-supply of goods. In the case of two of the councils, it is estimated that the dishonest actions of their employees cost them up to \$1.5 million.

In all cases, the provision of gifts ensured that the employees were not as motivated to look at the relative value and quality of the products of other suppliers, as they would be more inclined to deal with the companies that provided the gifts and benefits.

There has also been a significant cost to the public officials involved in this matter. Seven have already been subject to disciplinary action, including demotion, and three have been recommended for disciplinary action in this report. Ten of the public officials whose conduct is examined in this report have resigned from their positions; the average length of service of these 10 officials with their respective agencies was 17 years.

The allegations

This chapter deals with allegations that representatives of three companies provided gifts to employees of various local councils and other public authorities in return for the employees placing orders and continuing favourable business relationships with the companies. The companies are Hilindi Pty Ltd trading as R&R Tape Supplies (“R&R”),

Momar Australia Pty Ltd (“Momar”) and NCH Australia Pty Ltd trading as Chemsearch and Mantek (collectively to be referred to as “NCH”).

This chapter also examines the conduct of a number of public officials in 14 local councils and the Roads and Traffic Authority (RTA), now part of Roads and Maritime Services. It is alleged that these public officials accepted secret gifts and benefits from the three aforementioned companies as a reward for purchasing goods from them or to encourage the public officials to continue placing orders with those companies, in breach of the applicable code of conduct and gifts and benefits policy.

How the allegations involve corrupt conduct

The conduct of company representatives in providing gifts to public officials in return for those officials showing favour to the donors in business dealings with them is conduct that adversely affects, or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by the public officials under section 8(1)(a) of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”). Such conduct is also conduct that adversely affects, or could adversely affect, either directly or indirectly, the exercise of official functions by a public official and that could involve bribery, or obtaining or offering secret commissions, within the meaning of section 8(2)(b) and section 8(2)(d) of the ICAC Act. In both cases, for the purpose of section 9(1)(a) of the ICAC Act, such conduct could constitute or involve a criminal offence of corruptly giving a reward or offering an inducement contrary to section 249B(2) of the *Crimes Act 1900* (“the Crimes Act”).

The conduct of public officials in receiving gifts from suppliers as a reward for doing business with them or as an inducement to continue doing business with them is conduct that adversely affects, or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by the public officials and therefore comes under section 8(1)(a) of the ICAC Act. It is also conduct that constitutes or involves the dishonest or partial exercise of the official functions of the public officials within the meaning of section 8(1)(b) of the ICAC Act, and could constitute or involve a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affects, or could adversely affect, either directly or indirectly, the exercise of official functions by those public officials and that could involve official misconduct, bribery and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act. In both such cases, it could also constitute or involve a criminal offence of corruptly receiving a reward or an inducement contrary to section

249B(1) of the Crimes Act for the purpose of section 9(1)(a) of the ICAC Act, and also involve a substantial breach of an applicable code of conduct under section 440(5) of the *Local Government Act 1993* (“the LG Act”) and therefore constitute or involve a disciplinary offence of misconduct for the purpose of section 9(1)(b) of the ICAC Act.

The following section of this chapter sets out relevant actions of each of the three companies and deals with the conduct of the various public officials who received gifts from these companies.

R&R Tape Supplies

R&R is a telemarketing business conducted by Hilindi Pty Ltd that supplies safety equipment, such as gloves, boots and hard hats, and related products. The directors of Hilindi Pty Ltd are Richard Pearce and his wife Roberta Pearce. The sales representatives at R&R are remunerated by wages and commission.

The Commission investigated whether R&R provided gifts to public officials for their personal benefit as a reward for those officials placing orders with R&R. R&R’s records indicate that it provided gift vouchers in the total amount of \$7,380 to public officials, as well as about 158 oilskin coats, a number of other items and occasional holidays. Many of these items were sent to the home addresses of the relevant public officials.

In respect of R&R, evidence was given at the public inquiry from storeperson James Hopkinson, former employee Douglas Quinn, salesman Martin Slade and Eron Fisher, and Richard Pearce, co-director and co-shareholder of Hilindi Pty Ltd.

James Hopkinson

Mr Hopkinson is a storeperson at R&R where he has been employed for over 13 years. He confirmed that R&R provided gifts, such as Drizabone coats, Harvey Norman and Liquorland vouchers, DVD players and “the odd holiday voucher”, to buyers who placed orders with it. He understood the purpose of the gifts was to encourage the buyer to place orders with R&R.

He also confirmed the existence of the “freebie book”, which recorded gifts. He said that he ordinarily kept the book himself, although sometimes other salesmen would also make entries in it.

He told the Commission that he was responsible for dispatching the gifts, which were sent to the person who ordered the goods. He said the person placing the order with R&R would tell the salesperson where the gifts should be sent. He estimated that close to half of the gifts were sent to the home addresses of the buyers.

Mr Hopkinson may be considered to have had some part in the incentive scheme by keeping the “freebie book” and sending out the gifts, although he did not decide where to send them. The Commission, however, is satisfied that he had no direct dealings with any public officials and that, in any event, his role in the incentive scheme involved internal administration only at a low level.

For the above reasons, the Commission makes no adverse findings against Mr Hopkinson in relation to his involvement in R&R’s provision of incentives to public officials.

Douglas Quinn

Mr Quinn worked as a salesman at R&R from 1996 to 1997, and again from 1999 to 2009.

He told the Commission that R&R started providing incentives to buyers about a year after his second period of employment with R&R. Salespeople were allowed to offer gifts to the person who ordered goods above a certain amount, as long as the profit on the sale was over 43% of the cost price. The first incentives offered were oilskin coats and hats, but they later progressed to DVD players and similar items. Within two years, Harvey Norman and Liquorland gift vouchers were provided. The gift vouchers were in the amounts of \$50 to \$100 and could be offered for orders above \$1,000. There were also occasions when holidays were offered to particularly good buyers.

Mr Quinn admitted he took part in R&R’s incentive scheme. For example, he provided a coat and, later, gift vouchers as incentives to Geoffrey Hadley when Mr Hadley was an employee of Bathurst Regional Council (BRC). Mr Hadley, whose evidence is dealt with in detail in chapter 3 of this report, agreed that Mr Quinn offered him oilskin coats and DVD players in return for orders placed.

The Commission is therefore satisfied that Mr Quinn provided the coat and gift vouchers that he admitted providing, as specified above, to Mr Hadley for his personal benefit as an inducement for him to continue placing orders with R&R. Phillip Burnie of the RTA, whose evidence is detailed later in this chapter, confirmed that he dealt with Mr Quinn of R&R. He admitted he received gift vouchers from Mr Quinn, after Mr Quinn offered them to him and asked for his home address.

Mr Burnie admitted receiving a \$100 Harvey Norman gift voucher from Mr Quinn on or about 12 March 2007, 22 October 2007 and 21 November 2007, to a total value of \$300.

Mr Quinn agreed that providing gift vouchers to a public official who had the authority to make purchases on behalf of a public authority was an attempt to induce the public official to do further business with R&R.

The Commission is satisfied that Mr Quinn provided Mr Burnie with the gift vouchers specified above for Mr Burnie’s personal benefit as an inducement for Mr Burnie to continue placing orders with R&R.

Corrupt conduct finding and section 74A(2) statement

The Commission finds that Mr Quinn engaged in corrupt conduct by carrying out R&R’s incentive scheme, in particular, in directly offering and providing the gift vouchers specified above to Mr Burnie for his personal benefit, for the purpose of encouraging Mr Burnie to continue placing RTA orders with R&R and thereby to increase Mr Quinn’s sales, and also in directly offering and providing the gifts specified above to Mr Hadley for his personal benefit, for the purpose of encouraging Mr Hadley to continue placing BRC orders with R&R and thereby to increase Mr Quinn’s sales. This is because it was conduct that adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of Mr Burnie’s and Mr Hadley’s official functions and therefore comes within section 8(1)(a) of the ICAC Act. Such conduct was also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of Mr Burnie’s and Mr Hadley’s official functions and that could have involved bribery, or obtaining or offering secret commissions, within the meaning of section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Quinn has committed criminal offences of corruptly offering an inducement contrary to section 249B(2) of the Crimes Act.

In relation to Mr Quinn’s conduct as outlined above, Mr Quinn gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not 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 Quinn for a specified criminal offence.

Martin Slade

Mr Slade has been employed as a salesperson at R&R since October 2008 and reports directly to Mr Pearce.

Mr Slade admitted that he offered incentives to buyers in both the private and public sector, including to Robert Vagne, then an employee of Byron Shire Council (“Byron SC”). Mr Slade told the Commission that he provided Mr Vagne with a gift voucher valued at \$100 following his first conversation with Mr Vagne, however, he did not

specify when this occurred. Mr Vagne admitted receiving gift vouchers from R&R on five occasions, totalling \$500: a \$150 voucher received on an unspecified date, a \$100 voucher on or about 6 March 2008, a \$100 voucher on or about 15 December 2009, and both a \$50 voucher and a \$100 voucher on or about 25 January 2010. He told the Commission that he dealt with Mr Quinn at R&R until Mr Quinn left the company, when another salesperson, possibly Mr Slade, took over. Mr Quinn resigned from R&R in April 2009.

Given the above circumstances, it cannot be established with certainty which gift voucher out of those specified above is the one provided to Mr Vagne by Mr Slade, although it seems likely that it is the \$100 voucher provided on or about 15 December 2009, as that appears to be the first gift voucher given to Mr Vagne following Mr Quinn's departure from R&R. In any event, the Commission is satisfied on Mr Slade's own evidence that, at the very least, he provided Mr Vagne with a \$100 gift voucher sometime after Mr Quinn left the company in April 2009.

Mr Slade told the Commission that he was not required to obtain approval from his superiors before offering gift vouchers, as there were standing instructions from Mr Pearce allowing him to offer them, and "It was the done thing". It was, however, discretionary – not mandatory – for him to offer gift vouchers.

Mr Slade also told the Commission that records of these incentives were kept in the "freebie book", which contained details of the name of the recipient, the organisation for which the recipient worked, the incentive sent and the value of the incentive.

He acknowledged that he provided gift vouchers to persuade buyers to place orders with R&R (and sometimes to place bigger orders than they would otherwise have done) to build up customer loyalty and to encourage repeat business. He accepted that the real customer was the public authority that employed the public official placing the order with R&R, not the public official who got the benefit of the gift voucher.

Mr Slade said that gift vouchers were often sent to the home addresses of the public officials responsible for placing orders with R&R. He agreed that this was done in order to keep the matter secret from the public official's employer.

The Commission is satisfied that Mr Slade provided Mr Vagne with a \$100 gift voucher for Mr Vagne's personal benefit, for the purpose of encouraging Mr Vagne to continue doing business with R&R.

Corrupt conduct finding and section 74A(2) statement

The Commission finds that Mr Slade engaged in corrupt conduct by carrying out R&R's incentive scheme, in particular, in directly offering and providing the gift voucher referred to above to Mr Vagne for his personal benefit, for the purpose of encouraging Mr Vagne to continue placing orders with R&R and thereby to increase Mr Slade's sales. This is because it was conduct that adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of Mr Vagne's official functions and therefore comes within section 8(1)(a) of the ICAC Act. Such conduct was also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of Mr Vagne's official functions and that could have involved bribery, or obtaining or offering secret commissions, within the meaning of section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Slade has committed the criminal offence of corruptly offering an inducement contrary to section 249B(2) of the Crimes Act.

Mr Slade gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Slade for a specified criminal offence.

Eron Fisher

Mr Fisher has been employed as a salesperson by R&R for about eight years.

He confirmed that R&R provided incentives, mostly gift vouchers, to buyers in the public sector, including two with whom he dealt – Anthony Harman at Broken Hill City Council (BHCC) and Phillip Burnie at the RTA.

Mr Harman admitted receiving two Drizabone coats and gift vouchers from R&R over a period of about six or seven years, although he could not give more specific details. R&R records show that Mr Harman received Liquorland vouchers to a total value of \$2,550 between 30 August 2006 and 23 March 2010, another three Liquorland vouchers of unspecified amounts on or about 28 November 2003, and two Drizabone coats on or about 1 September 2003.

Mr Harman told the Commission that the gift vouchers were sent to his home address, after Mr Fisher suggested

this method to keep the vouchers a secret from BHCC and Mr Harman agreed to it.

In view of Mr Harman's evidence that gift vouchers were sent to his home address at Mr Fisher's suggestion and Mr Fisher's admissions that he provided gift vouchers to Mr Harman, the Commission is satisfied that at least some of the gift vouchers specified above were provided to Mr Harman for his personal benefit by Mr Fisher to encourage Mr Harman to continue placing orders with R&R.

In relation to Mr Burnie of the RTA, Mr Fisher told the Commission that he believed he gave Mr Burnie "a couple of vouchers". Mr Burnie admitted receiving a number of gifts from Mr Quinn of R&R, until Mr Quinn left the company in April 2009, and said his dealings with R&R were then taken over by Mr Fisher. The gifts that Mr Burnie admitted receiving after April 2009 are a Drizabone coat on or about 25 September 2009 and a \$150 gift voucher on or about 12 December 2009, both of which were sent to his home. In the circumstances, the Commission is satisfied that these two gifts were provided to Mr Burnie by Mr Fisher.

Mr Fisher told the Commission that he used R&R's incentive scheme to encourage buyers to continue to give R&R business. Like Mr Slade, he agreed that the gift vouchers were sent to the public officials who placed orders with the intention that they could use them for their personal benefit.

He initially told the Commission that he did not believe at the time that he was doing anything wrong. He eventually agreed, however, that it was wrong for the incentives to be sent to the home addresses of the buyers without being disclosed to their employers. The Commission is satisfied that Mr Fisher provided Mr Burnie and Mr Harman with the gifts specified above for their personal benefit, for the purpose of encouraging them to continue doing business with R&R.

Corrupt conduct finding and section 74A(2) statement

The Commission finds that Mr Fisher engaged in corrupt conduct by carrying out R&R's incentive scheme, in particular, in directly offering and providing the gifts specified above to Mr Burnie for his personal benefit, for the purpose of encouraging Mr Burnie to continue placing RTA orders with R&R and thereby to increase Mr Fisher's sales, and in directly offering and providing the gifts specified above to Mr Harman for his personal benefit for the purpose of encouraging Mr Harman to continue placing BHCC orders with R&R and thereby to increase Mr Fisher's sales. This is because it was conduct that adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of Mr Burnie's and Mr Harman's official functions and therefore comes

within section 8(1)(a) of the ICAC Act. Such conduct was also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of Mr Burnie's and Mr Harman's official functions and that could have involved bribery, or obtaining or offering secret commissions, within the meaning of section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Fisher has committed criminal offences of corruptly offering an inducement contrary to section 249B(2) of the Crimes Act.

Mr Fisher gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Fisher for a specified criminal offence.

Richard Pearce

Mr Pearce is the managing director of the company that trades as R&R. He told the Commission that R&R has dealt with over 300 local councils over the years, and about more than 80% of its income was derived from sales to the public sector in NSW. It was alleged that he authorised and directed R&R's sales representatives to provide gifts to public officials who placed orders with R&R on behalf of their public sector employers in return for their doing business with R&R.

Mr Pearce agreed that he authorised R&R's salespeople to offer gifts, such as Drizabone coats and Harvey Norman and Liquorland gift vouchers, as incentives to the individuals who placed orders, including public officials, if a certain quantity of goods was purchased and R&R was able to make a minimum of 43% profit in a given transaction. He admitted that the purpose of providing these incentives was to keep up a good business relationship with those to whom they were offered, and to secure future sales from them. Mr Pearce's evidence in this regard is supported by the evidence of Mr Quinn, as outlined above.

Mr Pearce confirmed that Mr Hopkinson was responsible for acquiring the gift vouchers and keeping a record of them in the "freebie book". Mr Pearce claimed, however, that he did not know whether the gifts were sent to the home addresses of the buyers, which would have had the effect of keeping the gift vouchers secret from their employers. He confirmed, however, that he authorised the dispatch of all incentives entered in the "freebie book". In these circumstances, the Commission considers that the gifts

were sent to the private addresses of the public officials with his implicit, if not explicit, consent.

The Commission is satisfied that, as the managing director responsible for the marketing strategies of his company, Mr Pearce authorised and directed the provision of gifts by R&R's salespeople Messrs Quinn, Slade and Fisher to public officials for their personal benefit to encourage those officials to continue placing orders with R&R, as detailed earlier in this chapter.

Corrupt conduct finding and section 74A(2) statement

The Commission finds that Mr Pearce engaged in corrupt conduct by instituting and maintaining R&R's incentive scheme, in particular, by authorising and directing Messrs Quinn, Slade and Fisher to provide gift vouchers and other gifts to various public officials for their personal benefit, as specified above, for the purpose of encouraging those public officials to continue placing orders with R&R. This is because it was conduct that adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of official functions by those public officials and therefore comes within section 8(1)(a) of the ICAC Act. Such conduct was also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of official functions by those public officials and that could have involved bribery, or obtaining or offering secret commissions, within the meaning of section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Pearce has committed criminal offences of corruptly offering an inducement contrary to section 249B(2) of the Crimes Act.

Mr Pearce gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Pearce for a specified criminal offence.

Momar Australia Pty Ltd

Momar is a company that supplies goods for industrial maintenance, including chemical and cleaning products. The income of Momar's sales representatives is derived from the commissions on the sales they make.

The Commission investigated whether Momar provided gifts, including gift vouchers, to public officials for their personal benefit as an inducement for those officials to place orders

with the company on behalf of their employers, which were public sector agencies, including numerous local councils.

According to its business records, between 2007 and 2011, Momar provided gift cards worth approximately \$57,000 to public officials in over 50 public authorities in NSW.

The Commission heard evidence from three Momar salespeople: Paul Goldin, Jody Parker and Ronald Butow. The company's managing director, Mark Moskow, and national sales manager, Ellis Kahn, also gave evidence at the public inquiry.

Paul Goldin

Mr Goldin has worked for Momar as a sales representative since 2003. When he commenced work at the company, he underwent a period of training based on the company's "Gears of Selling" process. This manual sets out in detail the techniques to be used by Momar salespeople when doing business with buyers. It emphasises building personal relationships with individuals with whom salespeople deal. This training was given by Mr Kahn.

Mr Goldin agreed that he provided gifts to public officials in the course of making sales to public sector organisations. Momar records indicate that the public officials with whom he dealt included Ronita Tompsett of Burwood Council (BC), Donald Harris of the Council of the City of Botany Bay (CCBB), Robert Nies, Jeffrey Duncum, Edwin Roger Martin and Christopher Myers of the Council of the City of Sydney (the CCS), Amjad Maaya and Maxwell Bancroft of Liverpool City Council ("Liverpool CC"), and Scott Ingwersen and Peter Naidoo of Waverley Council (WC).

According to these records, Mr Goldin provided the gifts listed below to these public officials who, in turn, admitted receiving these items from him. The evidence given by each of these public officials is dealt with in detail later in this chapter. The accuracy of Momar's records was not challenged by Mr Goldin.

- Mr Bancroft: gift vouchers to a total value of \$800 between 9 July 2009 and 16 December 2010.
- Mr Duncum: a portable DVD player, a GPS navigation system, a screwdriver, a Karcher high pressure cleaner and gift vouchers to a total value of \$1,250 between 25 August 2008 and 6 December 2010.
- Mr Harris: gift vouchers to a total value of \$1,450 between 5 June 2007 and 11 January 2011.
- Scott Ingwersen: gift vouchers to a total value of \$2,100 between 9 February 2007 and 16 December 2010.
- Mr Maaya: gift vouchers with a total minimum value of \$1,000 between 28 August 2007 and 15 December 2010.

- Mr Martin: gift vouchers to a total value of \$350 between 16 February 2009 and 25 November 2010.
- Mr Myers: gift vouchers to a total value of \$450 between 9 September 2008 and 25 November 2010.
- Mr Naidoo: gift vouchers to a total value of \$3,650 between 20 February 2007 and 15 October 2010.
- Mr Nies: gift vouchers to a total value of \$3,200 between 7 February 2007 and 26 October 2010.
- Ms Tompsett: gift vouchers to a total value of \$3,350 from 18 January 2007 to 13 January 2011.

Mr Goldin told the Commission he was instructed that, at the beginning of a sales call and at the end of the sales process (at the “thank you” stage), it was appropriate to offer gifts or incentives to the person responsible for placing orders, including those in the public sector. The salespeople were free to choose the appropriate gift.

He said that there were catalogues of items that could be offered as gifts, which varied from time to time. These catalogues were called “premium price list”, and set out items that could be given away at the introductory level of the sales process. These items included pens, rulers, staplers, hats and coffee mugs, and were valued at between \$1 and \$20. They were primarily paid for by Mr Goldin himself.

Mr Goldin said that at the “thank you” stage, the gifts available to be offered included Coles/Myer gift vouchers, Karcher high pressure hoses, iPods, GPS systems and DVD players.

He was authorised to offer a \$50 gift voucher for orders in excess of \$1,000, with the cost of the voucher being shared between Momar and him. There was a sliding scale in place, whereby he could offer gift vouchers of bigger value for orders of greater size, with a \$100 voucher available for orders in excess of \$2,000, and \$300 in vouchers for orders over \$4,000 or \$5,000. This system applied across the board, regardless of whether the buyers in question were from the public or private sector.

He agreed that the purpose behind the provision of gifts at the end of the sale was not only to thank the person placing the order, but also to establish a relationship of loyalty between that person and himself so that they would continue to do business with Momar.

He further conceded that there was often an attempt to encourage buyers placing orders falling just short of \$1,000 to increase the size of the order to more than a \$1,000 so that they could get a gift voucher.

Mr Goldin also admitted offering premium Scotch whiskey to some of his buyers around Christmas time, which he

paid for with his own money. He agreed that he did this in order to make the relationship between himself and the person responsible for placing orders more personal, and to encourage that person to continue to order from him.

Gift vouchers were posted to home addresses by Momar’s head office. Initially, however, Mr Goldin claimed that the reason the vouchers were sent to home addresses was to ensure that they were in fact received by the person who had placed the order, and not for the purpose of keeping the vouchers secret from the employer. He said there were past incidents of the vouchers getting lost and not being received by the intended recipients. He ultimately conceded, however, that the real reason for sending the vouchers to home addresses was to keep them secret from employers.

The Commission is satisfied that Mr Goldin was an active and willing participant in the implementation of Momar’s incentive scheme, that he provided the public officials named above with the gifts specified above for their personal benefit to encourage them to continue placing orders with Momar, and that he derived direct personal benefit in the form of increased commissions through higher sales.

Corrupt conduct finding and section 74A(2) statement

The Commission finds that Mr Goldin engaged in corrupt conduct by carrying out Momar’s incentive scheme, in particular, in directly offering and providing the gifts specified above to the public officials named above for their personal benefit, for the purpose of encouraging those public officials to continue placing orders with Momar and thereby to increase his sales. This is because it was conduct that adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of official functions by those public officials and therefore comes within section 8(1)(a) of the ICAC Act. Such conduct was also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of official functions by those public officials and that could have involved bribery, or obtaining or offering secret commissions, within the meaning of section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Goldin has committed criminal offences of corruptly offering an inducement contrary to section 249B(2) of the Crimes Act.

Mr Goldin gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the

DPP with respect to the prosecution of Mr Goldin for a specified criminal offence.

Jody Parker

Mr Parker has worked for Momar as a sales representative for about 11 years. He was also taught Momar's sales methodology, referred to as the Gears of Selling, by Mr Kahn when he was first employed by the company.

Mr Parker agreed that he provided gift vouchers to public officials in the course of making sales to public sector organisations. Momar's records indicate that the public officials with whom he dealt included Graham Gibbons of BRC, Peter Evans and Peter Lewis of Orange City Council (OCC) and Mark Ward of Walgett Shire Council (WSC). According to Momar's records, the accuracy of which was not challenged by Mr Parker, he provided the gifts listed below to the nominated public officials, and those officials have admitted receiving the items from him. The evidence given by each of these public officials is dealt with in detail later in this chapter.

- Peter Evans: gift vouchers to a total value of \$1,150 between 6 June 2007 and 29 September 2010.
- Graham Gibbons: gift vouchers to a total value of \$1,650 between 12 April 2007 and 25 November 2010.
- Peter Lewis: gift vouchers to a total value of \$200 between 27 February 2008 and 25 August 2010.
- Mark Ward: gift vouchers to a total value of \$3,650 between 9 May 2007 and 16 June 2010.

Mr Parker agreed that the purpose of providing gift vouchers to a person who placed an order was to engender a relationship of ongoing loyalty between that person and him, and thereby encourage further orders. He denied engaging, however, in the practice of "up-selling"; that is, encouraging people placing an order to increase the size of the order so that they would become eligible to receive a gift voucher.

When orders qualified a person for a gift voucher, Mr Parker said that he mentioned it to the person and asked where the person wanted the voucher sent. He agreed, however, that even if he did not mention the gift vouchers when accepting orders, anyone who had been buying from him for any period would know that they could receive gift vouchers for orders of a certain amount.

Mr Parker sought to defend Momar's gift voucher scheme by saying that some Momar products were unique and could not be obtained from any other company, the implication being that offering gift vouchers could not influence the person purchasing from Momar in placing subsequent orders, since these products could be ordered

only from Momar. He conceded, however, that this was true of only some of Momar's products, which substantially undermines his argument. Further, while some Momar products may have been unique, different products sold by others were capable of performing the same tasks (albeit in a different way) as the Momar products.

After some initial reluctance, Mr Parker eventually accepted that offering gift vouchers to a public official who was not the person paying for the goods ordered was "wrong".

The Commission is satisfied that Mr Parker was an active and willing participant in the implementation of Momar's incentive scheme, that he provided the public officials named above with the gift vouchers specified for their personal benefit to encourage them to continue placing orders with Momar, and that he derived direct personal benefit from the scheme in the form of increased commissions from higher sales.

Corrupt conduct finding and section 74A(2) statement

The Commission finds that Mr Parker engaged in corrupt conduct by carrying out Momar's incentive scheme, in particular, in offering and providing the gift vouchers specified above to the public officials named above for their personal benefit, for the purpose of encouraging those public officials to continue placing orders with Momar, thereby increasing his sales. This is because it was conduct that adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of official functions by those public officials and therefore comes within section 8(1)(a) of the ICAC Act. Such conduct was also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of official functions by those public officials and that could have involved bribery, or obtaining or offering secret commissions, within the meaning of section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Parker has committed criminal offences of corruptly offering an inducement contrary to section 249B(2) of the Crimes Act.

Mr Parker gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Parker for a specified criminal offence.

Ronald Butow

Mr Butow has been employed as a sales representative for Momar since 2007. He also received training from Mr Kahn in the Gears of Selling, including training relating to the provision of incentives to buyers. Mr Butow was under no obligation to offer these incentives, but could do so at his discretion.

Mr Butow told the Commission that a large percentage of the orders he received came from the public sector. He provided gift vouchers to public officials who placed orders and, on some occasions, also to those who used the Momar products in the course of performing their duties but did not necessarily order the goods themselves. In both cases, he agreed that the beneficiary of the gift vouchers was not the public authority by whom these people were employed. This is plainly the case.

Momar's records, the accuracy of which was not challenged by Mr Butow, indicate that the public officials with whom he dealt included Kerry Smith of Yass Valley Council (YVC). According to these records, Mr Butow provided Mr Smith with gift vouchers to a total value of \$1,150 between 4 October 2007 and 14 September 2010. Mr Smith, whose evidence is dealt with in detail later in this chapter, admitted that he received these gift vouchers.

Mr Butow confirmed that salespeople were directed by Momar to send gift vouchers only to the home addresses of the people placing the orders, and agreed that the reason for this practice was to keep the gift vouchers secret from others at the recipients' workplace.

He conceded that the purpose of providing the gift vouchers was to promote loyalty, namely to encourage the public official ordering the goods to place more orders with Momar, rather than purchasing goods from Momar's competitors.

The Commission is satisfied that Mr Butow was an active and willing participant in the implementation of Momar's incentive scheme, that he provided Mr Smith with the gift vouchers totalling \$1,150, as specified above, for his personal benefit to encourage him to continue placing orders with Momar, and that Mr Butow derived direct personal benefit from the scheme in the form of increased commissions from higher sales.

Corrupt conduct finding and section 74A(2) statement

The Commission finds that Mr Butow engaged in corrupt conduct by carrying out Momar's incentive scheme, in particular, in offering and providing the gift vouchers specified above to Mr Smith for his personal benefit, for the purpose of encouraging Mr Smith to continue placing orders with Momar, thereby increasing Mr Butow's sales. This is because it was conduct that adversely affected, or

could have adversely affected, either directly or indirectly, the honest or impartial exercise of Mr Smith's official functions and therefore comes within section 8(1)(a) of the ICAC Act. Such conduct was also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of Mr Smith's official functions and that could have involved bribery, or obtaining or offering secret commissions, within the meaning of section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Butow has committed criminal offences of corruptly offering an inducement contrary to section 249B(2) of the Crimes Act.

Mr Butow gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Butow for a specified criminal offence.

Mark Moskow

Mr Moskow is the managing director and co-shareholder of Momar. It was alleged that he authorised and directed Momar's sales representatives to provide gifts to public officials, who placed orders with Momar on behalf of their public sector employers, for the purpose of encouraging those public officials to continue doing business with Momar.

Mr Moskow agreed that the industry in which Momar operated was highly competitive, and the company adopted the incentive scheme as a loyalty program to encourage buyers to prefer Momar's products over those of its competitors.

He also agreed that the gift voucher promotion, described as an "amazing success" in Momar's internal correspondence dated 1 March 2008, resulted in an increase in orders received by the company.

Mr Moskow accepted that Momar's company policy made it mandatory for gift vouchers to be sent to the home address of the person placing the order. He claimed, however, that the purpose behind this policy was not to keep the gift vouchers secret, but to make sure that they were received by the intended recipients, as there had been incidents in the past of gift vouchers going missing. He conceded that there were other readily available means of ensuring the gift vouchers were securely delivered to the intended recipients at their workplace, and that he never instructed his sales staff to inform the public authorities, on

whose behalf the goods were ordered, that gift vouchers were being offered to their employees. The Commission is satisfied by all of the evidence on this topic that the objective behind this company policy was to keep the gift vouchers secret from the public officials' employers.

Mr Moskow sought to vindicate Momar's practice of providing gift vouchers to public officials by asserting that offering them gift vouchers was very different from offering them cash. He said computerised documentation existed in respect of gift vouchers, which render them traceable and transparent as opposed to cash.

The Commission rejects this claim by Mr Moskow. Records could just as readily be kept about cash payments and the recipients. Further, despite the fact that the company kept records about the gift vouchers, the relevant public authorities would have had no way of knowing that the vouchers were offered, unless their employees declared them. Therefore, whilst the gift vouchers may be traceable, they are certainly not transparent to the public authorities paying for the goods ordered.

The Commission is satisfied that, as the managing director responsible for the marketing strategies adopted by his company, Mr Moskow directed and authorised the provision of gifts to public officials for their personal benefit by Momar's salespeople, Messrs Goldin, Parker and Butow, to encourage those officials to continue placing orders with Momar.

Corrupt conduct finding and section 74A(2) statement

The Commission finds that Mr Moskow, as Momar's managing director, engaged in corrupt conduct by instituting and maintaining its incentive scheme, in particular, in authorising and directing Messrs Goldin, Parker and Butow to provide gift vouchers and other gifts to various public officials for their personal benefit, as specified above, for the purpose of encouraging those public officials to continue placing orders with Momar. This is because it was conduct that adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of official functions by those public officials and therefore comes within section 8(1)(a) of the ICAC Act. Such conduct was also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of official functions by those public officials and that could have involved bribery, or obtaining or offering secret commissions, within the meaning of section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Moskow has committed

criminal offences of corruptly offering an inducement contrary to section 249B(2) of the Crimes Act.

Mr Moskow gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Moskow for a specified criminal offence.

Ellis Kahn

Mr Kahn is the national sales manager for Momar and started working for the company about 15 years ago. The Commission investigated whether he authorised, trained and instructed Momar's sales representatives to provide gifts to public officials who placed orders with Momar on behalf of their public sector employers, for the purpose of encouraging those officials to continue doing business with Momar.

Mr Kahn confirmed that the Gears of Selling approach was built on the notion that, in order to achieve sales of a company's products, it was important that the sales representatives form personal relationships with the individuals responsible for placing orders. The intention behind Momar's incentive scheme was to encourage those individuals to continue to choose Momar's products over those of other companies. Mr Kahn said that the gift voucher promotion was successful in increasing Momar's sales, and had continued for some years until it was stopped in March 2011.

Like Mr Moskow, Mr Kahn attempted to defend Momar's incentive scheme as it applied to the public sector. He asserted that it was no different from the loyalty programs hundreds of other companies in Australia have, and cited Qantas as an example. The Commission rejects this claim. Unlike loyalty programs, such as the Qantas frequent flyer program, the incentives offered in these matters were kept secret from the true customer; that is, the person who was paying for the goods and services.

Mr Kahn further sought to dispute Momar's responsibility in this matter by arguing that it was up to the employee to tell his or her employer about receiving gift vouchers, referring to this as "the employee's prerogative". In the Commission's view, an employee's obligation to inform his or her employer of the receipt of the gift vouchers does not absolve Momar from responsibility for its conduct in offering or providing public officials with incentives for the purpose of inducing them to place further orders with Momar without the knowledge of, and often to the detriment of, those officials' employers.

Like Mr Moskow, Mr Kahn claimed that the reason that Momar directed its sales staff to send the gift vouchers

only to the home addresses of public officials was because of the risk of gift vouchers going missing and not being received by the correct person. He conceded, however, as Mr Moskow had done, that there were other means readily available, such as registered post, by which Momar could have ensured that the gift vouchers were reliably delivered to the intended recipients at their workplace. Mr Kahn eventually admitted that the real reason that gift vouchers were directed to be sent only to the home addresses of public officials was to keep the matter secret.

The Commission is satisfied that, as the national sales manager directly responsible for the marketing strategies adopted by Momar and for training its sales staff in how to make sales, Mr Kahn directed and authorised the provision of gifts to public officials for their personal benefit by Momar's salespeople, Messrs Goldin, Parker and Butow, to encourage those officials to continue placing orders with Momar.

Corrupt conduct finding and section 74A(2) statement

The Commission finds that Mr Kahn, as Momar's national sales manager, engaged in corrupt conduct by instituting and maintaining its incentive scheme, in particular, by authorising and directing Messrs Goldin, Parker and Butow to provide gift vouchers and other gifts to various public officials for their personal benefit, as specified above, for the purpose of encouraging those public officials to continue placing orders with Momar. This is because it was conduct that adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of official functions by those public officials and therefore comes within section 8(1)(a) of the ICAC Act. Such conduct was also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of official functions by those public officials and that could have involved bribery, or obtaining or offering secret commissions, within the meaning of section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Kahn has committed criminal offences of corruptly offering an inducement contrary to section 249B(2) of the Crimes Act.

Mr Kahn gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Kahn for a specified criminal offence.

NCH Australia Pty Ltd

NCH supplies chemical and cleaning products. It is part of an international group of companies, with a parent company in the United States. NCH is also often referred to as "Mantek" or "Chemsearch", which are different divisions within the company. All three entities are collectively referred to as NCH for the purposes of this report, unless otherwise necessary to distinguish between them.

The Commission investigated whether NCH provided gifts to public officials in NSW for the purpose of encouraging them to place orders with NCH on behalf of their employer organisations, which were public sector agencies, including local councils.

According to its business records, between January 2007 and August 2011, NCH provided a variety of incentives (including wine, electronic goods and computers) to a total value of over \$52,000 to public officials in about 50 public authorities. These incentives were frequently sent to the home addresses of the relevant public officials.

Three sales representatives from NCH, Sri Ramachandran, Gary Blackford and Jacqueline Verdeyen, gave evidence at the public inquiry. Robert Epps, David Wong, Roberto Pavan and Peter La-Vite, all members of NCH's senior management, also gave evidence at the public inquiry.

Sri Ramachandran

Mr Ramachandran has worked for NCH as a sales representative for over seven years. He reports to Robert Epps, national division manager of NCH.

Mr Ramachandran admitted he used NCH's incentive scheme in making sales to the public sector. NCH records indicate that the public officials with whom Mr Ramachandran dealt included Jeffrey Duncum of the CCS, Lee Warner, Steven McMurtrie and Peter Bradford of Lithgow City Council ("Lithgow CC"), and Kerry Smith of YVC. According to these records, the accuracy of which was not challenged by him, Mr Ramachandran provided the gifts detailed below to the nominated public officials, who have admitted receiving the items from him. The evidence of these public officials is dealt with in detail later in this chapter.

- Peter Bradford: an iPod valued at \$395 on or about 28 January 2011.
- Jeffrey Duncum: a DVD player valued at \$150 on or about 21 May 2010.
- Steven McMurtrie: an iPod valued at \$395 on 10 January 2011, one DVD player valued at \$150 on 31 January 2011, and a high-pressure washer valued at \$169 on 9 February 2011, to a total amount of \$714.

- Kerry Smith: all items identified in the document on page 27 except for the six drills, the laser distance finder, the trolleys and the vest.
- Lee Warner: both a bladeless fan valued at \$429 and a dozen bottles of wine valued at \$239.40 on or about 24 January 2011, a water purifier valued at \$229 on or about 28 January 2011, a high-pressure washer valued at \$169 on or about 2 February 2011, and a laptop valued at \$895 on or about 25 February 2011, to a total amount of \$1,961.40.

The promotions program

Mr Ramachandran told the Commission that he received sales training at the commencement of his employment at NCH for which the Gears of Selling manual was used. The thrust of this selling strategy was to establish a personal relationship with the individuals placing orders on behalf of their employer organisations in order to encourage those individuals to buy NCH's products rather than those of its competitors. NCH had an incentive scheme in place that its sales staff were directed to use to achieve this objective.

The public officials with whom Mr Ramachandran dealt were invited to choose what they wanted from a catalogue showing all the promotional items available at a given time, and to nominate where they wanted the selected item sent. He estimated that about 50% of the promotional items were sent to the recipients' home addresses rather than their workplaces.

The promotional items offered included things that could be utilised at work, such as angle grinders, but also items that could not be used for work purposes, such as bottles of wine. Mr Ramachandran said he did not concern himself about whether the item sent to the public officials was subsequently used for work purposes or for their personal benefit.

In most cases, the promotional items were offered to the public officials placing orders. In some cases, however, as in the case of Lithgow CC, they were also provided to other employees who used the products for which orders were placed. Mr Ramachandran said that he did not send promotional items to anyone who did not want them.

Incentives as an inducement

Mr Ramachandran's income is derived from a combination of salary and commission.

He denied that he used the incentive scheme as an inducement to obtain a sale or to encourage future orders. He pointed out that he showed the promotions catalogue to the person ordering the goods only after a sale had already been concluded. He also maintained that the public officials who were given the promotional items did not ask

him about the promotion when placing orders, and that they re-ordered from him because of the performance of NCH's products and the service that he provided, not because of the promotional items on offer.

The Commission rejects these claims. Public officials who placed orders with Mr Ramachandran would have been aware after the first few transactions that placing orders of a certain size earned them a promotional item of a certain value. There is also no logical reason to conclude that the quality of NCH's products or Mr Ramachandran's service precluded the possibility that the public officials chose to come back to NCH in order to reap the benefit of the promotions on offer. The Commission is satisfied that the purpose of NCH and Mr Ramachandran in implementing the incentive scheme was to persuade the public officials to order more goods from them.

Mr Ramachandran did not agree that NCH's incentive scheme was also designed to encourage the person placing orders to place larger orders so as to qualify for a desired promotional item, and denied engaging in such "upselling" himself.

He told the Commission that NCH allowed an order to be split into separate orders for different types of products when more than one type of product was ordered, with the result that the public official placing the order became entitled to more than one promotional item. For example, in the case of Lithgow CC, three different employees were classed as individual buyers, even though only one of them had the delegation to place orders on behalf of the council. A number of orders placed with Mr Ramachandran for the council were split, with the result that a greater number of promotional items were received by the three people than would have been the case had only a single order been placed. Mr Ramachandran conceded that he or another NCH sales representative must have provided the public officials with the information that they could qualify for a greater number of promotional items by splitting a given order. He denied, however, that he himself ever suggested that any buyer split an order to obtain a greater benefit from the promotion program.

Mr Ramachandran eventually conceded that the promotional items were used by NCH as an inducement to obtain future orders.

The Commission is satisfied that Mr Ramachandran was an active and willing participant in the implementation of NCH's incentive scheme, that he provided the public officials Messrs Bradford, Duncum, McMurtrie, Smith and Warner the gifts specified above to encourage them to continue placing orders with NCH, and that Mr Ramachandran derived direct personal benefit from the scheme in the form of increased commissions from higher sales.

Schedule Point 8 - Orders with Promotional Items requested (Jan 2007 - Aug 2011)

customer no	customer name	postal code	order no	order date	sales rep name	buyer name	Comments	Cost
10002604	YASS VALLEY COUNCIL	2582	092A:	2008/07/09	RAMACHANDRAN, SRIDH	KERRY SMITH	PLS COMBINE WEBOE 092A,B AND PROVIDE 6 (SIX) DRILLS ON PROMO	948.00
10002604	YASS VALLEY COUNCIL	2582	092B:	2008/07/09	RAMACHANDRAN, SRIDH	KERRY SMITH	PLS COMBINE WEBOE 092A,B AND PROVIDE 6 (SIX) DRILLS ON PROMO	
10002604	YASS VALLEY COUNCIL	2582	206A:	2008/10/07	RAMACHANDRAN, SRIDH	KERRY SMITH	SET OF BAR CLAMPS ON PROMO CAFE ROMA COFFEE MAKER PROMO. I WILL COLLECT IT FROM OPERATIONS AND PERSONALLY DELIVER IT TO THE BUYER	N/A
10002604	YASS VALLEY COUNCIL	2582	4139	2007/09/06	RAMACHANDRAN, SRIDH	KERRY SMITH	PLEASE SHIP 4 DUFFLE BAGS DIRECTLY TO KERRY SMITH'S SHIPPING ADDRESS (COMBINE THIS ORDER WITH WEBOE 4182)	138.00
10002604	YASS VALLEY COUNCIL	2582	4181	2007/10/04	RAMACHANDRAN, SRIDH	KERRY SMITH	PLEASE SHIP 4 DUFFLE BAGS IN TOTAL DIRECTLY TO KERRY SMITH'S SHIPPING ADDRESS (COMBINE THIS ORDER WITH WEBOE 4182)	191.96
10002604	YASS VALLEY COUNCIL	2582	4182	2007/10/04	RAMACHANDRAN, SRIDH	KERRY SMITH	4 DUFFLE BAGS: COMBINE WEBOE 4225 AND 4226	191.96
10002604	YASS VALLEY COUNCIL	2582	4225	2007/10/30	RAMACHANDRAN, SRIDH	KERRY SMITH	DUFFLE BAG PROMO	
10002604	YASS VALLEY COUNCIL	2582	4333	2008/01/24	RAMACHANDRAN, SRIDH	KERRY SMITH	2 TROLLEYS ON PROMO	118.14
10002604	YASS VALLEY COUNCIL	2582	4334	2008/01/24	RAMACHANDRAN, SRIDH	KERRY SMITH	1 TROLLEY ON PROMO. PLS SHIP ALONG WITH WEBOE 4333	59.07
10002604	YASS VALLEY COUNCIL	2582	5258	2008/11/25	RAMACHANDRAN, SRIDH	KERRY SMITH	BAR CLAMPS - 2 SETS ON PROMO	
10002604	YASS VALLEY COUNCIL	2582	5393	2009/04/02	RAMACHANDRAN, SRIDH	KERRY SMITH	ONE M SIZE JACKET ON PROMO	N/A
10002604	YASS VALLEY COUNCIL	2582	6040	2009/06/26	RAMACHANDRAN, SRIDH	KERRY SMITH	PLS PROVIDE ONE HITACHI GPS ORDER CODE H2007. WILL COLLECT ITEM FROM WAREHOUSE	57.95
10002604	YASS VALLEY COUNCIL	2582	6142	2009/09/10	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. ONE RUSSELL HOBBS UNO COFFEE MACHINE CODE 99155 ON PROMO. I WILL PERSONALLY COLLECT ITEM FROM WAREHOUSE	395.00
10002604	YASS VALLEY COUNCIL	2582	6144	2009/09/10	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. ONE WELDSKILL AUTO WELDING HELMET CODE 99253 TO BE SHIPPED DIRECTLY TO KERRY SMITH, CUSTOMER ON PROMO	121.00
10002604	YASS VALLEY COUNCIL	2582	6145	2009/09/10	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. ONE BLACK AND DECKER JICSAW 600 W/VARIABLE PENDULUM VARIABLE SPEED CODE 99153 TO BE SHIPPED DIRECTLY TO CUSTOMER KERRY SMITH ON PROMO	199.95
10002604	YASS VALLEY COUNCIL	2582	6196	2009/10/26	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. PLS COMBINE WEBOE 6196 AND WEBOE 6197 AND SHIP DIRECTLY ONE GRUNDIG LCD TV AND DVD COMBO CODE 99701 ON PROMOTION. SHIPPING ADDRESS: YASS COUNCIL DEPOT, 9, YASS VALLEY WAY YASS ATTN: KERRY SMITH	120.00
10002604	YASS VALLEY COUNCIL	2582	6197	2009/10/26	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. PLS COMBINE WEBOE 6196 AND WEBOE 6197 AND SHIP DIRECTLY ONE GRUNDIG LCD TV AND DVD COMBO CODE 99701 ON PROMOTION. SHIPPING ADDRESS: YASS COUNCIL DEPOT, 9, YASS VALLEY WAY YASS ATTN: KERRY SMITH - STORES	755.00
10002604	YASS VALLEY COUNCIL	2582	6241	2009/11/27	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. PLS ORDER ONE CONVAIR PORTABLE AIR CON CODE 2033 ON PROMO TO BE SHIPPED TO KERRY'S ATTN	
10002604	YASS VALLEY COUNCIL	2582	6350	2010/02/26	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. PLS PROVIDE ONE M SIZE REVERSIBLE VEST TO KERRY SMITH'S ATTN	195.00
10002604	YASS VALLEY COUNCIL	2582	7020	2010/05/19	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. PLS COMBINE WEBOE 7096, 97, 98 AND PROVIDE ONE PANASONIC CAM RECORDER CODE 2033 ON PROMO TO BE SHIPPED TO KERRY'S ATTN	495.00
10002604	YASS VALLEY COUNCIL	2582	7096	2010/08/19	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. CODE 233 PROMO	41.00
10002604	YASS VALLEY COUNCIL	2582	7097	2010/08/19	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. CODE 233 PROMO	349.00
10002604	YASS VALLEY COUNCIL	2582	7098	2010/08/19	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. CODE 2033 PROMO	349.00
10002604	YASS VALLEY COUNCIL	2582	7130	2010/09/28	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. PLS SHIP ONE DYSON UPRIGHT VACUUM CODE 2034 TO KERRY SMITH'S RESIDENCE ADDRESS [REDACTED]	665.00
10NW6795	YASS VALLEY COUNCIL	2582	4054	2007/07/18	RAMACHANDRAN, SRIDH	KERRY SMITH	CUST NO: 10002604 *** TWO(2) MEDIUM SIZE TORQUE JACKETS TO BE SHIPPED TO KERRY SMITH'S SHIPPING ADDRESS** APPROVED BY ROBERT PPS. 205 LITRES CONTAINER PACKING ALSO NOTIFIED TO ROB EPPS AND RENOS.	115.90

Corrupt conduct finding and section 74A(2) statement

The Commission finds that Mr Ramachandran engaged in corrupt conduct by carrying out NCH's promotional scheme, in particular, in offering and providing the promotional items specified above to the public officials named above for their personal benefit, for the purpose of encouraging those public officials to continue placing orders with NCH, thereby increasing his sales. This is because it was conduct that adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of official functions by those public officials and therefore comes within section 8(1)(a) of the ICAC Act. Such conduct was also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of official functions by those public officials and that could have involved bribery, or obtaining or offering secret commissions, within the meaning of section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Ramachandran has committed criminal offences of corruptly offering an inducement contrary to section 249B(2) of the Crimes Act.

Mr Ramachandran gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Ramachandran for a specified criminal offence.

Gary Blackford

Mr Blackford worked in sales for NCH for about 14 years until he left in October 2010.

Mr Blackford agreed that he provided promotional items to public officials in the course of making sales to public sector organisations. NCH records indicate that the public officials with whom he dealt included Peter Lewis of OCC. According to these records, the accuracy of which was not challenged by Mr Blackford, he provided the following gifts to Mr Lewis, who admitted receiving the items from him:

- a coffee maker for an order on 20 September 2007
- a jobsite radio for an order on 10 February 2009
- an iPod for an order on 30 July 2009
- a further iPod for an order on 1 December 2009
- an iPhone for an order on 11 March 2010
- a further iPhone for an order on 23 May 2010.

The evidence given by Mr Lewis is dealt with in detail later in this chapter.

Mr Blackford also received training in the Gears of Selling, and was taught to build up a relationship with the buyer in a particular entity rather than the entity itself. He agreed that the creation of goodwill by this methodology was to encourage people to continue doing business with NCH on a long-term basis, and that NCH's incentive scheme was part of the technique of establishing such a long-term relationship.

Mr Blackford sought to defend his actions in taking part in NCH's incentive scheme by arguing that the items provided could be used in the business operations of councils. In respect of bottles of wine, he suggested that they could be used for Christmas raffles and fundraising events, despite the obvious fact that such use would be possible only if the receiver of the wine declared the gift to his or her employer. He accepted, however, that the public officials who accepted promotional items from NCH were at liberty to do what they liked with them, and conceded that this was in fact the intention of the promotions program. Mr Blackford's attitude was that it was the public official's business, not his, whether they took the item for their personal benefit or used it for the benefit of their employer. He also told the Commission that, whilst the employer who was paying for the goods was the one entitled to the reward, in his view the employer, and the public official placing the order as a representative of the employer, were ultimately one and the same.

The Commission does not accept this argument, which offers no justification for the fact that the benefit of the gift was personally enjoyed by the public official placing the orders, who could conceal this fact from the employer who was paying for the goods ordered.

The Commission is satisfied that Mr Blackford was an active and willing participant in the implementation of NCH's incentive scheme, that he provided Mr Lewis the gifts specified above for his personal benefit to encourage him to continue placing orders with NCH, and that Mr Blackford derived direct personal benefit from the scheme in the form of increased commissions from higher sales.

Corrupt conduct finding and section 74A(2) statement

The Commission finds that Mr Blackford engaged in corrupt conduct by implementing and executing NCH's promotional scheme, in particular, in offering and providing the promotional items specified above to Mr Lewis for his personal benefit for the purpose of encouraging him to continue placing orders with NCH, thereby increasing Mr Blackford's sales. This is because it was conduct that adversely affected, or could have adversely affected,

either directly or indirectly, the honest or impartial exercise of Mr Lewis' official functions and therefore comes within section 8(1)(a) of the ICAC Act. Such conduct was also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of Mr Lewis' official functions and that could have involved bribery, or obtaining or offering secret commissions, within the meaning of section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Blackford has committed criminal offences of corruptly offering an inducement contrary to section 249B(2) of the Crimes Act.

Mr Blackford gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Blackford for a specified criminal offence.

Jacqueline Verdeyen

Ms Verdeyen has worked for NCH for approximately eight years. She does sales work and also performs duties as a business development manager for the Chemsearch division of NCH.

As a business development manager, part of Ms Verdeyen's role is to train new salespeople, which involves educating them in the Gears of Selling. She denied, however, that she trained them on NCH's promotions program, although she conceded that she herself has implemented NCH's promotional policies in the course of performing her sales duties in accordance with company instructions. She claimed that she rarely used the promotions program because she did not need to give her buyers promotions to make sales as they were happy with the products and her service.

Promotional items provided by Ms Verdeyen

NCH's business records indicate that between February 2007 and December 2010 Ms Verdeyen provided promotional items to officers of Ballina Shire Council ("Ballina SC") on about 20 occasions. She disputed the accuracy of these records and asserted that she had provided promotional items on only six occasions in a three-month period between 23 September and 22 December 2010.

The Commission notes that NCH's records show that many of the promotional items indicated as having been

provided to Ballina SC officers were first delivered, at her request, to Ms Verdeyen's home, after being requisitioned from NCH. Ms Verdeyen explained that some of these items were given by her to other buyers, and some were kept as reserve stock for the purpose of being offered to other buyers in the future, as she saw fit.

This claim is consistent with the evidence of Glen Lapham, a former employee of Ballina SC, who said that he received only the following six items (to a total amount of \$3,572):

- a camcorder valued at \$349 on 7 October 2010 (originally requisitioned by Ms Verdeyen for another Ballina SC employee, Michael Howard)
- three TV/DVD sets valued at \$689 each, one of them delivered on 15 October 2010 and the other two on 16 November 2010 (one of which was originally requisitioned for Mr Howard and was later given to Mr Howard by Mr Lapham)
- an iPhone valued at \$885 on 23 November 2010
- a Weber Baby Q barbecue valued at \$271 on 25 January 2011.

In all the circumstances, the Commission accepts Mr Lapham's and Ms Verdeyen's evidence in this regard.

Inducement

Although she admitted having provided the promotional items detailed above, Ms Verdeyen denied that she did this in order to secure sales for NCH, insisting that she never told her buyers about the promotions until she had decided to give them a promotional item. She adamantly denied that she discussed with Mr Lapham which promotional items would be available to him if he placed an order with her or how he could structure orders to maximise the number of promotional items he could receive.

She was then shown an email to Mr Lapham, dated 17 March 2010, in which she asked Mr Lapham if he needed to place an order and said, "PS. I have a promotion running that you may like...". She admitted that, by saying this, she was letting Mr Lapham know that he could get a promotional item if he placed an order, which directly contradicted her previous evidence. Ms Verdeyen attempted to justify this inconsistency by saying that she genuinely believed what she said to be true when she gave her earlier evidence, but had since realised that she was wrong. She insisted that she had simply made a mistake, having forgotten that she had mentioned the promotions to any of her buyers.

The Commission is satisfied that Ms Verdeyen attempted to dissociate herself from any involvement in NCH's promotions program, but there is incontrovertible evidence that she used the promotions program in her dealings with Mr Lapham in the email of 17 March 2010. It is unlikely

that Mr Lapham was the only client with whom Ms Verdeyen discussed the promotions program.

The Commission is satisfied that, contrary to her testimony, Ms Verdeyen engaged in pre-purchase discussions with Mr Lapham regarding desirable consumer products that were available to him in order to encourage him to place orders with NCH.

Ms Verdeyen sought to vindicate her actions in providing promotional items to Mr Lapham by claiming that she meant the intended recipient of the items to be Mr Lapham's department within Ballina SC, not Mr Lapham himself, and that the items were to be used for work purposes.

The Commission rejects this claim. The items were addressed to Mr Lapham and some of them were sent to his home address. Ms Verdeyen tried to justify the items being sent to Mr Lapham's home by saying that a camcorder that was previously delivered to the Ballina SC depot went missing, as a result of which Mr Lapham requested that future promotional items be delivered to his home address. The arrangement was that he would be contacted on his mobile phone so that he could pick up the items from his home when they were delivered, and then take them back to work to be put in the appropriate areas of the council.

The Commission finds these claims unconvincing. There is clearly no point in Mr Lapham being contacted at work to travel to his home to pick up the promotional items, and then return to the council with the goods. It would have been equally effective and much simpler for Mr Lapham to be contacted at work and advised of the imminent arrival of the promotional items at his workplace.

The Commission also rejects Ms Verdeyen's claim that the promotional items were meant to be used for the benefit of the council and not for Mr Lapham's personal benefit. She admitted that she never told anyone in Mr Lapham's department or any other council officer about these promotional items, but said it was up to Mr Lapham to decide what he told people within the council about these matters.

An exchange of emails between Ms Verdeyen and Mr Lapham on 14 and 15 October 2010 provides further evidence that Ms Verdeyen provided the promotional items to Mr Lapham for his personal enjoyment, with the object of encouraging him to place orders with her.

On 14 October 2010, Mr Lapham sent an email to Ms Verdeyen identifying the products, quantities and prices for goods to be ordered, which were set out in two separate lists. At the end of the first list were the comments, "if you take off HEALTHY HANDS you can still get phone" and "Phone x 1 for above order". At the end of the second list

were the comments, "TV x 2 for above order" and "Total = required for each order \$7,000 plus to qualify for each TV, therefore this order above could be split in 2 to get 2 TV's".

It is clear from this email that Mr Lapham had a good understanding of how he could structure the order so as to receive a particular promotional item or to receive more than one promotional item. He could have acquired this knowledge only from Ms Verdeyen, which she admitted. Ms Verdeyen said that she provided the relevant information about splitting orders only because Mr Lapham requested it, but that she did not actually suggest to him that he should split his orders to maximise his entitlement to promotional items.

This evidence is inconsistent with Ms Verdeyen's email to Mr Lapham on 15 October 2010. In this email, she said, "The 1st order would cover the phone and the second would be split into 2 orders to cover 2 TV's", then went on to advise him of the amount of the order required to qualify for each promotion. In other words, she gave Mr Lapham clear instructions on what he could do to qualify for particular promotional items, the natural effect of which would be to encourage Mr Lapham to place the order with her and to split it so as to get the maximum benefit from the promotional items available. Mr Lapham replied to Ms Verdeyen by email on the same day saying, "split the bottom order into two thanks and re-send, i will place order next week".

In her email to Mr Lapham on 22 December 2010, there is a further example of similar conduct on Ms Verdeyen's part, in which she advised him that she had worked out how an order could be put together by Mr Lapham to enable him to qualify for a Weber Baby Q100 barbecue.

The Commission is satisfied that Ms Verdeyen actively and deliberately used NCH's promotions program to provide Mr Lapham with the promotional items specified above for his personal benefit, for the purpose of securing orders from him and thereby increasing her sales.

The Commission did not find Ms Verdeyen to be a credible witness. As detailed above, there was a consistent pattern in her testimony of denying her involvement in particular conduct and changing her story when confronted with documentary or other credible evidence to the contrary.

Corrupt conduct finding and section 74A(2) statement

The Commission finds that Ms Verdeyen engaged in corrupt conduct in the course of her work as a sales representative for NCH by providing the gifts specified above to Mr Lapham for his personal benefit, for the purpose of encouraging Mr Lapham to continue to place orders with NCH, thereby increasing her sales. This is because it was conduct that adversely affected, or could

have adversely affected, either directly or indirectly, the honest or impartial exercise of Mr Lapham's official functions and therefore comes within section 8(1)(a) of the ICAC Act. Such conduct was also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of Mr Lapham's official functions and that could have involved bribery, or obtaining or offering secret commissions, within the meaning of section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 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 Verdeyen has committed criminal offences of corruptly offering an inducement contrary to section 249B(2) of the Crimes Act.

Ms Verdeyen gave her evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Verdeyen for a specified criminal offence in relation to her provision of gifts to public officials.

The Commission is of the opinion, however, that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Verdeyen for three counts of the criminal offence of knowingly giving false or misleading evidence at a public inquiry under section 87(1) of the ICAC Act in respect of her denial:

- a. *that she used promotional items in her pre-purchase discussions with Mr Lapham to encourage him to place orders*
- b. *that she advised Mr Lapham how he could split orders to maximise his entitlements, and*
- c. *that the entitlements were intended for his personal benefit.*

Robert Epps

Mr Epps has been employed by NCH for about 23 years. For the past six years, he has been a divisional manager for the Chemsearch division of the company, which is the division of NCH that supplied goods to the public sector. He is responsible for the marketing strategies adopted by the division, organising and managing its day-to-day running, and managing about 25 sales representatives.

The Commission investigated whether, as part of NCH's senior management, Mr Epps authorised and directed NCH's sales representatives to provide gifts to public officials who placed orders with NCH for the purpose of encouraging those officials to continue doing business with NCH.

Promoting the promotions

Mr Epps denied that NCH sales staff were urged to deploy promotional offers to generate record sales. This evidence is inconsistent with an email that Mr Epps sent to NCH salespeople on 2 March 2009, in which he advised them of a new winter promotion offering jackets, and said, "Lets pull out all of the stops for the next 2 months at least and set some records. Good selling and have fun!!!!!!".

Another example demonstrating that Mr Epps actively encouraged NCH's sales staff to use the promotions program is found in an email from him, dated 2 August 2010, to all sales staff. In this email, Mr Epps advised that he had "a sensational promotion for your customers for August to help get your 2nd Quarter off to a flying start. It is an I-Pad for a \$9,000 or above sale. Your customers will love it and want one. Give them one...". It is clear that this email expressly urged NCH's sales staff to produce better results by deploying this promotion, and Mr Epps eventually agreed that this was the case.

He maintained, however, that the salespeople were not required to offer promotions, but had a choice of whether to offer them or not. The Commission accepts that the offer of promotional items by NCH's salespeople was not mandatory. Mr Epps himself, however, described his 25 sales representatives as "commission driven". It is also obvious that the whole point of the two emails above was to motivate the sales staff to use the promotions program to boost sales.

Mr Epps agreed, albeit reluctantly, that NCH's promotions program gave purchasers the opportunity to split orders in order to get more than a single promotional item. He did not agree, however, that it also encouraged them to over-order in order to secure an available reward.

Mr Epps told the Commission that promotions involving consumer goods ceased in September 2011, and NCH was undertaking a complete review of the whole program with a view to doing away with it altogether in the future.

Whose responsibility?

Mr Epps sought to defend NCH's incentive scheme by arguing that he did not differentiate between the person who was placing the order on behalf of an entity and the entity paying the bill. He agreed that his attitude in equating the buyer placing orders to the customer paying the invoice was in direct conflict with a directive ("the Dallas Legal directive") that has been in place since January 2003 from Dallas Legal, the legal department of NCH's head office in Dallas, Texas. This directive specifically defines NCH's customer as the person or entity that pays the bill, and expressly states: "**Under no circumstances** [emphasis in original document] can any type of reward be offered to a customer for the receipt of an order".

Mr Epps said that he had not seen the Dallas Legal directive until Peter La-Vite, NCH's general manager, sent an email, dated 9 February 2011, to NCH's management staff advising that the Dallas Legal directive "needs to be re-established without exceptions" within the company. The recipients of this email were instructed to forward the email on to all salespeople at NCH.

Mr Epps agreed that, in the competitive market for industrial consumables in which NCH operated, quality of product, reliability of supply and competitiveness of price should form the basis on which goods are purchased and ongoing relationships with major consumers built. He did not agree, however, that by adding in the promotions and thereby creating a psychological incentive to purchase, NCH was inducing the employee to place orders with NCH regardless of the competitiveness of price in some cases, thereby placing the employee in a position of conflict of interest.

Mr Epps reluctantly agreed that, if he put himself in the shoes of the various local councils to which NCH supplied products, he would prefer obtaining a discount on the price of the goods ordered to having an employee receive rewards for placing the orders. He asserted, however, that it was the responsibility of employees ordering the goods to declare any rewards they received to their employers.

The Commission accepts that the responsibility to disclose gifts received from NCH rested with the public officials in accordance with applicable codes of conduct. The Commission does not accept, however, that NCH is blameless in this matter, as suggested by Mr Epps, for the following reasons.

It was entirely at the election of the individual who placed the order where the promotional items were sent. The evidence from NCH records and the testimony of council officers, discussed in detail later in this chapter, show that many buyers elected to have the items couriered to their homes and that NCH complied with this request. This supports an inference that the true intent of NCH's promotional program was that employees placing orders were to get the promotional items for their personal use and enjoyment.

Mr Epps admitted that the whole idea of giving the employees placing orders the choice of having promotional items sent to their homes was to let them know that the items were fully intended for their personal benefit, as there were a number of ways that items could have been delivered to the employees' workplace in an open and frank manner had the intention been otherwise.

The Commission is satisfied that, as the senior manager directly responsible for the marketing strategies adopted by his division within NCH and for motivating NCH's sales staff to actively implement the company's incentive scheme, Mr Epps directed and authorised the provision

of the gifts specified above by NCH's salespeople, Mr Blackford, Mr Ramachandran, and Ms Verdeyen, to public officials for their personal benefit to encourage those officials to continue placing orders with NCH.

Corrupt conduct finding and section 74A(2) statement

The Commission finds that Mr Epps engaged in corrupt conduct in authorising and directing Mr Blackford, Mr Ramachandran and Ms Verdeyen to provide promotional items to various public officials for their personal benefit, as specified above, for the purpose of encouraging those public officials to continue placing orders with NCH. This is because it was conduct that adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of official functions by those public officials and therefore comes within section 8(1)(a) of the ICAC Act. Such conduct was also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of official functions by those public officials and that could have involved bribery, or obtaining or offering secret commissions, within the meaning of section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Epps has committed criminal offences of corruptly offering an inducement contrary to section 249B(2) of the Crimes Act.

Mr Epps gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Epps for a specified criminal offence.

David Wong

Mr Wong is currently the technical director of the Asia Pacific region for NCH's lubrication division. Prior to August 2011, and during the time relevant to this investigation, he worked for three years as the division manager for the Mantek division of NCH.

Mr Wong told the Commission that, in the main, the Mantek division ran in parallel with the Chemsearch division so far as marketing strategies were concerned, although the two divisions had different sales teams. He had responsibilities for the sales team and marketing strategies of the Mantek division.

Mr Wong was part of NCH's leadership team, headed by Mr La-Vite, which met to make strategic decisions on marketing. Mr Wong participated in the discussions and in the decision-making process that followed.

Unlike Mr Epps, Mr Wong readily accepted at the public inquiry that NCH's incentive scheme was wrong. Nor did he suggest that the blame lay with the sales representatives or the employees of the public authorities for the choices they made. He agreed that NCH's approach of rewarding public officials who placed orders instead of their employers was flawed, and represented a substantial deviation from the 2003 Dallas Legal directive, which he said he had not seen until Mr La-Vite's email of 9 February 2011. Generally, Mr Wong agreed that compromising the position of someone else's employees by offering promotions as NCH had done was not good business ethics and was wrong.

Notwithstanding his evidence that he was part of NCH's corporate hierarchy responsible for instituting and maintaining the promotional schemes, there is no evidence that Mr Wong himself, or the company division for which he was responsible, was involved in the implementation of the incentive scheme in relation to sales made to the public sector. Accordingly, the Commission makes no adverse findings against Mr Wong in relation to his actions.

Roberto Pavan

Mr Pavan has been with NCH for about 19 years, and has been the operations manager of the company for about 11 years of that period.

Mr Pavan is responsible for the administration of the operations section of NCH, which includes processing orders, shipping goods, collecting payments, paying bills and providing technical support. He has no involvement with sales. His section also organises the procurement and delivery of promotional items.

Mr Pavan is also part of NCH's leadership team, and over the years has attended meetings with the company's divisional managers and Mr La-Vite to determine company policy. These included marketing strategy meetings concerning promotional items.

Mr Pavan initially rejected the idea that NCH's incentive scheme was flawed, but believed it could have been improved.

While Mr Pavan considered that NCH tried to comply with good business ethics, he agreed that the company ultimately failed in this regard, as illustrated by its departure from the standard for good business ethics set out in the Dallas Legal directive, which he had not seen previously.

He conceded that it was bad business ethics to put the customer's employees in the way of temptation, and to leave it up to the employees to exercise their own

personal responsibility in terms of declaring or refusing the promotional items. Notwithstanding that he was part of NCH's decision-making team, Mr Pavan was not involved in the sales aspect of the company's operations. There is also no evidence indicating that he took part in the implementation of the incentive scheme as it applied to the public sector, other than in a purely administrative capacity. Accordingly, the Commission makes no adverse findings against Mr Pavan in relation to his actions.

Peter La-Vite

Mr La-Vite has been with NCH since 1978 and is currently its general manager. The Commission investigated whether, as the head of NCH for Australia, he authorised and directed NCH's sales representatives to provide gifts to public officials who placed orders with NCH, for the purpose of encouraging those officials to continue doing business with NCH.

Mr La-Vite works with his division managers and directly manages three salespeople in Australia. He agreed that these three salespeople, one of whom sells to the public sector, would have applied the company's promotional policy in their dealings with all buyers, in accordance with their obligation to comply with NCH's policies. The company's incentive scheme was endorsed as a marketing strategy by NCH's leadership group, of which Mr La-Vite is the chief. The company's promotional activities were carried out by NCH's salespeople with Mr La-Vite's express approval and authority.

Mr La-Vite told the Commission that he did not think there was any difference in business ethics between dealing with the public sector and the private sector, and it is noted that no such distinction is made in the Dallas Legal directive. He was asked if he agreed whether a policy that permits the individuals placing orders to choose from a range of consumer items for themselves and to have them delivered to their home addresses if they chose puts such individuals in a position of temptation. His response was that temptation is out there all the time, and it is up to the individual how he or she is to resist it. He also said that he hoped the employees would use the gift for the benefit of their organisations and not for themselves.

It was suggested to him by Counsel Assisting the Commission that it takes somebody to provide the apple (or rather in NCH's case, an Apple product), and the conduct of both the tempter and the tempted may be equally reprehensible. Mr La-Vite agreed, but sought to defend NCH's actions by claiming that there were instances where the promotional items could be used in the workplace to improve staff efficiency or morale.

The Commission rejects this claim. Whilst it might be argued that some of the gifts provided could be useful at work, no such argument could be raised concerning gifts

such as a dozen bottles of wine. Many of the gifts, such as iPods, iPhones and camcorders, were also more likely to be used for personal rather than business purposes. Moreover, the individual placing an order was often entitled to choose his or her gift. These factors support an inference that the gifts were provided to public officials for their personal enjoyment. Mr La-Vite eventually admitted that it was wrong for employees to take valuable goods home to use for their personal benefit.

Mr La-Vite was aware of the 2003 Dallas Legal directive. He considered, however, that it had no applicability to the region for which he was responsible at the time and consequently did not take much notice of it. He admitted that, in hindsight, NCH's promotional practice was directly contrary to the company's global policy.

On their evidence, most of NCH's management and staff (with the exception of Mr La-Vite) did not know about the Dallas Legal directive. It remains the case, however, that NCH failed to comply with its own company policy, and pursued a business model that sought to build a relationship of dependence between the company's sales representative and the public officials authorised to order goods on behalf of public authorities, for which Mr La-Vite, as NCH's top position holder, was directly responsible.

The Commission is satisfied that Mr La-Vite, as NCH's general manager, was directly responsible for the marketing strategies adopted by the company and authorised and directed its incentive scheme to be implemented by its sales staff.

The Commission is therefore satisfied that Mr La-Vite authorised and directed the provision of the gifts specified above by NCH's salespeople, Mr Blackford, Mr Ramachandran and Ms Verdeyen, to public officials for their personal benefit to encourage those officials to continue placing orders with NCH.

Corrupt conduct finding and section 74A(2) statement

The Commission finds that Mr La-Vite engaged in corrupt conduct by instituting and maintaining NCH's incentive scheme, in particular in authorising and directing Mr Blackford, Mr Ramachandran and Ms Verdeyen to provide promotional items to various public officials for their personal benefit, as specified above, for the purpose of encouraging those public officials to continue placing orders with NCH. This is because it was conduct that adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of official functions by those public officials and therefore comes within section 8(1)(a) of the ICAC Act. Such conduct was also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of official functions by those public officials and that could

have involved bribery, or obtaining or offering secret commissions within the meaning of section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr La-Vite has committed criminal offences of corruptly offering an inducement contrary to section 249B(2) of the Crimes Act.

Mr La-Vite gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr La-Vite for a specified criminal offence.

Remarks on the conduct of salespeople from R&R, Momar and NCH

It may be said that the sales representatives from R&R, Momar and NCH were only doing their jobs, as directed by the senior management of their respective employers, and therefore should not themselves be held to have engaged in corrupt conduct. The Commission takes the view, however, that the sales representatives were commission agents who had budgets to meet and therefore had a strong personal incentive to provide gifts to the public officials with whom they dealt to secure sales. The salespeople derived a direct personal benefit from encouraging the public officials to place bigger or more frequent orders.

The totality of the evidence in this matter clearly shows that all of the sales representatives discussed in this chapter actively pursued public officials for the purpose of increasing sales. The Commission is therefore satisfied that they were not merely following orders, but that they actively and willingly implemented and executed the business model their employers put in place to their own advantage.

Public officials

This section of the chapter deals with 27 public officials from 15 public authorities who allegedly received gifts from one or more of three supplier companies, R&R, Momar and NCH, in return for placing orders with these companies on behalf of their public sector employers.

The evidence established that all of the public officials concerned were aware at the time they received relevant gifts, albeit to varying degrees, that they were prohibited from accepting gifts other than token gifts. Despite this,

none of them declared and registered the gifts they received, as required by the applicable codes of conduct.

Ballina Shire Council

Mr Howard and Mr Lapham were both employees of Ballina SC during the period relevant to this investigation. The Commission investigated whether they each accepted gifts from NCH in return for placing orders with the company. It was alleged that Mr Howard received a camcorder valued at \$349 on or about 24 September 2010 and one TV/DVD set valued at \$689 in or around October 2010. As against Mr Lapham, it was alleged that he received numerous gifts, as specified later in this section, when discussing his evidence.

Mr Howard was employed by Ballina SC from January 2009 to late 2011, most recently as a water and sewer officer. Mr Howard was disciplined by Ballina SC following the Commission's investigation, resulting in his removal from the store, reduction in pay for a period of three months and a final warning. He left his employment at Ballina SC in late 2011.

Prior to joining Ballina SC, he worked for 32 years as a station officer for the NSW Fire Brigades (now called Fire and Rescue NSW). As a result of his long service with the NSW Fire Brigades, Mr Howard was generally familiar with the code of conduct and gifts and benefits policy governing public sector employees in NSW. Further, when he started his job at Ballina SC, he went through an induction process that covered the council's policy on gifts and benefits, and was also given a copy of Ballina SC's code of conduct.

Mr Lapham commenced his employment at Ballina SC in January 2009 and worked as a team leader of water and sewer until 24 June 2011. He then held the position of acting team leader of waste management from 27 June 2011 until he resigned in July 2011.

Council records show that Mr Lapham received a copy of the council's code of conduct and took part in an induction program on 5 January 2009.

Mr Lapham was authorised to purchase goods for Ballina SC up to a limit of \$10,000. Mr Howard did not have any delegation to procure goods on behalf of Ballina SC in his own right, although he could write out relevant orders for approval by Mr Lapham, who was his team leader.

NCH was a supplier to Ballina SC. Ms Verdeyen was the sales representative from NCH who had dealings with Messrs Howard and Lapham. Mr Howard told the Commission that Mr Lapham introduced him to Ms Verdeyen sometime in 2010. Mr Howard said that he and Ms Verdeyen never discussed promotional items, and he never received anything from her other than some token gifts such as a hat and a golf towel.

According to NCH business records, however, there were two orders placed in the name of Mr Howard on 23 September 2010 and 19 October 2010. Mr Howard did not specifically recall placing orders himself, although he agreed that orders may have gone out in his name with Mr Lapham's approval. NCH's records indicate that a camcorder was provided to Mr Howard for the order of 23 September 2010, and a TV/DVD set was provided to Mr Lapham (not Mr Howard) for the order of 19 October 2010.

These records also show that, between 7 October 2009 and 22 December 2010, numerous promotional items, including TV/DVD sets and an iPhone, were provided to Mr Lapham in respect of orders placed in Mr Lapham's name. It was alleged that Mr Howard received one of these TV/DVD sets from Mr Lapham.

The camcorder

NCH's business records show that a Panasonic camcorder was ordered by Ms Verdeyen as a promotional item to be given to Mr Howard in relation to an order dated 23 September 2010. Mr Howard told the Commission that he never asked for the camcorder, never had a conversation about it with Ms Verdeyen, Mr Lapham or anyone else, and never received it, saw it or heard about it.

Ms Verdeyen told the Commission that she sent the camcorder to Mr Howard as a promotional item earned for the order of 23 September 2010, but she had it delivered to the Sewage Response Unit, at the request of Mr Lapham. Mr Lapham admitted that he himself received the camcorder from Ms Verdeyen, and confirmed that Mr Howard knew nothing about it until he told him about it later, after being contacted by the Commission.

Given the evidence of Mr Howard, Ms Verdeyen and Mr Lapham in this matter, the Commission is satisfied that it was Mr Lapham, not Mr Howard, who received the camcorder.

The TV/DVD set

Mr Howard was referred to an email during the public inquiry from Mr Lapham to Ms Verdeyen, dated 14 October 2010, setting out a suggestion that two orders might be placed and itemising the promotional products requested. Mr Howard said that he had not seen the email or had any conversation with Mr Lapham about placing an order at this time.

NCH business records show that three orders were placed with NCH dated 19 October 2010, two in the name of Mr Lapham and one in the name of Mr Howard. In relation to the order in Mr Howard's name, a TV/DVD set valued at \$689 was ordered by Ms Verdeyen as a promotional item. The NCH records indicate, however, that this item was to be delivered to Mr Lapham's home address, not to Mr Howard.

Mr Howard told the Commission that he did not have any conversation with Ms Verdeyen about the TV/DVD set, but he did have one with Mr Lapham in October or November 2010 during which Mr Lapham told him that he had a TV for him. Mr Howard understood the TV/DVD set was a promotional item from NCH provided in connection with an order placed with the company, although he was not sure whether he knew this at the time or after a subsequent conversation with Mr Lapham.

Mr Howard took possession of the TV/DVD set shortly afterwards and gave it to his wife's daughter as a Christmas present. He told the Commission that he had a guilty conscience about receiving the TV/DVD set and admitted that, at the time of its receipt, it occurred to him that it was covered by Ballina SC's gifts and benefits policy, as it was more than a token gift, and that he therefore had an obligation to declare it. He could not explain why he had not done so, but said he knew what he did was wrong.

The clandestine meeting

Mr Howard told the Commission that a Commission investigator called him a few days prior to visiting Ballina SC, and told him he wanted to speak to him about the Chemsearch division. He assumed he was to be questioned about the TV/DVD set. He then rang Mr Lapham who told him that he had also received a phone call from the Commission. Mr Lapham rang Mr Howard later that night and told Mr Howard to meet him at the BP service station in Ballina the following morning, and to bring the TV with him.

Mr Howard met Mr Lapham, as directed, at about 5.30 am the next morning, and gave him the TV/DVD set. Mr Lapham told Mr Howard that he (Mr Lapham) had been told by Ms Verdeyen that a camcorder had been put down to Mr Howard's name, and said that he would bring the camcorder in to work.

When interviewed by Commission officers on 14 July 2011, Mr Howard said that Mr Lapham had told him to tell the Commission that he (Mr Howard) did not know anything about the TV/DVD set.

Mr Lapham's version

Mr Lapham did not dispute that he had originally given the TV/DVD set to Mr Howard. He claimed, however, that he arranged the meeting at the service station with Mr Howard because he was "going to take the fall for him", as he did not want Mr Howard "to get in trouble". He denied that he had brought the promotional items he had at home in to work on the day that he met Mr Howard at the service station. He admitted, however, telling Mr Howard to tell Commission officers that he, Mr Howard, knew nothing about the TV, but claimed he said this to protect Mr Howard, and denied that he was telling Mr Howard to lie to the Commission.

No finding of corrupt conduct for Mr Howard

The Commission is satisfied that, sometime around October or November 2010, Mr Howard received a TV/DVD set with a value of \$689 from Mr Lapham at the Ballina SC premises with the knowledge that it was a promotional gift provided by NCH.

Mr Howard admitted that he knew the TV came from a Ballina SC supplier. He formed the belief that it was a gift or benefit of a type that had to be declared and surrendered, but did not do so. On the other hand, Mr Howard did not solicit the TV, and did not receive it from a supplier company's sales representative but from a colleague. It is also not clear from the evidence that the TV was given to Mr Howard as a reward for a particular order placed by Mr Howard or that Ms Verdeyen intended it for Mr Howard's benefit rather than Mr Lapham's.

Mr Howard was also completely frank and cooperative with the Commission from the outset. For example, it was open to him to claim that the TV/DVD set he received from Mr Lapham was a personal gift from Mr Lapham, and deny any knowledge that it was a promotional gift from NCH, but he chose not to do so and instead admitted to knowing where the TV came from, against his own interest. In these circumstances, the Commission has determined to exercise its discretion not to make a corrupt conduct finding against Mr Howard.

Section 74A(2) statement for Mr Howard

For the reasons outlined above, the Commission is also not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Howard for a specified criminal offence.

As Mr Howard has already been disciplined by Ballina SC for his actions, the Commission is not required to form an opinion as to whether consideration should be given to the taking of action against him for a specified disciplinary offence.

Gifts received by Mr Lapham

There was evidence before the Commission that, in addition to the camcorder valued at \$349, which Mr Lapham admitted receiving as discussed above, Mr Lapham also received the items detailed below from Ms Verdeyen for his personal benefit, which relevant delivery notes indicate were delivered to Mr Lapham on the specified dates:

- two TV/DVD sets valued at \$689 each on 15 October 2010 and/or 16 November 2010 (at least one of which was delivered to Mr Lapham's home)
- an iPhone valued at \$885 on 23 November 2010 (also delivered to his home)
- a Weber Baby Q barbecue valued at \$271 on 25 January 2011 (also delivered to his home).

These came to a total value of \$2,883 (including the camcorder). Mr Lapham did not dispute that he received these items.

There was a third TV/DVD set that was requisitioned by Ms Verdeyen for Mr Howard but sent to Mr Lapham either on 15 October 2010 or 16 November 2010, which means that Mr Lapham initially received a total of three TV/DVD sets. He admitted giving a TV/DVD set to Mr Howard. It is not clear which particular TV/DVD set out of the three is the one that was given to Mr Howard. In any event, in the circumstances, the Commission accepts that Mr Lapham received two TV/DVD sets, which he kept for his own benefit.

NCH's business records indicate that the following items were also sent to Mr Lapham by Ms Verdeyen:

- a radio of an unspecified value on or about 23 February 2009
- a high-definition set top box valued at \$195 on or about 7 October 2009
- a Dyson vacuum cleaner valued at \$629 on or about 2 November 2009
- a Blu-ray DVD player valued at \$455 on or about 17 November 2009.

Mr Lapham denied receiving any of these items. The Commission accepts Mr Lapham's evidence in this regard, as it is consistent with Ms Verdeyen's evidence that she did not always deliver the promotional items to which particular buyers were entitled.

When interviewed by Commission officers on 14 July 2011, Mr Lapham said that the promotional items he received were for work purposes, and he kept them at work, even though he did not declare them as he should have done. At the public inquiry, he agreed that he accepted these items to have and use as he saw fit, and arranged for some of them to be delivered to his home address. He denied, however, that he had kept the items at home after delivery until he was contacted by the Commission. He maintained that the items were taken to work and used for work purposes.

For example, he told the Commission that he put the iPhone in the filing cabinet at the office to make calls at work, even though he already had a mobile phone in working order at the time that he could have used for this purpose. He said that he did not, in fact, end up using the iPhone at work because he realised sometime after receiving it that he was wrong in not declaring it and he felt embarrassed. He also claimed that he used the TV/DVD set at Ballina SC to watch DVDs of water and sewer video footage, even though there were already at least two TV sets and a desktop computer fitted with a DVD drive at work that he could have used for this purpose. Mr Lapham

also claimed that he put the barbecue in the shed at work to be used for council purposes, even though Ballina SC already had a large barbecue.

Eventually, Mr Lapham accepted that he took each of these items, not because he needed them for work, but because it was "something for nothing" that he could use as he saw fit. He insisted, however, that he did not want to use them at home as he did not require them and that he took them all to work. He denied that he did so in response to becoming aware of the Commission's interest in these matters.

Given that many of the items Mr Lapham received were delivered to his home address, without the knowledge or approval of his employer and in contravention of Ballina SC's code of conduct with which he was bound to comply, the above claims are unconvincing.

Mr Lapham's demonstrated knowledge of how to structure his orders to maximise his entitlements to NCH's promotional items also provides strong evidence that he knew exactly what he was doing, and that he accepted the gifts provided to him by Ms Verdeyen for his personal benefit.

As mentioned previously, on 14 October 2010, Mr Lapham sent an email to Ms Verdeyen in which he requested an order be split into separate orders, and demonstrated his awareness that, as a result, he would become entitled to a particular promotional item or to more than one promotional item. On 15 October 2010, he sent Ms Verdeyen a further email saying, "split the bottom order into two thanks and re-send, i will place order next week".

Mr Lapham sought to explain this by telling the Commission that the order had to be split because the price of the required products was in excess of \$10,000, this amount being the limit of his financial delegation. Paul Hickey, Ballina SC's general manager, told the Commission that, if such an issue relating to limits imposed on Mr Lapham's financial delegation came up, it could have been overcome by Mr Lapham obtaining appropriate authorisation from his superiors. In any event, this explanation for splitting the order cannot hold up when the cost of one of the three orders eventually placed by him, as set out in Ms Verdeyen's email to him dated 16 October 2010, is, in fact, above \$10,000. It is therefore reasonable to infer that Mr Lapham did not have a work-related justification for splitting the order, but did so in order to maximise his entitlement to NCH's promotional items for his personal benefit.

The Commission is satisfied that Mr Lapham received a camcorder valued at \$349 on 7 October 2010, two TV/DVD sets valued at \$689 each between 15 October 2010 and 16 November 2010, an iPhone valued at \$885 on 23 November 2010 and a Weber Baby Q barbecue valued

at \$271 on 25 January 2011, to a total value of \$2,883, for his personal benefit, in return for placing orders with NCH.

Lying to the Commission

The Commission accepts Mr Howard's evidence that Mr Lapham encouraged him to deny knowing anything about the TV Mr Lapham had given him, in an attempt to hinder the Commission's investigation in this matter, as discussed above.

Mr Lapham also told Commission officers during his interview on 14 July 2011 that he received the promotional items from Ms Verdeyen for work purposes, which the Commission is satisfied is untrue, as discussed above.

In addition to these matters, Mr Lapham also initially told the Commission at the public inquiry that he had never had a discussion with Ms Verdeyen before placing an order with NCH about the availability of promotional items to which he might be entitled. Ms Verdeyen's email to Mr Lapham on 17 March 2010, however, in which she advises him, "PS. I have a promotion running that you may like...", and the exchange of emails on 14 and 15 October 2010 in which they discuss how Mr Lapham can split orders to qualify for particular promotional items, clearly show that such discussions did take place prior to purchases being made.

Confronted with the above evidence, Mr Lapham finally admitted that his earlier testimony about never being involved in any discussions about promotional items with Ms Verdeyen prior to placing orders was incorrect. He told the Commission that he gave this incorrect evidence because he wanted to persuade the Commission that he was not involved in any wrongful conduct in relation to ordering goods from NCH.

Corrupt conduct finding and section 74A(2) statement for Mr Lapham

The Commission finds that Mr Lapham engaged in corrupt conduct by negotiating with Ms Verdeyen over the available promotional items in the manner referred to above, and receiving such items, as specified above, for his personal benefit in return for placing orders with NCH on behalf of Ballina SC. This is because the conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of his official functions and that could involve official misconduct, bribery, and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Lapham has committed criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Lapham has, by accepting the gifts specified above in return for placing orders, committed disciplinary offences involving a substantial breach of an applicable code of conduct. In this respect, subsection 9(6) of the ICAC Act provides that a reference to a disciplinary offence includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the LG Act.

Mr Lapham gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Lapham for a specified criminal offence in relation to his receipt of promotional items.

The Commission is of the opinion, however, that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Lapham for the following criminal offences:

1. the offence of wilfully obstructing or hindering the Commission's exercise of its functions under section 80(a) of the ICAC Act, in respect of his encouraging Mr Howard to make a false statement to the Commission as to his knowledge about the TV/DVD set, in an attempt to mislead the Commission's investigation
2. the offence of wilfully making a false statement to the Commission under section 80(c) of the ICAC Act, in respect of his statement to Commission officers made during his interview on 14 July 2011 that he accepted and used the promotional items from Ms Verdeyen for work purposes and not for his personal benefit
3. the offence of knowingly providing false or misleading evidence under section 87(1) of the ICAC Act, in respect of his evidence given at the public inquiry that he never had any discussions about promotional items with Ms Verdeyen before placing orders.

As Mr Lapham is no longer employed by Ballina SC, the Commission is not required to form an opinion as to whether consideration should be given to the taking of action against him for a specified disciplinary offence.

Bathurst Regional Council – Graham Gibbons

Mr Gibbons has been employed at BRC since 21 November 1977. He used products supplied by Momar to BRC's store in the course of his duties as a sewer technician at the sewerage treatment plant. He did not have any delegation to order goods on behalf of BRC himself. He informed his supervisor when stocks were low and the supervisor then made the necessary purchase.

Momar records indicate that 33 \$50 gift vouchers, totalling \$1,650, were provided to Mr Gibbons by Jody Parker of Momar as follows: four on 12 April 2007, four on 16 July 2007, four on 28 May 2008, four on 24 March 2009, four on 17 September 2009, four on 16 December 2009, five on 8 June 2010 and four on 25 November 2010. The vouchers were sent to Mr Gibbons' home.

Mr Gibbons admitted that he received gift vouchers from Momar but told the Commission that he never received five vouchers at one time, as Momar's records indicate. He conceded that he did not keep a record of the total number of vouchers or the value of the vouchers received, and therefore it was difficult for him to contradict the evidence contained in Momar's records. The Commission considers that Momar's records are likely to be more accurate than Mr Gibbons' unassisted memory, and is satisfied that he received the 33 gift vouchers specified above.

Mr Gibbons told the Commission that he asked Mr Parker not to send him gift vouchers because he realised that they could be construed as an incentive. Mr Parker, however, told him that they were just a small thank you for being a loyal customer. Mr Gibbons agreed that gift vouchers worth \$200 (the usual number he received at any one time, being four \$50 vouchers) were more than just a small thank you. Mr Parker told the Commission that he did not recall Mr Gibbons expressing any concerns or reluctance about receiving the gift vouchers.

Mr Gibbons said that he shared the gift vouchers with a colleague who died in 2009. After that, he kept the vouchers and used them to buy groceries. He admitted that accepting the gift vouchers was wrong and that he should have told Mr Parker from the beginning to stop sending them.

Mr Gibbons also agreed that he was aware of the council's code of conduct and its policy on gifts and benefits. He knew that the policy prohibited council employees from accepting an offer of money, regardless of the amount, and agreed that a gift voucher, which could be used in Coles/

Myer shops, was effectively the same as money. He also knew that, in general, gifts and benefits of more than a nominal or token value had to be refused.

The Commission is satisfied that Mr Gibbons accepted gift vouchers from Momar to a total value of \$1,650 between 12 April 2007 and 25 November 2010, as specified above, for his personal benefit in connection with orders placed with Momar on behalf of the council, in respect of which orders Mr Gibbons clearly had some influence, although he was not directly involved in authorising the procurement.

Following the conclusion of the public inquiry, the Commission was informed by BRC that Mr Gibbons had been disciplined for his actions.

Corrupt conduct finding and section 74A(2) statement

The Commission finds that Mr Gibbons engaged in corrupt conduct by accepting the gift vouchers from Momar specified above for his personal benefit in connection with orders placed with Momar on behalf of BRC. This is because the conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of his official functions and that could involve official misconduct, bribery, and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Gibbons has committed criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Gibbons has, by accepting the gifts specified above in connection with orders placed on behalf of BRC, committed disciplinary offences involving a substantial breach of an applicable code of conduct. In this respect, subsection 9(6) of the ICAC Act provides that a reference to a disciplinary offence includes a reference to a

substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the LG Act.

Mr Gibbons gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Gibbons for a specified criminal offence.

As Mr Gibbons has already been disciplined by BRC for his actions, the Commission is not required to form an opinion as to whether consideration should be given to the taking of action against him for a specified disciplinary offence.

Broken Hill City Council – Anthony Harman

Mr Harman's employment at BHCC commenced on 1 August 1994 and he has been the stores officer since 14 January 2002. He understood that he had a financial delegation of \$5,000 during the period relevant to this investigation.

R&R records showed that Mr Harman received Liquorland vouchers to a total value of \$2,550 between 30 August 2006 and 23 March 2010, another three Liquorland vouchers of unspecified amounts on or about 28 November 2003, and two Drizabone coats on or about 1 September 2003.

Mr Harman was excused from giving evidence at the public inquiry on medical grounds. Accordingly, the Commission relies on the evidence he gave at an interview with Commission investigators on 23 November 2010 and at his compulsory examination on 20 December 2010 to make its findings.

Mr Harman was frank and cooperative with the Commission at all times. He readily admitted receiving the Drizabone coats and gift vouchers from R&R over a period of about six or seven years, although he could not provide the Commission with specific details relating to these items. The Commission is therefore satisfied that he received all of the gifts specified above.

Mr Harman told the Commission that the gift vouchers were sent to his home address. Mr Fisher at R&R suggested this method to keep them secret from BHCC, and Mr Harman agreed to it.

Mr Harman received the gift vouchers after placing orders for gloves with R&R. He understood that, if he bought a certain quantity, he would get vouchers to the value of \$200 or \$250. He used all the vouchers he subsequently received at the Liquorland store in Broken Hill.

Mr Fisher told the Commission that there was an understanding between Mr Harman and him that gift vouchers would be given to Mr Harman when sales were made. Mr Fisher, therefore, did not even have to mention the gift vouchers when transacting business with Mr Harman, but he said that Mr Harman always made sure that he was going to get the vouchers.

Mr Harman claimed that the gloves supplied by R&R were cheap and of good quality, and that is why he kept buying from R&R. He accepted, however, that R&R gave him the vouchers to encourage him to continue ordering from them. Mr Harman admitted that he had made a mistake in accepting the vouchers and that his conduct was wrong and inexcusable. He also told the Commission that he had received training in BHCC's code of conduct and was aware of its policy about accepting gifts and benefits from suppliers.

The Commission is satisfied that Mr Harman accepted the gifts specified above from R&R for his personal benefit as a reward for placing orders with the company.

In December 2010, BHCC conducted an internal investigation into this matter and subsequently took disciplinary action against Mr Harman. He handed in two Drizabone coats and a \$200 gift voucher, which was the last gift he received from R&R, and paid \$5,750 to BHCC, being the total value of the gift vouchers he estimated that he had received over the years. This figure is well in excess of the value of gifts and benefits received by Mr Harman, as recorded in R&R's "freebie book". Mr Harman was allowed to retain his employment with BHCC, however, his financial delegation was reduced to \$1. He was also given a final warning to the effect that any further proven breach of BHCC's code of conduct or related policies will result in the termination of his employment.

Corrupt conduct finding and section 74A(2) statement

The Commission finds that Mr Harman engaged in corrupt conduct by accepting the gift vouchers and gifts from R&R specified above for his personal benefit as a reward for placing orders with R&R on behalf of BHCC. This is because the conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of his official functions and that could involve official misconduct, bribery, and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Harman has committed criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Harman has, by accepting the gifts specified above as a reward for placing orders, committed a disciplinary offence involving a substantial breach of an applicable code of conduct. In this respect, subsection 9(6) of the ICAC Act provides that a reference to a disciplinary offence includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the LG Act.

Mr Harman gave his evidence under objection in this matter. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Harman for a specified criminal offence.

As Mr Harman has already been disciplined by BHCC for his actions, the Commission is not required to form an opinion as to whether consideration should be given to the taking of action against him for a specified disciplinary offence.

Burwood Council – Ronita Tompsett

Ms Tompsett was employed by BC from 9 September 1985 until she resigned on 10 February 2011. She held the position of depot superintendent from February 1997, in which capacity she had a delegation to purchase council supplies up to \$10,000 per order.

R&R records indicate that Ms Tompsett received gifts and benefits from them. Momar records indicate that, between 18 January 2007 and 13 January 2011, she received gift vouchers to a total value of \$3,350.

Ms Tompsett told the Commission that she had no recollection of receiving any gifts or benefits from R&R. As she has been completely frank and cooperative with the Commission in relation to this investigation at all times, the Commission accepts her evidence in this regard.

In respect of gifts from Momar, Ms Tompsett accepted that she received the gift vouchers as alleged. Whilst she disputed a couple of the dates on which she allegedly

received them, she conceded that she did not keep a record of when they were received or how much was received at any one time. The Commission is therefore satisfied that Momar's records in relation to these issues are more likely to be correct than Ms Tompsett's unassisted memory.

Ms Tompsett told the Commission that a \$50 voucher was given for each \$1,000 worth of goods ordered. The vouchers usually came within two days of the order arriving at her depot, with the value of the vouchers increasing with the amount of the order. After the first few vouchers that she received at work, the rest were sent to her home address after she and Mr Goldin from Momar agreed to keep the vouchers secret from BC. Ms Tompsett said that she found the gift vouchers very handy as she was under severe financial pressure at the time, and that she used them to buy groceries.

Mr Goldin told Ms Tompsett that the gift vouchers were a loyalty reward, offered because BC was a longstanding customer and regularly bought from Momar. She understood one purpose of that recognition of loyalty was to encourage further business. She believed Momar's products were good and their service was reliable, but accepted that the loyalty program might affect the overall competitiveness of the price for which BC might be able to obtain these goods.

Ms Tompsett told the Commission that she was not given any training in BC's code of conduct when she started her employment; however, BC records show that she undertook such training, including a component on the gifts and benefits policy, on 29 September 2005. Ms Tompsett recalled doing such a course about two years prior to giving evidence at the public inquiry. BC records indicate that she was not trained in its procurement policy.

In any event, she admitted that she knew that BC staff were not allowed to accept gifts of value from people with whom they dealt in the course of their work and, if for any reason the gifts could not be refused, they had to be declared and recorded in the gifts and benefits register maintained by BC. She realised after accepting the gift vouchers that she should have declared them to her employer, but did not do so. She admitted that she had no excuse for this failure to declare them, other than that she knew she was doing the wrong thing and did not want to get into trouble.

The Commission is satisfied that Ms Tompsett accepted gift vouchers from Momar to a total value of \$3,350 from 18 January 2007 to 13 January 2011 for her personal benefit and as a reward for placing orders with Momar.

Corrupt conduct finding and section 74A(2) statement

The Commission finds that Ms Tompsett engaged in corrupt conduct by accepting the gift vouchers from Momar specified above for her personal benefit as a reward for placing orders with Momar on behalf of BC. This is because the conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of her official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of her official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of her official functions and that could involve official misconduct, bribery, and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 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 Tompsett has committed criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Ms Tompsett has, by accepting the gifts specified above as a reward for placing orders, committed disciplinary offences involving a substantial breach of an applicable code of conduct. In this respect, subsection 9(6) of the ICAC Act provides that a reference to a disciplinary offence includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the LG Act.

Ms Tompsett gave her evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Tompsett for a specified criminal offence.

As Ms Tompsett is no longer employed at BC, the Commission is not required to form an opinion as to whether consideration should be given to the taking of action against her for a specified disciplinary offence.

Byron Shire Council – Robert Vagne

Mr Vagne was employed as a storeperson by Byron SC from 10 October 1994 to December 2010. He told the Commission that he resigned on 17 December 2010. He had a financial delegation of \$15,000 at the time relevant to this investigation.

R&R records indicate that Mr Vagne had received gifts from R&R, such as coats and hats, and, between 6 March 2008 and 25 January 2010, gift vouchers to a total value of \$500.

Mr Vagne told the Commission that R&R first contacted him, possibly in 2000, offering to supply gloves, and told him that upon purchasing a certain amount, a DVD player would be sent to him as a gift. This gift was sent to the Byron SC depot where Mr Vagne worked and he took it home without disclosing it to the council. He admitted that he should not have accepted this gift. He subsequently received some Drizabone coats and possibly a hat from R&R. He kept one coat for his own use and could not recall what he did with the other coats, but believed he probably gave them to other staff at Byron SC. R&R's records indicate that a hat was sent to him on or around 31 August 2001, and that an item that may have been a coat was sent to him on 25 October 2000, 31 August 2001, 7 May 2003 and 5 June 2003. Given the lack of certainty as to exactly how many coats and hats were received by Mr Vagne, when they were received and whether he used them for his own or Byron SC's purposes, the Commission is satisfied only that he received a DVD player sometime around 2000 for his personal benefit, apart from gift vouchers discussed below.

Mr Vagne agreed he received gift vouchers from R&R on five occasions, being a \$150 voucher received on an unspecified date, and four further vouchers received between 6 March 2008 and 25 January 2010, to a total value of \$500. He spent two vouchers totalling \$250 at Harvey Norman shops and destroyed the rest.

He told the Commission that Mr Quinn of R&R mentioned the gift vouchers to him and suggested they be sent to his home address. Mr Vagne agreed to this as it occurred to him that it might be a good way to get around the Byron SC's code of conduct. He told the Commission that it was made clear to him that the vouchers were given according to the amount of goods purchased, which meant he did not receive a voucher every time he placed an order. He believed the gloves from R&R were good products, and claimed that his judgment was not swayed by the gift vouchers when making purchases for Byron SC. He admitted, however, that on some occasions he ended up purchasing a greater amount than he intended to buy in order to receive a gift voucher.

He confirmed that he received training in Byron SC's code of conduct, including in relation to the receipt of gifts and benefits by council officers, on 18 November 2009. He knew he was not entitled to receive any cash or gifts with more than nominal value.

The Commission is satisfied that Mr Vagne accepted gift vouchers from R&R to a total value of \$500 and a DVD player for his personal benefit as a reward for placing orders with R&R.

Mr Vagne told the Commission that he resigned from Byron SC in December 2010 after the allegations against him came to light, which resulted in him suffering a financial loss of approximately \$30,000 by way of lost entitlements.

Corrupt conduct finding and section 74A(2) statement

The Commission accepts that Mr Vagne did not cash all of the gift vouchers received, and that the value of the benefits he obtained for his own benefit was relatively small. He also cooperated fully and frankly with the Commission at all times.

Notwithstanding these considerations, the Commission finds that he engaged in corrupt conduct by accepting the DVD player and gift vouchers from R&R for his personal benefit, as specified above, as a reward for placing orders with R&R on behalf of Byron SC. This is because the conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of his official functions and that could involve official misconduct, bribery, and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Vagne has committed criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they

would be grounds on which such a tribunal would find that Mr Vagne has, by accepting the gifts specified above as a reward for placing orders, committed disciplinary offences involving a substantial breach of an applicable code of conduct. In this respect, subsection 9(6) of the ICAC Act provides that a reference to a disciplinary offence includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the LG Act.

Mr Vagne gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Vagne for a specified criminal offence.

As Mr Vagne is no longer employed by Byron SC, the Commission is not required to form an opinion as to whether consideration should be given to the taking of action against him for a specified disciplinary offence.

Council of the City of Botany Bay

The allegations concerning the CCBB involve the conduct of Mr Harris and John MacKenzie. Mr Harris gave evidence at the public inquiry; however, Mr MacKenzie was not called to give evidence.

Donald Harris

Mr Harris was employed by the CCBB as a plumber from 18 July 2001 until he resigned on 4 October 2011. He did not have any formal delegation for procurement, but could order goods required to carry out his job. For orders above \$2,000, he required the authority of his superior, and all orders had to be signed off by this person.

Mr Harris admitted that he had received gift vouchers from Momar to a total value of \$1,450 between 5 June 2007 and 11 January 2011.

Mr Harris told the Commission that, in about 2007, Mr Goldin mentioned to him that Momar was starting a loyalty program to look after good customers and was going to send him some gift vouchers. These vouchers were sent to Mr Harris' home address. He accepted them because he was in financial difficulties at the time, and used them to pay for food and telephone bills.

He claimed that the gift vouchers made no difference to his decision to order from Mr Goldin because he found Momar to be a reliable supplier with excellent products, and he would have ordered from him in any event. He accepted, however, that Momar may have been providing the gift vouchers because they did not want him to look around to see if there were other equally effective and reliable products in the market.

Mr Harris said that he was not aware of the CCBB's policy on gifts and benefits, as he had never received any training in it. Council records confirm this evidence. He agreed, however, that even though he did not know the relevant council policy on gifts and benefits, he knew taking the gift vouchers was wrong.

The Commission is satisfied that Mr Harris accepted gift vouchers from Momar to a total value of \$1,450 between 5 June 2007 and 11 January 2011 for his personal benefit as a reward for orders placed with Momar.

Corrupt conduct finding and section 74A(2) statement

The Commission finds that Mr Harris engaged in corrupt conduct by accepting the gift vouchers from Momar specified above for his personal benefit as a reward in connection with orders placed with Momar on behalf of the CCBB. This is because the conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of his official functions and that could involve official misconduct, bribery, and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Harris has committed criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Harris has, by accepting the gifts specified above as a reward in connection with orders placed by the CCBB, committed disciplinary offences involving a substantial breach of an applicable code of conduct. In this respect, subsection 9(6) of the ICAC Act provides that a reference to a disciplinary offence includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the LG Act.

Mr Harris gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Harris for a specified criminal offence.

As Mr Harris is no longer employed at the CCBB, the Commission is not required to form an opinion as to whether consideration should be given to the taking of action against him for a specified disciplinary offence.

John MacKenzie

Mr MacKenzie was not required to give evidence at the public inquiry. He did, however, provide a statement of information in response to a notice issued under section 21 of the ICAC Act.

Mr MacKenzie told the Commission that he was employed as a parks and garden supervisor at the CCBB, with a financial delegation to purchase goods up to the value of \$2,000. He denied receiving any training in the CCBB's code of conduct.

According to Momar records, Mr MacKenzie received 13 gift vouchers totalling \$650 from Momar between 6 June 2008 and 24 March 2010. Mr MacKenzie said that he received only four or five gift vouchers and a small iPod Nano. He told the Commission he thought they were thank you gifts and did not know they were being sent to him until they arrived.

No corrupt conduct finding for Mr McKenzie

As Mr MacKenzie was not called to give evidence at the public inquiry to be further examined about these matters, the Commission makes no adverse finding or finding of corrupt conduct against him.

Section 74A(2) statement

For the same reasons, the Commission is also not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr MacKenzie for a specified criminal offence, or to the taking of action against him for a specified disciplinary offence.

Council of the City of Sydney

The Commission investigated allegations that five employees from the CCS, namely Messrs Nies, Duncum, Martin and Myers and Maria Evans, received gifts and benefits from suppliers. All, except Ms Evans, were called to give evidence at the public inquiry.

Robert Nies

Mr Nies has been employed by the CCS since 11 September 1995. He is currently a handyman and storeperson at the council's Bay Street depot. In this capacity, he is authorised to raise purchase orders for goods required for the maintenance of the depot, as long as they are approved by his manager. He told the Commission that his manager generally accepted the orders raised by him and never questioned the prices of the goods ordered.

NCH records indicate that Mr Ramachandran provided Mr Nies with the following promotional items:

- a duffel bag valued at \$47.99 on or around 20 November 2007
- a hand trolley valued at \$59.07 on or around 9 January 2008
- two jackets valued at \$123.90 on or around 29 April 2008.

Mr Nies, however, was adamant that he never received any of these items. Mr Nies was off work recovering from surgery when the jackets were supposedly delivered, and all these items were said to have been delivered at a time when it was the responsibility of the NCH sales representative to hand-deliver them. Given these circumstances, the Commission accepts Mr Nies' evidence that he did not receive any of these gifts from NCH.

Momar records indicate that Mr Nies received a total of 64 gift vouchers to a total value of \$3,200 between 7 February 2007 and 26 October 2010. Mr Nies admitted receiving gift vouchers from Momar, but told the Commission that he was unsure exactly how many he received. He said the vouchers were always \$50 in value, and sometimes he received two or three of them at a time. They were always sent to his home address, which he had provided to Mr Goldin after being asked for it. Mr Nies' wife then used the vouchers primarily to buy gifts for his grandchildren.

Mr Nies disputed the accuracy of Momar's records and said that his wife, who normally took possession of the vouchers, told him that just over 20 gift vouchers were received. He acknowledged, however, that neither he nor his wife kept any record of the vouchers received. In the absence of a written record, Mr Nies agreed that it might be hard to keep track of the vouchers, which arrived irregularly in the mail. Mr Nies' wife was not called to give evidence at the public inquiry. Given the obvious difficulty of keeping track of the irregular receipt of gift vouchers of varying amounts and the fallibility of human memory, the Commission considers that Momar's records are likely to be more reliable than Mr and Mrs Nies' unassisted memory.

Mr Nies told the Commission that when Mr Goldin initially offered him the gift vouchers, he told Mr Goldin

that he was not interested in receiving them and that it was not worth it for him, because he knew right from the start that accepting them would be wrong. Mr Goldin suggested, however, that he would send them to Mr Nies' home address so that nobody would ever find out, and his initial resistance was worn down by Mr Goldin's persistence. He said Mr Goldin never pressured him to buy a certain amount so as to get a gift voucher, but the vouchers were part of Momar's loyalty program offered to him for the orders he placed. He understood this to mean that Mr Goldin would keep giving him the vouchers for his continued loyalty to Momar. He admitted that Mr Goldin sending him the gift vouchers was an obvious attempt to influence his behaviour, and he should have refused them.

Mr Nies confirmed that he had received training in the CCS's code of conduct, including a component on gifts and benefits, annually. He was therefore aware that there was a strict prohibition on accepting money under any circumstances, and he accepted that gift vouchers were akin to money. He also knew that, as a person involved in procurement, he was prohibited from receiving any gifts or benefits.

The Commission is satisfied that Mr Nies accepted a total of 64 gift vouchers to a total value of \$3,200 between 7 February 2007 and 26 October 2010 from Momar for his personal benefit as a reward for placing orders with Momar.

Corrupt conduct finding and section 74A(2) statement

The Commission finds that Mr Nies engaged in corrupt conduct by accepting the gift vouchers specified above from Momar for his personal benefit as a reward for placing orders with Momar on behalf of the CCS. This is because the conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of his official functions and that could involve official misconduct, bribery, and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Nies has committed criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Nies has, by accepting the gifts specified above as a reward for placing orders, committed a disciplinary offence involving a substantial breach of an applicable code of conduct. In this respect, subsection 9(6) of the ICAC Act provides that a reference to disciplinary offences includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the LG Act.

Mr Nies gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Nies for a specified criminal offence.

In all the circumstances, however, the Commission is of the opinion that consideration should be given by the CCS to the taking of disciplinary action against Mr Nies in relation to his conduct in accepting gifts from Momar, as specified above.

Jeffrey Duncum

CCS records show that Mr Duncum was employed by the CCS from 28 June 1995. Mr Duncum, however, told the Commission that he started his employment with the council in 1987, followed by periods of employment at South Sydney Council resulting from boundary changes, and then returned to the CCS in 2004. He has been a parks supervisor in the eastern region since 5 December 2005. In that capacity, he can raise requisitions for the purchase of goods that are then approved by his manager.

NCH records indicate that Mr Duncum received:

- a set of bar clamps of unspecified value on 21 October 2008
- a Sunbeam Cafe Grill valued at \$119 on 14 July 2009
- a Sidchrome socket set valued at \$110 on 24 November 2009
- a portable DVD player valued at \$150 on 21 May 2010.

Mr Duncum admitted receiving the DVD player and the socket set, but denied receiving the set of bar clamps and the Sunbeam Cafe Grill. He told the Commission that the socket set, which was delivered to the CCS depot, was placed in the council's storeroom with other tools and used at work. In the Commission's view, Mr Duncum was

an honest and cooperative witness, and the Commission therefore accepts his evidence on these matters.

Mr Duncum admitted receiving the following items from Momar in the course of his dealings with Mr Goldin: a portable DVD player, a GPS navigation system, a cordless screwdriver, and a Karcher high-pressure water cleaner. The value of these items and the dates on which each of these items was received by Mr Duncum have not been established on evidence before the Commission.

Mr Duncum told the Commission that he kept all of these items locked in a storeroom at work, until they were later surrendered to the Commission, together with the DVD player received from NCH, all of them still in their packaging. He said he never used these items either at home or at work, because he knew that he should not have them and he was not comfortable using them. The Commission accepts this evidence.

It was also alleged that Mr Duncum received 25 gift vouchers from Momar to a total value of \$1,250 between 25 August 2008 and 6 December 2010. He admitted receiving gift vouchers from Momar – on occasion multiple vouchers on the same day – but he believed that the total value was only \$900. He acknowledged, however, that he did not keep a record of every voucher he received, and given that the vouchers were received over a period of more than two years, it would be difficult to rely upon his own recollection for the precise number of vouchers received. The Commission considers that Momar's records are likely to be more accurate than Mr Duncum's recollection.

Mr Duncum told the Commission that, after the first occasion on which he placed an order with Momar, Mr Goldin handed him a gift voucher as part of what Mr Goldin described as a loyalty program. Mr Duncum was not expecting to receive a gift and was quite shocked, but he took the voucher. Vouchers were subsequently sent to his home address and later via registered post. He spent the first series of gift vouchers, to the value of approximately \$400, which he said was foolish of him.

According to Mr Duncum, Mr Goldin did not say anything to him about getting gift vouchers if he placed orders. Mr Duncum understood, however, that the purpose of the loyalty program was that he would keep placing orders with Momar, upon which he would continue to receive gift vouchers. He agreed that, whilst he believed Momar's products to be of good quality and regarded the company as a reliable supplier, the vouchers were provided to encourage repeat business and discourage him from shopping around.

Mr Duncum confirmed that he had had training in the CCS's code of conduct, including in relation to gifts and benefits, and therefore had a basic understanding of its

provisions. He also knew about the existence of the CCS's gifts register.

He told the Commission that he knew from the beginning that accepting the gift vouchers was wrong, and contrary to CCS policy. He could not explain why he had done so, other than to say that it was not because he was in desperate need of money, rather he was tempted and Mr Goldin was very "persuasive". After about a year, he told Mr Goldin that he did not want to get the vouchers any more, and that he was not buying Momar's products because of the vouchers. Mr Goldin told him that this was how the company worked and everyone got them, and tried to persuade him that it was not wrong. Mr Duncum said he was not reassured by what Mr Goldin said, and was relieved when the vouchers subsequently stopped coming. The vouchers, however, started being sent again sometime later, even though he had again asked Mr Goldin not to send them.

He took these latter vouchers (10 of them, to a total amount of \$500) to work and kept them in a locker, and later handed them to Commission officers prior to the public inquiry. He did not want to spend these vouchers because he knew he should not have used the earlier vouchers. He also felt too scared to speak up about this matter because he assumed other CCS officers were also getting the gift vouchers and he did not want to get himself or others in trouble.

Mr Goldin told the Commission that he did not recall Mr Duncum expressing any reservations about receiving the gift vouchers. In the Commission's view, Mr Duncum presented as an honest and sincere witness, and Mr Goldin's recollection of his dealings with Mr Duncum may not be accurate, given the number of buyers with whom he dealt. Accordingly, the Commission accepts Mr Duncum's evidence in this regard.

The Commission is satisfied that Mr Duncum received a DVD player valued at \$150 from NCH for his personal benefit in return for placing orders with NCH. The Commission is further satisfied that he received a portable DVD player, a GPS navigator, a cordless screwdriver and a Karcher high-pressure cleaner, all of unspecified value, and gift vouchers to a total value of \$1,250 between 25 August 2008 and 6 December 2010 from Momar for his personal benefit as a reward for placing orders with Momar.

The Commission accepts Mr Duncum's evidence that he did not use \$500 worth of the gift vouchers he received, and that some of the other gifts he received were also not used or opened by him. There are also other public officials dealt with in this report who have not used some of the gifts they received. The Commission takes the view, however, that where the gifts received by the relevant public officials were not returned to the supplier who provided them or declared to the officials' employer

organisations, the gifts were accepted on the basis that the public officials were free to use those gifts whenever and for whatever purpose they chose. For this reason, the Commission considers that gifts accepted and retained but not used by the public officials in these circumstances are still gifts received for their personal benefit.

Following an internal investigation by the CCS carried out after the conclusion of the public inquiry, Mr Duncum was demoted from his position as parks supervisor to gardener. Mr Duncum told the Commission that this resulted in a loss of income of \$23,000 and loss of the use of a motor vehicle.

Corrupt conduct finding and section 74A(2) statement

The Commission finds that Mr Duncum engaged in corrupt conduct by accepting the DVD player from NCH and the gifts and gift vouchers from Momar specified above for his personal benefit, as a reward for placing orders with these companies on behalf of the CCS.

This is because the conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of his official functions and that could involve official misconduct, bribery, and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Duncum has committed criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Duncum has, by accepting the gifts specified above as a reward for placing orders, committed a disciplinary offence involving a substantial breach of an applicable code of conduct. In this respect, subsection 9(6) of the ICAC Act provides that a reference to disciplinary offences includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the LG Act.

Mr Duncum gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Duncum for a specified criminal offence.

As Mr Duncum has already been disciplined by the CCS for his actions, the Commission is not required to form an opinion as to whether consideration should be given to the taking of action against him for a specified disciplinary offence.

Edwin Roger Martin

Mr Martin has been employed by the CCS since 28 June 1995. He has been a team leader in civil maintenance since 23 October 2006, in which capacity he has a procurement role with a delegation of \$5,000. He has been the acting civil maintenance manager since December 2010.

He told the Commission that Mr Goldin of Momar initially offered him some gifts as promotional items, including two electric drills, a vehicle navigator and a snack maker. Mr Martin claimed that all of these items were kept at the CCS and used for work purposes. In the absence of evidence to the contrary, the Commission accepts this evidence that the items were not used by Mr Martin for his personal benefit.

Mr Martin said Mr Goldin never referred to the promotion program as a loyalty program, and told Mr Martin that the gifts were coming from his own pocket. Mr Martin accepted that a salesman spending his own money in this way in the hope that Mr Martin would keep buying from him would make his receipt of the gifts even worse than if they had come from Momar.

Momar records indicate that Mr Martin also received seven \$50 gift vouchers to a total value of \$350 between 16 February 2009 and 25 November 2010. He admitted receiving these vouchers. He told the Commission that he used about half of them to buy food and drinks for CCS staff barbecues, and used the other half for personal purposes. He said Mr Goldin sent the first voucher to his home, but when he told him he did not want the vouchers, Mr Goldin brought them to the depot where he worked and handed them to him or left them on his desk when he was not there. He said Mr Goldin would not take no for an answer and he finally gave in and took the vouchers.

Mr Martin acknowledged that, over the years, he had received training in the CCS' code of conduct, including its policy on gifts and benefits. He also attended a training course on procurement conducted by Commission staff in April 2011, after the allegations against him came to light, which "opened [his] eyes". He claimed, however, that at the time he received the vouchers, he thought he

could accept them because of the provision in the gifts and benefits policy that allowed employees to accept gifts up to the value of \$50. After he was contacted by the Commission, he realised that he had not read the policy properly and that he was mistaken in this belief. He understood then that the provision allowing employees to accept gifts of up to \$50 in value applied only to a single gift, not a series of gifts like the vouchers and that, in any event, it did not apply to anyone involved in procurement. He acknowledged that he had made a big mistake in not reading the policy properly, and had done the wrong thing in accepting the gift vouchers.

The Commission is satisfied that Mr Martin received gift vouchers from Momar to a total value of \$350 between 16 February 2009 and 25 November 2010, at least some of which were used for his personal benefit, as a reward for placing orders with Momar.

Mr Martin told the Commission that the CCS had not taken any action against him in relation to his conduct as at the time of the public inquiry.

Corrupt conduct finding and section 74A(2) statement

The Commission finds that Mr Martin engaged in corrupt conduct by accepting the gift vouchers specified above from Momar and using at least some of them for his personal benefit, as a reward for placing orders with Momar on behalf of the CCS. This is because the conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of his official functions and that could involve official misconduct, bribery, and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Martin has committed criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that

Mr Martin has, by accepting the gifts specified above as a reward for placing orders, committed disciplinary offences involving a substantial breach of an applicable code of conduct. In this respect, subsection 9(6) of the ICAC Act provides that a reference to a disciplinary offence includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the LG Act.

Mr Martin gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Martin for a specified criminal offence.

In all the circumstances, however, the Commission is of the opinion that consideration should be given by the CCS to the taking of disciplinary action against Mr Martin for his acceptance of gift vouchers from Momar, as specified above.

Christopher Myers

Mr Myers has been with the CCS since 1995 and is currently an acting team leader in maintenance. He has no delegation to make purchases for the CCS directly; however, it was part of his role to put together purchase orders for approval by his team leader. Once these were approved, Mr Myers was authorised to send the purchase orders to suppliers.

Mr Myers admitted that he received nine \$50 gift vouchers from Momar to a total value of \$450 between 9 September 2008 and 25 November 2010. He said that the vouchers were usually left on his desk by Mr Goldin, but one was sent to his home and sometimes Mr Goldin handed them to him. Mr Myers told the Commission that Mr Goldin never explained why he was giving him these vouchers, and never mentioned anything about a loyalty program. Like Mr Martin, Mr Myers claimed that he believed the vouchers were personal gifts from Mr Goldin, not from Momar. Mr Myers admitted that he knew that the provision of the vouchers was an attempt to influence his decisions in relation to placing orders.

Mr Myers claimed that he accepted the gift vouchers because he believed at the time that any gift up to \$50, including cash or gift cards or any other form of benefit, was acceptable. This was because he had not read the relevant council policy and was misled by discussions about the CCS' code of conduct at a seminar he attended. Since the allegations arose, he has been re-trained in the CCS' code of conduct. He accepted that his previous view was mistaken, and said that he now understood that the \$50 exception did not apply to a series of gifts received from one source, and that he can accept no gifts whatsoever in any event because he is involved in purchasing. He also

agreed that a salesman giving him a \$50 gift voucher that he could use at Coles/Myer shops to buy what he wanted amounted to the same thing as being given \$50 cash, and would be equally wrong.

The Commission is satisfied that Mr Myers received gift vouchers to a total value of \$450 from Momar between 9 September 2008 and 25 November 2010 for his personal benefit as a reward for orders placed with Momar.

After the public inquiry, Mr Myers was subject to disciplinary action by the CCS. He was demoted from his position for a period of six months, whereby his grade was reduced by two levels, resulting in loss of wages.

Corrupt conduct finding and section 74A(2) statement

The Commission finds that Mr Myers engaged in corrupt conduct by accepting the gift vouchers from Momar, as specified above, for his personal benefit in connection with orders placed with Momar on behalf of the CCS. This is because the conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of his official functions and that could involve official misconduct, bribery, and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Myers has committed criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Myers has, by accepting the gifts specified above in connection with orders placed by the CCS, committed disciplinary offences involving a substantial breach of an applicable code of conduct. In this respect, subsection 9(6) of the ICAC Act provides that a reference to a disciplinary offence includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the LG Act.

Mr Myers gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Myers for a specified criminal offence.

As Mr Myers has already been disciplined by the CCS for his actions, the Commission is not required to form an opinion as to whether consideration should be given to the taking of action against him for a specified disciplinary offence.

Maria Evans

Ms Evans started her employment with South Sydney Council, which is now the CCS, in August 2000. She is currently a depot recorder for the construction branch at the Alexandria depot. Whilst she does have a procurement role, it appears that her role in this regard is merely clerical, since she has no financial delegation for procurement, nor any authority to approve purchases or select suppliers.

Ms Evans was not called to give evidence at the public inquiry, and the Commission therefore relies on the evidence she provided by way of a statement of information in response to a notice issued under section 21 of the ICAC Act.

Momar records indicate that, between 24 September 2008 and 11 March 2010, Ms Evans received four \$50 gift vouchers, totalling \$200, from Mr Goldin. Ms Evans told the Commission that, to the best of her recollection, she received only three, although she did not challenge the accuracy of Momar's records. In the Commission's view, Momar's records should be preferred to Ms Evans' unassisted memory. Ms Evans also admitted receiving a bottle of wine and some wine glasses from Mr Goldin. She understood that all these gifts were provided to her by Mr Goldin as "a thank you for the customer service she had provided" to him.

Ms Evans told the Commission that, at the time she received these gifts, she did not realise she was not allowed to accept them. She became aware of this only after a training session on gifts and benefits was held at her depot on 18 August 2010, after which she did not accept any further gifts.

No corrupt conduct finding for Ms Evans

The Commission is satisfied that Ms Evans had no direct role in procurement, and it is not clear whether she fully understood the motive behind the offer of the gifts provided to her by Mr Goldin. Further, given her limited role in the procurement process, there was no scope for the honest or impartial exercise of her official functions to be affected, within the meaning of section 8 of the ICAC Act.

It is also difficult to see that her conduct constitutes or involves the criminal offence of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act, as, on the evidence available, there was simply no capacity for Ms Evans to affect the affairs of the CCS in Momar's favour. It is also questionable whether her conduct amounts to a *substantial breach* of the CCS' code of conduct, given the small amounts involved on each occasion and the infrequency of the receipt of the gifts, although there can be no doubt that it was a breach of the code of conduct. The requirements of section 9 of the ICAC Act therefore are also not met.

In any event, there is sufficient doubt about these matters for the Commission to exercise its discretion and the Commission makes no findings of corrupt conduct against her.

Section 74A(2) statement

For the reasons outlined above, the Commission is also not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Evans for a specified criminal offence or to the taking of action against her for a specified disciplinary offence.

Lithgow City Council

The Commission investigated allegations against three employees of Lithgow CC, namely Messrs Warner, McMurtrie and Bradford, that they received gifts and benefits from NCH in return for placing orders.

Mr McMurtrie and Mr Bradford were the users of NCH products who would inform their superior, Mr Warner, what products were required. Mr Warner would then prepare the purchase order and give his final approval for the order to be placed.

Lee Warner

Mr Warner started working at Lithgow CC from 7 February 2005, and has been the supervisor of plant and pumping stations since 14 June 2010. As part of his job, he is responsible for placing orders for necessary supplies in the plant and pump station section. He understood he had a financial delegation of up to \$20,000; however, according to information provided by Lithgow CC, his delegation was in fact \$30,000.

He told the Commission that he did not place orders on his own initiative, but only when a need for supplies was brought to his attention by the staff in his section. As part of his delegation, he placed orders for both Mr McMurtrie and Mr Bradford.

Gifts received

NCH records indicate that Mr Warner received the following gifts from Mr Ramachandran in the course of his business dealings with NCH (to a total value of \$2,126.40):

- a socket set valued at \$165 on or around 17 December 2010
- a bladeless fan valued at \$429 and a dozen bottles of wine valued at \$239.40 both on or about 24 January 2011
- a water purifier valued at \$229 on or about 28 January 2011
- a high-pressure washer valued at \$169 on or about 2 February 2011
- a laptop valued at \$895 on or about 25 February 2011.

Mr Warner admitted receiving all of the above items except for the socket set, to a total value of \$1,961.40. The Commission accepts Mr Warner's evidence on this issue.

According to NCH's records, the five items Mr Warner admits to having received were sent to him during a timeframe of just over one month. Mr Warner disputed, however, the accuracy of this timeframe, saying that he believed he received the items between December 2010 and April 2011. Even if Mr Warner's recollection is correct, the fact remains that five promotional items were received within the space of a few months. He told the Commission that some of the items were delivered to his home and others, including the laptop that he subsequently took home, were delivered to his work. He said that he did not use any of the items he received. He had told Mr Ramachandran that he did not want the wine as he did not drink, but it was still delivered to his home and he subsequently forgot about it. He handed the items in to Lithgow CC after being contacted by Commission officers about the matter.

Mr Warner acknowledged that he underwent an induction process when he first started working at Lithgow CC, part of which related to the council's code of conduct. He did not, however, recall seeing anything about Lithgow CC's policy on gifts and benefits, and had not heard of the gifts and benefits register until he was contacted by Commission officers enquiring into this matter. He told the Commission that, in hindsight, he was wrong to accept these promotional items, but at the time he was not sure what he was supposed to do, which was why he just kept the items in their boxes and did not even use them. He could not explain why he did not return them or tell Lithgow CC about them, other than to say that he panicked.

The Commission takes the view that, even if it is true that Mr Warner did not have a detailed knowledge of Lithgow CC's gifts and benefits policy, as a matter of common sense, he should have known that accepting gifts from a supplier to the council in the manner that he did was not acceptable. Further, regardless of whether he actually used the promotional items received or not, he accepted these items, which he was in a position to enjoy for his own benefit if he chose, without declaring them to his employer.

The laptop

Mr Warner received the laptop following an order placed with Mr Ramachandran dated 23 February 2011. About two weeks earlier, on 9 February 2011, the promotions system at NCH changed. The change required all promotional items from that time to be delivered to the place of work of the person who placed the order, and the promotional item in question to appear on the invoice for the goods issued to that person's employer, in compliance with the Dallas Legal directive, discussed earlier in this chapter.

In breach of this directive, Mr Ramachandran issued two separate invoices, one for the goods ordered and one for the laptop, and addressed both invoices to Mr Warner. These two invoices were subsequently sent to Mr Warner by NCH. Mr Ramachandran's explanation for this was that he had advised Mr Warner of NCH's change of policy; however, Mr Warner specifically requested him to put the laptop on a separate invoice, without providing a reason for the request.

Mr Warner claimed that he could not remember being informed by Mr Ramachandran of the change of NCH's policy relating to promotional items nor could he remember asking Mr Ramachandran for separate invoices and requesting him not to include the laptop on the product invoice. He conceded, however, that if he did make such a request, it would have been in an attempt to avoid detection by his employer of his receipt of the laptop.

The Commission finds Mr Warner's evidence on this issue unsatisfactory, and accepts Mr Ramachandran's evidence that he was requested by Mr Warner to provide a separate invoice for the laptop. The Commission is satisfied that Mr Warner made this request to attempt to conceal the fact that he was receiving an expensive gift from NCH because he knew that this was in breach of Lithgow CC's code of conduct.

Mr Warner's budget blow out

Mr Warner told the Commission that Mr Ramachandran explained to him that NCH's reward scheme was to say thank you to customers for buying their products. Mr Warner said he told Mr Ramachandran he did not need any incentives to buy NCH's products, since he was ordering them because they were worth using. He conceded, however, that he did not say no to the offer of the promotional items or send them back when they arrived.

Mr Warner was referred to his budget having blown out as a result of his ordering \$105,000 worth of products in a short space of time, which led to him being questioned by Lithgow CC's general manager. He was asked if this had anything to do with the fact that, around this time, he and some of his subordinates were getting promotional items from NCH. He claimed that he did not know others were also receiving gifts and denied that he put in the orders in question for the purpose of getting promotional items. He conceded, however, that the promotional items were provided "to butter you up so you're going to order some more stuff".

The Commission rejects Mr Warner's denial that he placed the orders in order to receive promotional items, given the clear correlation between his budgetary blow out and the receipt of five gifts from NCH within a short period of time. The Commission is satisfied that he was encouraged to place more orders with Mr Ramachandran as a result of being influenced by the benefit of the gifts he received from NCH.

The Commission is satisfied that Mr Warner received the five promotional items from NCH specified above for his personal benefit as a reward for placing orders with NCH.

Mr Warner told the Commission that he was suspended from work for three weeks without pay, demoted to another position with a lower wage, and given a final warning for his actions by way of disciplinary action by Lithgow CC.

Corrupt conduct and section 74A(2) statement

The Commission finds that Mr Warner engaged in corrupt conduct by accepting the gifts from NCH specified above for his personal benefit as a reward for placing orders with NCH on behalf of Lithgow CC. This is because the conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of his official functions and that could involve official misconduct, bribery, and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which

such a tribunal would find that Mr Warner has committed criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Warner has, by accepting the gifts specified above as a reward for placing orders, committed disciplinary offences involving a substantial breach of an applicable code of conduct. In this respect, subsection 9(6) of the ICAC Act provides that a reference to a disciplinary offence includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the LG Act.

Mr Warner gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Warner for a specified criminal offence.

As Mr Warner has already been disciplined by Lithgow CC for his actions, the Commission is not required to form an opinion as to whether consideration should be given to the taking of action against him for a specified disciplinary offence.

Steven McMurtrie

Mr McMurtrie was employed by Lithgow CC from 7 April 2009 until he resigned on 1 August 2011. He held the position of wastewater treatment plant operator at Portland. He was responsible for running the plant, and one of his jobs was to maintain the necessary supplies of chemicals and other products required for the operation of the plant. He had no spending authority himself, so, if he detected low levels of any particular product, he placed an order to replenish the stock through his superior, Mr Warner, to whom he directly reported.

NCH records indicate that Mr McMurtrie received (to a total value of \$864):

- an iPod valued at \$395 on 10 January 2011
- two DVD players valued at \$150 each on 12 January 2011 and 31 January 2011 respectively
- a high-pressure washer valued at \$169 on 9 February 2011.

Mr McMurtrie admitted receiving all of the above items except the DVD player on 12 January 2011. He also believed the items were received over a longer period, but could not recall the dates that they were delivered to him.

The Commission takes the view that NCH's business records are likely to be more reliable than Mr McMurtrie's unassisted memory. In relation to the DVD player he denied receiving, however, the Commission accepts his evidence in the absence of clear proof that the item was received by him.

Mr McMurtrie told the Commission that Mr Ramachandran of NCH took him and two other Lithgow CC officers, including Mr Bradford, to lunch at a Thai restaurant. Mr Ramachandran did not explain to him then or later that promotional items were available to the people responsible for placing orders. Mr Ramachandran told him that, after an order had gone through, he would send him an iPod as a special promotion. Although all of the promotional items from NCH were delivered to his home address, Mr McMurtrie claimed not to know how Mr Ramachandran obtained his address. He said he did not remember giving him the address, but accepted that he may have if asked to do so by Mr Ramachandran.

Mr McMurtrie initially claimed to be unsure of the uses to which iPods could be put, other than playing music. He also claimed that he took the iPod to work to use it for work purposes, namely to listen to music. He later admitted that he took the iPod home and used it to take a number of personal photographs.

Mr McMurtrie told the Commission that he also took the DVD player to work and kept it in a drawer so it could be used at work if needed but, due to there being no TV, it did not in fact get used at work for any purpose. He said he had not known the high-pressure washer was coming to him before he got it.

Mr McMurtrie acknowledged undertaking an induction process when he started working at Lithgow CC. He was aware that the council had a code of conduct and a policy on gifts and benefits, however, he said he was not familiar with the details of these policies, other than knowing that employees were not allowed to accept gifts. He admitted that when Mr Ramachandran mentioned the iPod was coming his way, he knew it was his obligation as an employee of Lithgow CC to tell Mr Ramachandran that he was not allowed to receive gifts from suppliers. He further admitted that it was wrong of him to accept any gifts from NCH.

The Commission is satisfied that Mr McMurtrie received from NCH an iPod valued at \$395 on 10 January 2011, one DVD player valued at \$150 on 31 January 2011, and a high-pressure washer valued at \$169 on 9 February 2011, to a total value of \$714, for his personal benefit. The Commission is also satisfied that he received these gifts as a reward for orders placed with NCH.

Mr McMurtrie received indefinite suspension without pay by way of disciplinary action by Lithgow CC. About a week later, he resigned from the council.

Corrupt conduct and section 74A(2) statement

The Commission finds that Mr McMurtrie engaged in corrupt conduct by accepting gifts from NCH, as specified above, for his personal benefit as a reward for orders placed with NCH on behalf of Lithgow CC. This is because the conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of his official functions and that could involve official misconduct, bribery, and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr McMurtrie has committed criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr McMurtrie has, by accepting the gifts specified above as a reward for placing orders, committed a disciplinary offence involving a substantial breach of an applicable code of conduct. In this respect, subsection 9(6) of the ICAC Act provides that a reference to a disciplinary offence includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the LG Act.

Mr McMurtrie gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr McMurtrie for a specified criminal offence.

As Mr McMurtrie is no longer employed by Lithgow CC, the Commission is not required to form an opinion as to whether consideration should be given to the taking of action against him for a specified disciplinary offence.

Peter Bradford

Mr Bradford commenced his employment at Lithgow CC on 19 February 1994, and since January 2004 has been a wastewater treatment plant operator. He reports to Mr Warner. Mr Bradford had no spending authority himself, so Mr Warner, who had the relevant delegation, ordered goods on his behalf when they were required by Mr Bradford.

Mr Bradford admitted at the public inquiry that he received two promotional items of value from Mr Ramachandran of NCH, being a dozen bottles of wine valued at \$239.40 on or about 9 December 2010 and an iPod valued at \$395 on or about 28 January 2011. When he was initially spoken to by Commission investigators, however, Mr Bradford denied any knowledge of the wine. At the public inquiry, he explained that he was told by his wife after the Commission interview that the wine was delivered to his home, but she threw it out as she would not allow him to keep alcohol at home. He also said that he was not previously told to expect the wine by Mr Ramachandran. In the absence of clear evidence to refute his claims, the Commission does not make any adverse finding against Mr Bradford in relation to his denial of any knowledge of the receipt of the wine to Commission investigators.

Mr Bradford told the Commission that he picked up the iPod from a courier company after receiving a slip at his home address directing him to do so. Again, he claims that he was not told by Mr Ramachandran that it was being sent to him. He did not open the package himself or use the iPod; however, it was later opened by a member of his family. It remained unused, until the Commission took possession of it in the course of its investigation.

Mr Bradford also told the Commission that Mr Ramachandran took him and some co-workers to lunch at a Thai restaurant; however, he said that Mr Ramachandran did not explain at that time that there were promotional items on offer according to how much product was ordered from him. Mr Bradford could not recall how Mr Ramachandran obtained his personal address, but he acknowledged that he must have given it to him.

Mr Bradford admitted that he was aware of the council's gifts and benefits policy requiring employees to declare all gifts (other than token gifts) received by them. He agreed that it was wrong of him to accept a gift from Mr Ramachandran.

The Commission is satisfied that Mr Bradford received an iPod from NCH valued at \$395 on or about 28 January 2011 for his personal benefit, regardless of whether he actually used it himself or not. The Commission is also satisfied that he received this gift as a reward for orders placed with NCH.

Mr Bradford was disciplined by the council in relation to these matters. He was given a final warning and suspension from work for one-and-a-half weeks without pay.

No corrupt conduct finding for Mr Bradford and section 74A(2) statement

In all the circumstances, including the fact that the receipt of the iPod in this matter was a one-off occurrence, the Commission has determined not to make a corrupt conduct finding against Mr Bradford.

For the same reasons, the Commission is not of the opinion that the advice of the DPP should be sought in respect of Mr Bradford's conduct.

As Mr Bradford has already been disciplined by Lithgow CC for his actions, the Commission is not required to form an opinion as to whether consideration should be given to the taking of action against him for a specified disciplinary offence.

Liverpool City Council

The allegations concerning Liverpool CC involve receipt of gift vouchers from Momar by two of its former employees, Mr Maaya and Mr Bancroft, both of whom gave evidence at the public inquiry.

Amjad Maaya

Mr Maaya was employed by Liverpool CC from 9 February 1998 to 25 March 2011. His last position at the council was that of street maintenance coordinator, in which capacity he had a financial delegation to purchase supplies up to \$10,000.

Momar records indicate that Mr Maaya received 25 vouchers to a total value of \$1,250 between 28 August 2007 and 15 December 2010. Mr Maaya initially told the Commission that he had received fewer than 10 gift vouchers from Momar, each valued at between \$20 and \$70. Later, at the public inquiry, he admitted receiving about 25 vouchers, each valued between \$20 and \$150. He explained that he had not told the whole truth earlier because he was too embarrassed and scared to admit the truth. He thought that the total amount received by him was less than \$1,250 because some of the vouchers were only for \$20, but agreed that the total amount he received would be in the vicinity of \$1,000 to \$1,250. He said that his wife and children spent the vouchers.

Mr Maaya said that the gift vouchers were sent to his home so that they could be kept secret from Liverpool CC. Mr Goldin, the Momar sales representative with whom he dealt, told him that the vouchers were part of Momar's loyalty program, which Mr Maaya understood meant that they were a reward for using Momar's products.

Mr Maaya said that he made it clear to Mr Goldin that the vouchers were not going to affect what or how much he bought. Each time Mr Maaya placed an order with Momar, however, the vouchers arrived at his home and he found them handy, although the value of the vouchers received did not appear to relate to the amount of products purchased. Later, Mr Goldin became “very pushy” in asking for orders and, finally, Mr Maaya told him not to send any more vouchers and the vouchers stopped arriving. He acknowledged that this experience made him understand that Momar was using the loyalty program to try to increase the sales it was making to Liverpool CC.

Mr Maaya confirmed that he had received training in Liverpool CC’s code of conduct, including its policy on gifts and benefits, and that he had previously used the council’s gifts register. He therefore knew that it was wrong for him to receive and keep the gift vouchers. He agreed that receiving a gift voucher that one can spend in a shop was the same as receiving cash.

The Commission is satisfied that Mr Maaya received gift cards from Momar to a total value of at least \$1,000 between 28 August 2007 and 15 December 2010 for his personal benefit as a reward for placing orders with Momar.

Mr Maaya told the Commission that he left Liverpool CC on 28 March 2011, not because of the Commission’s investigation but because he got another job at Penrith City Council. He resigned from his new job on 30 September 2011, partly because he felt that the attitude of his new employer changed towards him after the Commission made enquiries about him. He remained unemployed at the time of the public inquiry.

Corrupt conduct and section 74A(2) statement

The Commission finds that Mr Maaya engaged in corrupt conduct by accepting the gift vouchers from Momar, as specified above, for his personal benefit as a reward for placing orders with Momar on behalf of Liverpool CC. This is because the conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of his official functions and that could involve official misconduct, bribery, and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the

criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Maaya has committed criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Maaya has, by accepting the gifts specified above as a reward for placing orders, committed disciplinary offences involving a substantial breach of an applicable code of conduct. In this respect, subsection 9(6) of the ICAC Act provides that a reference to a disciplinary offence includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the LG Act.

Mr Maaya gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Maaya for a specified criminal offence.

As Mr Maaya is no longer employed by Liverpool CC, the Commission is not required to form an opinion as to whether consideration should be given to the taking of action against him for a specified disciplinary offence.

Maxwell Bancroft

Mr Bancroft was employed by Liverpool CC from 23 August 1993 to 8 July 2011. His most recently held position was senior coordinator of cleansing and waste, in which capacity he had delegated authority to approve purchase orders up to \$25,000.

Momar records indicate that Mr Bancroft received gift vouchers between 9 July 2009 and 16 December 2010 to a total value of \$800.

In a statement provided to the Commission prior to the public inquiry, Mr Bancroft admitted receiving gift vouchers from Momar, but did not say how many he received or what the value of the vouchers was. He explained at the public inquiry that he had spent the vouchers he received and had not kept any records about them, so he could not remember these details. Presented with Momar’s records, however, he accepted that he received the gift vouchers as alleged and confirmed that the vouchers were sent to his home.

Mr Bancroft told the Commission that Mr Goldin explained to him that the gifts were a loyalty program for continuing to use Momar’s products. Mr Bancroft said that he received a gift about 50% or more of the times that he placed

orders, not every time. At the time, he did not notice any connection between the size of the orders placed and the value of the vouchers that he received, but he agreed at the public inquiry that there probably was such a correlation.

He told the Commission, however, that he always bought things that were actually needed by Liverpool CC and never ordered excessive amounts of goods. He also said that he shopped around to see if there were products from other suppliers that might do the same job at a cheaper price, but did not find them as effective as Momar's products. He claimed he would therefore still have purchased from Momar even if there was no loyalty program offered. In these circumstances, he did not regard the vouchers as being a kickback at the time. He now accepted, however, that Momar's loyalty program was used to induce buyers to keep doing business with them.

Mr Bancroft received training in Liverpool CC's code of conduct, including the council's gifts and benefits policy and procurement policy. He acknowledged that his acceptance of the gift vouchers, which he agreed were more than token value and akin to cash, breached these policies.

The Commission is satisfied that Mr Bancroft received gift vouchers from Momar to a total value of \$800 between 9 July 2009 and 16 December 2010 for his personal benefit as a reward for placing orders with Momar.

Mr Bancroft told the Commission that he was now self-employed after leaving his job at Liverpool CC on 8 July 2011, following the ICAC investigation.

Corrupt conduct and section 74A(2) statement

The Commission finds that Mr Bancroft engaged in corrupt conduct by accepting the gift vouchers from Momar, as specified above, for his personal benefit as a reward for placing orders with Momar on behalf of Liverpool CC. This is because the conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of his official functions and that could involve official misconduct, bribery, and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted

by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Bancroft has committed criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Bancroft has, by accepting the gifts specified above as a reward for placing orders, committed disciplinary offences involving a substantial breach of an applicable code of conduct. In this respect, subsection 9(6) of the ICAC Act provides that a reference to a disciplinary offence includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the LG Act.

Mr Bancroft gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Bancroft for a specified criminal offence.

As Mr Bancroft is no longer employed by Liverpool CC, the Commission is not required to form an opinion as to whether consideration should be given to the taking of action against him for a specified disciplinary offence.

Narrandera Shire Council – Mathew Kelly

Mathew Kelly, also known as Ted Kelly, was an employee of Narrandera Shire Council (NSC) from 6 May 2002 until he resigned on 7 October 2011. From 24 August 2004, he was a storeperson and in this capacity had authority to obtain quotations and authorise the purchase of goods, works and services to a delegated limit of \$3,000 per order.

Gift vouchers from R&R

R&R records indicate that Mr Kelly received gift vouchers to a total value of \$500 between 5 December 2006 and 8 October 2008 for placing orders with R&R. Mr Kelly admitted receiving these vouchers, which were sent to his home address in order to keep them secret from his employer. He thought the salesperson at R&R with whom he dealt was Martin Slade, but he could not be certain. Mr Kelly told the Commission that he used \$200 worth of Liquorland vouchers to purchase alcohol as prizes for NSC's annual picnic, but was not sure if he mentioned this to anyone at NSC. He used another \$50 voucher for himself and believed he told NSC's director of corporate services about it, but there is no entry of the item on NSC's gifts register.

The remaining gift vouchers were Harvey Norman gift vouchers totalling \$250. There was evidence indicating that these vouchers were redeemed to purchase an iPod Nano from the Harvey Norman store at Griffith on 12 December 2007. When spoken to by Commission investigators on 21 October 2010, Mr Kelly denied having received any Harvey Norman vouchers from anyone.

Benjamin Duggan, who runs the computer section of the store, gave evidence at the public inquiry. At the Commission's request, he caused a search of business records maintained at the store to be conducted in relation to the transaction involving the purchase of an iPod Nano using Harvey Norman gift vouchers on 12 December 2007. He later confirmed that the purchase was made by a Jason Williams.

Mr Williams has been a friend of Mr Kelly's for about 10 years. They are both retained fire fighters with Fire and Rescue NSW. Mr Williams gave evidence at the public inquiry that he was at the Harvey Norman store at Griffith on 12 December 2007 to buy a present for his wife. He could not recall being given any Harvey Norman gift vouchers by anyone or purchasing an iPod Nano using those vouchers on the same day. He agreed, however, that given the documentary evidence relating to the transaction, Mr Kelly must have given him the vouchers and asked him to use them to purchase the iPod Nano for him, as Mr Williams could not think of any other person who might have given him the vouchers. He assumed he subsequently gave Mr Kelly both the iPod Nano and the invoice pertaining to it, although he does not have a specific recollection of these matters.

After the conclusion of the oral evidence of Mr Duggan and Mr Williams, Mr Kelly gave his evidence. He admitted that he gave the Harvey Norman vouchers to Mr Williams to purchase an iPod Nano for him. He told the Commission that he used the iPod Nano at work to listen to music for about two years, after which he took it home and used it "a couple of times".

Council records indicate that Mr Kelly undertook training in NSC's code of conduct on 7 February 2006 and 7 October 2010. He acknowledged that he received training in NSC's gifts and benefits policy, and knew it was not permissible for employees of NSC to accept gifts from suppliers. He admitted that he knew he was doing the wrong thing by accepting the gift vouchers from R&R.

The Commission is satisfied that Mr Kelly received gift vouchers from R&R to a total value of \$500 between 5 December 2006 and 8 October 2008 as a reward for placing orders with R&R, out of which at least \$300 worth of the gift vouchers was used for his personal benefit.

Lying to the Commission

Mr Kelly admitted he denied receiving any Harvey Norman vouchers when he was specifically asked about them at his interview with Commission investigators on 21 October 2010. He claimed at the public inquiry that he had forgotten about the vouchers and the iPod Nano purchased using those vouchers on the day of the interview with Commission officers because he had not used the iPod Nano for a long time. He said he was reminded of the vouchers when he came across the iPod Nano and the invoice for it issued by Harvey Norman about a month before appearing at the public inquiry. He said he "did not have the heart" to contact the Commission and tell its officers about it, however, because "everyone would be thinking I'll be changing my evidence".

Eventually, Mr Kelly conceded that he knew at the time of his interview that he had the iPod Nano and admitted that he did not tell the truth to the Commission officers because he did not want to own up to what he had done, not only to the Commission but also to his employer.

Corrupt conduct and section 74A(2) statement

The Commission finds that Mr Kelly engaged in corrupt conduct by accepting the gift vouchers from R&R, as specified above, for his personal benefit as a reward for placing orders with R&R on behalf of NSC. This is because the conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of his official functions and that could involve official misconduct, bribery, and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Kelly has committed criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Kelly has, by accepting the gifts specified above

as a reward for placing orders, committed disciplinary offences involving a substantial breach of an applicable code of conduct. In this respect, subsection 9(6) of the ICAC Act provides that a reference to a disciplinary offence includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the LG Act.

Mr Kelly gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Kelly for a specified criminal offence in relation to his receipt of gift vouchers from R&R.

The Commission is of the opinion, however, that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Kelly for the criminal offence under section 80(c) of the ICAC Act of wilfully making a false statement to Commission officers at his interview on 21 October 2010, in respect of his denial that he had received any Harvey Norman gift vouchers.

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 Kelly for the criminal offence of giving false or misleading evidence under section 87(1) of the ICAC Act, in respect of his statement made at the public inquiry that the reason he denied he received any Harvey Norman gift vouchers at his interview with Commission officers on 21 October 2010 was that he had forgotten at the time of the interview about his receipt of the Harvey Norman vouchers and the iPod Nano that was purchased using those vouchers.

As Mr Kelly is no longer employed by NSC, the Commission is not required to form an opinion as to whether consideration should be given to the taking of action against him for a specified disciplinary offence.

Orange City Council

Allegations concerning OCC involve two of its former employees, Mr Evans and Mr Lewis, in relation to their receipt of gifts from both NCH and Momar. Mr Evans and Mr Lewis gave evidence at the public inquiry.

Peter Evans

Mr Evans commenced his employment at OCC on 6 October 1987, and from 1997 held the position of drainage and building overseer. From time to time, he ordered goods from suppliers, including NCH and Momar, in the course of performing his duties. He resigned from OCC following the public inquiry.

Gifts received

NCH business records show that a battery charger was sent to Mr Evans via Mr Blackford in respect of an order placed on 4 September 2008. Mr Evans told the Commission, however, that he had no recollection of ever receiving anything from Mr Blackford. In view of the lack of clear evidence to show that Mr Evans received this item, the Commission accepts his evidence in this regard.

Momar's business records show that Mr Evans received 23 \$50 gift vouchers to a total value of \$1,150 between 6 June 2007 and 29 September 2010. Mr Evans disputed the receipt of the most recent voucher. He also claimed that he was not aware that on occasions he had received two vouchers on the same day. He said they were sent to his post office box, and his wife would pick them up and not always tell him about them. He told the Commission that, following a discussion with his wife, they came to the conclusion that he received about four vouchers a year over the three-year period (just over half of the number allegedly received by him). He acknowledged that there were no records kept of the receipt of these vouchers. He was also reluctant to ask his wife to come to the public inquiry and give evidence about these matters, saying that she would find the experience upsetting. In these circumstances, the Commission prefers the evidence of Momar's records, which are likely to be more accurate than Mr Evans' or his wife's recollections. Accordingly, the Commission is satisfied that Mr Evans received all of the gift vouchers recorded in his name in Momar's records.

Mr Evans told the Commission that he was not given any induction when he started his job at OCC, but had subsequently attended a number of training courses relevant to his job. These included a course held on 20 March 2008 called "Dealing effectively with unacceptable employee behaviour", which included a segment on OCC's gifts and benefits policy, as well as an induction on 5 August 2009.

Mr Evans produced a copy of OCC's policy dated January 2008, originally issued in September 2005, which stated that gifts below nominal value, defined as less than \$50, could be accepted without disclosure. He agreed that, notwithstanding this provision, the policy actively discouraged the offer and acceptance of gifts. He also acknowledged that, from January 2009, OCC's policy on gifts and benefits had changed to the extent that the reference to nominal value of gifts being less than \$50 was removed, and that he was advised of the current policy at his induction in August 2009.

Notwithstanding the above, he sought to explain his acceptance of the gift vouchers by claiming that his approach to the receipt of these vouchers was guided by the 2008 policy until he received the training in 2009. He told the Commission that his understanding of OCC's gifts

and benefits policy was that if you were given two \$50 gift vouchers at one time, you were obliged to declare them. If the vouchers were received on separate days, however, no disclosure was required. It was pointed out to him that, even if his interpretation were correct, receipt of even one \$50 voucher would still contravene OCC's policy, since it was not less than the nominal value of \$50. Mr Evans sought to overcome this difficulty by explaining that, at the time, he had mistakenly believed that he was allowed to accept gifts of \$50 or less, and it was not until 2008 when he put together a folder of all of OCC's policies that he realised his mistake. The Commission does not accept this evidence, since Mr Evans continued to accept \$50 gift vouchers from Momar well after 2008 and up until 2010 without declaring them to OCC.

Gifts as an inducement

Mr Evans acknowledged that he gave his private post box number to Mr Parker when asked for it, but initially denied that the reason Mr Parker wanted the address was to send the gift vouchers. When pressed to suggest another possible reason, Mr Evans was unable to do so. He eventually agreed that the reason Mr Parker asked for his private address was so that the two of them could keep the matter of the vouchers secret because they both knew it was wrong. Mr Evans, however, claimed that it was wrong only since 2008, when he studied OCC's gifts and benefits policy more closely, and not before, even though he "always had a feeling in the back of [his] head that it was dodgy". The Commission finds this claim unlikely, as it is difficult to accept that Mr Evans suddenly gained an insight into the truth of these matters in 2008. It is far more likely that he thought this pattern of gift vouchers being sent to his private address after orders were placed with Momar was "dodgy" right from the start.

Mr Evans told the Commission that Mr Parker explained to him that the gift vouchers were in recognition and appreciation of Mr Evans' use of his services and the products he sold. Mr Parker had never represented to Mr Evans that the more he ordered, the more gift vouchers he would get. Mr Evans insisted that the gift vouchers never influenced his purchase of products, that he ordered Momar's products because they were proven and good, and that he also bought materials from other suppliers.

He admitted, however, that he had done the wrong thing. He said he did not stop to consider whether keeping the gift vouchers without declaring them was the right thing to do, and agreed with the suggestion that, if Mr Parker was happy to send them, he was happy to spend them.

The Commission found Mr Evans to be an unsatisfactory witness, with a tendency to be evasive and attempt to avoid admitting the obvious. In particular, the Commission considers that it is likely that Mr Evans' evidence about

misreading OCC's 2008 policy on gifts and benefits was an invention.

The Commission is satisfied that Mr Evans received gift vouchers from Momar to total value of \$1,150 between 6 June 2007 and 29 September 2010 for his personal benefit as a reward for placing orders with Momar.

Corrupt conduct and section 74A(2) statement

The Commission finds that Mr Evans engaged in corrupt conduct by accepting the gift vouchers from Momar, as specified above, for his personal benefit as a reward for placing orders with Momar on behalf of OCC. This is because the conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of his official functions and that could involve official misconduct, bribery, and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Evans has committed criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Evans has, by accepting the gifts specified above as a reward for placing orders, committed disciplinary offences involving a substantial breach of an applicable code of conduct. In this respect, subsection 9(6) of the ICAC Act provides that a reference to a disciplinary offence includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the LG Act.

Mr Evans gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Evans for a specified criminal offence.

As Mr Evans is no longer employed by OCC, the Commission is not required to form an opinion as to whether consideration should be given to the taking of action against him for a specified disciplinary offence.

Peter Lewis

Mr Lewis commenced his employment at OCC on 5 January 1981. Between 1995 and 2010, he was a wastewater treatment plant supervisor and responsible for placing orders for all chemicals used for the purpose of OCC's wastewater treatment operations. His last-held position was technical officer, assets, of the water treatment plant and sewer treatment plant. He resigned from OCC following the public inquiry.

Gifts from NCH

NCH records indicate that Mr Lewis received the gifts identified below:

- a coffee maker for an order on 20 September 2007
- two duffel bags for an order on 29 November 2007
- a garden shredder and a drill for an order on 18 June 2008
- a battery charger for an order on 4 September 2008
- a jobsite radio for an order on 10 February 2009
- an iPod for an order on 30 July 2009
- a high-pressure washer for an order on 14 October 2009
- a further iPod for an order on 1 December 2009
- an iPhone for an order on 11 March 2010
- a further iPhone for an order on 23 May 2010
- a further iPhone for an order on 21 October 2010.

Mr Lewis admitted only that he received the coffee maker, radio, six iPods (four more than those indicated in the NCH records), three iPhones and a high-pressure cleaner from Mr Blackford of NCH. He told the Commission that the high-pressure cleaner was used for OCC purposes. In the absence of clear evidence to the contrary, the Commission accepts Mr Lewis' evidence on these matters.

Mr Lewis told the Commission that he understood, from statements made by other staff at the council, that council employees were allowed to accept gifts of \$50 or less in value. He admitted, however, that the gifts he received from NCH well exceeded \$50 in value, particularly the iPods and the iPhones.

He said that, out of the six iPods he received, he gave one to his daughter, another to his wife, and the rest

went to the Salvation Army over time. Out of the three iPhones he received, he gave one to his daughter and another to the Salvation Army. He sent the last iPhone back to Mr Blackford, telling him that he could not accept any more gifts (Mr Blackford confirmed that one iPhone was returned to him by Mr Lewis) because by then his conscience was getting the better of him. Mr Lewis accepted that his conscience was slow in being activated, and that he should not have accepted any of the gifts in the first place.

He agreed that the gifts he received cemented the relationship between Mr Blackford and him, although he claimed that his decision to order from NCH was largely dictated by his belief in the superior quality of NCH's products. He also agreed that the money that was spent on the gifts he received could have been rebated to the council to spend in more meaningful ways.

The Commission is satisfied that Mr Lewis received a coffee maker, a radio, six iPods and two iPhones from NCH for his personal benefit in the course of his dealings with NCH as a reward for placing orders with NCH.

Gifts from Momar

Mr Lewis confirmed that Mr Parker of Momar sent four \$50 gift vouchers to Mr Lewis' home on three occasions between 27 February 2008 and 25 August 2010. He received two of these four gift vouchers on 27 February 2008. This means that, even if he genuinely believed that gifts of \$50 or less were acceptable, receiving \$100 worth of gifts on one day would still have been contrary to OCC's policy.

Mr Lewis conceded that, although he and Mr Parker never discussed it, he understood that the vouchers were intended to thank him for the orders he placed with Mr Parker, and to encourage further orders for Momar because he would feel grateful to Mr Parker for giving him the vouchers.

Mr Lewis accepted that a gift voucher was like cash, and that it was wrong of him to accept the vouchers from Mr Parker. He said he was sorry for his actions, but could not explain why he accepted the vouchers. He accepted that he obtained financial benefits from the vouchers, but said that his motivation in taking them was not so much for financial gain, but rather because they turned up unsolicited and he just accepted them without giving the matter much thought.

The Commission is satisfied that Mr Lewis received gift vouchers from Momar to a total value of \$200 between 27 February 2008 and 25 August 2010 for his personal benefit as a reward for placing orders with Momar.

Council policy and gifts as incentives

Mr Lewis told the Commission that there was no induction in 1981 when he started his employment at OCC. He acknowledged, however, that he attended a number of courses relevant to his job in later years, although he could not recall the details. Council records indicate that Mr Lewis undertook specific training on OCC's code of conduct on 11 March 2008 and a re-induction (with a particular focus on the code of conduct) on 8 July 2009. Mr Lewis accepted the accuracy of these records.

He told the Commission that he was well aware that there was an OCC policy relating to gifts and benefits, which prohibited council employees from accepting gifts and benefits other than token gifts. He also understood that, in situations where the gifts could not be refused, he was required to declare them on OCC's gifts register.

Mr Lewis admitted that he accepted gifts from both NCH and Momar as rewards after he placed orders with them. He also acknowledged that the purpose in giving him these gifts was to build up a relationship with him, and act as an incentive for him to continue to do business with them.

The Commission is satisfied that Mr Lewis accepted the gifts from NCH and Momar, as specified above, for his personal benefit as a reward for placing orders with these companies.

Corrupt conduct and section 74A(2) statement

The Commission finds that Mr Lewis engaged in corrupt conduct by accepting the gifts from NCH and the gift vouchers from Momar, as specified above, for his personal benefit as a reward for placing orders with these companies on behalf of OCC. This is because the conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of his official functions and that could involve official misconduct, bribery, and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Lewis has committed criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Lewis has, by accepting the gifts specified above as a reward for placing orders, committed disciplinary offences involving a substantial breach of an applicable code of conduct. In this respect, subsection 9(6) of the ICAC Act provides that a reference to a disciplinary offence includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the LG Act.

Mr Lewis gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Lewis for a specified criminal offence.

As Mr Lewis is no longer employed by OCC, the Commission is not required to form an opinion as to whether consideration should be given to the taking of action against him for a specified disciplinary offence.

Roads and Traffic Authority – Phillip Burnie

Mr Burnie started working for the RTA, now part of Roads and Maritime Services (RMS), on 19 June 1979. He has held the position of team leader at the Rockdale depot store since about 2001.

Mr Burnie admitted that he received the following gifts from R&R:

- a holiday to Batemans Bay on or about 25 September 2004
- a DVD player on or about 24 November 2005
- a Drizabone coat on or about 25 September 2009
- four Harvey Norman gift vouchers totalling \$450 on or about 12 March 2007, 22 October 2007, 21 November 2007 and 12 December 2009.

Mr Burnie said that the coat and the gift vouchers were sent to his home. He accepted the holiday at Batemans Bay, and used the gift vouchers at Harvey Norman stores to purchase items that he wanted. He did not keep the DVD player and the coat because he did not want them, and gave them away to charity. He agreed that all of these gifts should have been disclosed to his manager and put on the RTA's gift register, but claimed that at the time he did not know there was such a register.

Mr Burnie denied that the gifts he received were incentives. He told the Commission that he did not believe he was doing anything wrong at the time he received the gifts because he was not ordering directly from R&R himself. As the storeperson, he would raise a requisition for required products and send that requisition to the Purchasing Group of the RTA, located at Parramatta, which then placed the orders with various suppliers. He had the option of nominating who the supplier of particular products should be. He did not make such a nomination every time he raised a requisition. He always nominated R&R as the supplier to be used, however, when he wanted the type of goods that were supplied by R&R. His justification for this was that he found their products to be the cheapest. He explained that the Purchasing Group had the right to decline to use the supplier he nominated. He conceded, however, that he could not recall any instance when they did not accept his nomination.

Mr Burnie initially denied that he was influenced by the fact that R&R had given him gifts and benefits over the years, even though he accepted the gifts and kept them secret from his employer. It was put to him that the reason R&R gave him these personal gifts was to influence his decision about which supplier he nominated to the Purchasing Group. It was further suggested to him that R&R was successful in so influencing him, since he did in fact nominate R&R on the stock re-order forms, and his nomination of that company was always accepted by the Purchasing Group. Mr Burnie eventually agreed, albeit reluctantly, with both of these propositions.

Mr Burnie agreed that he received training from the RTA in its code of conduct and knew that, in his position, receiving any kind of gift or benefit from suppliers of goods was forbidden.

The Commission is satisfied that Mr Burnie received a holiday to Batemans Bay, a DVD player, a Drizabone coat and four Harvey Norman gift vouchers totalling \$450 from R&R for his personal benefit as a reward for orders placed with R&R by the Purchasing Group.

Lying to the Commission

Mr Burnie attended a compulsory examination at the Commission on 9 December 2010 and was questioned about the allegation that he had received gifts from suppliers. On that occasion, he unequivocally declared that he never received any gifts or benefits of any kind from any supplier with whom he dealt in his capacity as a RTA officer. At the public inquiry, he admitted that this was a lie. He agreed that he was given every opportunity to tell the truth on 9 December 2010, and was aware of the severe penalties for making false statements to the Commission. He said he lied because he was scared.

Corrupt conduct and section 74A(2) statement

The Commission finds that Mr Burnie engaged in corrupt conduct by accepting the gifts and gift vouchers from R&R, as specified above, for his personal benefit as a reward for orders placed with R&R by the RTA with his assistance, as specified above. This is because the conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of his official functions and that could involve official misconduct, bribery, and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Burnie has committed criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act.

The Commission is also satisfied that, for the purposes of section 9(1)(b) of the ICAC Act, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Burnie has committed disciplinary offences, by accepting the gifts specified above as a reward for orders placed, being a breach of discipline that could constitute grounds for disciplinary action according to the general law of employment.

Mr Burnie gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Burnie for a specified criminal offence in relation to his receipt of gifts from R&R.

The Commission is of the opinion, however, that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Burnie for the criminal offence of giving false or misleading evidence at a hearing of the Commission under section 87(1) of the ICAC Act, in respect of his denial at his compulsory examination on 9 December 2010 that he had received any gifts from any suppliers.

The Commission is also of the opinion that consideration should be given by the RTA (now RMS) to the taking of disciplinary action against Mr Burnie on the basis of his acceptance of gifts from suppliers, as outlined above.

Walgett Shire Council – Mark Ward

Mr Ward has been employed by WSC since 20 January 1997. He has held the position of supply officer, later called stores officer, since 4 November 2002. In this capacity, he is authorised to purchase necessary supplies required for WSC's ordinary operations up to the amount of \$20,000.

Mr Ward admitted that between 9 May 2007 and 16 June 2010 he received a large number of gift vouchers from Mr Parker of Momar, to a total value of \$3,650. He said that the gift vouchers were each worth \$50, that he sometimes received up to four or five at one time, and that he subsequently redeemed the vouchers at Coles/Myer shops to purchase goods.

Some of the vouchers were sent to Mr Ward's personal post box address, which he gave to Mr Parker before the first voucher was sent. There were also a number of further gift vouchers addressed to Mr Ward but sent to WSC, which were received by WSC's human resources section. These vouchers were not forwarded to Mr Ward, but retained by WSC and dealt with in accordance with the council's applicable process.

In addition to the gift vouchers, Mr Ward admitted to receiving from Mr Parker, and using, a pressure cleaner, a GPS unit, and a fishing rod and tackle box. Mr Ward thought that there was a relationship between the size of the orders and the value of the vouchers he received, although it was not necessarily the case that the more he ordered, the bigger the value of the gift vouchers received or the greater the number of gift vouchers received. Notwithstanding this, he initially insisted that he was not encouraged to keep dealing with Mr Parker because of the gift vouchers, even though he was earning only about \$1,500 a month and the gift vouchers came in handy. He said he bought substantially more from Momar than from anyone else because the quality of its products was superior to that of products available from other suppliers. Eventually, however, Mr Ward conceded that receiving the gift vouchers from Mr Parker amounted to receiving a kickback for dealing with Momar and that, in cases where other suppliers had products of equal quality available, the gift vouchers would have influenced him to continue business dealings with Momar over its competitors.

Shortly after he became a supply officer, Mr Ward received training in proper methods of procurement. He told the Commission that he was aware of WSC's code of conduct, and knew that he was not allowed to accept gifts and benefits. He admitted that his actions were not only

contrary to WSC's policy but were plainly wrong, and that he felt bad about what he had done.

The Commission is satisfied that Mr Ward received gift vouchers to a total value of \$3,650 between 9 May 2007 and 16 June 2010, a pressure cleaner, a GPS unit, and a fishing rod and tackle box from Momar for his personal benefit as a reward for placing orders with Momar.

Mr Ward told the Commission that WSC disciplined him for his actions by suspending him with pay for one week.

Corrupt conduct and section 74A(2) statement

The Commission finds that Mr Ward engaged in corrupt conduct by accepting the gifts and gift vouchers from Momar, as specified above, for his personal benefit as a reward for placing orders with Momar on behalf of WSC. This is because the conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of his official functions and that could involve official misconduct, bribery, and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Ward has committed criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Ward has, by accepting the gifts specified above as a reward for placing orders, committed disciplinary offences involving a substantial breach of an applicable code of conduct. In this respect, subsection 9(6) of the ICAC Act provides that a reference to a disciplinary offence includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the LG Act.

Mr Ward gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that

consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Ward for a specified criminal offence.

As Mr Ward has already been disciplined by WSC for his actions, the Commission is not required to form an opinion as to whether consideration should be given to the taking of action against him for a specified disciplinary offence.

Waverley Council

The allegations relating to WC concern the receipt of gift vouchers from Momar by two former employees, Mr Ingwersen and Mr Naidoo, both of whom gave evidence at the public inquiry.

In relation to these allegations, it is relevant to note the following matters about WC's policy on gifts and benefits, as updated from time to time. The policy appears clear enough when read as a whole. There is some scope, however, for ambiguity given that the code of conduct adopted on 20 February 2007 states that, "Council considers that a gift or benefit is token if it is valued at \$50 or less". The current policy, however, makes it quite clear that any gift or benefit having a value of \$20 or more must be registered, gifts having a value over \$50 must be registered and donated to WC's charitable trust, and gifts having a value over \$200 must be refused.

Scott Ingwersen

Mr Ingwersen was employed by WC from 26 March 1986 until he resigned on 19 April 2011, following the Commission's investigation. The position he last held at WC was parks operations supervisor for coastal reserves. He had a delegation of \$20,000 to make purchases on behalf of WC.

Momar records indicate that Mr Ingwersen received 42 \$50 vouchers to a total value of \$2,100 between 9 February 2007 and 16 December 2010. He admitted receiving vouchers totalling a significant sum from Mr Goldin over a long period of time, but questioned the actual length of time over which they were received and the total amount received as indicated by Momar's records. He acknowledged, however, that he had not kept a record of the vouchers received, and therefore was not in a position to contradict the evidence produced by Momar. In these circumstances, the Commission accepts the accuracy of Momar's records.

Mr Ingwersen understood the gift vouchers were to thank him for the orders he placed with Momar. Mr Goldin first gave him a \$20 voucher as a Christmas present two or three years after he started dealing with him. Mr Goldin then sent a second \$20 voucher to his home after asking him for his home address, saying he was going to put "a little thank you in the mail" for the order. The value of the

vouchers later increased to \$50. Mr Ingwersen used the vouchers for ordinary household expenses, except for the last three vouchers he received on 16 December 2010, which he handed in to WC.

Mr Ingwersen told the Commission that he felt more and more uncomfortable about accepting the vouchers as time went on, but found it hard to say no to Mr Goldin, who was very persuasive. He also felt that he had built up a personal relationship with Mr Goldin and did not want to offend him by refusing the gifts offered, although in hindsight he realised it was not really a friendship.

Mr Ingwersen claimed that he was not influenced by the gift vouchers in the performance of his duties. He agreed, however, that the gift vouchers were an attempt to so influence him. He also agreed that, whilst he was happy with Momar's products and regarded them as a reliable supplier, the kind of relationship that developed between Mr Goldin and him had the effect of closing his mind to the alternatives offered by competitors.

Mr Ingwersen told the Commission that he had not received any formal training in the council's code of conduct and gifts and benefits policy for about five years. He was aware generally, however, of the relevant policy, even though it kept changing and he had not read it for a while. Council's records show that Mr Ingwersen received a refresher course on gifts and benefits on 3 September 2008. In any event, he admitted that he knew after the first \$20 voucher sent to him at Christmas that he was obliged to declare all gifts received.

Mr Ingwersen also told the Commission that he knew that council employees were definitely not allowed to take any cash, but at the time he did not equate the receipt of gift vouchers to accepting cash. He now realised this to be the case and said that he had made a stupid mistake in doing what he did. He said he was naive and gullible and paid a huge price for his actions, which led to his resignation from WC after 25 years of service, as well as placing a strain on his family life.

The Commission is satisfied that Mr Ingwersen received 42 gift vouchers from Momar to a total value of \$2,100 between 9 February 2007 and 16 December 2010 for his personal benefit in return for placing orders with Momar.

Corrupt conduct and section 74A(2) statement

The Commission finds that Mr Ingwersen engaged in corrupt conduct by accepting the gift vouchers from Momar, as specified above, for his personal benefit as a reward for placing orders with Momar on behalf of WC. This is because the conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves

the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of his official functions and that could involve official misconduct, bribery, and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Ingwersen has committed criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Ingwersen has, by accepting the gifts specified above as a reward for placing orders, committed disciplinary offences involving a substantial breach of an applicable code of conduct. In this respect, subsection 9(6) of the ICAC Act provides that a reference to a disciplinary offence includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the LG Act.

Mr Ingwersen gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Ingwersen for a specified criminal offence.

As Mr Ingwersen is no longer employed by WC, the Commission is not required to form an opinion as to whether consideration should be given to the taking of action against him for a specified disciplinary offence.

Peter Naidoo

Mr Naidoo was employed by WC from 4 August 1993 until he resigned on 8 April 2011, following the Commission's investigation. The position he last held was that of maintenance supervisor. He had a delegation to purchase up to \$20,000 in relation to non-stock items and \$5,000 in relation to goods from established suppliers, which included Momar.

Momar records indicate that he received 73 \$50 vouchers to a total value of \$3,650 from Momar between 20 February 2007 and 15 October 2010. Momar's records

also indicate that, on some occasions, he received five to seven vouchers in one day. Mr Naidoo was adamant, however, that he had never received more than three vouchers on the same day, and he believed the total number of vouchers received was about 20, less than one-third of the number indicated in Momar's records. He conceded that he did not keep a record of the vouchers received, and could not produce any evidence to contradict the evidence produced by Momar. WC records also show that on 28 April 2008 (when Mr Naidoo allegedly received six vouchers) and on 13 October 2008 (when he allegedly received seven vouchers), unusually large invoices were issued by Momar to WC. Given these circumstances, the Commission is of the view that Momar's records are likely to be more reliable than Mr Naidoo's unassisted memory. The Commission is therefore satisfied that Mr Naidoo received all of the gift vouchers detailed in Momar's records as being provided to him.

Mr Naidoo told the Commission that the vouchers were handed to him by Mr Goldin, except for the last few, which were sent to his house. Mr Naidoo used the vouchers to buy ordinary, household items.

He accepted that, by giving him the gift vouchers, Mr Goldin was trying to influence him in the exercise of his duties at WC, notwithstanding that Mr Naidoo found Momar's products to be good and the company to be a reliable supplier. Mr Naidoo said, however, that he did not see things that way at the time, and accepted the gift vouchers because he believed Mr Goldin to be his personal friend. He said Mr Goldin made it sound as though he had received a bonus himself and wanted to pass some of it on to Mr Naidoo, leading him to regard the vouchers as personal gifts from Mr Goldin.

The Commission takes the view that, even if Mr Naidoo genuinely believed that the gift vouchers were personal gifts from Mr Goldin and not promotional gifts for supplies ordered by him, he knew Mr Goldin was a sales representative for Momar. He would have known that accepting the gift vouchers from Mr Goldin was contrary to WC's code of conduct and gifts and benefits policy on which he confirmed that he had received training (his most recent training having been undertaken on 3 September 2008). He also admitted that he knew that WC had a gifts and benefits register, yet did not declare and register the gifts he received.

The Commission is satisfied that Mr Naidoo received gift vouchers to a total value of \$3,650 from Momar between 20 February 2007 and 15 October 2010 for his personal benefit as a reward for placing orders with Momar.

Mr Naidoo was asked to resign from WC when the allegations against him came to light. He has now lost his job at the council and said that it was difficult at his age for him to find new work. He also said that his wife was devastated to learn of his loss of employment, resulting in some strain on their relationship.

Corrupt conduct and section 74A(2) statement

The Commission finds that Mr Naidoo engaged in corrupt conduct by accepting the gift vouchers from Momar, as specified above, for his personal benefit as a reward for placing orders with Momar on behalf of WC. This is because the conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of his official functions and that could involve official misconduct, bribery, and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Naidoo has committed criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Naidoo has, by accepting the gifts specified above as a reward for placing orders, committed a disciplinary offence involving a substantial breach of an applicable code of conduct. In this respect, subsection 9(6) of the ICAC Act provides that a reference to a disciplinary offence includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the LG Act.

Mr Naidoo gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Naidoo for a specified criminal offence.

As Mr Naidoo is no longer employed by WC, the Commission is not required to form an opinion as to whether consideration should be given to the taking of action against him for a specified disciplinary offence.

Yass Valley Council

The allegations relating to YVC concern the receipt of gifts from Momar and NCH by former employee Mr Smith, and from NCH by YVC employee Adam Baker, both of whom gave evidence at the public inquiry.

Kerry Smith

Mr Smith was employed by YVC for 27 years, from 10 February 1984 to March 2011, when he left following the Commission's investigation. From 23 December 1997, he was a storeperson at YVC and, as part of his job, was required to procure supplies on behalf of the council. YVC records show that, from 2007, he had a financial delegation of \$25,000, although he believed it to be \$20,000.

It was alleged that Mr Smith accepted gifts from suppliers and cash payments from Robin Newman for facilitating payment by YVC of false invoices in respect of goods that were not delivered. The latter allegation will be dealt with in detail in chapter 3.

Mr Smith admitted that he received gift vouchers from Momar to a total value of \$1,150 between 4 October 2007 and 14 September 2010 by registered mail to his home address.

NCH records indicate that Mr Smith received the gifts detailed in the schedule on page 67.

Of these items, Mr Smith told the Commission that he could not recall receiving the six drills, the laser distance finder, the trolleys and the vest, but admitted receiving the rest. A number of these items were sent to his home address.

Mr Smith acknowledged that he was aware that he was offered these gifts from Momar and NCH when he placed orders of a certain value with the companies on behalf of YVC.

Council records indicate that Mr Smith attended training in YVC's code of conduct on 5 December 2006, when he also received a copy of the code of conduct. Mr Smith said he did not know about YVC's gifts and benefits policy in the early days but later became aware of it, and knew that he should have refused these gifts.

The Commission is satisfied that Mr Smith received gift vouchers from Momar to a total value of \$1,150 between 4 October 2007 and 14 September 2010 for his personal benefit as a reward for placing orders with Momar.

The Commission is also satisfied that Mr Smith received the gifts from the NCH schedule, which he has admitted receiving, as outlined above, for his personal benefit as a reward for placing orders with NCH.

Schedule Point 8 - Orders with Promotional Items requested (Jan 2007 - Aug 2011)

customer no	customer name	postal code	order no	order date	sales rep name	buyer name	Comments	Cost
10002604	YASS VALLEY COUNCIL	2582	092A	2008/07/09	RAMACHANDRAN, SRIDH	KERRY SMITH	PLS COMBINE WEB06 093A,B AND PROVIDE 6 (SIX) DRILLS ON PROMO	948.00
10002604	YASS VALLEY COUNCIL	2582	092B	2008/07/09	RAMACHANDRAN, SRIDH	KERRY SMITH	PLS COMBINE WEB06 093A,B AND PROVIDE 6 (SIX) DRILLS ON PROMO	
10002604	YASS VALLEY COUNCIL	2582	206A	2008/10/07	RAMACHANDRAN, SRIDH	KERRY SMITH	PLS COMBINE WEB06 206A,B AND PROVIDE ONE LASER DISTANCE FINDER AND ONE SET OF BAR CLAMPS ON PROMO	N/A
10002604	YASS VALLEY COUNCIL	2582	4139	2007/09/06	RAMACHANDRAN, SRIDH	KERRY SMITH	CAFE ROMA COFFEE MAKER PROMO. I WILL COLLECT IT FROM OPERATIONS AND PERSONALLY DELIVER IT TO THE BUYER	138.00
10002604	YASS VALLEY COUNCIL	2582	4181	2007/10/04	RAMACHANDRAN, SRIDH	KERRY SMITH	PLEASE SHIP 4 DUFFLE BAGS DIRECTLY TO KERRY SMITH'S SHIPPING ADDRESS (COMBINE THIS ORDER WITH WEB06 4182)	191.96
10002604	YASS VALLEY COUNCIL	2582	4225	2007/10/30	RAMACHANDRAN, SRIDH	KERRY SMITH	PLEASE SHIP 4 DUFFLE BAGS IN TOTAL DIRECTLY TO KERRY SMITH'S SHIPPING ADDRESS (COMBINE THIS ORDER WITH WEB06 4181)	
10002604	YASS VALLEY COUNCIL	2582	4226	2007/10/30	RAMACHANDRAN, SRIDH	KERRY SMITH	4 DUFFLE BAGS - COMBINE WEB06 4225 AND 4226	191.96
10002604	YASS VALLEY COUNCIL	2582	4333	2008/01/24	RAMACHANDRAN, SRIDH	KERRY SMITH	2 TROLLEYS ON PROMO	118.14
10002604	YASS VALLEY COUNCIL	2582	4334	2008/01/24	RAMACHANDRAN, SRIDH	KERRY SMITH	1 TROLLEY ON PROMO. PLS SHIP ALONG WITH WEB06 4333	59.07
10002604	YASS VALLEY COUNCIL	2582	5258	2008/11/25	RAMACHANDRAN, SRIDH	KERRY SMITH	BAR CLAMPS - 2 SETS ON PROMO	
10002604	YASS VALLEY COUNCIL	2582	5393	2009/04/02	RAMACHANDRAN, SRIDH	KERRY SMITH	ONE M SIZE JACKET ON PROMO	N/A
10002604	YASS VALLEY COUNCIL	2582	6040	2009/06/26	RAMACHANDRAN, SRIDH	KERRY SMITH	PLS PROVIDE ONE HITACHI GPS ORDER CODE H2007. WILL COLLECT ITEM FROM WAREHOUSE	57.95
10002604	YASS VALLEY COUNCIL	2582	6142	2009/09/10	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. ONE RUSSELL HOBBS UNO COFFEE MACHINE CODE 99155 ON PROMO. I WILL PERSONALLY COLLECT ITEM FROM WAREHOUSE	395.00
10002604	YASS VALLEY COUNCIL	2582	6144	2009/09/10	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. ONE WELDSKILL AUTO WELDING HELMET CODE 99353 TO BE SHIPPED DIRECTLY TO KERRY SMITH, CUSTOMER ON PROMO	121.00
10002604	YASS VALLEY COUNCIL	2582	6145	2009/09/10	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. ONE BLACK AND DECKER JIGSAW 600 W VARIABLE PENDULUM VARIABLE SPEED CODE 99153 TO BE SHIPPED DIRECTLY TO CUSTOMER	199.95
10002604	YASS VALLEY COUNCIL	2582	6196	2009/10/26	RAMACHANDRAN, SRIDH	KERRY SMITH	KERRY SMITH ON PROMO	120.00
10002604	YASS VALLEY COUNCIL	2582	6197	2009/10/26	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. PLS COMBINE WEB06 6196 AND WEB06 6197 AND SHIP DIRECTLY ONE GRUNDIG LCD TV AND DVD COMBO CODE 99701 ON PROMOTION. SHIPPING ADDRESS: YASS COUNCIL DEPOT, 9, YASS VALLEY WAY YASS ATTN: KERRY SMITH - STORES	755.00
10002604	YASS VALLEY COUNCIL	2582	6241	2009/11/27	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. PLS SHIP ONE HIGH DEFINITION SET TOP BOX CODE 99254 TO KERRY SMITH'S RESIDENTIAL ADDRESS VIA REGISTERED MAIL	755.00
10002604	YASS VALLEY COUNCIL	2582	6350	2010/02/26	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. PLS ORDER ONE CONVAIR PORTABLE AIR CON CODE 2023 ON PROMO TO BE SHIPPED TO KERRY'S ATTN	195.00
10002604	YASS VALLEY COUNCIL	2582	7020	2010/05/19	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. PLS PROVIDE ONE M SIZE REVERSIBLE VEST TO KERRY SMITH'S ATTN	495.00
10002604	YASS VALLEY COUNCIL	2582	7096	2010/08/19	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. PLS COMBINE WEB06 7096, 97, 98 AND PROVIDE ONE PANASONIC CAM RECORDER CODE 2033 ON PROMO TO BE SHIPPED TO KERRY'S ATTN	41.00
10002604	YASS VALLEY COUNCIL	2582	7097	2010/08/19	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. CODE 233 PROMO	349.00
10002604	YASS VALLEY COUNCIL	2582	7098	2010/08/19	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. CODE 2033 PROMO	349.00
10002604	YASS VALLEY COUNCIL	2582	7130	2010/09/28	RAMACHANDRAN, SRIDH	KERRY SMITH	MSDS WITH SHIPMENT. PLS SHIP ONE DYSON UPRIGHT VACUUM CODE 2034 TO KERRY SMITH'S RESIDENTIAL ADDRESS	665.00
10NW6795	YASS VALLEY COUNCIL	2582	4054	2007/07/18	RAMACHANDRAN, SRIDH	KERRY SMITH	CUST NO: 10002604 *** TWO(2) MEDIUM SIZE TORQUE JACKETS TO BE SHIPPED TO KERRY SMITH'S SHIPPING ADDRESS". APPROVED BY ROBERT EPPS. 205 LITRES CONTAINER PACKING ALSO NOTIFIED TO ROB EPPS AND RENOS.	115.90

Corrupt conduct and section 74A(2) statement

The Commission finds that Mr Smith engaged in corrupt conduct by accepting the gift vouchers from Momar and the gifts from NCH, as specified above, for his personal benefit as a reward for placing orders with these companies on behalf of YVC. This is because the conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of his official functions and that could involve official misconduct, bribery, and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Smith has committed criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Smith has, by accepting the gifts specified above as a reward for placing orders, committed disciplinary offences involving a substantial breach of an applicable code of conduct. In this respect, subsection 9(6) of the ICAC Act provides that a reference to a disciplinary offence includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the LG Act.

Mr Smith gave his evidence under objection at the public inquiry. Due to insufficient admissible evidence being available, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Smith for a specified criminal offence in respect of his acceptance of gifts from Momar and NCH in return for placing orders with them.

As Mr Smith is no longer employed by YVC, the Commission is not required to form an opinion as to whether consideration should be given to the taking of action against him for a specified disciplinary offence.

Adam Baker

Mr Baker has been employed at YVC since 10 October 2005, and has held the position of workshop supervisor/mechanic since 25 May 2006. In this capacity, he has a delegation to procure supplies on behalf of YVC and has dealt with NCH.

NCH records indicate that Mr Baker received the gifts detailed in the schedule on page 69.

Of these items, Mr Baker admitted that, in respect of orders placed between 9 July 2008 and 15 February 2011, he received from Mr Ramachandran of NCH a battery charger, a pressure cleaner, a cordless phone, a jacket and a vest. He also admitted to having received a toaster, a Ryobi drill, a Metabo cordless driver and an overnight bag from other suppliers.

Mr Baker said that all of these items were sent to him at his workshop at YVC and, except for the overnight bag (valued at about \$30) and the vest (which was kept at home but used by him for work), they were all kept at YVC for use by council staff. The Commission accepts this evidence, for which some supporting material was provided to the Commission by YVC.

Mr Baker failed to declare the gifts when they were received. He subsequently disclosed all of them on 6 July 2011, after being advised to do so by YVC's human resources manager. He told the Commission that, although he believed this advice was prompted by the Commission's investigation, he himself was not aware of the enquiries made to YVC by the Commission at the time he declared the gifts.

Mr Baker also told the Commission that he knew YVC had a policy on gifts and benefits, but was not very familiar with the terms of that policy. He accepted, however, that he should have declared the gifts when he received them.

Mr Baker also accepted that, by giving him these gifts, Mr Ramachandran was trying to make him think of Mr Ramachandran when he had to order more products, thereby attempting to influence the exercise of his duties at YVC.

No corrupt conduct finding for Mr Baker

In all the circumstances, particularly the fact that Mr Baker kept all of the items received by him, except for one item of modest value (the overnight bag), at YVC for the benefit of its staff and not for his personal benefit, the Commission is satisfied that Mr Baker has not engaged in any wrongdoing other than failing to promptly declare the gifts when they were received. Accordingly, the Commission makes no finding of corrupt conduct against Mr Baker.

Schedule Point 8 - Orders with Promotional Items requested (Jan 2007 - Aug 2011)

customer no	customer name	postal code	order no	order date	sales rep name	buyer name	Comments	Cost
10016442	YASS VALLEY COUNCIL	2582	091A:	9/07/2008	RAMACHANDRAN, SRIDH	ADAM BAKER	ONE DRILL ON PROMO	158.00
10016442	YASS VALLEY COUNCIL	2582	154A:	27/08/2008	RAMACHANDRAN, SRIDH	ADAM BAKER	PLS COMBINE WEOE 154A, BAND PROVIDE 2 BATTERY CHARGERS ON PROMO	N/A
10016442	YASS VALLEY COUNCIL	2582	5019	14/05/2008	RAMACHANDRAN, SRIDH	ADAM BAKER	COOPER JACKET ONE L SIZE ON PROMO	57.95
10016442	YASS VALLEY COUNCIL	2582	5205	7/10/2008	RAMACHANDRAN, SRIDH	ADAM BAKER	ONE SET OF CLAMPS ON PROMO	N/A
10016442	YASS VALLEY COUNCIL	2582	5237	11/12/2008	RAMACHANDRAN, SRIDH	ADAM BAKER	ONE SET OF BAR CLAMPS ON PROMO	N/A
10016442	YASS VALLEY COUNCIL	2582	5392	2/04/2009	RAMACHANDRAN, SRIDH	ADAM BAKER	ONE XL SIZE JACKET ON PROMO	57.95
10016442	YASS VALLEY COUNCIL	2582	6041	26/06/2009	RAMACHANDRAN, SRIDH	ADAM BAKER	PLS PROVIDE ONE SUNBEAM CAFE GRILL ON PROMO G2009, WILL COLLECT ITEM FROM WAREHOUSE	119.00
10016442	YASS VALLEY COUNCIL	2582	6318	13/01/2010	RAMACHANDRAN, SRIDH	ADAM BAKER	MSDS WITH SHIPMENT. PLS COMBINE WEOE 6318 AND 6319 AND SHIP ONE UNIDEN CORDLESS FONE CODE 2013 DIRECTLY TO ADAM BAKER'S SHIPPING ADDRESS	121.00
10016442	YASS VALLEY COUNCIL	2582	6319	13/01/2010	RAMACHANDRAN, SRIDH	ADAM BAKER	MSDS WITH SHIPMENT. PLS COMBINE WEOE 6318 AND 6319 AND SHIP ONE UNIDEN CORDLESS FONE CODE 2013 DIRECTLY TO ADAM BAKER'S SHIPPING ADDRESS	121.00
10016442	YASS VALLEY COUNCIL	2582	7021	19/05/2010	RAMACHANDRAN, SRIDH	ADAM BAKER	MSDS WITH SHIPMENT. PLS SHIP ONE XL REVERSIBLE VEST TO ADAM BAKER'S ATTN	41.00
10016442	YASS VALLEY COUNCIL	2582	7271	15/02/2011	RAMACHANDRAN, SRIDH	ADAM BAKER	MSDS WITH SHIPMENT. PLS SHIP ONE HIGH PRESSURE KARCHER CLEANER ON PROMO, ATTN: ADAM BAKER	N/A

Section 74A(2) statement

For the reasons outlined above, the Commission is also not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Baker for a specified criminal offence or to the taking of action against him for a specified disciplinary offence.

Chapter 3: Bathurst Regional Council and Yass Valley Council – false invoices and corrupt payments

Allegations

This chapter deals with the allegation that Geoffrey Hadley, former senior council storeperson at Bathurst Regional Council (BRC) and Kerry Smith, former storeperson at Yass Valley Council (YVC), facilitated payment by these councils of false invoices generated by Robin Newman, Pinnacle Traders Pty Ltd (“Pinnacle”), PAE Industries (“PAE”), R&R Tape Supplies (“R&R”) and Universal Cartridges Pty Ltd (“Universal”) in return for corrupt payments.

How the allegations involve corrupt conduct

The conduct of public officials in facilitating payment by their public sector employers of false invoices from suppliers in return for corrupt payments is conduct that adversely affects, or could adversely affect, either directly or indirectly, the honest or impartial exercise of their official functions and therefore comes under section 8(1)(a) of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”). It is also conduct that constitutes or involves the dishonest or partial exercise of their official functions within the meaning of section 8(1)(b) of the ICAC Act, and could constitute or involve a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affects, or could adversely affect, either directly or indirectly, the exercise of their official functions and that could involve official misconduct, bribery, obtaining or offering secret commissions and fraud within the meaning of section 8(2)(a), section 8(2)(b), section 8(2)(d) and section 8(2)(e) of the ICAC Act.

In both such cases, it could also constitute or involve the criminal offences of corruptly receiving a reward contrary to section 249B(1), obtaining financial advantage by

deception under section 178BA, or obtaining financial advantage by false or misleading statements under section 178BB of the *Crimes Act 1900* (“the Crimes Act”) for the purpose of section 9(1)(a) of the ICAC Act, and also involve a substantial breach of an applicable code of conduct under section 440(5) of the *Local Government Act 1993* (“the LG Act”) and therefore could constitute or involve a disciplinary offence of misconduct for the purpose of section 9(1)(b) of the ICAC Act.

The conduct of individuals in issuing false invoices to a public sector organisation to which they, or business entities that they represent, supply goods, obtaining payment for these invoices with the assistance of a public official employed by the public sector organisation, and providing corrupt payments to the public official as a reward for such assistance, is conduct that adversely affects, or could adversely affect, either directly or indirectly, the honest or impartial exercise of the public official’s official functions and therefore comes under section 8(1)(a) of the ICAC Act. Such conduct is also conduct that adversely affects, or could adversely affect, either directly or indirectly, the exercise of the public official’s official functions and could involve official misconduct, bribery, obtaining or offering secret commissions and fraud within the meaning of section 8(2)(a), section 8(2)(b), section 8(2)(d) and section 8(2)(e) of the ICAC Act.

In both such cases, it could also constitute or involve the criminal offences of corruptly offering a reward contrary to section 249B(2), obtaining financial advantage by deception under section 178BA, or obtaining financial advantage by false or misleading statements under section 178BB of the Crimes Act for the purpose of section 9(1)(a) of the ICAC Act.

Geoffrey Hadley and BRC – background and overview

Mr Hadley was employed by BRC from 13 February 1989 to 25 February 2009. He had been in charge of BRC's store since he became storeperson on 16 September 1996. He occupied the reclassified position of senior storeperson from 14 October 2004. In this capacity, he had a financial delegation of \$10,000, with authority to order goods at his discretion.

The allegations against Mr Hadley were that he used his position at BRC to facilitate payment by BRC of false invoices issued by various suppliers, in return for corrupt payments from those suppliers or individuals associated with those suppliers, including Robin Newman. The Commission was not able to ascertain the exact amount of money involved in the alleged corrupt activities of these people, but it is likely to be over \$1 million.

It has not been possible to trace all relevant payments due to the distribution of the proceeds of these activities having largely been made in cash, with only part of this cash having found its way into the bank accounts of the relevant parties. The activities also extend over a significant period of time, between 2004 and 2009, and it would therefore be unrealistic to expect the beneficiaries of these proceeds to have an accurate recollection of where the proceeds went. The Commission has, however, obtained a considerable volume of banking and other financial records relevant to this investigation, and an analysis of this evidence is detailed later in this chapter.

BRC's ordering system

Generally, the goods ordered on behalf of BRC were identified as either stores items (for inclusion in BRC's store) or non-stock items (goods required for specific council jobs). An order was raised on a computerised system, an order number was allocated for that order,

and then two copies of the order – one in pink and one in green – were printed out. The pink copy was faxed to the supplier from whom the goods were ordered, and the green copy, which was known as the "goods received copy", was kept in the store.

The majority of the goods ordered were delivered to BRC's store, whereas delivery of non-stock items or urgently required goods was made to the relevant job site. Upon delivery of goods to the store, Mr Hadley or one of the other storepeople working under his supervision was required to check that the delivered items matched the order, sign off on the green copy of the order and send it to BRC's accounts section for payment to be processed. No counter signature by any senior officer was required for the order or for the confirmation of delivery. This meant that Mr Hadley was primarily responsible for both ordering and accepting delivery of goods.

False invoices

The suppliers alleged to have issued false invoices to BRC are Robin Newman, Pinnacle, PAE, R&R and Universal; organisations that will be referred to collectively in this chapter as "the Five Suppliers". Each of the Five Suppliers submitted invoices to BRC in the following amounts:

Supplier	Total value of invoices submitted to BRC
1. Robin Newman	\$797,135.13
2. Pinnacle	\$178,311.19
3. PAE	\$331,546.60
4. R&R	\$124,483.12
5. Universal	\$167,231.17
Total	\$1,598,707.10

It is clear on the evidence that some, at least, of these invoices were false. The false invoices issued by the Five Suppliers, which were received and subsequently paid in full by BRC, with Mr Hadley facilitating such payments, were false because the goods ordered were never delivered or only partly delivered, or because the prices charged for the goods delivered were deliberately inflated.

Due to a lack of adequate records at BRC and the fact that its records cannot be relied on fully because Mr Hadley was in a position to manipulate them, the Commission is unable to identify any particular false invoice out of the invoices submitted by the Five Suppliers.

The Commission has, however, conducted an analysis of the quantity of particular products purportedly supplied to BRC over the period relevant to the investigation, by reference to certain suspect invoices issued by some of the suppliers and comparing these with the reasonably expected consumption of these products by BRC in the same period. This process has not been carried out in respect of every item listed in every suspect invoice, but appropriate sampling has been undertaken, of which the following are some examples providing compelling evidence that many of the invoices in respect of the products described below were false.

HOBAS pipe

One of the main products appearing on the allegedly false invoices from Robin Newman and PAE was HOBAS pipe, a product required to install new infrastructure relating to water supply. It was alleged that between 2004 and 2009, bogus invoices were created by Mr Newman and PAE for approximately 870 metres of HOBAS pipe at a cost of \$143,848.10.

Evidence obtained by the Commission indicates that HOBAS pipe was not available in Australia between July 2006 and March 2009. It follows therefore that no HOBAS pipe could have been supplied to BRC during this period and any invoices relating to the supply of HOBAS pipe during this period would have been false. The Commission also notes that BRC would not have required HOBAS pipe during this period, as it had purchased and stockpiled HOBAS pipe between February and August 2004, after being notified that the product would soon be unavailable. An examination of BRC's records indicates that the HOBAS pipe invoiced by Robin Newman and PAE was in fact never supplied, and this evidence was not challenged by Mr Hadley.

Barrier safety mesh

Another of the main products to which the false invoices related was barrier safety mesh, which is used to tape off areas posing a hazard to road users or to prevent passage by pedestrians into work areas. Between 2006 and 2008,

Mr Hadley ordered 444.55 kilometres of barrier safety mesh from some of the Five Suppliers. He agreed that this length of barrier safety mesh equated to about twice the distance between Sydney and Bathurst, sufficient to line the Great Western Highway on both sides between these two cities. He further agreed that this quantity far exceeded any possible requirement of BRC. It is noteworthy that, following Mr Hadley's departure from BRC in February 2009, BRC has required an average of only about 600 metres of the barrier safety mesh per month during the period from July 2010 to March 2011. This amount is almost 20 times less than the amount of approximately 11 kilometres per month, which was ordered by Mr Hadley during a 39-month period.

Mr Hadley told the Commission that not all of the invoices relating to barrier safety mesh were sham invoices, as some of the goods were actually supplied. He agreed, however, that whatever was supplied would have constituted only a small fraction of the total of 444.55 kilometres of mesh ordered by him.

It therefore follows that a significant portion of the invoices relating to the supply of barrier safety mesh would be false by reason of a gross under-supply of the product to which they relate.

Payments received by Mr Hadley

The Commission's investigation identified withdrawals from each of the Five Suppliers' bank accounts, except for PAE, that corresponded with deposits into Mr Hadley's bank accounts, suggesting these were corrupt payments to Mr Hadley. An analysis of Mr Hadley's bank accounts identified 37 payments by cheque and direct deposits traceable to these four suppliers, totalling \$249,168.40, as indicated below.

Supplier	Amount (by cheque or direct deposit)
1. Robin Newman	\$217,168.40
2. Pinnacle	\$17,500.00
3. R&R	\$8,300.00
4. Universal	\$6,200.00
Total	\$249,168.40

Although he could not recall the precise amount of money he had received over the years from the suppliers above, Mr Hadley did not dispute the evidence that \$249,168.40 was deposited into his bank accounts, and admitted that these deposits represented corrupt payments he received from these suppliers.

Additionally, the financial analysis conducted by the Commission identified 39 payments totalling \$94,842.50 of untraceable cash deposits, which could not be linked to specific withdrawals from a bank account held by any of the Five Suppliers or to any legitimate income Mr Hadley would have received from his employment with BRC. Mr Hadley denied, however, that all of the \$94,842.50 came from corrupt payments from suppliers. He claimed that part of this money represented an inheritance of \$10,000 from his grandmother and wages from his side jobs in security and as a gardener. He did not, however, provide the Commission with any documentary evidence supporting this claim. In any case, he agreed that, at the very least, the vast majority of the \$94,842.50 probably related to cash provided to him by suppliers.

The total amount of payments by cheque or direct deposits plus untraceable cash received by Mr Hadley in the relevant period comes to \$344,010.90. The payments allegedly made to Mr Hadley by each of the Five Suppliers will be discussed in further detail later in this chapter.

Receipt of incentive gifts by Mr Hadley

Mr Hadley admitted that he received other gifts and benefits from suppliers, including from Mr Newman of Universal Telemarketing Services Pty Ltd (UTS), over the years that he worked as a storeperson and senior storeperson at BRC. These included gift cards, alcohol, tickets to entertainment events, accommodation and holidays. Mr Hadley's evidence in this regard was not disputed by Mr Newman.

Mr Hadley told the Commission that acceptance of such gifts and benefits was a regular practice in the store at BRC. He admitted, however, that he knew there was a BRC policy that prohibited him from accepting gifts and benefits for his personal use, although he said he did not know about the existence of a gifts register at BRC. He also admitted that he knew accepting such gifts and benefits and keeping them secret was not only contrary to BRC's policy, but was also morally wrong.

The Commission is satisfied that Mr Hadley received numerous gifts and benefits from various suppliers, including from Mr Newman on behalf of UTS, during his employment at BRC, for his personal benefit as a reward for doing business with these suppliers. The particulars of those gifts and which gifts were received from which suppliers are, however, not clear on the evidence before the Commission. Accordingly, no findings as to corrupt conduct or statement under section 74A(2) of the ICAC Act are made by the Commission in respect of Mr Hadley's acceptance of incentive gifts from suppliers.

Robin Newman

It was against the background of routine acceptance of gifts and benefits from suppliers outlined above that Mr Hadley first came across Robin Newman, who contacted Mr Hadley by phone one day for the purpose of soliciting business for his employer, UTS. Mr Newman was employed as a sales representative for UTS from about 2003, later becoming a floor manager but still continuing to do sales work. He told the Commission that he was working on a wage, but no commission.

UTS was engaged in the business of supplying industrial consumables, such as guide posts, barrier safety mesh and gloves. Mr Newman initially took orders from Mr Hadley for the supply of products from UTS. He later issued invoices to BRC in his own name as a sole trader. He also generated invoices in the name of Pinnacle as well as arranging for invoices to be issued by PAE. The respective roles of these entities are discussed in detail later in this chapter. It was alleged that the invoices issued in the names of Mr Newman, Pinnacle and PAE were false, with the goods never supplied or only partially supplied.

Mr Hadley admitted receiving cash payments from Mr Newman in return for facilitating the payment of false invoices issued by Mr Newman, Pinnacle and PAE.

How it all started

Mr Newman told the Commission that some time after he started dealing with Mr Hadley, Mr Hadley placed an order with him in respect of which there was a shortage of available stock at UTS at the time. Mr Hadley then suggested that Mr Newman arrange for UTS to pay for the cost of a trip to Scotland that Mr Hadley was planning, instead of UTS being required to deliver the rest of the goods. Mr Newman subsequently made a payment to Mr Hadley, with the approval of Michael Stokes, the managing director of UTS, to fund Mr Hadley's trip to Scotland as requested, in lieu of providing the remainder of the stock. This event will be discussed in further detail in the part of this chapter dealing with UTS.

Mr Newman told the Commission that he could not remember if there was ever any legitimate order placed with him by Mr Hadley after this event. He believed that each subsequent order involved a mix of short-supply or non-supply of goods, the invoice being issued to BRC for the full amount of the order and subsequently being paid in full by BRC, with the payment going into UTS' account and part of the money then being spent to pay for whatever Mr Hadley wanted.

Mr Newman also admitted issuing false invoices in the names of different business entities, including in his own name. He told the Commission that the arrangement with Mr Hadley started with only half of the goods ordered

being delivered to BRC and the other half being placed on a backorder, but the backorder never being fulfilled. As the relationship between them continued, fewer and fewer goods were delivered until, towards the end, nothing was delivered at all.

Mr Hadley's evidence on this issue was largely consistent with that of Mr Newman. Mr Hadley told the Commission that, at some stage, it was agreed between Mr Newman and him that some orders would be short-supplied, with about only three-quarters of the goods ordered actually being delivered, whilst the invoice for the order was paid in full by BRC. Mr Hadley would facilitate such payment by signing off on the green "goods received copy" of the order to certify delivery, and this certified copy of the order would then be matched up with an invoice subsequently received by BRC from the entity from which the goods were ordered. He said Mr Newman would suggest which entity was to be used in respect of each order and what would be put on the invoices. The excess money relating to the unsupplied portion of the goods was then shared between Mr Hadley and Mr Newman, although not equally according to Mr Hadley. The evidence relating to the division of the profit between Mr Hadley and Mr Newman from their arrangement will be discussed in more detail later in this chapter.

There is some discrepancy in the evidence of Mr Hadley and Mr Newman in the details of the arrangement, such as whether it was three quarters or only half of the goods which was initially agreed not to be delivered. It is clear, however, from the evidence of both that they had an agreement in place for false invoices to be issued, in respect of which the goods ordered were to be only partly delivered or not delivered at all, while the invoices would still be paid in full by BRC, with the assistance of Mr Hadley.

Mr Hadley claimed that the whole scam was Mr Newman's idea, whereas Mr Newman claimed it was Mr Hadley who came up with it. It is not necessary to resolve the issue of who instigated the scheme. What has clearly been established is the fact, undisputed by either Mr Hadley or Mr Newman, that the two of them willingly entered into an arrangement to carry out the scam, and did so using different entities over a number of years to their mutual financial advantage. The details of the amounts received by each of them through this scheme are outlined later in this chapter.

Universal Telemarketing Services Pty Ltd

Mr Stokes was the managing director of UTS and was responsible for the day to day management of its operations. It was alleged that Mr Newman, with authorisation from Mr Stokes, provided gifts on behalf of UTS as incentives to public officials employed by local councils as a reward for return business. It was further alleged that Mr Newman, again with the approval of Mr Stokes, issued false invoices in the name of UTS to BRC in respect of which goods were not delivered, and then split the profit from such dishonest dealings with Mr Hadley and Mr Stokes.

The incentive scheme

Mr Stokes agreed that UTS provided gift vouchers whose value ranged from \$50 to \$500 to buyers who placed large orders with the company, including storepeople at local councils, in order to keep UTS competitive in the market. For example, if someone placed an order for \$5,000, they would be given a \$500 gift voucher.

Mr Stokes accepted that these incentives were offered to the individuals placing the order, not the local council that is the true customer, to encourage those individuals to keep buying from UTS. He also agreed that offering a gift voucher to someone was like giving them cash. He disagreed, however, that the provision of the incentives amounted to bribing the council officers to continue doing business with UTS.

Mr Newman agreed that he participated in UTS' incentive scheme, whereby certain gifts were provided to buyers, including public officials in return for orders placed with UTS.

The Commission is satisfied that UTS engaged in the practice of offering gift vouchers to public officials as an inducement for the officials to continue placing orders with UTS, that Mr Stokes as UTS' managing director was responsible for the institution and execution of this practice, and that Mr Newman also took part in this practice in his capacity as a salesperson for UTS. The particulars relating to each of these gifts provided, however, such as the nature and value of the item and when, how and to whom it was sent, are not clear on the evidence before the Commission's inquiry. Accordingly, no findings as to corrupt conduct or statement under section 74A(2) of the ICAC Act are made by the Commission in respect of the provision of incentive gifts to public officials by Mr Stokes or Mr Newman on behalf of UTS.

Invoices issued by UTS – were they false?

A total of 46 invoices were issued to BRC by UTS between 1 April 2003 and 26 October 2007 in the total amount of \$272,151.40. It was alleged that some, not all, UTS invoices were false. It is not possible to verify whether the stock in respect of any particular UTS invoice was actually received by BRC from BRC's records alone, which cannot be relied on given that Mr Hadley was in a position to manipulate the information in those records.

Mr Stokes emphatically denied that he had any knowledge of a dishonest arrangement between Mr Newman and Mr Hadley, and said that any money provided to Mr Hadley via UTS would have been for orders that were delivered in full.

Mr Newman told the Commission that he was the only person at UTS who made sales to BRC. Given the passage of time, however, he could not recall specific details of the history of transactions between Mr Hadley and UTS, including details of what was or was not delivered in respect of any particular orders. He said, however, that he had personal knowledge of UTS having had dishonest dealings with Mr Hadley, although not all the dealings were dishonest. Mr Newman said there were transactions in respect of which goods were invoiced but not delivered by UTS, from which both UTS and Mr Hadley benefited financially, including the incident relating to funding Mr Hadley's trip to Scotland.

Mr Hadley dealt with Mr Newman in his business transactions with UTS and caused the invoices issued by UTS to be processed and paid by BRC as part of his usual duties. He told the Commission at the public inquiry, however, that he believed that the dealings with UTS were not dishonest. This evidence is not only in conflict with Mr Newman's evidence, but also with Mr Hadley's own evidence given to NSW Police on 9 October 2009, when he said that dealings with UTS were legitimate at the beginning, but towards the end became dishonest in nature by reason of goods not being supplied. It is also inconsistent with Mr Hadley's evidence that some money may have been sent to him by post in respect of his transactions with UTS.

Later at the public inquiry, Mr Hadley conceded that he could not be sure that his dealings with UTS were not dishonest and told the Commission that the practice of issuing false invoices probably started when Mr Newman was at UTS.

In these circumstances, the Commission considers that Mr Newman's evidence is likely to be more accurate and reliable than that of Mr Hadley on this issue. This is especially so since Mr Hadley provided information consistent with Mr Newman's evidence when he was interviewed by NSW Police.

False invoices from UTS – findings

In relation to the general allegation that false invoices relating to undelivered goods were used by UTS to obtain payments from BRC, there is insufficient evidence to establish that Mr Stokes participated in, or had knowledge of, any such dealings between Mr Newman and Mr Hadley. Accordingly, the Commission makes no findings as to corrupt conduct or any section 74A(2) statement in respect of Mr Stokes in relation to the general allegation that false invoices were issued by UTS.

In relation to Mr Newman and Mr Hadley, although there is some evidence that false invoices were routinely used by them to obtain money from BRC, there is uncertainty as to the timeframe within which the transactions took place, the frequency with which they occurred, the amount of money involved in the false invoices issued, and any corrupt payments made to Mr Hadley in respect of such dealings. In the circumstances, the Commission also makes no findings as to corrupt conduct or any section 74A(2) statement in respect of Mr Newman or Mr Hadley in relation to the allegation of false invoices being issued by UTS, other than in respect of the funding of Mr Hadley's trip to Scotland by UTS, dealt with below.

Mr Hadley's trip to Scotland

Mr Newman told the Commission that there was an occasion when there was a shortage of stock at UTS to fill an order placed by BRC.

Mr Hadley then suggested to Mr Newman that, instead of supplying the rest of the stock to BRC, UTS could pay for a trip to Scotland that Mr Hadley was planning to take.

Mr Newman told Mr Hadley that he could not make such a decision himself, but would have to speak to UTS' management. Mr Newman told the Commission that he subsequently spoke to Mr Stokes, who authorised him to go ahead. Mr Newman then let Mr Hadley know the decision and organised for his trip to be paid for by UTS. The invoice issued by UTS for the relevant order was paid in full by BRC, with part of the money going to UTS and the remainder being applied towards the cost of Mr Hadley's proposed trip to Scotland.

Mr Stokes did not challenge this evidence. He conceded that he vaguely recalled a conversation with Mr Newman regarding Mr Hadley going on an overseas holiday, and a proposal that UTS would pay for the trip as a kickback on the payments made by BRC to UTS. Mr Stokes said he did not pay for the whole holiday, but later conceded that he could not know whether he paid for the entire cost of the holiday or only for a part of it because he was never provided with a quote for the cost of the holiday. He also admitted that he knew his contribution would come out of the proceeds of the payment made by BRC for the invoices issued by UTS.

Mr Stokes explained that, when Mr Newman approached him about paying for Mr Hadley's trip, he did not regard it any differently from providing gift vouchers on orders, as long as the orders were big enough or frequent enough, so he authorised a payment to fund Mr Hadley's holiday.

Mr Hadley agreed that he had spoken to Mr Newman about his trip to Scotland and thought UTS was the company involved in paying for the trip. He also admitted during his interview with NSW Police on 9 October 2009 that, although he could not recall details such as relevant dates or amounts involved, he went on at least two holidays to Scotland, which he believed took place in 2005 and 2007, and probably used some of the payments he received from Mr Newman as spending money for at least one of these holidays.

Mr Newman, Mr Stokes and Mr Hadley all agreed that a cash payment was made to Mr Hadley by UTS to fund a trip to Scotland for him. Given the passage of time, however, it is not clear how much money was provided to Mr Hadley or for which trip to Scotland the financial assistance was provided.

Although Mr Stokes denied that there was ever any short-supply of goods by UTS, given the evidence of Mr Hadley and Mr Newman that they had a longstanding arrangement whereby illicit profit from unsupplied goods would be shared between them, and Mr Newman's evidence that the payment towards Mr Hadley's overseas holiday was funded from short-supply on a number of invoices, the Commission is satisfied that a trip to Scotland for Mr Hadley was funded by a short-supply of goods by UTS to BRC.

Findings of fact

The Commission is satisfied to the requisite degree that the following facts have been established:

1. Mr Hadley took at least two holidays to Scotland during the period in which he had dealings on behalf of BRC with Mr Newman of UTS.
2. Prior to taking one of these trips to Scotland, Mr Hadley asked Mr Newman for a cash payment to be made by UTS towards the cost of the trip, to be sourced from the profit made by UTS from invoices paid in full by BRC with Mr Hadley's assistance, but in respect of which the goods ordered were to be only partially supplied.
3. An unspecified amount of money was then paid to Mr Hadley to fund his trip to Scotland by Mr Newman on behalf of UTS, following Mr Newman consulting with and obtaining the approval of Mr Stokes for such a payment.
4. Mr Stokes expressly authorised the above payment to Mr Hadley to fund his holiday to Scotland as a reward for his doing business with UTS and Mr Newman organised the payment on the same basis. Mr Stokes and Mr Newman both knew that the money was to be sourced from the payments received from BRC in payment of invoices issued by UTS to BRC in respect of which the goods ordered were to be only partially supplied.

Corrupt conduct findings and section 74A(2) statements

Geoffrey Hadley

The Commission finds that Mr Hadley, by soliciting and accepting a cash payment from UTS via Mr Newman, as specified above, to be used for his personal benefit towards the cost of a holiday to Scotland, engaged in corrupt conduct. This is because the conduct directly and adversely affected the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, the conduct constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that directly and adversely affected the exercise of Mr Hadley's official functions and could involve official misconduct, bribery, obtaining or offering secret commissions and fraud within the meaning of section 8(2)(a), section 8(2)(b), section 8(2)(d) and section 8(2)(e) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Hadley has committed the criminal offences of corruptly soliciting or receiving a reward contrary to section 249B(1), obtaining financial advantage by deception pursuant to section 178BA, or obtaining financial advantage by false or misleading statements under section 178BB of the Crimes Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Hadley has, by accepting the cash payment specified above as a reward for placing orders, committed a disciplinary offence involving a substantial breach of an applicable code of conduct. In this respect, subsection 9(6) of the ICAC Act provides that a reference to a disciplinary

offence includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the LG Act.

Mr Hadley has already been sentenced to a term of imprisonment for similar conduct involving false invoices issued in the name of Robin Newman to BRC. In all the circumstances, the Commission is not 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 Hadley for a specified criminal offence.

As Mr Hadley has already left his employment at BRC, the Commission is not required to form an opinion as to whether consideration should be given to the taking of any action against him for a specified disciplinary offence.

Robin Newman

The Commission finds that, by facilitating a cash payment from UTS to Mr Hadley, as specified above, to be used for Mr Hadley's personal benefit towards the cost of his holiday to Scotland, Mr Newman engaged in corrupt conduct. This is because it was conduct that directly and adversely affected the honest or impartial exercise of Mr Hadley's official functions and therefore comes within section 8(1)(a) of the ICAC Act. It was also conduct that directly and adversely affected the exercise of Mr Hadley's official functions and that could have involved official misconduct, bribery, obtaining or offering secret commissions and fraud within the meaning of section 8(2)(a), section 8(2)(b), section 8(2)(d) and section 8(2)(e) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Newman has committed the criminal offences of corruptly giving a reward contrary to section 249B(2), obtaining financial advantage by deception pursuant to section 178BA, or obtaining financial advantage by false or misleading statements under section 178BB of the Crimes Act.

Mr Newman has already been sentenced to a term of imprisonment for similar conduct involving false invoices issued in his name to BRC. In all the circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Newman for a specified criminal offence.

Michael Stokes

The Commission finds that, by authorising a cash payment from UTS to Mr Hadley, as specified above, to be used for Mr Hadley's personal benefit towards the cost of his

holiday to Scotland as a reward for Mr Hadley continuing to place orders with UTS on behalf of BRC, Mr Stokes engaged in corrupt conduct. This is because it was conduct that directly and adversely affected the honest or impartial exercise of Mr Hadley's official functions and therefore comes within section 8(1)(a) of the ICAC Act. It was also conduct that directly and adversely affected the exercise of Mr Hadley's official functions and that could have involved official misconduct, bribery, or obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Stokes has committed the criminal offence of corruptly giving a reward contrary to section 249B(2) 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 Stokes for the criminal offence of corruptly giving a reward contrary to section 249B(2) of the Crimes Act. Although Mr Stokes, Mr Hadley and Mr Newman all gave their evidence under objection at the public inquiry, statements could be obtained from Mr Hadley and Mr Newman to assist in the prosecution of Mr Stokes for the above offence.

False invoices in the name of Robin Newman

It was alleged that Mr Newman issued false invoices to BRC in his own name, using a fictitious company called Robin Newman Pty Ltd, in respect of goods that were not delivered, arranged for these invoices to be paid by BRC with the assistance of Mr Hadley, and shared the profits derived from this scam with Mr Hadley.

Dishonest dealings

Mr Newman told the Commission that the dishonest dealings with UTS stopped at some point because UTS let Mr Hadley down by refusing to pay for another overseas trip that he wanted. Mr Newman said Mr Stokes was not happy about having to pay for a further overseas trip. Mr Stokes, however, denied knowing anything about this second holiday. In any event, according to Mr Newman, Mr Hadley stopped doing business with UTS altogether as a result of his request for funding of a second holiday not being met.

Mr Newman explained that he then created Robin Newman Pty Ltd, a fictitious company with an ABN belonging to his wife, and used it as a vehicle for continuing

the dishonest arrangement with Mr Hadley. Mr Newman was reluctant to commit to a date on which this practice commenced. Given that the first Robin Newman invoice was issued on 10 December 2003, it can be inferred that such dealings probably started around this time.

Numerous invoices in the name of Robin Newman were issued to BRC between 10 December 2003 and 16 September 2008 for the supply of various products, in the total amount of \$797,135.13. These invoices showed Mr Newman's own name on their face rather than the name of the sham company Robin Newman Pty Ltd; however, many of them quoted the ABN used for that company. Mr Newman admitted that he used the ABN in order to present the company as a legitimate trading entity to BRC.

Mr Newman admitted that all of the invoices issued in his name were false, in that no goods were ever supplied in respect of them. This is supported by the fact that, while all of these invoices were paid, BRC was unable to find any records that showed delivery of goods in respect of the invoices.

Mr Hadley told the Commission that he did not know Robin Newman Pty Ltd was a sham company at the time these invoices were issued to BRC. He also denied that all these invoices were false, in that no goods were ever supplied, maintaining that some orders were part-supplied at the start. He did, however, admit receiving cash payments from Mr Newman in return for facilitating the payment of false invoices issued by Mr Newman.

The Commission does not accept Mr Hadley's evidence that not all of the invoices issued in the name of Robin Newman were false, which conflicts with the evidence of Mr Newman. Mr Hadley's evidence is also inconsistent with the police facts in relation to which both he and Mr Newman entered pleas of guilty and were sentenced to terms of imprisonment. The charges laid by NSW Police, and subsequently accepted by Mr Hadley and Mr Newman, proceeded on the basis that the invoices from Robin Newman in the total amount of \$757,467.15 (somewhat short of the true total amount of \$797,135.13) were false. Further, Mr Hadley admitted at the public inquiry that he was not in a position to deny that all of the invoices from Robin Newman represented sham transactions in respect of which no goods were delivered.

Further, it is implausible that a sham entity employed for the purpose of issuing false invoices would have been capable of honouring any order placed. Moreover, given the breadth of Mr Hadley's involvement in dealing with false invoices, it seems unlikely that his recollection could be precise in this regard. The Commission therefore prefers Mr Newman's evidence on this issue and is satisfied that all invoices issued in the name of Robin Newman, to a total amount of \$797,135.13, were false by reason of the non-delivery of the goods to which they purported to relate.

Payments by Mr Newman to Mr Hadley

Mr Hadley admitted that he received corrupt payments from Mr Newman, starting from quite early in their relationship, possibly in 2005 or 2006. He provided Mr Newman with the details of his four bank accounts, and Mr Newman deposited money from time to time in each of these accounts, which represented Mr Hadley's share of the proceeds of their scheme involving issuing false invoices to BRC. He confirmed that Mr Newman also sent him money in the post, usually in an amount ranging from \$500 to \$1,000, but occasionally in larger amounts up to \$10,000.

Mr Hadley told the Commission that Mr Newman would call him on the phone and let him know to expect a payment, but there were times when he had to ring Mr Newman to remind him that a payment was due. Mr Hadley said he sometimes put the cash received in his bank account, but otherwise he spent it on ordinary living expenses.

Mr Hadley also told the Commission that there was no agreed percentage for how the money was to be divided between Mr Newman and him. His understanding was that Mr Newman would deduct his expenses, including taxes, from the total amount, and then share the remainder equally with Mr Hadley. Despite the fact that the scheme obviously could not have operated without Mr Hadley's key role in it, he said it was Mr Newman who determined how the proceeds were to be split between them.

Mr Newman made 29 cheque deposits into Mr Hadley's bank accounts, to a total amount of \$217,168.40. These deposits usually occurred the day after Mr Newman received payment from BRC. The relevant 29 invoices issued by Mr Newman to BRC, which preceded and are referable to the 29 cheque deposits made by Mr Newman to Mr Hadley, totalled \$376,456.32. This indicates that Mr Hadley received payments equivalent to more than half of the value of the invoices.

Findings of fact

The Commission is satisfied to the requisite degree that the following facts have been established:

1. Mr Newman issued false invoices to BRC in respect of which no goods were supplied in the total amount of \$797,135.13.
2. Mr Hadley facilitated the payment by BRC of these invoices, which he knew to be false.
3. Mr Newman paid Mr Hadley, and Mr Hadley received from Mr Newman, payments by cheque or direct deposit to a minimum total amount of \$217,168.40 and an unspecified amount in cash by post, in return for facilitating payment of these false invoices by BRC.

Corrupt conduct findings and section 74A(2) statements

Geoffrey Hadley

The Commission finds that Mr Hadley, by receiving payments from Mr Newman to facilitate the payment by BRC of false invoices, as specified above, engaged in corrupt conduct. This is because the conduct directly and adversely affected the honest or impartial exercise of Mr Hadley's official functions under section 8(1)(a) of the ICAC Act, the conduct constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that directly and adversely affected the exercise of Mr Hadley's official functions and could involve official misconduct, bribery, obtaining or offering secret commissions and fraud within the meaning of section 8(2)(a), section 8(2)(b), section 8(2)(d) and section 8(2)(e) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Hadley has committed the criminal offences of corruptly soliciting or receiving a reward contrary to section 249B(1), obtaining financial advantage by deception pursuant to section 178BA, or obtaining financial advantage by false or misleading statements under section 178BB of the Crimes Act.

Mr Hadley has already been dealt with under the criminal law for a significant part of the above conduct. In all the circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Hadley for a specified criminal offence.

As Mr Hadley has already left his employment at BRC, the Commission is not required to form an opinion as to whether consideration should be given to the taking of any action against him for a specified disciplinary offence.

Robin Newman

The Commission finds that, by issuing false invoices to BRC and by making payments to Mr Hadley, as specified above, Mr Newman engaged in corrupt conduct. This is because it was conduct that directly and adversely affected the honest or impartial exercise of Mr Hadley's official functions and therefore comes within section 8(1)(a) of the ICAC Act. Such conduct was also conduct that directly and adversely affected the exercise of Mr Hadley's official functions and that could have involved official misconduct,

bribery, obtaining or offering secret commissions and fraud within the meaning of section 8(2)(a), section 8(2)(b), section 8(2)(d) and section 8(2)(e) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Newman has committed criminal offences of corruptly giving a reward contrary to section 249B(2), obtaining financial advantage by deception pursuant to section 178BA, or obtaining financial advantage by false or misleading statements under section 178BB of the Crimes Act.

Mr Newman has already been dealt with under the criminal law for a significant part of the above conduct. In all the circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Newman for a specified criminal offence.

Pinnacle Traders Pty Ltd

Pinnacle was registered as a company on 8 April 2005 and dissolved on 30 August 2009. Mr Newman was the company director and secretary and Mr Stokes was the sole shareholder, although Mr Newman erroneously believed he also had a shareholding in the company.

It was alleged that Mr Newman, with the knowledge and participation of Mr Stokes, issued false invoices in the name of Pinnacle to BRC for goods that were not supplied. It was also alleged that Mr Hadley facilitated payment of these false invoices by BRC in return for corrupt payments from Mr Newman, and that Mr Newman and Mr Stokes then shared the remaining profit from the scam. A key issue in dispute was whether Mr Stokes was a willing party who obtained a financial benefit from this scam or whether the scam was carried out by Mr Newman without the knowledge of Mr Stokes.

Evidence of Mr Newman

Mr Newman told the Commission that Pinnacle was initially created as a legitimate company by agreement between Mr Stokes and him. It was intended that Mr Newman would import respiratory masks from overseas for UTS, and would then share with Mr Stokes any profits from on-selling the masks through Pinnacle. The idea of importing respiratory masks never got off the ground, and eventually Pinnacle was put to a different use, namely selling to BRC.

Mr Newman said that the same type of dishonest transactions involving BRC occurred with Pinnacle as with the false invoices issued in his own name. Mr Hadley also

admitted that he and Mr Newman used Pinnacle to carry out dishonest dealings with BRC.

Invoices were issued by Pinnacle to BRC during the period from 9 January 2005 to 29 January 2009 in the total amount of \$178,311.19, which was paid in full by BRC.

In light of Mr Newman's claim that Pinnacle was initially set up for legitimate purposes, it is significant that the first Pinnacle invoice to BRC was issued about three months before the company was even incorporated. It is also significant that the vast majority of goods identified on these invoices related to goods that have been found by this investigation to have been grossly over-ordered, such as barrier safety mesh and guideposts.

Mr Newman told the Commission that no stock was ever sent to BRC by Pinnacle, and every single invoice issued by Pinnacle to BRC was therefore false. Mr Newman's evidence is consistent with the absence of BRC records evidencing that the relevant goods were in fact received by BRC. It is also confirmed by the evidence of Mr Hadley, who admitted that he received cash payments from Mr Newman in return for facilitating the payment of false invoices from Pinnacle in respect of goods that were not supplied. Mr Newman said 50% of the profit made from this arrangement was given to Mr Hadley, and the remaining 50% was shared equally between Mr Stokes and himself.

Mr Newman and Mr Stokes were both signatories to Pinnacle's company bank account, and both their signatures were required for transactions to be conducted. Mr Newman said that, once the money received from BRC for Pinnacle's false invoices went into Pinnacle's account, he and Mr Stokes would go to the bank together to withdraw the money and divide it up between themselves. Mr Newman would then send the rest of the money to Mr Hadley, originally by making deposits into the bank account nominated by Mr Hadley, and later by posting cash to him.

Consistently with this evidence, an examination of Mr Hadley's and Pinnacle's bank accounts identified the following deposits into Mr Hadley's bank account corresponding with withdrawals from Pinnacle's bank account, in the total amount of \$17,500 (see below).

Date	Amount	Deposit
12/12/2005	\$5,000.00	Cash
22/03/2006	\$3,000.00	Cheque
22/03/2006	\$9,000.00	Cheque
17/08/2006	\$500.00	Cash
Total	\$17,500.00	

Mr Newman was adamant that Mr Stokes knew what they were doing and why. He told the Commission that before a false invoice was issued by Pinnacle, discussions about its content would take place between Mr Stokes and himself, and the raising of a false invoice might be initiated by Mr Stokes, Mr Hadley or himself.

Mr Newman said he stopped these dishonest dealings on behalf of Pinnacle after the last invoice dated 29 January 2009, which is about two months after allegations that BRC had been defrauded by Mr Newman and others were first made in an email to BRC dated 29 November 2008 by Mr X (name has been suppressed), whose evidence is discussed in detail later in this chapter. Mr Newman claimed that he stopped these dealings because he heard, possibly from a client of his, that "there was problems", although he was not told that the problems involved the Commission.

Evidence of Mr Stokes

Consistently with Mr Newman's evidence, Mr Stokes told the Commission that Pinnacle was originally set up as an incentive for Mr Newman to continue to work hard for Mr Stokes, and that the initial idea of importing respiratory masks was not a success and had to be abandoned.

Mr Stokes insisted, however, that Pinnacle was Mr Newman's company and he, Mr Stokes, did not have anything to do with it and did not make any money out of it. He denied that Pinnacle was a partnership between Mr Newman and himself, as Mr Newman stated. He also suggested that it was Mr Newman, and not he, who arranged for the new company to be set up.

Mr Stokes' evidence is inconsistent with credible documentary evidence, such as records held by the Australian Securities and Investments Commission (ASIC), showing him to have been the sole shareholder of Pinnacle since the company was first registered on 8 April 2005, with the shares in the company fully paid up. Despite this, Mr Stokes maintained that he never paid for any shares in Pinnacle, and was not aware that he owned the company until he gave evidence at the public inquiry. He accepted the accuracy of the ASIC records, however.

The pre-incorporation minutes of a meeting of members dated 8 of April 2005 is further evidence that Mr Stokes was involved with Pinnacle. These minutes record the appointment of Mr Newman as Pinnacle's director and a resolution by the sole member, that is Mr Stokes, that BH Shelf Companies Pty Ltd be appointed as agent for the purpose of the registration of Pinnacle as a company. This document is signed by Mr Stokes. The application for registration document not only shows Mr Stokes as the sole member, but is signed by a representative of BH Shelf Companies Pty Ltd, the agent that he authorised to apply

for registration of the company. This documentation shows that Mr Stokes took an active role in establishing Pinnacle and was well aware of the respective roles that he and Mr Newman held in respect of the new company.

In these circumstances, Mr Stokes' claim that it was Mr Newman who gave instructions for Pinnacle to be set up as a company, and that he did not know until the day he gave evidence on 18 October 2011 that he was a shareholder in Pinnacle, is unconvincing.

Mr Stokes also attempted to dissociate himself from the operations of Pinnacle, notwithstanding that the company was run from the same premises as UTS and that he was a co-signatory to Pinnacle's bank account with Mr Newman, so that every cheque to be cashed had to be countersigned by both of them. Mr Stokes accepted that he would have seen and signed the Pinnacle cheques used to withdraw funds from the Pinnacle company account to deposit into Mr Hadley's account. He denied, however, knowing that Mr Newman was using these cheques to put money in Mr Hadley's account or knowing about activities on the Pinnacle account that he said he "didn't want to know" about.

Mr Stokes claimed that the only reason that he was a co-signatory was because he was a successful businessman and Mr Newman wanted to emulate him, not because he, Mr Stokes, was equally entitled to control Pinnacle's company funds in accordance with his arrangement with Mr Newman. He also claimed that Mr Newman was a big gambler and therefore wanted Mr Stokes' help in restraining him from wasting money on gambling. Mr Stokes said that he was just a rubber stamp, and did not make sure that what he was signing was appropriate.

Mr Stokes was reminded of two cheques in the amounts of \$3,000 and \$9,000, which were both drawn on 22 March 2006 and signed by Mr Newman and him. Mr Newman agreed that the proceeds of both of these cheques were deposited into Mr Hadley's account in payment of his 50% share under their scheme. Mr Stokes was asked if he made an enquiry of Mr Newman about the purpose of cashing two cheques on the same day. He replied that he did not recall such a conversation, but, if he did ask Mr Newman why he needed cheques to be cashed, Mr Newman would tell him that it was to purchase stock.

The example of the two cheques referred to above demonstrates that Mr Stokes failed to discharge either of the two functions entrusted to him (according to Mr Stokes' own evidence) by Mr Newman in making him the co-signatory to Pinnacle's account. That is, he did not advise Mr Newman, as his mentor in business, that cashing \$12,000 of the company's funds on one day was not a good way of keeping track of where the money was going nor did he show concern that Mr Newman might fritter away any profit. He did not question Mr Newman as to whether

he wanted the money for gambling. Mr Stokes admitted that he let Mr Newman "run his own race"; however, he denied that the reasons he provided to the Commission for being a co-signatory to the Pinnacle account were untrue.

Mr Stokes firmly denied that he was a party to the dishonest arrangement involving Pinnacle and Mr Hadley or that he received a share of the proceeds.

Evidence of Mr X

Mr Stokes' disavowal of any involvement in Pinnacle's dishonest dealings with Mr Hadley is in direct conflict with the evidence of Mr Newman, and also that of another former employee of UTS, Mr X.

Mr X worked at UTS for a number of years and was employed there during the period relevant to this investigation. He confirmed that he sent an email to BRC dated 29 November 2008, when he was "quite drunk", and a further email dated 29 March 2009 to Andrew MacLean, a detective senior constable of the NSW Police. The allegations made by Mr X in these two emails were to the effect that Mr Hadley, Mr Newman, Mr Stokes, UTS, Pinnacle and others were involved in fraudulent dealings with BRC and other local councils. These emails eventually led to investigations by BRC, NSW Police and the Commission.

Mr X confirmed at the public inquiry that what he had said in these two emails was true. As well as being an employee of UTS, Mr X had a personal relationship with Mr Stokes and Mr Newman and often took part in social engagements with them. In these circumstances, it would not be unreasonable to assume that he was in a position to have first-hand knowledge of the things he asserted in his emails.

Mr X told the Commission that he saw the name Pinnacle on a folder containing outstanding invoices at the UTS premises, as well as on UTS' computer, which had a separate MYOB file for Pinnacle.

Mr X said that he first heard about Pinnacle at a new year's eve party at Mr Stokes' home, where he was a frequent visitor. He had the following conversation with Mr Stokes on that occasion, when he asked Mr Stokes whether he was worried about his company, UTS.

[Mr X]:

I said to Mick, you know, what was going on and he said well, it's nothing to worry about. We've set up a, I've had Robin set up a company called Pinnacle Traders and I've put him down – well, he's been put down as the, as the head guy so that if the shit hits the fan eventually he'll be the one that goes.

[Counsel Assisting]: *Did he say why there might be some prospect of any shit hitting a fan?*

[Mr X]: *You see, I'm – 'cause it was so long ago I'm hazy on details. I can't remember whether the, the subject had come up over non-supply, I'm not sure.*

At his compulsory examination on 12 August 2011, Mr X told the Commission that he heard things about “non-supply, it was non-supply Bathurst Council. Somehow Robin [Newman] had got into this Geoff Hadley's head and organised this non-supply through – and it was put through Pinnacle Traders so that Mick could keep his little UTS safe...”. He was not sure whether he heard the references to non-supply at Mr Stokes' party or at another time, but he said he could not have heard about the non-supply from anyone other than Mr Stokes. Mr X also said he knew of stock being supplied to BRC by UTS but not by Pinnacle, nor was he aware of any stock that belonged to Pinnacle in the UTS store.

Mr X said that UTS had an open plan office, and he would sometimes hear Mr Newman saying to Mr Stokes that Mr Hadley had rung and demanded more money, and then the two of them would have a discussion about the matter. Mr X therefore formed the impression that, as Mr Stokes had a very successful business going with UTS and did not want to put it at risk by having “dodgy” invoices going through it, he and Mr Newman had decided to set up Pinnacle to use for the purpose of issuing false invoices to BRC.

One day at UTS, Mr X saw Mr Newman get out of his truck and an envelope fell on the ground. Mr X picked it up, opened it and saw that it was a remittance advice from BRC for about \$17,000 made out to Pinnacle. Mr X went up to Mr Newman and said to him, “mate, you really shouldn't be leaving this stuff lying around on the driveway”. Mr X explained to the Commission that he said this because he thought, if Mr Newman was “still doing his little non-supplies with Bathurst Council”, he should be keeping it to himself, especially if Mr Stokes did not know about it. Mr X said Mr Stokes was involved in the Pinnacle scheme, but he got the impression that, towards the end, Mr Newman was issuing Pinnacle invoices without Mr Stokes' knowledge.

Finally, Mr X told the Commission that both Mr Newman and Mr Stokes gambled, saying “it wouldn't be a big deal for Robin to drop 1,000 in the pokie at lunch or Mick Stokes to have a table totally covered with every combination of Keno that you could possibly think of”.

Given all these circumstances, Mr X was certain that Mr Stokes was well and truly involved in the dishonest dealings between Pinnacle, Mr Hadley and Mr Newman.

The evidence given by Mr X in relation to Mr Stokes' knowledge of the scam is consistent with the evidence of Mr Newman on this issue.

Conflicting accounts

Mr Stokes sought to explain the direct conflict between his evidence regarding his knowledge of, and participation in, Pinnacle's dishonest dealings with Mr Hadley, and the evidence of Mr X and Mr Newman on this point, by suggesting that they did not tell the truth to the Commission. He said Mr Newman had a grievance against him because there was a dramatic fallout between them, which Mr Stokes described as “a war”, some months before UTS went into liquidation, and they had never been friends since or even talked to each other again. He said that Mr X was another UTS staff member who left the company on bad terms.

Notwithstanding that Mr Newman and Mr X may well have had grievances against Mr Stokes, the Commission found their evidence consistent, persuasive and supported in important respects by credible documentary evidence.

Mr Stokes' evidence, on the other hand, was far from convincing. It is unlikely that whoever set up Pinnacle with Mr Stokes as the 100% shareholder would have done so without Mr Stokes' instructions or authority. It is also unlikely that Mr Newman would purchase stock in cash for an amount as large as \$12,000, which was the total amount of the two cheques cashed, with Mr Stokes' authority on 22 March 2006. It is far more probable that such withdrawals were made for the purpose of making corrupt payments to Mr Hadley and splitting the remaining proceeds between Mr Stokes and Mr Newman, as Mr Newman has stated. Further, Mr Stokes' claim that he was not aware of the substantial sums of money that were withdrawn from Pinnacle's account through his co-signing cash cheques with Mr Newman is simply not believable.

On the whole, Mr Newman's evidence throughout the public inquiry was compelling in that his account was consistent and in all material respects corroborated by circumstantial evidence and credible documentary evidence, such as ASIC documentation and banking records. Mr Newman's evidence was also corroborated by the testimony of Mr X who was, in the Commission's view, a credible and truthful witness.

Accordingly, on this issue the Commission accepts the evidence of Mr Newman and Mr X, and rejects the evidence of Mr Stokes.

Findings of fact

The Commission is satisfied to the requisite degree that the following facts have been established:

1. Mr Newman, with the knowledge of and participation by Mr Stokes, issued false invoices in the name of Pinnacle in respect of which no goods were supplied to BRC in the total amount of \$178,311.19.
2. Mr Hadley facilitated the payment of these false invoices by BRC.
3. With the knowledge and approval of Mr Stokes, Mr Newman paid Mr Hadley, and Mr Hadley received from Mr Newman, payments in the minimum total amount of \$17,500 by way of cheque or direct deposits into Mr Hadley's bank account and an unspecified amount in cash by post, in return for facilitating payment of these false invoices by BRC.
4. Mr Newman and Mr Stokes split the remaining proceeds of the dishonest scheme involving Pinnacle between themselves, in unspecified amounts.

Corrupt conduct findings and section 74A(2) statements

Geoffrey Hadley

The Commission finds that Mr Hadley, by receiving payments from Mr Newman, as specified above, as a reward for facilitating payment by BRC of false invoices issued by Pinnacle in respect of which no goods were delivered, engaged in corrupt conduct. This is because the conduct directly and adversely affected the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that directly and adversely affected the exercise of Mr Hadley's official functions and could involve official misconduct, bribery, obtaining or offering secret commissions and fraud within the meaning of section 8(2)(a), section 8(2)(b), section 8(2)(d) and section 8(2)(e) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Hadley has committed

criminal offences of corruptly soliciting or receiving a reward contrary to section 249B(1), obtaining financial advantage by deception pursuant to section 178BA, or obtaining financial advantage by false or misleading statements under section 178BB of the Crimes Act.

Mr Hadley has already been dealt with under the criminal law for, in substance, similar conduct involving false invoices issued by Mr Newman in the name of Robin Newman Pty Ltd. In all the circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Hadley for a specified criminal offence.

As Mr Hadley has already left his employment at BRC, the Commission is not required to form an opinion as to whether consideration should be given to the taking of any action against him for a specified disciplinary offence.

Robin Newman

The Commission finds that, by issuing false invoices in the name of Pinnacle to BRC, as specified above, and by making payments, as specified above, to Mr Hadley in return for his facilitating the payment of these false invoices, Mr Newman engaged in corrupt conduct. This is because it was conduct that directly and adversely affected the honest or impartial exercise of Mr Hadley's official functions and therefore comes within section 8(1)(a) of the ICAC Act. Such conduct was also conduct that directly and adversely affected the exercise of Mr Hadley's official functions and that could have involved official misconduct, bribery, obtaining or offering secret commissions and fraud within the meaning of section 8(2)(a), section 8(2)(b), section 8(2)(d) and section 8(2)(e) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Newman has committed criminal offences of corruptly giving a reward contrary to section 249B(2), obtaining financial advantage by deception pursuant to section 178BA, or obtaining financial advantage by false or misleading statements under section 178BB of the Crimes Act.

Mr Newman has already been dealt with under the criminal law for, in substance, similar conduct involving false invoices issued by him in his name. In all the circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Newman for a specified criminal offence.

Michael Stokes

The Commission finds that, by participating in the issuing of false invoices by Pinnacle to BRC, as specified above, and by making payments, as specified above, to Mr Hadley in return for his facilitating the payment of these false invoices, Mr Stokes engaged in corrupt conduct. This is because it was conduct that directly and adversely affected the honest or impartial exercise of Mr Hadley's official functions under section 8(1)(a) of the ICAC Act. Such conduct was also conduct that directly and adversely affected the exercise of Mr Hadley's official functions and that could have involved official misconduct, bribery, obtaining or offering secret commissions and fraud within the meaning of section 8(2)(a), section 8(2)(b), section 8(2)(d) and section 8(2)(e) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Stokes has committed criminal offences of corruptly giving a reward contrary to section 249B(2), obtaining financial advantage by deception pursuant to section 178BA, or obtaining financial advantage by false or misleading statements under section 178BB 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 Stokes for an offence of corruptly giving a reward contrary to section 249B(2), obtaining financial advantage by deception pursuant to section 178BA, or obtaining financial advantage by false or misleading statements under section 178BB of the Crimes Act. Although Mr Stokes, Mr Hadley and Mr Newman all gave their evidence under objection at the public inquiry, statements could be obtained from Mr Hadley and Mr Newman to assist in the prosecution of Mr Stokes for the above offences and there is also a quantity of credible documentary evidence available.

Paul Wright and PAE Industries

Paul Wright was a sole trader, under the business name PAE Industries ("PAE"), and supplied gloves, clothing, and other industrial consumables. The business ceased trading in 2010.

Mr Wright was the only signatory to the business account for PAE, into which relevant payments from BRC were deposited. He also had three other personal accounts, which he said were used at times for business purposes.

The allegations concerning Mr Wright relate to invoices issued to BRC in the name of PAE, totalling \$331,546.60, between 10 February 2006 and 30 January 2009. It was alleged that these invoices were issued by Mr Wright at Mr

Newman's instructions, but that the relevant stock was not supplied. It was further alleged that Mr Hadley facilitated the payment of these false invoices, and the profit from this scam was then divided between Mr Hadley, Mr Newman and Mr Wright. A key issue in dispute was whether Mr Wright was a willing party to this arrangement and obtained a financial benefit from it or whether the scam was carried out by Mr Newman without the knowledge of Mr Wright.

Mr Hadley's evidence

When asked which companies were involved in the scam against BRC, Mr Hadley volunteered the name of PAE along with Robin Newman/Robin Newman Pty Ltd and Pinnacle. He said, however, that he always dealt with Mr Newman and did not know Mr Wright. Mr Hadley confirmed that all invoices from PAE were entirely bogus, as no goods were delivered. He told the Commission that Mr Newman sent him cash payments through the post for facilitating payment of these invoices by BRC.

Mr Newman's evidence

Mr Newman told the Commission that Mr Wright was a supplier of goods to UTS. He said Mr Wright approached him for help when PAE got into serious financial trouble some years ago. Mr Newman suspected that Mr Wright already knew about Mr Newman's dishonest dealings with Mr Hadley in relation to BRC. Mr Newman agreed to help by arranging orders with Mr Hadley and getting Mr Wright to send invoices to BRC in the name of PAE. Mr Newman said he and Mr Hadley would talk on the phone and decide what to put on an invoice, and then Mr Newman would telephone Mr Wright and tell him the items and amounts to be identified on the invoice. Mr Newman acted as an intermediary between Mr Hadley and Mr Wright, and they did not have any direct contact with each other.

Non-supply of goods – PAE invoices

Mr Newman initially said he could not remember whether any goods were supplied or not, and that there "may have been only minor bits and pieces supplied". He later admitted that no goods were supplied in respect of the PAE invoices sent to BRC. He told the Commission that this scam involving PAE invoices, to which Mr Wright was a party, ran concurrently with the scam involving invoices from Robin Newman and Pinnacle.

BRC records indicate PAE submitted invoices totalling \$331,546.60 between 10 February 2006 and 30 January 2009, which were paid in full by BRC. The invoices predominantly related to HOBAS pipe, associated material and barrier safety mesh of various kinds. As discussed in preceding sections, these items arouse suspicion because, in the case of the HOBAS pipe, it was unavailable for supply

in Australia and, in the case of the other material, the amount ordered grossly exceeded the quantity reasonably required by BRC. There are no records that show delivery of goods pertaining to these invoices, which is consistent with the evidence of Mr Hadley and Mr Newman that no goods were ever delivered.

Division of profit

Mr Newman told the Commission that the payment PAE received from BRC went into PAE's bank account. Mr Wright retained the amounts required for GST and other tax purposes, and drew out about half of the remaining profit in cash for Mr Newman to pass on to Mr Hadley. The remaining half would be shared between Mr Newman and Mr Wright. Mr Newman said that he would get his share from Mr Wright in cash, usually at the same time that he received the money due to Mr Hadley. He said he did not know what Mr Wright did with his share of the money.

Of the \$331,546.60 paid by BRC to PAE, \$155,823.00 (almost half) was withdrawn in cash, and \$144,620.80 (most of the balance) transferred to another account operated by Mr Wright, making a total of \$300,443.80 in withdrawals. The rest of the money received from BRC (less than 10%) remained in the PAE account. Mr Newman agreed that the cash withdrawals represented the money that was given to him by Mr Wright to pass on to Mr Hadley, although he could not remember if he gave all of it to Mr Hadley or took some of the money himself.

Mr Newman said he did not have authority to operate PAE's bank account and relied on Mr Wright to give him the cash for his and Mr Hadley's share. He also said he did not believe he ever provided Mr Wright with Mr Hadley's bank account details to enable Mr Wright to make direct deposits into Mr Hadley's account, nor did he think Mr Wright ever gave him a cheque to deposit into one of Mr Hadley's accounts.

Mr Newman agreed that there was no reason for Mr Wright to withdraw cash to pay himself, since the money was already in the bank account of PAE, which he owned. It would therefore appear that, contrary to what Mr Newman thought was their arrangement, Mr Wright kept about 50% of the proceeds of the scam for himself and gave the other 50% to Mr Newman to split with Mr Hadley. Mr Newman insisted, however, that this did not occur, as he knew how much was invoiced to BRC by PAE. Although Mr Wright did not provide him with copies of the invoices, Mr Newman would do a quick calculation in his head to work out how much a particular invoice would come to, having discussed with Mr Hadley what items BRC could be invoiced for. Mr Newman acknowledged that he did not physically see the invoices that went to BRC, nor did he see the payments from BRC that were deposited into PAE's account. He finally agreed that the money Mr Wright gave him in cash (representing

almost half of the payments received from BRC) was given to him to share with Mr Hadley, with Mr Wright keeping whatever was left.

Mr Wright's evidence

Non-supply of goods

Mr Wright told the Commission that he came to know Mr Newman while PAE was a supplier to UTS. He denied knowing or having ever met or spoken to Mr Hadley. Contrary to Mr Newman's evidence, he claimed it was Mr Newman who first approached him with the business proposition, to which he agreed, whereby Mr Newman would get orders from BRC and Mr Wright would issue invoices for these orders in the name of PAE. He confirmed that Mr Newman would tell him exactly what had to go on the invoices and that he knew the invoices were being sent to Mr Hadley at BRC, but claimed he was not aware of the invoices being part of a dishonest scheme. He claimed he did not know what goods Mr Newman supplied and what he did not supply, although he now accepted, in the light of Mr Newman's evidence, that the goods were never delivered to BRC.

Mr Wright claimed that, in obtaining orders for PAE from BRC, Mr Newman was not acting on behalf of UTS but as Mr Wright's agent, and that he paid Mr Newman commission and funds to purchase stock. He agreed that this meant Mr Newman was working for him in competition with Mr Newman's employer UTS, since UTS and PAE supplied the same type of products. Mr Wright thought that the reason Mr Newman was using Mr Wright instead of just getting more orders for UTS was because Mr Newman "wanted more money on the side". Mr Wright denied that he himself participated in any form of cheating, and insisted that he was not guilty of any wrongdoing.

Mr Wright told the Commission that the goods for BRC were never supplied by him, but were sourced and dispatched to BRC (and Yass Valley Council, discussed later in this chapter) by Mr Newman, who Mr Wright would then pay for the stock. Mr Wright said he assumed that Mr Newman, who told him he had his own suppliers, was obtaining the goods on credit by using contacts from UTS, and believed that Mr Newman would be able to get better prices for the goods than he could. He claimed that Mr Newman had given him paperwork relating to purchase of stock, and insisted that he did not know Mr Newman was actually not supplying the goods. He acknowledged, however, that he never got signed delivery notes from BRC or sighted any that Mr Newman received from BRC. He also admitted that he had no records of payments he claimed he had made to Mr Newman to buy stock, but said that all records were no longer available, following the cessation of PAE's business operations.

Mr Wright also acknowledged that Mr Newman sometimes asked him to split invoices so that more than one invoice would be issued to BRC on the same date, as was the case on 13 March 2006 when several separate invoices were sent to BRC at Mr Newman's request. Mr Wright said he did not ask Mr Newman why he wanted the invoices split, and Mr Newman did not provide any reasons for splitting the invoices.

Mr Wright's evidence, that he had no knowledge of the invoices he issued to BRC being false, is in direct conflict with Mr Newman's evidence that it was Mr Wright who came up with the idea of the scam and approached Mr Newman for his assistance in carrying it out.

Division of profit

Mr Wright maintained that about 80% to 85% of the total amount of each invoice paid by BRC was given to Mr Newman to purchase stock as well as for his commission. This money was paid from the PAE account in cash and given to Mr Newman in person near Mr Wright's bank or at Mr Newman's work, as requested by Mr Newman. Mr Wright said PAE did not have a ledger, and although he kept bank statements, he had computer records only of money coming in, not money going out. When asked how he then knew what profit he was making, he replied that he did not really know, despite acknowledging that all the money he received from the local councils he dealt with went into PAE's bank account, and he was therefore in a position to know exactly what was received in the bank account and what was paid out from it.

It was pointed out to Mr Wright that the transaction details of the PAE account showed that substantial amounts of cash were drawn immediately following deposits of payments from BRC, however only about half of the invoice total appears to have been paid to Mr Newman. Mr Wright explained that, because he had a previous experience of having a garnishee order put on his PAE account, when BRC paid his invoices he transferred money from that account to his personal account to protect the funds, and then paid Mr Newman also out of that personal account.

In the Commission's view, this claim is not believable. There is no logical reason why Mr Wright would take the trouble to transfer funds from one account to another and then pay Mr Newman from two separate accounts rather than just from one. This exercise would have complicated and delayed the process of payment to Mr Newman, with no possible benefit to either Mr Wright or Mr Newman. Further, for Mr Wright's claim to be correct, there would have to be evidence of cash withdrawals of substantial sums of money from his personal account, since the combination of moneys withdrawn from the PAE account and from Mr Wright's personal account would

have to make up 80% to 85% of the total value of invoices paid by BRC, which is \$331,546.60. There is no credible documentary evidence that supports Mr Wright's claims in this regard.

In all the circumstances, the Commission is satisfied that the only payments made to Mr Newman came out of PAE's business account, and that Mr Wright retained for himself in his personal account about half of the total amount received from BRC for the false invoices. In any event, the Commission is satisfied that each of Messrs Wright, Newman and Hadley shared the profit made from the scam.

Payments to Mr Hadley

Mr Wright denied he knew Mr Hadley, other than as Mr Newman's contact at BRC, and maintained that he did not have anything to do with him. An examination of PAE's bank account and Mr Hadley's bank accounts did not show any payments to Mr Hadley made by PAE or Mr Wright by way of direct debits or cheque payments. Curiously enough, however, on three separate occasions (5 October 2007, 30 April 2008 and 17 December 2008) withdrawals of \$600, \$2,000 and \$200, respectively, were made from PAE's account, and the same amounts were deposited into Mr Hadley's credit card account on the same dates.

Mr Wright denied having made any payments to Mr Hadley himself, and suggested the possibility that the money was given to Mr Newman who, in turn, made the deposits into Mr Hadley's account. Mr Wright said he did not even know the bank account details for Mr Hadley and Mr Newman did not provide them to him, which is confirmed by Mr Newman's evidence.

Notwithstanding the coincidence of money being withdrawn from PAE's account and the same amount being deposited into Mr Hadley's account on the same day, there is insufficient evidence available to the Commission to conclude that these payments into Mr Hadley's account were made by Mr Wright/PAE or Mr Newman or by another person at Mr Wright's instruction.

Lying to the Commission

Mr Wright participated in two records of interview with Commission investigators on 19 January 2011, and also attended a compulsory examination on 28 January 2011. During the first interview, he was shown seven invoices issued by PAE to BRC, and asked if he recalled the products identified in those invoices, to which he replied that he did. He was then asked if, in relation to any of these invoices, the goods ordered were not delivered but the invoice was still paid. In response, he assured the Commission officers that "everything has been supplied". He also pretended that he supplied the goods himself,

or at least was himself involved in the supply of goods, by repeatedly referring to “we” (meaning himself and Mr Newman) having supplied the goods, including HOBAS pipe at a time when this product was not even available in Australia.

Mr Wright denied telling any lies to the Commission, and insisted that he told the Commission investigators that the goods had been supplied because he believed at that time that they were sent out and had no reason to believe otherwise.

The Commission rejects this evidence. At the time of the interview, Mr Wright knew that all he had done was issue invoices as instructed by Mr Newman and, on his own admission, that he did not know what goods were delivered and what goods were not delivered, or if any goods were delivered at all.

At the interview, Mr Wright was also asked by Commission investigators: “When we examine your bank accounts we’re not going to see any money coming out to Robin Newman?”, to which he replied, “No”. This answer is patently false. Mr Wright tried to wriggle out of this difficulty by claiming that he believed “No” to be the correct response to the question because he was giving Mr Newman cash, not cheques written out to his name. In the Commission’s view, the question by the Commission investigators who used the word “money” and not “cheques” had a clear and obvious meaning, and Mr Wright knew at all times that money was in fact going out of his account to be paid to Mr Newman on numerous occasions. Moreover, when he was further asked about cash withdrawals, he replied evasively, “Ah well I take cash out from time to time to pay things and do all that so”, when a truthful answer would have been that he had withdrawn cash to pay Mr Newman. He was again asked if he had been involved in any financial relationship with Mr Newman, to which he replied, “Ah no, no, no”, and further said that the only financial transaction to speak of occurred when he gave Mr Newman \$10 or \$20 so he could buy some cigarettes. Mr Wright, when pressed, finally admitted that all these statements were lies.

It should be noted that, following the first interview, Mr Wright took part in another interview later in the same day. At this second interview, he informed the Commission officers that he had been approached by Mr Newman who told him that he had “made budget” in his job at UTS and suggested Mr Wright put some orders through PAE. Mr Wright accepted that he understood by this, at the very least, that Mr Newman was saying that he did not have to do any more sales for his boss at UTS having already met his budget, so he wanted to sell some more goods on the side, for which he wanted Mr Wright’s help.

Mr Wright told the Commission investigators that he and Mr Newman agreed that Mr Wright would issue invoices

in the name of PAE in accordance with Mr Newman’s instructions, which were later paid by BRC, but the supply of the stock would be taken care of by Mr Newman, so that Mr Wright had no knowledge of any supplies physically being delivered to BRC. He also told the Commission investigators that he would get a cut out of this scheme, being from 5% to 8% of the total cost of the order from BRC as his profit, and he would pay Mr Newman money required to purchase stock, plus his commission. Later in the interview, he said he may have retained from 8% to 10% of the total cost of the order. This percentage then went up to 12% at his compulsory examination on 28 January 2011 and, finally, to 20% at the public inquiry. Evidence at the public inquiry, as discussed above, showed that Mr Wright had in fact retained about 50% of the total invoice value. It is therefore evident that Mr Wright could not have held a genuine belief that he retained as his share of the profit the constantly changing percentage of the value that he provided on several different occasions to the Commission.

The Commission found Mr Wright to be a most unsatisfactory witness, who adopted the tactic of prevarication to avoid answering questions directly and told lies to the Commission about his involvement in this scheme on several occasions, as outlined above.

Analysis and conclusion

The Commission rejects Mr Wright’s claim that he had no knowledge of the dishonest nature of the arrangement into which he entered with Mr Newman.

Mr Wright consistently denied the clear evidence from PAE’s accounts showing that the actual cut of the profit from the invoices that he took for himself was about 50%. If Mr Wright retained 50% for his share of the profit and Mr Newman took the remaining 50% to share with Mr Hadley, there would have been no money left to pay for the goods, which were supposed to have been purchased and delivered by Mr Newman to BRC. It can be reasonably inferred from these facts that Mr Wright must have known that goods detailed in the PAE invoices were not delivered to BRC.

Mr Wright also told the Commission that he did not have computer records of money going out of PAE’s business, and therefore he did not really know what profit he was making. This claim is not credible, since it is highly unlikely that a businessman would not keep records to allow himself to determine what profit he was making. Mr Newman was not cross-examined at the public inquiry about his evidence that Mr Wright was aware of the dishonest nature of their arrangement.

In all the circumstances, the Commission prefers Mr Newman’s evidence to that of Mr Wright. Although not always clear on specific details, Mr Newman gave straightforward and consistent evidence relating to his

dealings with Mr Wright. There also seems to be no apparent reason why Mr Newman would make up a false story in order to implicate Mr Wright, particularly since neither Mr Newman nor Mr Wright suggested that there was any bad feeling between them.

The Commission is therefore satisfied that, at all times since it began, Mr Wright was aware of the dishonest nature of the arrangement he entered into with Mr Newman. That is, he knew that the invoices he issued in the name of PAE to BRC, in respect of which he shared the profits with Mr Newman and Mr Hadley, were false in that no goods were ever intended to be, or were, supplied to BRC.

Findings of fact

The Commission is satisfied to the requisite degree that the following facts have been established:

1. Mr Newman and Mr Wright entered into an arrangement in 2006, whereby Mr Wright would issue invoices in the name of his business PAE to BRC under instructions from Mr Newman, in respect of orders placed by Mr Hadley on behalf of BRC, for which the relevant goods would not be delivered.
2. PAE issued invoices to BRC between 2006 and 2009 in the total amount of \$331,546.60. These invoices were paid in full by BRC but none of the goods specified in the invoices was supplied.
3. Mr Hadley facilitated payment of the false invoices issued by PAE to BRC, as specified in finding 2, knowing that none of the goods specified had been or would be supplied.
4. With the knowledge and agreement of Mr Wright, Mr Newman paid Mr Hadley, and Mr Hadley received from Mr Newman, cash payments in an unspecified amount from the proceeds of the false invoices as a reward for facilitating the payment of the invoices by BRC.
5. Mr Newman and Mr Wright split the remaining profit from the proceeds of the false invoices between themselves, in unspecified amounts.

Corrupt conduct findings and section 74A(2) statements

Geoffrey Hadley

The Commission finds that Mr Hadley, by receiving payments from Mr Newman as a reward for facilitating payment by BRC of false invoices issued by PAE, as specified above, engaged in corrupt conduct. This is because the conduct directly and adversely affected the honest or impartial exercise of his official functions under

section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that directly and adversely affected the exercise of Mr Hadley's official functions and could involve official misconduct, bribery, obtaining or offering secret commissions and fraud within the meaning of section 8(2)(a), section 8(2)(b), section 8(2)(d) and section 8(2)(e) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Hadley has committed criminal offences of corruptly soliciting or receiving a reward contrary to section 249B(1), obtaining financial advantage by deception pursuant to section 178BA, or obtaining financial advantage by false or misleading statements under section 178BB of the Crimes Act.

Mr Hadley has already been dealt with under the criminal law for, in substance, similar conduct involving false invoices issued by Mr Newman in the name of Robin Newman. In all the circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Hadley for a specified criminal offence.

As Mr Hadley has already left his employment at BRC, the Commission is not required to form an opinion as to whether consideration should be given to the taking of any action against him for a specified disciplinary offence.

Robin Newman

The Commission finds that, by entering into an arrangement with Mr Wright, whereby Mr Wright would issue false invoices in the name of his business, PAE, to BRC, as specified above, obtaining payment for such invoices for himself and Mr Wright, and by making payments to Mr Hadley in return for Mr Hadley facilitating the payment by BRC of these false invoices, Mr Newman engaged in corrupt conduct. This is because it was conduct that directly and adversely affected the honest or impartial exercise of Mr Hadley's official functions under section 8(1)(a) of the ICAC Act. Such conduct was also conduct that directly and adversely affected the exercise of Mr Hadley's official functions and that could have involved official misconduct, bribery, obtaining or offering secret commissions and fraud within the meaning of section 8(2)(a), section 8(2)(b), section 8(2)(d) and section 8(2)(e) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Newman has committed criminal offences of corruptly giving a reward contrary to section 249B(2), obtaining financial advantage by deception pursuant to section 178BA, or obtaining financial advantage by false or misleading statements under section 178BB of the Crimes Act.

Mr Newman has already been dealt with under the criminal law for, in substance, similar conduct involving false invoices issued by him in his name. In all the circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Newman for a specified criminal offence.

Paul Wright

The Commission finds that, by entering into an arrangement with Mr Newman, whereby Mr Wright would issue false invoices in the name of his business, PAE, to BRC, as specified above, by issuing false invoices to BRC from 2006 to 2009 in the total amount of \$331,546.60, by obtaining payment from BRC for such invoices, and by providing Mr Newman with the funds from the proceeds of those invoices for the purpose of Mr Newman making payments to Mr Hadley in return for Mr Hadley facilitating the payment by BRC of those invoices, Mr Wright engaged in corrupt conduct. This is because it was conduct that directly and adversely affected the honest or impartial exercise of Mr Hadley's official functions under section 8(1)(a) of the ICAC Act. Such conduct was also conduct that directly and adversely affected the exercise of Mr Hadley's official functions and that could have involved official misconduct, bribery, obtaining or offering secret commissions and fraud within the meaning of section 8(2)(a), section 8(2)(b), section 8(2)(d) and section 8(2)(e) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Wright has committed criminal offences of corruptly giving a reward contrary to section 249B(2), obtaining financial advantage by deception pursuant to section 178BA, or obtaining financial advantage by false or misleading statements under section 178BB 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 Wright for an offence

of corruptly giving a reward contrary to section 249B(2), obtaining financial advantage by deception pursuant to section 178BA, or obtaining financial advantage by false or misleading statements under section 178BB of the Crimes Act. Although Mr Wright, Mr Hadley and Mr Newman all gave their evidence under objection at the public inquiry, statements could be obtained from Mr Hadley and Mr Newman to assist in the prosecution of Mr Wright for the above offences and there is also a quantity of credible documentary evidence available.

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 Wright for the offence of making false statements to Commission officers on 19 January 2011, as specified above, under section 80(c) of the ICAC Act, and the offence of giving false or misleading evidence to the Commission at a compulsory examination on 28 January 2011 and at the public inquiry on 18 and 19 October 2011, as specified above, under section 87(1) of the ICAC Act.

R&R Tape Supplies

Background

R&R is a telemarketing business conducted by Hilindi Pty Ltd, which supplies safety equipment and related products. The directors of Hilindi Pty Ltd are Richard Pearce and his wife, Roberta Pearce. Douglas Quinn was a sales representative employed by R&R at the relevant time and James Hopkinson is R&R's storeperson.

It was alleged that R&R provided gift vouchers and other gifts to public officials as an incentive for those officials to place orders with R&R. This allegation is dealt with in detail in chapter 2.

It was also alleged that R&R issued false invoices to BRC, which were paid by BRC with the assistance of Mr Hadley, in return for which R&R made corrupt payments to Mr Hadley or, alternatively or in addition, R&R made corrupt payments to Mr Hadley to induce him to continue favourable business dealings with R&R.

BRC records indicate that R&R issued 39 invoices in the total amount of \$124,483.12 to BRC from 21 November 2002 to 24 November 2008 and that these invoices were paid in full. Once an order to R&R was raised by Mr Hadley, R&R would create an invoice and dispatch the order from R&R's warehouse at the Central Coast, using a courier firm called Star Track Express to make the delivery.

An examination of R&R's business records and Star Track Express delivery consignment reports indicates that BRC received only 16 deliveries from R&R. There are no records that show delivery of goods for 21 of the R&R invoices with a total value of \$79,909.48. It was alleged

that Mr Hadley facilitated the payment by BRC of these 21 false invoices in return for corrupt payments from R&R. This is supported by an examination of Mr Hadley's bank accounts. Four deposits into Mr Hadley's bank accounts, which correspond with withdrawals from R&R's National Australian Bank account, totalling \$8,300, were identified in the table below.

Date	Amount	Deposit
08/06/2005	\$1,000.00	Cheque
16/04/2007	\$800.00	Cheque
17/10/2008	\$6,000.00	Cheque
12/12/2008	\$500.00	Direct Deposit
Total	\$8,300.00	

Mr Hadley's evidence

Mr Hadley told the Commission that he entered into an arrangement with R&R, whereby goods would be under-supplied by R&R, but the relevant invoice would be paid in full by BRC. He said that, as far as he knew, Mr Newman had nothing to do with R&R. Mr Hadley dealt only with Mr Quinn at R&R. He agreed that Mr Quinn offered him oilskins and DVD players in return for orders placed, in response to which he told Mr Quinn that he would prefer to receive cash payments and that money was then sent to him, as requested. Subsequently, Mr Quinn and he reached an understanding that Mr Hadley would receive payments from R&R out of profits derived from the short-supply of goods to BRC.

Mr Hadley's evidence was that, usually, at least part of the stock ordered was delivered, even if it was just a small amount, except right at the end when there may have been one or two occasions when nothing was supplied. He admitted that, as time went on, fewer and fewer goods were supplied, and that the net proceeds of the scheme were split between R&R and him.

Douglas Quinn

Mr Quinn was employed by R&R as a telemarketer during two periods, first from 1996 to 1997 and then from 1999 until he resigned in April 2009. Mr Hadley was one of his buyers.

Non-supply of goods

Mr Quinn told the Commission that in the course of his dealings with Mr Hadley, there were instances when goods were paid for by BRC but not delivered by R&R. The first of these occurred around the time of the Bathurst car race in 2004, when he received an order

from Mr Hadley for 20,000 garbage bags. By reference to his client card, Mr Quinn dated the conversation about this order as having taken place on 10 September 2004. Mr Quinn provided the Commission with a detailed description of the circumstances relating to this event. His evidence accords with BRC records, which identify this order as Order No. 148131, dated 13 September 2004. This order relates to one of the 21 R&R invoices for which no delivery records exist. The total amount charged by R&R and paid by BRC for this order, which also included a request for products referred to as "gloves asphalt", was \$6,902.50. The value of the invoice as it related to garbage bags was \$3,528.96.

Mr Quinn's evidence was that Mr Hadley asked him to send the invoice to BRC immediately, but hold the stock for a couple of weeks, and then failed to advise Mr Quinn when the stock would be needed. When Mr Quinn chased up the matter, Mr Hadley simply said, "Not required", and hung up the phone, despite Mr Quinn reminding him that the goods had already been paid for by BRC.

This evidence is corroborated to some extent by the testimony of Mr Pearce, who agreed that he was aware of a quantity of garbage bags having been ordered by Mr Hadley for BRC, knew that the garbage bags were brought into R&R's warehouse, and sometime afterwards noticed that they were no longer there and assumed they had been delivered to BRC. He said he was also aware that an invoice for the garbage bags, which was subsequently paid by BRC, had been sent to BRC whilst the goods were still being held at R&R's warehouse. He also admitted to Commission officers at his interview on 5 January 2011 that Mr Hadley used to ring up and tell R&R to send an invoice but hold the goods and that he, Mr Hadley, would let them know later when the stock was required to be delivered. Mr Pearce agreed, however, that there was no invoice from Star Track Express for the delivery of the garbage bags as there would have been if they were delivered, and accepted that the garbage bags were never delivered to BRC but denied that he was aware of this non-supply at the time.

The evidence of Mr Quinn and Mr Pearce differs in one significant respect. Mr Quinn said he told Mr Pearce about Mr Hadley not wanting to receive the garbage bags ordered and Mr Pearce then spoke to Mr Hadley. According to Mr Quinn, Mr Pearce did not tell him what was said, but told Mr Quinn that he never wanted to speak to Mr Hadley again and that Mr Quinn was to deal with Mr Hadley in the future. Mr Pearce denied speaking to Mr Hadley on this occasion.

Mr Quinn's evidence on this issue is not consistent with Mr Hadley's evidence that he never dealt with anyone at R&R except Mr Quinn. It is, however, quite possible that Mr Hadley simply forgot about this phone call, especially when

he was dealing with so many different parties over the years in the course of his conduct involving false invoices. Also, Mr Pearce himself told Commission officers during his interview on 5 January 2011 that he had spoken to Mr Hadley on one occasion, and that he distinctly remembered Mr Hadley saying, “here’s an order, what’s it worth to me?”. Mr Pearce also said that he might also have spoken to Mr Hadley about Mr Hadley’s holiday in Darwin on another occasion.

In any case, in the light of the events outlined below, it appears that some deal was struck between Mr Hadley and Mr Pearce as to the splitting of profits from orders that would be invoiced by R&R and paid for by BRC, but not delivered.

Mr Quinn said Mr Hadley wanted half of the profit for his role in the arrangement. Mr Hadley then continued to place orders with Mr Quinn in respect of which goods would not be supplied. Mr Quinn said these orders were always approved by Mr Pearce, with Mr Quinn acting as the go-between for Mr Hadley and Mr Pearce. Mr Quinn indicated these false orders on R&R’s BRC client card with the notation “H” or “Hold”, signifying that the goods were to be held and not delivered. He said none of the orders for which such a notation was made on the card was supplied, but invoices were still issued, with Mr Quinn writing out the relevant orders and either Mr Pearce or Mr Hopkinson generating the invoices. Mr Quinn claimed Mr Hopkinson also knew about the non-supply of stock and which invoices were being sent without any deliveries taking place because Mr Quinn told him about it, at Mr Pearce’s instruction.

It was drawn to Mr Quinn’s attention that, out of all of the invoices issued to BRC by R&R over the years in the total amount of \$124,483.12, only 16 have a separate Star Track Express delivery consignment note, with the remaining invoices – totalling nearly \$80,000 (over 60% of the total value of the invoices) – having no delivery records. Mr Quinn admitted that the goods pertaining to the invoices without delivery records were never delivered. He knew this because he was specifically requested by Mr Hadley not to supply the goods for these orders. Mr Quinn claimed that he had let Mr Pearce know about everything that went on with regard to these transactions, and Mr Pearce approved every such transaction.

The evidence of Mr Quinn and Mr Pearce to the effect that the garbage bags ordered by Mr Hadley for BRC were never supplied, but the invoice for the order was fully paid by BRC, was not challenged on behalf of Mr Hadley. Nor was any suggestion advanced on his behalf that he later requested a refund of BRC’s payment pertaining to the garbage bags to be made by R&R or requested R&R to otherwise account for the surplus payment made by BRC to R&R for the undelivered garbage bags. Further, the Commission notes Mr Hadley’s evidence that he facilitated

the payment by BRC of invoices issued by various suppliers that were false by reason of non-supply or short-supply of goods in return for corrupt payments, and that R&R was one of the suppliers with whom he had such a dishonest arrangement. Accordingly, the Commission is satisfied that the R&R invoice issued in 2004 for the garbage bags was one of the false invoices for which Mr Hadley facilitated payment by BRC in return for receiving, or in the expectation of receiving, corrupt payments from R&R.

Payments to Mr Hadley

It appears that corrupt payments to Mr Hadley by R&R may have started as early as 2002, before the garbage bags order in 2004, as an inducement for Mr Hadley to continue placing orders with R&R. Mr Quinn told the Commission that, once the incentive scheme was introduced at R&R, gifts such as coats and gift vouchers were offered to Mr Hadley. According to Mr Quinn, about two years after he started dealing with Mr Hadley (during Mr Quinn’s second period of employment with R&R commencing in 1999), Mr Hadley informed Mr Quinn that he wanted cash rather than the incentives. Mr Quinn told Mr Hadley that he did not have the authority to do what he asked, to which Mr Hadley responded by saying, “Well your boss is giving us giveaways, ask him to give me cash”. Mr Quinn then went and spoke to Mr Pearce about Mr Hadley’s proposition. Mr Pearce wanted to know how much Mr Hadley was asking and the value of the order and, upon being given this information, instructed Mr Quinn to proceed with the payment to Mr Hadley.

Mr Quinn advised Mr Hadley of the outcome and deposited the cheque (it is not clear on the evidence in what amount) that Mr Pearce gave him into Mr Hadley’s account, after obtaining the account details from Mr Hadley. Following this transaction, which appears to have been in or around 2002, Mr Quinn said he did not himself make any further payments to Mr Hadley. He knew, however, that money continued to change hands between R&R and Mr Hadley and how much Mr Hadley asked for, because he acted as a go-between for Mr Hadley and Mr Pearce and relayed Mr Hadley’s demands for payment to Mr Pearce. Mr Quinn did not know exactly how Mr Hadley received these further payments, but said that he had passed on Mr Hadley’s bank account details to Mr Pearce.

Mr Quinn said Mr Hadley asked for cash quite frequently so that he, Mr Quinn, “was getting scared”. No one at R&R had the authority to sign company cheques except Mr Pearce, so Mr Quinn had to ask Mr Pearce for approval every time a request for money was made by Mr Hadley. Mr Quinn said Mr Pearce never refused any of Mr Hadley’s demands for payment, except on one occasion when there was not enough profit in the order. When Mr Quinn advised Mr Hadley of this, Mr Hadley suggested R&R

put the price up and Mr Quinn did so, with Mr Pearce's approval.

Mr Quinn told the Commission that neither Mr Hadley nor Mr Pearce talked to him about how the profit was to be split. He believed the amounts of money demanded by Mr Hadley were not equivalent to the value of gift cards he would otherwise have qualified for in respect of a particular order, but represented half of R&R's profit on the orders he placed. R&R salespeople were required to sell goods at a minimum profit of 43%; however, goods such as riggers gloves were often sold at a 100% mark up, not just to Mr Hadley but also to R&R's other buyers.

Mr Quinn told the Commission that R&R also directly paid for Mr Hadley's accommodation for a holiday in the Northern Territory in around 2008, with authorisation from Mr Pearce. The available evidence indicates that the cost of this accommodation was \$1,304. The evidence relating to R&R's payment for Mr Hadley's accommodation in the Northern Territory was not disputed by Mr Pearce or by Mr Hadley.

The first payment to Mr Hadley from R&R that the Commission was able to trace is by cheque dated 8 June 2005 in the amount of \$1,000, which was shown to Mr Quinn. He told the Commission that from his memory, the first payment from R&R to Mr Hadley was made much earlier, perhaps in 2002, and was in a different amount. He said the payments then continued "quite a bit" over subsequent years. He recalled that the last payment was a substantial amount in the order of \$5,000 or \$6,000. Mr Quinn's evidence is largely consistent with the evidence of banking records for R&R's account, which show four payments deposited into Mr Hadley's accounts by R&R, in the amount of \$1,000 on 8 June 2005, \$800 on 16 April 2007, \$6,000 on 17 October 2008 and \$500 on 12 December 2008, totalling \$8,300.

Mr Quinn thought Mr Hadley received more than \$8,300 over the years, and could not understand why only these payments appeared in the bank records. If Mr Quinn's memory is correct, it would appear that payments in addition to these four payments were made to Mr Hadley by R&R, possibly as cash payments through the post. There is, however, insufficient evidence available to the Commission to find that such additional payments were made to Mr Hadley.

James Hopkinson

Mr Hopkinson has been an employee of R&R for over 13 years. He works as the storeperson and performs some sales work, although he has not sold to any local councils.

He denied that he was aware of invoices being issued by R&R to BRC for goods that were not delivered. He said he was never requested to process an invoice for payment but

to withhold delivery of the goods. If he had received such an instruction, he would not have issued the invoice and would have reported the matter to Mr Pearce.

Mr Hopkinson confirmed that, when sales were made by R&R, the stock was delivered to its customers by Star Track Express, which R&R used exclusively to deliver its goods. He said if a salesperson accepted an order and there was no stock available in the R&R warehouse to fill that order, the salesperson could do his own purchasing of the goods. In such cases, the salespeople were not required to go through him.

He told the Commission that, when stock was obtained from a supplier by R&R, it normally came to the warehouse before being delivered to the customer. The exception to this practice was when the goods were "drop-shipped" by a supplier at R&R's request because they were required by the customer in a hurry. Drop-shipping refers to shipping by a supplier directly to the customer, instead of goods being delivered to R&R's warehouse first.

Mr Hopkinson told the Commission that, as each order came in, he would invoice and pack that order, put a sticker on it and load it onto the truck. Where goods were to be drop-shipped, the salespeople would indicate this on their docket when they wrote out the order (not on the invoices, which would explain why no reference to drop-shipping appears on the R&R invoices) or, alternatively, they would advise Mr Hopkinson of it verbally. He would then just issue and post the invoice off later, as the stock was not coming from the R&R warehouse.

Mr Hopkinson said he recalled one instance when Mr Quinn told him he had organised the delivery of goods for an order received from BRC, and directed Mr Hopkinson to send out the invoice to BRC. On this occasion, Mr Hopkinson assumed that Mr Quinn had organised for the stock to be drop-shipped.

R&R charged a standard freight cost of \$20 to the customer, regardless of whether the delivery was made by Star Track Express or by a supplier by way of drop-shipping. Mr Hopkinson thought about 10% to 15% of orders received by R&R were drop-shipped. In such cases, Mr Hopkinson said there would be no invoice from Star Track Express if the supplier used a different courier company to make the drop.

He also said that part of his duties was typing up invoices and he had never typed up two invoices for one order or one consignment of goods. This would mean that there was no duplication of invoices for a given order. He added that he was not aware of any occasion when an invoice was sent but no goods were delivered, but said that, if such a thing happened, he would probably not have known about it. He pointed out that it was not part of his responsibility to check to make sure that goods were delivered in accordance with an invoice.

There are a number of difficulties with Mr Hopkinson's evidence. First, it is in conflict with Mr Quinn's evidence that he told Mr Hopkinson no deliveries were made in respect of the invoices for which there are no accompanying Star Track Express delivery notes. Mr Hopkinson conceded that it was possible that Mr Quinn did tell him this and that 21 invoices went out from R&R to BRC without the stock being supplied, but he could not recall such conversations or specific orders. He agreed that it would be unusual for him to be told to send an invoice but not to deliver the goods; however, he would have posted out the invoices without enquiring into the matter because he would have assumed that Mr Quinn knew what he was doing. This evidence is clearly inconsistent with his earlier evidence that, if he were asked to process an invoice for which no stock was to be sent, he would have declined to issue the invoice and reported the matter to Mr Pearce.

When asked how he could fail to notice such a large number of non-deliveries, he replied that he sent out a few thousand invoices a year and did not pay much attention to these matters, nor could he recall having any discussions about them with Mr Pearce. He admitted that, in all the circumstances, he might have sensed that something "fishy" was going on. He did not, however, admit to any involvement in dishonest dealings, and also denied banking any cheques in Mr Hadley's account or sending him any cash by mail on behalf of R&R.

R&R issued 39 invoices in the total amount of \$124,483.12 over the course of its dealings with BRC. If Mr Hopkinson's evidence that only 10% to 15% of orders received by R&R were drop-shipped is correct, one would expect about 85% to 90% of these invoices to relate to goods delivered to BRC in the usual manner and therefore to have corresponding invoices issued by Star Track Express. In fact, only 16 of these invoices (just over 40%) have such corresponding invoices. Mr Hopkinson agreed that this was most unusual given the business practice of R&R. He also agreed that, even in cases where a customer negotiated with an R&R salesperson for free shipping, the cost of freight waived would be absorbed by R&R, not Star Track Express. So there would still be a companion invoice from Star Track Express in those cases. Mr Hopkinson said he could offer no explanation for the lack of such invoices.

In the Commission's view, on proper analysis, Mr Hopkinson's evidence does not support his claim that the lack of Star Track Express invoices was caused by the practice of drop-shipping. Mr Hopkinson was, in some respects, an unsatisfactory witness who did not appear to be willing to provide full and frank evidence. His claim that he was unaware of the suspect invoices being sent without delivery of goods lacks credibility and conflicts with the evidence of Mr Quinn. It seems clear, however, that his role at R&R in respect of these issues was purely administrative

and there is no evidence that he derived any benefit from any conduct of, or on behalf of, R&R.

No corrupt conduct finding for Mr Hopkinson

For the reasons outlined above, the Commission makes no findings of corrupt conduct in respect of Mr Hopkinson.

Section 74A(2) statement

For the same reasons, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Hopkinson for any criminal offence.

Richard Pearce

Mr Pearce, the managing director of the company that traded as R&R, was interviewed by Commission officers in the course of its investigation into this matter and also gave evidence at the public inquiry. He consistently denied that he took any part in the issuing of false invoices by R&R to BRC in respect of which the goods were not supplied.

Non-delivery of goods

Mr Pearce told the Commission that he and his staff at R&R conducted their own investigation into this matter prior to attending the public inquiry, and came to the conclusion that there are in fact 24 invoices issued by R&R to BRC, totalling about \$85,000, for which there are no delivery notes from Star Track Express, and 18 invoices where there are such delivery notes. He accepted that BRC paid all invoices issued by R&R and that the payments went into R&R's bank account, which he and his wife control (his wife is not actively involved in the business).

Mr Pearce did not accept, however, that his company was paid \$85,000 for goods not delivered, suggesting that some deliveries not made by Star Track Express may have been made by way of drop-shipping. He explained that direct delivery of goods to the customer by drop-shipping occurred about four times a year. Mr Pearce claimed that he contacted the suppliers who did drop-shipping on behalf of R&R and tried to obtain records to support his theory; he was told, however, that the records were not available for various reasons. He was therefore not in a position to identify any specific deliveries made by way of drop-shipping.

Mr Pearce's evidence appears to be inconsistent with the evidence of Martin Slade, one of the salespeople at R&R, who told the Commission that in every case where goods had genuinely been delivered to a customer by R&R, the relevant financial records on R&R's computer would show invoices and consignment notes from a courier company in respect of the freight of the goods, which was normally Star Track Express. Neither Mr Slade nor Mr Quinn mentioned anything about drop-shipping in their evidence.

It may also be significant that many of the invoices without delivery records relate to orders for R&R's routine stock in trade such as barrier tape, gloves and dust masks, which Mr Pearce agreed R&R always had on hand, so that in the ordinary course of business, one would expect a Star Track Express consignment note for these invoices. Yet as many as 21 invoices (and, according to Mr Pearce, as many as 24) are missing corresponding delivery notes from Star Track Express. The Commission also notes that Mr Pearce did not make any reference to drop-shipping at his interview with Commission officers on 5 January 2011, when he was specifically asked about matching freight documentation in the context of possible non-delivery of goods. Mr Pearce claimed he did not raise it at his interview because he did not "realise it then".

Mr Pearce adamantly denied he had an arrangement with Mr Hadley whereby he would pay Mr Hadley kickbacks for invoices issued and paid for but for which goods would not be delivered, with Mr Quinn acting as the go-between for him and Mr Hadley. He also maintained that he did not know that the garbage bags ordered by Mr Hadley in September 2004 were never delivered to BRC. Asked why Mr Quinn would give untruthful evidence about these matters, Mr Pearce suggested it may be because Mr Quinn left R&R "under funny terms".

Payments to Mr Hadley

Mr Pearce accepted that R&R paid Mr Hadley at least \$8,300 by cheques signed by him, which he caused to be deposited into one or other of Mr Hadley's personal accounts. These were in the amounts of \$1,000 on 8 June 2005, \$800 on 16 April 2007, \$6,000 on 17 October 2008 and \$500 on 12 December 2008, totalling \$8,300. Mr Pearce denied ever sending Mr Hadley any cash (as opposed to cash cheques).

He said he had an explanation for all these payments. He told the Commission that the \$1,000 deposited on 8 June 2005 and the \$800 deposited on 16 April 2007 were payments made to Mr Hadley as contributions for holidays Mr Hadley wanted to take. He said the \$500 transferred via the internet on 12 December 2008 was for Mr Hadley's accommodation in Darwin. He also admitted that he paid for Mr Hadley's accommodation at the Holiday Inn for another holiday in Darwin from 12 to 16 July 2008 in the amount of \$1,304. This evidence is consistent with Mr Quinn's evidence that R&R paid for a holiday in the Northern Territory for Mr Hadley. Mr Pearce accepted that these payments amounted to inducements paid to Mr Hadley in return for continued business, and said that he eventually put a stop to this practice as Mr Hadley was getting too greedy.

In respect of the amount of \$6,000 deposited on 17 October 2008, Mr Pearce maintained that this was

not paid as an inducement, but was a payment for the purchase price owed to Mr Hadley for supplying R&R with 3,000 gloves at \$2 each through UTS, when R&R ran out of gloves.

Mr Pearce maintained his denial that there was an arrangement between Mr Hadley and him whereby R&R would profit from invoices paid by BRC in respect of which goods were not delivered, with Mr Hadley then receiving a kickback from R&R. He admitted, however, that Mr Hadley did in fact get a cash kickback for some of these invoices, namely the payments represented by the cash cheques traced by the Commission, referred to above (except for the cheque for \$6,000, which he insisted was a legitimate payment for supply of gloves to R&R by Mr Hadley).

Analysis and conclusion

False invoices and non-delivery of goods

It was not disputed by anyone, including Mr Pearce, that he controlled R&R, its bank accounts and invoices. Accordingly, he was the person who had the most to gain out of any dishonest arrangement with Mr Hadley.

In the Commission's view, Mr Quinn has, at all times, given candid and consistent evidence, and his account has been largely borne out by the evidence of others and by contemporaneous documentary evidence. He provided detailed information on relevant issues and made admissions against his interest about his own involvement in corrupt conduct.

Mr Pearce, by contrast, did not impress as an honest or convincing witness. He was evasive in many of his responses, and his evidence changed on several important issues over time.

For example, Mr Pearce agreed with Mr Quinn's evidence that Mr Quinn relayed Mr Hadley's demands to Mr Pearce, and he, Mr Pearce, then decided whether to meet these demands or not. Notwithstanding this evidence, and what he told the Commission officers at his interview about having a conversation with Mr Hadley about "what was in it for [Mr Hadley]" in placing an order, and having spoken to Mr Hadley on another occasion about his holiday in Darwin, Mr Pearce attempted to resile from this position at the public inquiry by claiming he never spoke to Mr Hadley.

The Commission also notes that drop-shipping was not mentioned by Mr Pearce when he was interviewed by Commission officers and questioned about possible false invoices and non-delivery of goods.

The Commission considers, however, that there is insufficient evidence to positively discount the possibility that drop-shipping may have been involved in respect of at least some of the 21 suspect invoices.

Accordingly, the Commission is not satisfied to the requisite degree that any of the 21 invoices for which there are no delivery records from Star Track Express, with the exception of the invoice for garbage bags discussed above, was in fact a false invoice issued to BRC by R&R.

Mr Quinn and Mr Pearce both agreed, in relation to the garbage bag order in 2004, that the garbage bags were never delivered but the invoice was issued and paid. The issue of drop-shipping is not applicable to this order, since Mr Pearce himself admitted that the goods were held at R&R's warehouse in preparation for delivery, not held somewhere else for direct delivery by another supplier. Mr Quinn admitted that he was aware of the falsity of this invoice, since he knew about the non-supply. There is, however, insufficient evidence to prove that Mr Pearce also knew about the non-supply.

It is not clear whether a corrupt payment was made to Mr Hadley by R&R following the garbage bags order as a reward to Mr Hadley for facilitating the payment of the relevant invoice. In all the circumstances, however, particularly the context of the continuing pattern of payments made to Mr Hadley before and after this incident by R&R, it would be reasonable in the Commission's view to draw the inference that Mr Hadley arranged for the R&R invoice to be paid by BRC, despite non-delivery of the goods, in the expectation that he would continue to receive gifts and payments from R&R.

For the above reasons, the Commission makes no findings of corrupt conduct or 74A(2) statements in respect of Mr Hadley, Mr Quinn or Mr Pearce in relation to the allegations generally concerning false invoices issued by R&R, other than in respect of the invoice relating to the order for garbage bags in September 2004, as set out below.

Payments to Mr Hadley

The Commission is satisfied that corrupt payments were made by Mr Pearce to Mr Hadley, with Mr Quinn acting as a go-between, and that these payments were made to Mr Hadley as an inducement for him to continue doing business with R&R. In the absence of evidence to substantiate all such payments that may have been made to Mr Hadley over the years in accordance with Mr Quinn's evidence, the Commission relies on the payments by cheque or direct deposit of \$1,000 on 8 June 2005, \$800 on 16 April 2007 and \$500 on 12 December 2008, as well as the payment for Mr Hadley's accommodation in Darwin from 12 to 16 July 2008 in the amount of \$1,304, totalling \$3,604.

In relation to the payment of \$6,000 made on 17 October 2008, in the Commission's view, the reason proffered by Mr Pearce for making this payment to Mr Hadley is fanciful. If it were true that R&R had run out of gloves, the natural thing for them to do would have been to buy the

gloves from one of their competitors directly. Mr Pearce said it was Mr Quinn who organised the acquisition of the gloves, but it is hardly likely that Mr Quinn, a salesperson of gloves, would go to Mr Hadley, a buyer of gloves, to ask him where to find gloves. In any event, Mr Quinn contradicted this claim by informing the Commission that the large shipment of gloves that Mr Pearce mentioned referred to a purchase Mr Quinn made from a Chinese company, not Mr Hadley.

Despite these factors, the Commission considers that there is insufficient evidence to find that the payment of \$6,000 was made by R&R to Mr Hadley as an inducement.

Findings of fact

The Commission is satisfied to the requisite degree that the following facts have been established:

1. On or around 10 September 2004, Mr Hadley placed an order with Mr Quinn for a quantity of garbage bags and gloves to be supplied to BRC.
2. Sometime after the order was placed, Mr Hadley requested Mr Quinn to issue an invoice for the order, but to hold the goods until further notice from him. Mr Quinn complied with this request and an invoice was subsequently issued by R&R in the total amount of \$6,902.50, out of which \$3,528.96 related to the garbage bags. This invoice was later processed and paid in full by BRC, with the assistance of Mr Hadley.
3. Sometime after the request to hold the goods was made by Mr Hadley and the invoice was paid by BRC, Mr Quinn sought instructions from Mr Hadley regarding delivery of the garbage bags, in response to which Mr Hadley advised that the goods were not required to be supplied. The garbage bags were never delivered to the BRC, resulting in extra profit being made by R&R.
4. From time to time, Mr Hadley solicited payments from R&R through Mr Quinn, as a reward for continuing to do business with R&R.
5. Mr Pearce authorised and caused payments to be made to Mr Hadley in the amounts of \$1,000 on 8 June 2005, \$800 on 16 April 2007 and \$500 on 12 December 2008, as well as a payment for Mr Hadley's accommodation in Darwin from 12 to 16 July 2008 in the amount of \$1,304, totalling \$3,604, as an inducement for Mr Hadley to continue doing business with R&R. Mr Hadley received the above payments.
6. The above payments were made to Mr Hadley with the assistance of Mr Quinn, who acted as a go-between for Mr Hadley and Mr

Pearce, conveying Mr Hadley's requests for payment of money to Mr Pearce, obtaining Mr Pearce's approval for such requests, and then communicating such approval to Mr Hadley.

Corrupt conduct findings and section 74A(2) statements

Geoffrey Hadley

The Commission finds that Mr Hadley, by soliciting and accepting payments from R&R for his personal benefit via Mr Quinn as an inducement to continue to place orders with R&R on behalf of BRC, as specified above, engaged in corrupt conduct. This is because the conduct directly and adversely affected the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that directly and adversely affected the exercise of Mr Hadley's official functions and could involve official misconduct, bribery and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Hadley has committed criminal offences of corruptly soliciting or receiving an inducement contrary to section 249B(1) of the Crimes Act.

The Commission also finds that Mr Hadley, by facilitating the payment by BRC of a false invoice relating to the order of a quantity of garbage bags in 2004, as specified above, engaged in corrupt conduct. This is because the conduct directly and adversely affected the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that directly and adversely affected the exercise of Mr Hadley's official functions and could involve official misconduct, bribery, obtaining or offering secret commissions and fraud within the meaning of section 8(2)(a), section 8(2)(b), section 8(2)(d) and section 8(2)(e) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted

by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Hadley has committed the criminal offence of corruptly soliciting or receiving an inducement contrary to section 249B(1), obtaining financial advantage by deception pursuant to section 178BA, or obtaining financial advantage by false or misleading statements under section 178BB of the Crimes Act.

Mr Hadley has already been dealt with under the criminal law for, in substance, similar conduct involving false invoices issued by Mr Newman in the name of Robin Newman. In all the circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Hadley for a specified criminal offence.

As Mr Hadley has already left his employment at BRC, the Commission is not required to form an opinion as to whether consideration should be given to the taking of any action against him for a specified disciplinary offence.

Douglas Quinn

The Commission finds that, by facilitating payments from R&R to be made to Mr Hadley as an inducement for Mr Hadley to continue to place orders with R&R on behalf of BRC, Mr Quinn engaged in corrupt conduct. This is because it was conduct that directly and adversely affected the honest or impartial exercise of Mr Hadley's official functions under section 8(1)(a) of the ICAC Act. Such conduct was also conduct that directly and adversely affected the exercise of Mr Hadley's official functions and that could have involved official misconduct, bribery, offering secret commissions and fraud within the meaning of section 8(2)(a), section 8(2)(b), section 8(2)(d) and section 8(2)(e) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Quinn has committed the criminal offences of corruptly offering an inducement contrary to section 249B(2), obtaining financial advantage by deception pursuant to section 178BA, or obtaining financial advantage by false or misleading statements under section 178BB of the Crimes Act.

There is insufficient admissible evidence to recommend that consideration be given to a prosecution for charges under sections 249B, 178BA and 178BB of the Crimes Act against Mr Quinn, given that Mr Quinn, Mr Hadley and Mr Pearce have all given their evidence under objection at the public inquiry. Accordingly, in all the circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Quinn for a specified criminal offence.

Richard Pearce

The Commission finds that, by authorising and causing to be made cash payments from R&R to Mr Hadley, as specified above, as an inducement for Mr Hadley to continue to place orders with R&R on behalf of BRC, Mr Pearce engaged in corrupt conduct. This is because it was conduct that directly and adversely affected the honest or impartial exercise of Mr Hadley's official functions under section 8(1)(a) of the ICAC Act. Such conduct was also conduct that directly and adversely affected the exercise of Mr Hadley's official functions and that could have involved official misconduct, bribery, or obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Pearce has committed criminal offences of corruptly offering an inducement contrary to section 249B(2) of the Crimes Act.

In all the circumstances, 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 Pearce for criminal offences of corruptly giving a reward contrary to section 249B(2) of the Crimes Act. Although Mr Pearce, Mr Quinn and Mr Hadley all gave evidence under objection at the public inquiry, there is evidence of banking records available and statements could also be obtained from Mr Quinn and Mr Hadley to assist in the prosecution of Mr Pearce for the above offence.

Universal Cartridges Pty Ltd

Background and overview

The Commission investigated whether Universal provided Mr Hadley with gifts, such as gift cards and electronic goods, as an incentive to continue business dealings with Universal. It was further alleged that Universal issued false invoices to BRC, which were paid in full by BRC with the assistance of Mr Hadley, without the relevant goods being delivered.

Universal was established on 26 July 2006 in Victoria, and is engaged in the business of selling computer accessories and equipment such as printer cartridges. Universal does not hold any stock on hand, but arranges for direct shipment to be made from its suppliers to customers upon receipt of an order for goods.

John Morgan is the sole director and shareholder of Universal and has been involved with the company since its establishment. As an undischarged bankrupt,

however, he was unable to become a director and assume a management role until May 2008, when he became its managing director. Jacqueline Morgan (Mr Morgan's sister) and Teresa Schillaci were formerly directors of the company. Mr Hadley told the Commission that he had an arrangement with Mr Morgan whereby bogus invoices would be issued about once a month or once every two months in return for cash payments from Universal to Mr Hadley. He said most of the orders placed with Universal were under-supplied, and some of the false invoices related to orders for which no goods were supplied at all.

BRC records show that from 8 February 2006 to 30 September 2008 Universal submitted 22 invoices, in the total amount of \$167,231.17, all of which were paid by BRC. There are no records that show delivery of the goods to which these invoices relate.

An examination of Mr Hadley's bank accounts in the relevant period identified two deposits totalling \$6,200 that correspond with withdrawals from Universal's bank account, as shown below.

Date	Amount	Deposit
27/03/2007	\$1,500	Direct deposit
19/07/2007	\$4,700	Direct deposit
Total	\$6,200	

John Morgan

Mr Morgan told the Commission that he knew Mr Hadley as a buyer from about 2002 or 2003, when Mr Morgan had worked at another company that offered Mr Hadley gift vouchers as an incentive for doing business with it. When Mr Morgan commenced working at Universal, he contacted Mr Hadley to secure BRC's business, and BRC subsequently became Universal's third largest customer. Mr Morgan himself took care of all dealings with Mr Hadley and no one else at Universal had any involvement in these dealings.

Gifts as incentives

Mr Morgan admitted that Universal offered Mr Hadley gifts such as gift vouchers and electronic goods as incentives for continuing business, which Mr Hadley accepted. Mr Morgan explained that a buyer was not necessarily entitled to an incentive every time an order was placed above a certain amount, as the profit varied with each order and the incentive depended on the profit made, not the amount ordered.

The Commission is satisfied that Universal provided gifts to Mr Hadley as an inducement to continue placing orders with Universal and that Mr Morgan, as the person actively

involved in running Universal's business and directly dealing with Mr Hadley, was responsible for the institution and execution of this practice. There is no clear evidence before the Commission, however, about the particulars relating to the gifts provided to Mr Hadley, such as the nature and value of these items, and when and where they were sent. Accordingly, no findings as to corrupt conduct or statements under section 74A(2) of the ICAC Act are made in relation to Mr Hadley or Mr Morgan in respect of the provision of incentive gifts (as opposed to the payment of money, which is discussed below) to Mr Hadley.

Payments as incentives

Mr Morgan told the Commission that Mr Hadley was quite happy receiving gift cards from him for a period. Later on, however, Mr Hadley requested cash in return for placing orders with Universal, and Mr Morgan agreed. He thought Mr Hadley made such a request just once or twice, towards the middle to the end of their relationship, not every time an order was placed.

Mr Morgan denied sending any cash in the post to Mr Hadley, but admitted he made two payments to him. The first was \$1,500 on 27 March 2007, which coincides with a payment to Universal by BRC on that day of approximately \$5,000. Mr Morgan explained that, after an accumulation of invoices, Mr Hadley became entitled to \$1,500 worth of gift vouchers but requested a payment in cash instead and Mr Morgan obliged him. He did not agree, however, that this amounted to payment of a bribe, saying it was part of the rewards program and he just "kept a blind eye and went with it". He commented that what he did was "a stupid mistake".

When asked about another payment of \$4,700 on 19 July 2007, which followed payments made to Universal by BRC of over \$20,000 in July 2007, Mr Morgan admitted that this payment was made as an inducement to Mr Hadley to continue doing business with Universal.

In the Commission's view, it is clear that Mr Morgan made both payments as an inducement for Mr Hadley to continue placing orders with Universal, even though Mr Morgan sought to categorise the first as being part of a "rewards program".

Given that a total of \$6,200 was paid directly to Mr Hadley, a public official who was in a position to place orders with Universal on behalf of BRC, Mr Morgan's conduct cannot be considered trivial or technical in nature.

It was suggested to Mr Morgan that, given BRC paid Universal in excess of \$167,000 for Universal's invoices, Mr Hadley was likely to have received more than \$6,200 from him. Mr Morgan claimed that the rest of Mr Hadley's entitlements were paid by way of gift vouchers and electronic items whose individual value varied from

\$200 to \$700, such as Xboxes and PlayStations; however, he was unable to recall the total number or value of these items. The Commission suspects that Mr Morgan was reluctant to confess to the total amount involved. There is, however, insufficient evidence to establish to the requisite degree that any further payments were made by Mr Morgan to Mr Hadley.

The Commission is therefore satisfied that Mr Morgan provided Mr Hadley with two cash payments in the total amount of \$6,200, as specified above, as a reward for placing orders with Universal.

Lying to the Commission

Mr Morgan admitted telling numerous lies during his compulsory examination on 9 March 2011. He was asked several times if Mr Hadley ever asked for corrupt payments, including any kind of gifts or cash, and replied "no" every time. He also insisted, repeatedly, that he had never given Mr Hadley any gift cards, any other incentive or money. Further, he claimed that when Mr Hadley was first offered a gift card at the beginning, he made it clear to Mr Morgan that government departments could not accept gift cards. Mr Morgan told the Commission that he lied because he was scared and he panicked, thinking he would get in trouble if he told the truth.

False invoices and non-supply of goods

In conflict with Mr Hadley's evidence, Mr Morgan denied issuing any invoices to BRC in respect of goods that were never delivered or were short-supplied, although he admitted that it would have been an easy thing to do if Mr Hadley was prepared to go along with the scheme.

Notwithstanding the lies that Mr Morgan has admitted telling, which cast serious doubt on his credibility as a witness, there is insufficient evidence to prove that he issued false invoices involving non-delivery or short-delivery of goods and paid Mr Hadley kickbacks for facilitating payment of such invoices.

Accordingly, no findings as to corrupt conduct or statements under section 74A(2) of the ICAC Act are made in respect of Mr Hadley or Mr Morgan in relation to the allegation of false invoices and non-supply of goods.

Sebastiano Schillaci

Evidence of Mr Morgan

Sebastiano Schillaci is a former associate of Mr Morgan who did some work for Universal after the company was first set up. Mr Morgan suggested during his evidence at his compulsory examination on 9 March 2011, when he denied any involvement in any corrupt dealings with Mr Hadley, that Mr Schillaci may have been the person involved in such dealings. At that time, he claimed that Mr Schillaci made

some phone calls to Mr Hadley, but Mr Morgan did not know what was said between them.

At the public inquiry, however, Mr Morgan told the Commission that Mr Schillaci spoke to Mr Hadley only on one occasion, when Mr Morgan was on the phone with Mr Hadley and he passed the phone to Mr Schillaci so that Mr Schillaci could introduce himself to Mr Hadley. Mr Morgan acknowledged that Mr Schillaci was not involved in sales for Universal, other than occasionally introducing potential customers, and that he was not involved in preparing any invoices. He claimed, however, that Mr Schillaci was his business partner and all gift cards issued by Universal, including those for Mr Hadley, were discussed with Mr Schillaci, who approved of their dispatch. He further claimed that Mr Schillaci was also consulted about the two cash payments made to Mr Hadley and agreed to them being made. Mr Morgan denied that he tried to implicate Mr Schillaci falsely, to take the heat off himself in relation to the allegations of corrupt dealings with Mr Hadley.

The two cash payments to Mr Hadley were made by means of electronic transfers, for which Mr Morgan had the required authorisation and access. He said Mr Schillaci also had a computer, but he did not know what Mr Schillaci did on his computer.

Evidence of Mr Schillaci

Mr Schillaci told the Commission that his then wife, Teresa Schillaci, a former director of Universal, provided the capital required to set up Universal but did not play any active role in the operations of the company. He said he prepared the premises when the company started up, and later performed some menial tasks, such as picking up stationery and minding the phone to assist Mr Morgan. He was never involved in any sales for the company. About a year after the company was established, Mr Morgan's relationship with him and his wife broke down and they parted ways.

He also told the Commission that he was illiterate and was not capable of operating the computer so as to be able to perform electronic transfers. He said he had no knowledge of any corrupt dealings between Mr Morgan and Mr Hadley until he was questioned about the matter by Commission officers prior to the public inquiry. He firmly denied that Mr Morgan discussed the payments made to Mr Hadley with him as Mr Morgan alleged.

Conclusion

Mr Schillaci, in contrast to Mr Morgan who told a series of lies to the Commission prior to the public inquiry, impressed the Commission as an honest and reliable witness who gave frank and consistent evidence. The Commission therefore accepts Mr Schillaci's evidence and rejects Mr Morgan's evidence in relation to the role played by Mr Schillaci in Universal's dealings with Mr Hadley.

The Commission is therefore satisfied that Mr Schillaci had nothing to do with Mr Hadley, and that Mr Morgan attempted falsely to implicate Mr Schillaci in order to transfer the suspicion attaching to himself to someone else.

Accordingly, no adverse findings are made by the Commission in respect of Mr Schillaci.

Findings of fact

The Commission is satisfied to the requisite degree that the following facts have been established:

1. Mr Morgan had business dealings on behalf of Universal with Mr Hadley who, from time to time, placed orders with Universal on behalf of BRC.
2. Mr Morgan made two cash payments to Mr Hadley by way of direct deposits into Mr Hadley's bank account via electronic transfer in the amount of \$1,500 on 27 March 2007 and \$4,700 on 19 July 2007, respectively, in the total sum of \$6,200, as an inducement for Mr Hadley to continue to place orders with Universal.

Corrupt conduct findings and section 74A(2) statements

Geoffrey Hadley

The Commission finds that Mr Hadley, by soliciting and accepting payments from Universal, as specified above, for his personal benefit as an inducement to continue to place orders with Universal on behalf of BRC, engaged in corrupt conduct. This is because the conduct directly and adversely affected the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that directly and adversely affected the exercise of Mr Hadley's official functions and could involve official misconduct, bribery and obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Hadley has committed criminal offences of corruptly soliciting or receiving an inducement contrary to section 249B(1) of the Crimes Act.

Mr Hadley has already been dealt with under the criminal law for, in substance, similar conduct involving false invoices

issued by Mr Newman in the name of Robin Newman. In all the circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Hadley for a specified criminal offence.

As Mr Hadley has already left his employment at BRC, the Commission is not required to form an opinion as to whether consideration should be given to the taking of any action against him for a specified disciplinary offence.

John Morgan

The Commission finds that, by making cash payments, as specified above, to Mr Hadley as an inducement for Mr Hadley to continue to place orders with Universal on behalf of BRC, Mr Morgan engaged in corrupt conduct. This is because it was conduct that directly and adversely affected the honest or impartial exercise of Mr Hadley's official functions under section 8(1)(a) of the ICAC Act. Such conduct was also conduct that directly and adversely affected the exercise of Mr Hadley's official functions and that could have involved official misconduct, bribery or obtaining or offering secret commissions within the meaning of section 8(2)(a), section 8(2)(b) and section 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Morgan has committed criminal offences of corruptly offering an inducement contrary to section 249B(2) of the Crimes Act.

In all the circumstances, 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 Morgan for criminal offences of corruptly offering an inducement contrary to section 249B(2) of the Crimes Act. Although all relevant witnesses gave their evidence under objection at the public inquiry, there is evidence of banking records available and statements could also be obtained from Mr Hadley and Mr Schillaci.

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 Morgan for the offence of giving false or misleading evidence at a hearing of the Commission under section 87(1) of the ICAC Act, in respect of his denial at his compulsory examination on 9 March 2011 that Mr Hadley ever asked for, and that he ever provided to Mr Hadley, any incentives or cash payments.

Kerry Smith and Yass Valley Council

Mr Smith was a longstanding and trusted employee at YVC and worked there for 27 years from February 1984 until March 2011, when he left YVC following the Commission investigation. The allegation that he accepted gifts from suppliers to YVC in return for placing orders with them (with the exception of the allegation in respect of UTS, as outlined below) is dealt with in chapter 2.

This section concerns an allegation that Mr Smith received incentives from UTS to place orders with it. It also concerns an allegation that he received corrupt payments from Robin Newman for facilitating the payment of false invoices generated by Pinnacle and PAE, consisting of a traceable amount of \$18,128.14 and additional cash payments of an unspecified amount. Mr Smith repaid \$18,128.14 to YVC on 21 November 2011, following the public inquiry.

From 23 December 1997, Mr Smith was a storeperson at YVC and, in this capacity, was required to procure supplies on behalf of YVC. From February 2007, he had a financial delegation of \$25,000, although he believed it was \$20,000. He was responsible for purchasing all goods for YVC's store and had authority to place orders with suppliers within his delegation without having to obtain a second signature. It was also possible for him to bring orders within his delegation by splitting the orders, which he said he may have done, but did not recall doing.

At the time relevant to this investigation, Mr Smith had sole responsibility for receiving goods ordered for YVC's stores and checking that the correct quantities were received. Once goods were received, he would either enter the goods into the stores register or allocate them to the particular job for which they were ordered. Invoices attached to the goods would be matched with the correct order form, and Mr Smith would indicate on the invoice that he had taken receipt of the goods and that the price was correct. This paperwork would then be sent to YVC's finance section, and invoices for goods under \$25,000 would be paid on Mr Smith's authorisation.

Given the system that YVC had in place at the time, YVC was not alerted to the nature of Mr Smith's dishonest activities until late 2010, when it was brought to the council's attention by the Commission.

UTS' incentive scheme

At the relevant time, Mr Newman was an employee at UTS and the director of Pinnacle. Mr Stokes was the director of UTS and shareholder of Pinnacle. YVC was an established customer of UTS' when Mr Newman first had contact with Mr Smith, after Mr Newman became a manager at UTS.

Mr Newman told the Commission that UTS had an incentive program, whereby Drizabone coats, DVDs, TVs, gift cards, and the like, were offered to its buyers. He recalled Mr Smith receiving some gift cards from UTS as part of this incentive program.

Mr Smith told the Commission that, from about 2002 or 2003, UTS offered him incentives in return for placing orders. He had not heard of Mr Stokes of UTS but, at some point, started dealing with Mr Newman. Mr Newman explained to Mr Smith how he could qualify for gift vouchers, and pointed out that the more Mr Smith ordered, the more gift vouchers he would be able to receive. Although Mr Smith did not get a gift voucher every time he placed an order, after the first couple of times, he had an expectation that, if he placed an order of a certain amount, he would get something. He could not recall the total value of the gift vouchers he received from Mr Newman, but it was possibly as much as \$200 per month. Mr Smith said the vouchers were sent to his home address by registered post.

Mr Smith said the gift vouchers turned up without his soliciting them, although discussions relating to what benefits he would receive took place between Mr Newman and him when orders were placed. Sometimes he would select gifts other than gift vouchers, and he recalled TVs, DVD players, Drizabone coats and holidays being offered, although he never accepted any holidays. He claimed that the gifts did not necessarily influence his decision about whether to place an order with UTS or not.

The Commission is satisfied that UTS provided gifts, such as gift vouchers and electronic goods, to Mr Smith as an inducement for him to continue placing orders with UTS. The particulars relating to each of the gifts provided, however, such as the nature and value of the item and when and how it was sent to Mr Smith, are not clear on the evidence before the Commission. Accordingly, no findings as to corrupt conduct or statements under section 74A(2) of the ICAC Act are made in relation to any person, in respect of the provision of incentive gifts to Mr Smith by Mr Newman or Mr Stokes on behalf of UTS.

False invoices

Mr Newman told the Commission that, at some stage, he or Mr Smith suggested during a telephone conversation that a payment of cash would be a better option than the provision of gift cards. An arrangement was subsequently entered into between Mr Newman and Mr Smith, whereby goods would be short-supplied for invoices issued by Pinnacle to YVC, but the invoices would still be paid in full by YVC. To this extent, the arrangement that Mr Newman had with Mr Smith differed from the arrangement he had with Mr Hadley, since *some* stock was usually sent to YVC, although there was a practice

of under-supply, whereas no goods were sent to BRC for orders placed with Pinnacle. The proceeds from the under-supply of goods was, however, divided in the same manner as in the arrangement with Mr Hadley; that is, Mr Smith was given 50% of the profit, and the remaining 50% was split between Mr Newman and Mr Stokes.

Mr Smith's evidence was that, at some stage, Mr Newman proposed an arrangement out of which Mr Smith could get "a bit of cash". Mr Smith said he agreed to this proposition out of "stupidity" and "greed". Mr Newman suggested this arrangement could take place by way of inflating prices on the invoices, by short-delivery of goods, and by issuing invoices without any goods being delivered at all. Mr Smith said the last method was never put into action because he felt that it was "going too far". He told the Commission that the companies involved in this scheme were Pinnacle and PAE, both of which Mr Newman told him were other arms of UTS. Mr Smith dealt only with Mr Newman in relation to these arrangements.

The evidence of Mr Newman and Mr Smith clearly establishes that they entered into an arrangement for Pinnacle and PAE to issue invoices to YVC but for which only a portion of the goods would be supplied, and for these false invoices to be paid in full by YVC with Mr Smith's assistance.

The payments made by YVC to Pinnacle for invoices issued between 2006 and 2008 came to \$139,026.27. Mr Smith maintained that at least some goods were delivered for each of these invoices. Between 12 October 2006 and 21 June 2007, a total of \$30,599.10 was deposited into PAE's account by YVC in payment of invoices issued by PAE. Mr Smith told the Commission that he believed there was a total of seven or eight invoices that were "dodgy" out of all the invoices from Pinnacle and PAE that he processed. He conceded, however, that he was not in a position to dispute that all of the invoices were false in some respects.

Mr Smith had end-to-end control of the purchasing process at YVC at relevant times, in that he had the authority to order goods, confirm delivery and authorise payment of relevant invoices. Accordingly, the records of YVC cannot be relied upon as evidence that certain goods ordered were in fact delivered by Pinnacle and PAE. The goods-received spreadsheet maintained by Mr Smith shows the goods relating to a number of invoices for both Pinnacle and PAE to have been delivered by a freight company. Pinnacle and PAE themselves are shown as the delivery agents that supposedly delivered the goods in respect of the remaining invoices issued by them to YVC.

In the circumstances, it seems likely that the goods shown to have been delivered by a freight company were actually delivered, whereas the goods shown to have been delivered by Pinnacle or PAE themselves, without a third-party freight service provider being involved, were not delivered.

Given the evidence of Mr Newman and Mr Smith about short-supply, it also seems likely that even the goods shown to have been delivered by a freight company do not represent the full quantity of the stock ordered but only a portion thereof. Therefore the possibility that *all* invoices from Pinnacle and PAE were false by virtue of short-delivery of goods cannot be discounted. Ultimately, however, there is insufficient evidence available to prove or disprove the delivery of any amount of stock for any particular invoice.

Notwithstanding this difficulty in identifying which particular invoices are in fact false, the Commission is satisfied on the evidence of Mr Newman and Mr Smith that at least *some* of the invoices issued by Pinnacle and PAE were in fact false by virtue of short-delivery or non-delivery of goods ordered. Further, Mr Smith agreed that some of the items he ordered on behalf of YVC were far more than YVC would reasonably have required, had they all been delivered. For example, the 4,000 guide posts, which were ordered from Pinnacle between September 2006 and November 2008, spaced in compliance with the applicable Australian standard and placed on each side of the roadway, could line the road from Sydney to Yass three times over. Mr Smith also admitted that seven or eight invoices from Pinnacle and PAE that he processed were false in some respects, and went so far as to concede that he was not in a position to dispute that all of the invoices were false.

The falsity of at least some of the invoices issued by Pinnacle and PAE to YVC is also corroborated by the payments made to Mr Smith by Mr Newman pursuant to their arrangement, as discussed below.

Payments to Mr Smith

Evidence of Mr Smith

Mr Smith told the Commission that his “dodgy dealings” with Mr Newman went on for a number of years, until he was contacted by a Commission investigator. He admitted that, during these years, he accepted dishonest payments from Mr Newman. Mr Smith claimed that he did not get a payment after each invoice, only now and again in a haphazard fashion, that there was no rationale connecting each payment to a particular invoice, and that the payments were made basically at Mr Newman’s discretion.

Mr Newman made deposits into Mr Smith’s and his wife’s (Gemma Smith’s) credit card accounts, after Mr Smith provided Mr Newman with the account details. In addition to these traceable payments, Mr Smith also admitted receiving two or three cash payments from Mr Newman, as well as a further payment to purchase a utility vehicle. He could not recall the exact total amount of cash received, although he recalled the last payment was in the amount of \$3,000, and thought the total amount may be about \$5,000.

The Commission notes that the payments made by YVC for Pinnacle’s invoices alone were in the order of \$139,026.27. Mr Smith was also shown some material indicating payments of \$30,599.10 made by YVC to PAE from 12 October 2006 to 21 June 2007, and cash withdrawals made from the PAE account totalling \$28,575 during this period. It was Mr Wright’s evidence that he gave this money to Mr Newman.

It was suggested to Mr Smith that, in all the circumstances, he was likely to have received a lot more than \$5,000 from Mr Newman as his share of the profit from their arrangement. Mr Smith agreed this was a fair assumption to make, but said he did not believe and could not recall that he got more than \$5,000.

In relation to the utility vehicle, Mr Smith said it was purchased for \$7,800, and that Mr Newman paid the money directly to the vendor of the car. Mr Smith confirmed that, after the vehicle was involved in an accident, he received an insurance payout of \$7,178.14.

Evidence of financial records

Mr Smith’s evidence relating to payments he received from Mr Newman is consistent with the financial evidence gathered by the Commission in the course of its investigation.

An examination of the bank accounts of Mr Newman, Pinnacle, Mr Smith and Mrs Smith identified a number of withdrawals from the Newman and Pinnacle bank accounts corresponding to deposits in the Smiths’ accounts, both in cash and cheques. It also showed that, in the majority of cases, these payments followed the submission of Pinnacle’s invoices and payment of these invoices by YVC. The examination of these accounts identified a total of \$18,128.14 paid to Mr Smith’s and Mrs Smith’s individual and joint bank accounts, which are not part of the Smiths’ regular and legitimate income, as detailed below.

Type of payment to Smiths’ bank accounts	Source of payment	Total amount
Cheque deposits	Robin Newman	\$1,400.00
Cheque deposits	Pinnacle	\$1,000.00
Traceable cash	Robin Newman	\$800.00
Traceable cash	Pinnacle	\$7,750.00
Other payments	GIO (insurance payout for car given to Mr Smith by Mr Newman following accident)	\$7,178.14
Total		\$18,128.14

Evidence of Mr Newman

Mr Smith's evidence relating to the payments he received from Mr Newman is consistent with Mr Newman's evidence. YVC paid Pinnacle a total of \$139,026.27 for invoices issued from 2006 to 2008. Although he was not certain, Mr Newman believed Mr Smith's share was paid into his bank accounts, after Mr Smith told him about a joint account with his wife and their two credit card accounts. The first payment from Mr Newman to Mr Smith, in the amount of \$1,000, went into Mrs Smith's credit card account on 21 April 2006.

On 14 and 28 November 2008, two deposits of \$2,750 and \$4,000 were made to Mr Smith's credit card account. Mr Newman recalled a discussion with Mr Smith about Mr Smith's intention to purchase a utility vehicle around this time, and thought these payments may have been made to help Mr Smith buy the vehicle. Mr Newman had no memory, however, of making those deposits or doing so for the particular purpose of the acquisition of the vehicle by Mr Smith. Mr Newman's evidence is inconsistent with Mr Smith's evidence that the money required for the purchase of the vehicle was paid to the vendor directly by Mr Newman. In any case, since Mr Smith ultimately received an insurance payout of \$7,178.14 for the car, the Commission is satisfied that he obtained a financial benefit in this amount from Mr Newman, in addition to the other payments he received, as specified above.

Initially, Mr Newman said he could not remember if he ever posted additional cash payments to Mr Smith, as he did in the case of Mr Hadley. Later, he told the Commission that he gave Mr Smith cash on some occasions. This is consistent with the financial evidence available to the Commission, which shows no traceable record of any payment from Mr Newman to Mr Smith during the period from July to November 2006, despite there being a number of payments by YVC in significant amounts. Mr Newman said he may have posted the cash or hand-delivered it to Mr Smith on his occasional trips to Yass, but he could not recall the actual amounts of cash involved.

Evidence of Mrs Smith

Mrs Smith also worked at YVC at the time relevant to this investigation, but resigned from her position as a customer service officer on 7 November 2011.

Mrs Smith claimed to be unaware of the fact that two payments of \$1,000 and \$700 had been made to her credit card account from an outside source on 21 April 2006 and on 13 February 2007. She told the Commission that she used BPAY every fortnight over the phone on Mr Smith's and her credit cards, but did not examine her account statements to check what balance was owed. Mr Smith said his wife knew nothing about what was going on. Mrs Smith also said that her husband did not confide in her about what he was doing, or how much money he had received.

Mrs Smith told the Commission that she knew about the gift vouchers her husband received, and said that he would bring them home and she used some of them to buy clothes. She said Mr Smith said the gift vouchers were a gift from "a rep" as a thank you. She did not give much thought at the time as to whether it was the wrong thing for her husband to accept these gift vouchers.

The Commission accepts that Mrs Smith was not involved in any corrupt conduct in this matter and no adverse findings are made against her.

Conclusion

The total, traceable amount paid to Mr Smith by Mr Newman is \$18,128.14. Given Mr Newman's admission that he sometimes mailed or handed cash to Mr Smith, which was not disputed by Mr Smith, it is clear that the total amount received by Mr Smith is greater than the traceable amount. Neither Mr Newman nor Mr Smith, however, was able to recall sufficient details to establish the exact total of the payments received by Mr Smith. It is also not clear on the evidence which particular payment Mr Smith received as his share of the profit from the payment of false invoices issued by Pinnacle, and which represented his share in respect of invoices issued by PAE. The Commission is, however, satisfied that Mr Smith received from Mr Newman a minimum total of approximately \$23,128.14 for facilitating payment of false invoices issued by Pinnacle and PAE, consisting of the traceable payments of \$18,128.14 and at least \$5,000 of cash payments, as detailed above.

Michael Stokes

Mr Stokes told the Commission that he did not deal directly with Mr Smith when he (Mr Stokes) was at UTS; however, YVC was already a customer of UTS' before Mr Newman started working there.

Mr Stokes disputed Mr Newman's evidence that he was a party to the dishonest arrangement between Mr Newman and Mr Smith, whereby illicit profit from payment of Pinnacle's invoices by YVC for under-supplied goods was to be divided between Mr Smith, Mr Newman and himself. Mr Stokes also denied any knowledge of any corrupt payments made to Mr Smith by Mr Newman on behalf of Pinnacle pursuant to this arrangement.

Despite Mr Stokes' denials, the inevitable inference to be drawn from all the circumstances is that he had to have been involved in the dishonest activities referred to above, particularly given that he was a signatory to Pinnacle's bank account.

Mr Stokes was referred to the cheque for \$1,000 dated 21 April 2006 paid into the account of Mrs Smith, and was asked if he knew about this transaction at the time. He accepted he must have counter-signed the cheque, but

claimed he would not have known about the transaction. He was asked about the further cheques drawn from Pinnacle's bank account, which later found their way into Mr Smith's account. He claimed he could not recall whether he co-signed these further cheques as he stopped signing Pinnacle cheques after 2006 or 2007.

He acknowledged, however, that he had never gone to the bank and removed himself as a co-signatory to the account or closed the account, but explained that this was because he stopped putting stock through Pinnacle and Mr Newman was not buying stock through UTS any more, it was getting "too hard" and he was too focused on his own business. Nor did he shut down Pinnacle once he realised Pinnacle was not working out, but he said this was because he did not think he had the power to do so. He told the Commission that he assumed Mr Newman somehow found a way to avoid Mr Stokes' signature being required, as Mr Newman stopped coming to him with Pinnacle cheques to sign from about this time.

Throughout his evidence at the public inquiry, Mr Stokes insisted that he had nothing to do with the activities of Pinnacle and maintained that they were carried out solely by Mr Newman. Indeed, he went so far as to claim that he did not even know that he was a shareholder in Pinnacle until he gave evidence at the public inquiry. He suggested that Mr Newman gave untruthful evidence regarding the nature and extent of Mr Stokes' involvement in Pinnacle's activities because of the bad terms under which the two of them parted ways when UTS closed down.

The Commission does not accept that Mr Newman's evidence about Mr Stokes' role in Pinnacle's dishonest activities involving YVC is false. Mr Newman's account of events has been consistent and convincing and in all material respects has been corroborated by circumstantial evidence, the testimony of other witnesses and objective documentary evidence, such as financial records.

On the other hand, the evidence of Mr Stokes was self-serving, unpersuasive and not supported by other objective evidence, including bank records. The fact that Mr Stokes was the sole shareholder of Pinnacle and co-signatory to Pinnacle's company account, as discussed above, supports the inference that Mr Stokes was well aware of Mr Newman's dishonest activities with YVC and was himself a willing party to them.

Accordingly, the Commission accepts the evidence of Mr Newman and rejects the evidence of Mr Stokes. The Commission is satisfied that Mr Stokes, together with Mr Newman, used Pinnacle as a vehicle for the dishonest transactions between Mr Newman and Mr Smith, whereby invoices were issued for goods only partly supplied but paid in full by YVC with the assistance of Mr Smith.

The Commission also accepts Mr Newman's evidence that he and Mr Stokes obtained financial benefit from the proceeds of the scam. There is, however, insufficient evidence available to establish the total amount of money retained by Mr Newman and Mr Stokes as their respective shares of the profit from the scam.

Paul Wright and PAE Industries

Mr Wright, a sole trader under the business name PAE Industries, denied ever meeting or knowing Mr Smith. Mr Wright agreed, however, that he and Mr Newman had an arrangement whereby he would issue invoices to YVC in PAE's name and Mr Newman would supply the goods to YVC. He claimed that, unlike the case of BRC where the supply of stock was completely in Mr Newman's hands, Mr Wright himself sent the goods to YVC for some of the orders received in the early days, after which Mr Newman took over the responsibility for the supply of stock to YVC. This evidence appears to be consistent with the goods-received spreadsheet maintained by Mr Smith, which indicates a number of deliveries were apparently made by freight companies on behalf of PAE.

Mr Wright did not admit to being a party to a dishonest arrangement with Mr Newman, pursuant to which they were to share the illicit profit derived from issuing false invoices in the name of PAE to YVC.

The transaction records of PAE's business account show that between 12 October 2006 and 21 June 2007 a total of \$30,599.10 was deposited into the account by YVC in payment of invoices issued by PAE. During this period, cash withdrawals totalling \$28,575 (only a little short of the entire amount of payments made to PAE by YVC) were made from the PAE account by Mr Wright, usually the day after the deposits were made from YVC. Mr Wright agreed that the amount that was withdrawn in cash represented cash payments he made to Mr Newman. He did not agree, however, that he gave this money to Mr Newman so that he could split it with Mr Smith, and said that it was given to Mr Newman to pay for stock to be supplied. Mr Wright admitted, however, that he did not disclose these payments to Mr Newman to Commission investigators when he was interviewed by them on 19 January 2011. At that time, Mr Wright said that the only financial transactions between Mr Newman and him involved no more than \$20.

Mr Newman's evidence in relation to PAE's dealings with BRC (detailed earlier in this chapter) made it clear that the arrangement he had with Mr Wright was that Mr Wright would withdraw money from the payments deposited by BRC into PAE's account and would then give the money to Mr Newman to share with the storeperson at BRC, Mr Hadley. Apart from Mr Wright's denial, the evidence all suggests that the arrangement Mr Newman had with Mr

Wright in relation to PAE's dealings with YVC was the same as the arrangement they had in respect of BRC.

Since money from the payments made to PAE by YVC was given to Mr Newman by Mr Wright, and not directly to Mr Smith, any corrupt payments made by Mr Newman to Mr Smith are likely to form part of that cash and are therefore unable to be traced or verified.

Notwithstanding these difficulties, given Mr Wright's lack of credibility as a witness and his history of telling lies to the Commission, discussed earlier in this chapter, the Commission is satisfied that the nature of Mr Wright's dealings with YVC was the same as his dealings with BRC; that is, they were dishonest. The only difference between the false invoices issued by PAE to BRC and those issued to YVC seems to be that, whilst no goods were supplied to BRC at all, some goods appear to have been supplied to YVC. The essential falsity of the invoices PAE issued to both councils was, however, the same.

There is insufficient evidence available to ascertain exactly how much money was retained by Mr Wright and Mr Newman respectively pursuant to the arrangement they had in relation to the PAE invoices sent to YVC. The evidence that a total of \$30,599.10 was deposited into PAE's account by YVC, out of which a total of \$28,575 was subsequently withdrawn in cash by Mr Wright, was not disputed by Mr Wright. Given that the Commission is satisfied that at least some of these invoices which were paid in full by YVC, if not all of them, were false by virtue of short-delivery of goods, the Commission is satisfied that Mr Wright obtained a financial benefit for himself from the illicit profit made from his arrangement with Mr Newman, as did Mr Smith, Mr Newman and Mr Stokes.

Findings of fact

The Commission is satisfied to the requisite degree that the following facts have been established:

1. Mr Newman, with the knowledge of and participation by Mr Stokes and Mr Smith, issued false invoices to YVC in the name of Pinnacle, in respect of which only a portion of the goods ordered was supplied but payment was made in full by YVC. The total number and amount of such false invoices cannot be verified.
2. Mr Smith facilitated the payment of these false invoices to Pinnacle by YVC.
3. Mr Newman, with the knowledge of and participation by Mr Wright and Mr Smith, arranged for false invoices to be issued to YVC in the name of PAE, in respect of which only a portion of the goods ordered was supplied but payment was made in full

by YVC. The total number and amount of such false invoices cannot be verified.

4. Mr Smith facilitated the payment of these false invoices to PAE by YVC.
5. Mr Newman paid Mr Smith, and Mr Smith received from Mr Newman, payments in the minimum total amount of \$23,128.14, comprising traceable deposits by cheque or cash in the amount of \$18,128.14 and cash payments in the total sum of at least \$5,000, made by post or hand-delivery, in return for facilitating payment by YVC of false invoices issued by Pinnacle and PAE.
6. Mr Stokes and Mr Wright had knowledge of, and approved, the payments made by Mr Newman to Mr Smith in relation to their respective dealings with Mr Smith via Mr Newman.
7. Mr Newman and Mr Stokes split the remaining profit from the proceeds of the dishonest scheme involving Pinnacle and YVC between themselves, in unspecified amounts.
8. Mr Newman and Mr Wright split the remaining profit from the proceeds of the dishonest scheme involving PAE and YVC between themselves, in unspecified amounts.

Corrupt conduct findings and section 74A(2) statements

Kerry Smith

The Commission finds that Mr Smith, by receiving payments from Mr Newman, as specified above, as a reward for facilitating payment by YVC of false invoices issued to YVC by Pinnacle and PAE in respect of which only part of the goods ordered was delivered, engaged in corrupt conduct. This is because the conduct directly and adversely affected the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constitutes or involves a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that directly and adversely affected the exercise of Mr Smith's official functions and could involve official misconduct, bribery, obtaining or offering secret commissions and fraud within the meaning of section 8(2)(a), section 8(2)(b), section 8(2)(d) and section 8(2)(e) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found

were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Smith has committed criminal offences of corruptly soliciting or receiving a reward contrary to section 249B(1), obtaining financial advantage by deception pursuant to section 178BA, or obtaining financial advantage by false or misleading statements under section 178BB 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 Smith for an offence of corruptly receiving a reward contrary to section 249B(1), obtaining financial advantage by deception pursuant to section 178BA, or obtaining financial advantage by false or misleading statements under section 178BB of the Crimes Act. Although all relevant witnesses gave their evidence under objection at the public inquiry, there is evidence of banking records available and a statement could also be obtained from Mr Newman.

As Mr Smith has already left his employment at YVC, the Commission is not required to form an opinion as to whether consideration should be given to the taking of any action against him for a specified disciplinary offence.

Robin Newman

The Commission finds that, by issuing false invoices in the name of Pinnacle and by arranging for false invoices in the name of PAE to be issued by Mr Wright to YVC in respect of goods which were short-delivered, by obtaining a financial benefit from these activities for himself and Mr Stokes, and by making payments specified above to Mr Smith in return for Mr Smith facilitating the payment by YVC of these false invoices, Mr Newman engaged in corrupt conduct. This is because it was conduct that directly and adversely affected the honest or impartial exercise of Mr Smith's official functions under section 8(1)(a) of the ICAC Act. Such conduct was also conduct that directly and adversely affected the exercise of Mr Smith's official functions and that could have involved official misconduct, bribery, obtaining or offering secret commissions and fraud within the meaning of section 8(2)(a), section 8(2)(b), section 8(2)(d) and section 8(2)(e) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Newman has committed criminal offences of corruptly giving a reward contrary to section 249B(2), obtaining financial advantage by deception pursuant to section 178BA, or obtaining financial

advantage by false or misleading statements under section 178BB of the Crimes Act.

Mr Newman has already been dealt with under the criminal law for, in substance, similar conduct involving false invoices issued by him in his name. In all the circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Newman for a specified criminal offence.

Michael Stokes

The Commission finds that, by participating in the issuing of false invoices in the name of Pinnacle to YVC in respect of goods which were short-delivered, thereby obtaining a financial benefit for himself and Mr Newman, and in the making of payments, as specified above, to Mr Smith in return for Mr Smith facilitating the payment by YVC of these false invoices, Mr Stokes engaged in corrupt conduct. This is because it was conduct that directly and adversely affected the honest or impartial exercise of Mr Smith's official functions under section 8(1)(a) of the ICAC Act. Such conduct was also conduct that directly and adversely affected the exercise of Mr Smith's official functions and that could have involved official misconduct, bribery, obtaining or offering secret commissions and fraud within the meaning of section 8(2)(a), section 8(2)(b), section 8(2)(d) and section 8(2)(e) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Stokes has committed criminal offences of corruptly giving a reward contrary to section 249B(2), obtaining financial advantage by deception pursuant to section 178BA, or obtaining financial advantage by false or misleading statements under section 178BB 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 Stokes for offences of corruptly giving a reward contrary to section 249B(2), obtaining financial advantage by deception pursuant to section 178BA, or obtaining financial advantage by false or misleading statements under section 178BB of the Crimes Act. Although all relevant witnesses gave their evidence under objection at the public inquiry, there is evidence of banking records available and a statement could also be obtained from Mr Newman.

Paul Wright

The Commission finds that, by issuing false invoices in the name of PAE to YVC for orders placed by Mr Smith on behalf of YVC, in respect of which only a portion of the goods ordered was delivered, by obtaining payment from YVC for such invoices for himself and Mr Newman, and by providing Mr Newman with the funds from the proceeds of payments of the invoices for the purpose of Mr Newman making payments to Mr Smith for his facilitating the payment by YVC of these false invoices, Mr Wright engaged in corrupt conduct. This is because it was conduct that directly and adversely affected the honest or impartial exercise of Mr Smith's official functions under section 8(1)(a) of the ICAC Act. Such conduct was also conduct that directly and adversely affected the exercise of Mr Smith's official functions and that could have involved official misconduct, bribery, obtaining or offering secret commissions and fraud within the meaning of section 8(2)(a), section 8(2)(b), section 8(2)(d) and section 8(2)(e) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Wright has committed criminal offences of corruptly giving a reward contrary to section 249B(2), obtaining financial advantage by deception pursuant to section 178BA, or obtaining financial advantage by false or misleading statements under section 178BB 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 Wright for an offence of corruptly giving a reward contrary to section 249B(2), obtaining financial advantage by deception pursuant to section 178BA, or obtaining financial advantage by false or misleading statements under section 178BB of the Crimes Act. Although all relevant witnesses gave their evidence under objection at the public inquiry, there is evidence of banking records available and a statement could also be obtained from Mr Newman.

Chapter 4: Corruption prevention

This investigation focused on public officials in NSW responsible for maintaining their agencies' inventory and those who had some role in ordering goods. In terms of financial impact, operational effectiveness and risk of corrupt behaviour, the procurement of goods and services is one of the most significant duties that a public official undertakes. In public sector organisations, procurement transactions span the boundary between the impartial and ordered world of the bureaucratic administration inside the organisation and the profit-seeking world of the free market on the outside.

The actions of many public sector agencies suggest that they regard procurement as just another cog in the machinery of government, guided by policies and procedures. They appear oblivious to the commercial practices and pressures pulling at their staff, including false friendships and inducements that may be offered by suppliers.

Working in poorly managed environments and without close supervision, buyers in some public agencies in NSW are left to act alone and under an assumption that they will always act impartially. Suppliers, on the other hand, are far from impartial and are often trained in tactics (such as "relational selling"), which are designed to foster a sense that the buyer is in a relationship with them. Providing gifts is an integral part of this approach. Whether used to engender an obligation of reciprocity on the part of the public official or held out as a reward for making purchases, the gifts are designed to bias public officials' purchasing practices in favour of the supplier providing the gifts.

These factors do not excuse a public official's corrupt conduct but do help to explain how it may occur. In this case, despite knowing that gifts were prohibited, each of the public officials involved in the Commission's public inquiry made a decision to accept and not to declare or register the gifts. Their decision to keep the gifts secret and to direct them to their home addresses was a decision that largely led to the findings of corrupt conduct that have been made in this report.

The external environment: relational selling, gifts and the norm of reciprocity

In the late 1980s, marketing literature started to recognise that "more business is lost every year through neglect than through any other cause".¹ It was recognised that the costs of repeat selling to existing customers were far lower than the costs of finding and selling to new customers. Relational selling then emerged and is characterised by a high level of personalised service with the aim of encouraging customer loyalty. Companies have established dedicated relational marketing departments and have developed customer loyalty schemes.

Relational salespeople focus on delivering a reliable service to their customers and responding promptly to any problems that may emerge. This is an advantage for the buyer, as it puts the buyer in a more powerful bargaining position and reduces some of the costs of buying, such as sourcing supplies, drawing up contracts, arranging deliveries and setting up payment systems.

The problems begin when relational selling crosses into the creation of false friendships and the use of gifts to manipulate the buyer. Relational salespeople seek to gain the trust of their customers by being dependable and being interested in their customer's views, workplace and private life. It is this aspect of relational selling that has the potential to break down public officials' impartiality in the exercise of their duties.

The power of the false relationships and the obligation created by gifts was central to the training provided by NCH Australia Pty Ltd ("NCH") and Momar Australia Pty Ltd ("Momar"). Both companies developed training manuals for new salespeople called the Gears of Selling. The manuals

¹ Kerndt, Richard (1989) *Sales Talk*, Sales and Marketing Management, 141 (January), 88.

set out selling practices, why they work and the steps to take to achieve results.

The extract on pages 110 and 111 from NCH's Gears of Selling manual summarises the initial stages of meeting a customer and stresses the importance of building a relationship.

Momar's Gears of Selling manual talks about the importance of finding a "mutual field of interest" and encourages its salespeople to "be interested in your prospects' family and hobbies as well as his [the buyer's] business problems".

The NCH manual promotes the salespeople's use of open-ended questions and self-disclosure, while encouraging them to be observant of the buyer's environment by being on the lookout for family photos or sporting memorabilia. It also suggests that salespeople might want to remember special occasions that are relevant to the buyer and practical examples are provided to "illustrate how you can weave personal information into a warm-up and/or combine the personal information and warm-up with the use of advertising novelties".

Small gifts are integrated into this relationship development to reward purchasing behaviour and to foster a sense of obligation to purchase something in return for the gift. Reciprocity is a powerful societal norm that creates a sense of obligation in an individual to repay someone who has done something for them. It is a concept well understood by those involved in relational sales and marketing.

Further, the NCH manual states that the provision of an ice-breaker or small novelty gift "is linked to what is called 'reciprocity'. In simple terms, it means that if you do something nice for me ... I'm obligated to reciprocate". An extract from the manual (see below) takes the salespeople through the process of introducing themselves to a new customer.

Even at this introductory stage, the suppliers are aware of the importance of the norm of reciprocity and focus on making

individuals feel "psychologically indebted". An ice-breaker or novelty item is provided to break down any initial resistance or suspicion, to introduce themselves to new buyers, and to make an existing buyer feel special. Offering small gifts such as novelty items is a deliberate tool used by suppliers to rapidly develop a relationship with public officials.

Over time, the "relationship" strengthens as more gifts are provided. This is seen in Momar's customer sales card (see page 112) for Scott Ingwersen, an employee of Waverley Council.

In the third column titled "premium", the sales card indicates the type of smaller gift that was provided to the buyer (for example, salad server, Easter egg, USA lollies, spice rack, computer bag, whiskey, pens and wireless headset). In the "amount of sale" column, it indicates the total value of the sale and, in a hand-drawn box, the value of gift cards provided to the customer (to a total of \$520 on this sales card).

The integration of the gifts and the development of the relationship is also apparent on this card. In the far column titled "personal information and product demo", there are notes taken after each visit to the buyer; in this case "won their baseball division". On subsequent visits, this allows the salesperson to talk to the buyer about this topic and build on their relationship.

When asked about this particular customer sales card and the gifts listed under the premium column, Paul Goldin, a salesperson from Momar, gave the following evidence at the Commission's public inquiry:

[Counsel Assisting]: Now the reason why you provided those gifts of that value is to build up that relationship with the buyer, wasn't it?

[Mr Goldin]: To make it more personal.

Q: Yeah. Well to make it more

STEP 1 - FIRST GEAR:

FIND THE BUYER AND GET THE BUYER TO TALK:

All things being equal, people buy from people they like and trust. As you develop a relationship with your customers, you need to keep in mind that a customer needs to know how much you care before they are willing to care how much you know. First Gear is about getting to the right customer and developing a trusting relationship with that customer. The illustrations below will take you through that process.

The actual steps in *"Find the Buyer and Getting the Buyer to Talk"* are outlined below. The logic and techniques associated with each of these steps will be elaborated in Section III.



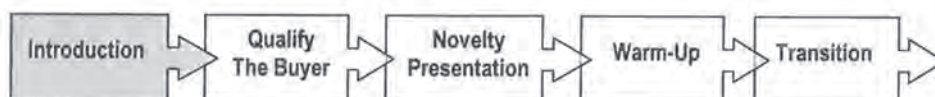
**ONCE YOU HAVE DEVELOPED A RELATIONSHIP, YOUR CUSTOMER
WILL BE MORE RECEPTIVE TO LEARNING MORE ABOUT YOUR
COMPANY AND YOUR PRODUCTS.**

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I -6

You'll discover that once you've used "*First Gear*" to establish a relationship, it becomes easier to show your product and ask your customer to buy. Let's study how a NCH representative would handle the "*Introduction*".

THE INTRODUCTION:



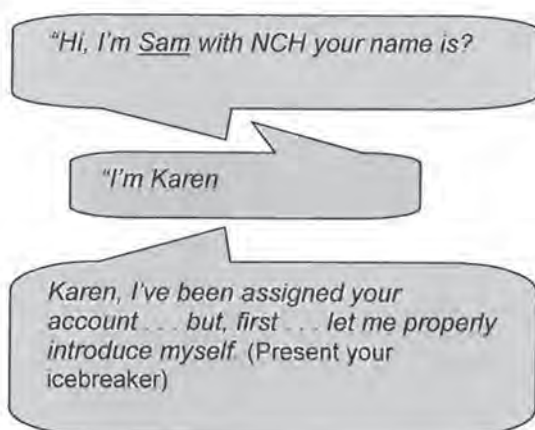
When you first start your business, you will meet between 60 and 75 new prospects or existing customers each week. As a representative new to the territory, even the existing customers will be new calls. Why? Because this is the first time you've met them.

The new call experience will be very much like approaching a traffic light. In some calls you'll get a "**green**" light and the receptionist or the buyer will be very open to seeing you. In other calls, you will have a "**yellow**" or caution light where the receptionist or buyer will give you excuses or reasons why they can't see you. In situations where you encounter resistance, you will need some extra sales tools to help overcome those initial objections, maintain control and get to the buyer. And, of course, you will encounter some "**red**" lights where stop means stop and a customer cannot or will not see you.



FIRST PERSON YOU WILL MEET WHEN YOU MAKE A CALL:

Most people you call on will be helpful and friendly. The scenario below illustrates what an "*Introduction*" might sound like when you walk into a call.



LOGIC:

- Your introduction is designed to give you control and help guide the conversation.
- Treat the first person you meet with respect.
- Gain control by introducing yourself and quickly ask the person's name.
- Tell the person that you've been assigned the account giving them the sense that you are supposed to be there.
- Finally . . . present an "*icebreaker*" or small novelty. When the person accepts, they become psychologically indebted to help you. That's the value of using a small novelty (e.g. pen, hypo-oiler, key chain)

FULL NAME OF CUSTOMER			Inverclyde Council - Parks & Gardens						
POSTAL ADDRESS OF CUSTOMER									
DELIVERY ADDRESS OF CUSTOMER									
			FULL NAME OF PERSONS TO SEE				POSITION	TELEPHONE	
			1 Scott Ingham				Supervisor		
			2						
			3						
			4						

CUSTOMER RECORD	DATE	ORDER No.	PREMIUM	NEW ACCT.	No. OF ITEMS	AMOUNT OF SALE	QTY.	PRODUCT NAME	PERSONAL INFORMATION & PRODUCT DEMO
	1/4/09	259	Saled server Easter egg light 3x pen	N	5	\$2772.50 (\$100)	12	Assassin	Wm. Hest
							12	Starless	baseball
							24	\$40	division
							25	C-Gide	Claude cane
							25	Over Glen	but for contact
	22/5	341	USA bottles		3	\$1567 (\$70)	12	Orange Sw	Wm. Hest
							24	\$40	Champion for
							25	Over Glen	Boston baseball
	31/7	464	Spice rack sunny holder		5	\$2633 (\$100)	20	Blue Rider	Club.
							50	ACT-on	Away July.
							24	94F	Bought baseball
							12	Marisize	gear. Got great
	3/9	527	Computer Bag 4x pen		5	\$2864.75 (\$100)	12	Blister	jacket at
							25	Front	paddies.
							25	Odor Cap	Starting baseball
							12	Motto	with Claude tea
	20/10	615	Mat 1p in 1		3	\$1966.50 (\$100)	12	Standers	- Scott coach.
							24	\$40	but Odor Caps
							50	Over Glen	Silphores start in
							12	Starless	week. Undefente
							25	Super Ma	in Claude term.
	3/12	710	Glenfiddich whisky 4x pen		6	\$3012 (\$100)	12	\$40	might go to
							12	Starless	pen to
							50	Over Glen	Silphores in
							50	ACT-on	March.
	15/1/10	119	Wireless Headset		8	\$3155 (\$150)	8	my size	but General Get
							6	Marisize	Claude prize gun
							12	Orange Sw	Wm. Hest
							25	Odor Cap	award. Pen
							25	Impover	6 bottles and to me
							20	Blue Rider	

- personable which lets the buyer know that you remember them and value them. That's right, isn't it?*
- A: *Yes.*
- Q: *And the purpose of letting them know you remember them and value them is so that they will think you're a good bloke. That's right, isn't it?*
- A: *Perhaps.*
- Q: *Yes. And continue to order from you because you're their friend. That's right isn't it?*
- A: *Yes.*
- Q: *It's a kind of grooming them for ongoing relationship for future sales, isn't it?*
- A: *Yes.*

The grooming of the public officials with the combination of small gifts and relationship building techniques was effective. Mr Ingwersen, whose sales card is displayed above, believed Mr Goldin was his friend:

Well, he was a sales rep and I was, you know, doing my job but we'd sort of worked up a little bit of a personal friendship as well, I thought it was, but in hindsight it wasn't.

The relational selling techniques, including the gifts, were designed to cause the public official to favour the supplier. In effect, they deliberately created a conflict of interest for the public sector buyer. That the buyer was merely an agent for the true customer was not considered by those engaged in the selling. As Mark Moskow, director of Momar, summed up:

- [Counsel]: *The Gears of Selling approach focused upon the individual buyer rather than upon the true customer. Do you agree with that?*
- [Mr Moskow]: *[To] our organisation, the true customer is the buyer.*

Whether the gifts operate to create an obligation to reciprocate or act as a reward along the lines of a loyalty program, the personal motivations generated by the gifts are not balanced by a personal motivation to achieve the

best value for money. The public official is achieving a personal benefit as a buyer for their agency but spending the agency's money – that is, the true customer's money.

Relational selling is not necessarily corrupt, and can be a good thing for both the supplier and the customer. A relationship with suppliers, in the context of a broader, well-managed engagement, allows suppliers to better understand the customer's needs and suggest new solutions, and provides a basis for negotiation on price and value.

The corrupt conduct in this case occurred as a result of the public agencies' lack of management of their engagement with suppliers, despite their procurement activities occurring in an environment in which the combination of gifts and false relationships are common tactics. It also occurred because of the suppliers' focus on the buyer, rather than the customer.

Buyer beware: managing supplier engagement

Active engagement of suppliers and management of the supplier-public official relationship can deliver significant benefits to an agency. Increased market intelligence, better price discovery, reduced transaction costs, novel solutions, bargaining strength and better supplier understanding of agency needs and goals are all possible. Managed supplier engagement also provides an opportunity to clearly communicate agency expectations around gifts, ensure the consequences of breaches of policy are understood, and control the access of suppliers to public officials.

On the agency side, public officials who clearly understand the consequences of gift-taking, and are equipped to rebuff relational sales techniques, provide additional protection from corruption risks for an agency. In this case, gifts policies and procedures existed at every council and public agency investigated, but the evidence clearly indicates that they alone were not effective controls on staff behaviour. In many cases, management of the broader relationship between buyer and supplier to limit gift exchanges and relational selling was weak or non-existent.

Reducing gift giving by suppliers

This investigation showed that suppliers either genuinely did not know that gifts were prohibited for public officials or claimed that they did not know. They could make this claim because there was a lack of communication between the public authorities as customer and the suppliers. From the suppliers' perspective, the only interaction they had with the agencies was with the individual buyer with whom they dealt. There was no evidence of limits being placed on their access to premises and little or no information provided to them about how they should interact with the agency.

Setting expectations and incentives

In *Corruption risks in NSW Government procurement – The management challenge* (December 2011), the Commission expressed the view that public authorities need to take more action to communicate with suppliers in order to both improve procurement and to reduce corruption risks. Engagement with suppliers, where public officials take the initiative and control the interaction, provides the public sector with the opportunity to communicate ethical obligations, principles and standards of behaviour to suppliers.

In this case, it is clear from the evidence of the suppliers that what was missing with regard to their interactions with the public sector, and what may have curtailed the practice of gift giving, was communication of a definitive position on gifts from the public sector. Phill Scott, contracts manager with Local Government Procurement (LGP), appeared as an expert witness at the Commission's public inquiry and advised that:

An advantage of informing all suppliers [that gifts are not permitted] is that they become aware and can't deny that they know what's going on. It also sets the standard because many suppliers are quite honest. Most suppliers I would have thought are honest and it's only a smaller number who are going to adopt these corrupt processes.

If any information was provided at all to suppliers involved in this investigation about their expected behaviour and the consequences of poor behaviour, it would have been through a statement of business ethics. This statement, usually included at the end of a contract, is often viewed as fine print. As such, it cannot alone be considered an effective mode of communication with suppliers.

For suppliers of lower value items, as is the case for the suppliers in this investigation, there were no contracts and, consequently, no statements of business ethics or any other information provided that would make them reconsider the practice of gift giving.

Any communication about expected supplier behaviour would be more powerful if clearly tied to disincentives. Clearly articulating the consequences of giving a gift and other problem behaviours, such as job promises, lavish hospitality, secondary employment and business opportunities, changes the cost-benefit equation. While each agency would need to find a set of disincentives suited to their situation, options include a warning/termination system, publication of expected behaviour standards, and agreements with other agencies to ban offending suppliers from government work. These types of disincentives are consistent with recent anti-bribery laws in the US and the United Kingdom.

Recommendation 1

That councils communicate to suppliers a clear set of supplier behaviour expectations and the associated consequences for non-compliance.

Taking control of interactions with suppliers

Communication to suppliers of expectations and consequences would be more effective when supplier engagement is driven by the public sector. In general, however, this inquiry identified a passive approach by public sector agencies to procurement. Suppliers were given free access to council locations and met public officials at depots, parks and wastewater treatment plants. In some cases, salespeople were given unsupervised access to council offices:

[Karen McGlinchey]: So he was just able to wander around and... place vouchers on people's desks?

[Christopher Myers]: Yes.

Unlike some companies that have a strategy for accessing and meeting with buyers, the councils examined at the public inquiry did not have a strategy, rules or regulations governing the visits of travelling salespeople or general communication with suppliers. Not only is passive engagement with well-trained vendors a corruption risk, it is also a risk to good procurement outcomes. A proactive and controlled engagement with suppliers allows the public sector to access industry knowledge and gives the public sector an opportunity to hear about new products, innovations and solutions. This is particularly valuable for councils that have significant buying power in particular industries. Further, such an engagement framework controls access to the agencies and provides a set of communication channels that also can be used to communicate expectations and consequences around corrupt behaviour.

In considering the best way to communicate with suppliers, councils should seek to maximise the benefits of meeting with suppliers and visiting salespeople, while limiting the risk of corrupt relationships developing. The key to communicating and engaging with suppliers is for the public sector – not the suppliers – to take the initiative and set the rules. How an agency designs its supplier engagement framework will depend on its own circumstances. There is, however, a range of options. While the following is in no way an exhaustive list, the Commission has previously identified the following communication strategies:

- holding regular open supplier briefing sessions
- providing performance feedback, including tender debriefs for all unsuccessful tenderers

- developing centralised access through the internet to information about available procurement opportunities
- holding industry forums and seminars or training for suppliers about agency procurement selection processes
- developing a supplier's guide to procurement processes and expectations.

In addition to developing an engagement framework that puts the agency in control of interactions with suppliers, agencies may also need to close the door on uncontrolled access by suppliers. This could include one or more of the following or another approach tailored to an agency's circumstances:

- meetings with suppliers to be by appointment only
- meetings with suppliers to occur in a public place
- meetings with suppliers to be attended by more than one public official
- suppliers wishing to demonstrate a new product being instructed to send details of that product to a generic email address that can be accessed by more than one individual.

Recommendation 2

That councils develop a proactive and comprehensive supplier engagement framework.

Reducing gift taking by officials

Clarifying expectations around gift taking

A principal control of behaviour in the public sector is the rules by which work is to be carried out, including rules guiding the acceptance of gifts and benefits. The minimum set of rules on gifts and benefits that must be adopted by all local councils is clearly laid out in the NSW Division of Local Government's Model Code of Conduct (June 2008). The model code states that council officials must not:

- *seek or accept a bribe or other improper inducement*
- *seek gifts or benefits of any kind*
- *accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty*
- *accept any gift or benefit of more than token value*
- *accept any offer of money regardless of the amount.*

The model code also provides the following definition of "token":

Generally speaking, token gifts and benefits include:

- a. *free or subsidised meals, beverages or refreshments provided in conjunction with:*
 - i. *the discussion of official business*
 - ii. *council work related events such as training, education sessions, workshops*
 - iii. *conferences*
 - iv. *council functions or events*
 - v. *social functions organised by groups, such as council committees and community organisations.*
- b. *invitations to and attendance at local social, cultural or sporting events*
- c. *gifts of single bottles of reasonably priced alcohol to individual council officials at end of year functions, public occasions or in recognition of work done (such as providing a lecture/training session/address)*
- d. *ties, scarves, coasters, tie pins, diaries, chocolates or flowers.*

The model code then gives some specific examples of gifts that would not be considered token; for example, tickets to major sporting events, discounted products for personal use, and the use of facilities such as gyms, holiday homes or free or discounted travel.

In summary, the only circumstances in which the acceptance of a gift would not constitute a breach of the model code, and thereby grounds for disciplinary action, would be where:

- the gift or benefit in question was of token value only, **and**
- the acceptance of the gift or benefit would not create a sense of obligation on the part of the council official concerned, **and**
- it could not be perceived to be intended to or likely to influence the council official in carrying out his or her public duty.

Despite the relatively clear provisions of the model code, evidence from this investigation indicated that the acceptance of gifts was widespread. While a large number of public officials reported knowing that gifts were prohibited, some claimed to have limited or confused understanding of the details of the policies of council regarding gifts (as covered in chapter 2 of this report).

A smaller number of public officials expressed confusion in relation to thresholds and the concept of token gifts.

While the provisions of the model code are clear, most public officials would not consult it in the course of their normal work. Instead, they would consult their own council's code of conduct and any associated gifts policy. It appears that the confusion asserted by some public officials was a result of the complexity of some agencies' policies, with gift acceptance rules sometimes split between two documents (the code of conduct and a separate gifts policy).

In some cases, attempts to clarify the situation and to further tighten the rules resulted instead in overly-complicated rules. An example is the Council of the City of Sydney's code of conduct (adapted from the model code), which states that "gifts and benefits are defined as token when their value does not exceed \$50.00". Some council officers claimed that it was this provision that led them to believe that gift vouchers were acceptable, and it was only after they were contacted by the Commission that they realised they had not read other provisions in the code that specifically banned all gifts for those staff members working in procurement.

Similarly, an officer at Orange City Council claimed that he thought he could accept gifts of less than \$50 in value, and that he was obliged to report such a gift only if two \$50 gifts were received in one day. That officer was able to make this claim because Orange City Council's gifts, bribes and benefits policy stated that staff "who receive more than two nominal gifts from one source must disclose that fact in the gifts and benefits register".

This evidence highlights the need for councils and other agencies to ensure they have simple rules on gifts that cannot be misinterpreted. Clear rules reduce public officials' ability to rationalise taking gifts or to use confusion as a defence. The definition of what constitutes a token gift, in particular, needs to be unambiguous.

In situations where a public official is in a commercial relationship with the gift giver on behalf of his or her agency acceptance of gifts should never be allowed. All individuals who hold financial delegations within an organisation can be deemed to hold such a position, and councils may wish to make a prohibition on accepting gifts a condition of such a delegation.

Recommendation 3

That councils review their codes and policies on gifts and benefits to ensure they effectively communicate expected behaviour in a way that the intended audience can easily grasp.

Recommendation 4

That councils ensure that their policy provides that all staff who hold financial delegations are prohibited from receiving gifts of any kind.

Clarifying the consequences of accepting gifts

The public officials caught up in this inquiry paid a high personal price for the decisions they made. Some employees escaped with an investigation and a tarnished record, but for others the acceptance of the gifts has cost them their jobs and reputations. Should these employees have known the high cost to be paid, they may well have thought twice before accepting the gifts.

Ronita Tompsett had worked at Burwood Council since 1985 but resigned as soon as her practice of accepting gifts became known. Ms Tompsett gave evidence that she has subsequently taken a job that pays her approximately \$20,000 less a year than her former job at the council.

The Commission also heard from Maxwell Bancroft who had worked at Liverpool City Council since 1993. After the Commission's initial investigations, he described feeling sick, and subsequently resigned from the council, stating that he could not stay and "do that to everyone".

Donald Harris had worked at the Council of the City of Botany Bay since 2001, but he also resigned when his conduct became known, stating that he felt disappointed in himself and that he wanted to save the council some embarrassment. At the time of the public inquiry, Mr Harris was still unemployed, as is Peter Naidoo, who had worked at Waverley Council since 1993.

The Commission's investigation has shown that simply training public officials to be aware of policies concerning gift acceptance is largely ineffective. Whether or not the public officials knew the exact rules, most of them knew they were not supposed to take the gifts, but did so anyway. What they did not seem to understand was the consequences of such behaviour. After working at Byron Shire Council since 1994, for example, Robert Vagne resigned, forfeiting his full entitlements. He estimated that this cost him approximately \$30,000 in his retirement.

Communication of rules around gift acceptance may be more effective in changing behaviour if staff also understand the consequences of violating the rules. Clear communication of the connection between rule violation and the possibility of resulting investigations, discipline or even loss of job and entitlements will have much greater impact than training on the set of rules alone.

Recommendation 5

That councils ensure that staff training on gifts has a focus on the disciplinary consequences of accepting gifts.

Equipping staff to manage supplier gift giving

Relational selling at its worst (as demonstrated in the Gears of Selling process employed by Momar and NCH), including fostering relationships with gifts, is a highly sophisticated approach that draws on principles from both psychology and marketing.

Manuals on the Gears of Selling employed by Momar and NCH, as well as testimony from the companies' salespeople, clearly describe a long-term process designed to manipulate and groom the buyer. The beginning of the process is characterised by token novelty gifts and a search for emotionally-important personal information about the buyer. It moves on to gifts of increased value, loyalty programs and an apparent friendship.

In a situation where the suppliers are highly skilled in manipulating the buyers, but the buyers are not skilled in managing the vendors, it may be unreasonable to rely completely on rules that require a public official to simply say no to gifts. Ideally, a well-designed supplier engagement framework would not put agency staff in such a situation. If, however, the nature of the public official's work is such that he or she has to be exposed to these sales techniques, then the public officials could be expected to cope better if they are equipped with the skills to recognise and rebuff these methods of the vendors.

Staff who can appreciate that salespeople who enquire about their personal lives are just doing what they have been trained to do – that is, sell – are less likely to be swayed in carrying out their duties. Staff will be in a better position to appreciate the commercial environment in which they are operating, what their role is as a buyer for the council, and ways in which they can best deal with the approaches of suppliers.

Societal norms make refusing a gift an uncomfortable task for anyone, and many people feel that doing so would be rude. To be able politely to refuse any gifts that are offered, and advise the giver that gifts are not acceptable in their organisation, is a skill that can be taught. Councils might consider mentoring staff when they are dealing with suppliers who use these relational selling techniques. Options include managers attending meetings with salespeople, modelling appropriate responses to various sales tactics and discussing the results later with staff. This type of frequent management communication is more likely to build the knowledge and expertise of staff in a way that a one-off training course cannot.

Recommendation 6

That councils assess which of their staff members operate in an environment where relational selling is commonplace, and equip these staff members to recognise and respond to these sales tactics, including the offer of gifts.

Procurement and inventory: reducing opportunity for corruption

Gifts, inducements, collusion, private business interests and favouritism, to name a few, generally achieve the intended outcome only when the operations of a public sector agency provide the opportunity for staff to act secretly and in a self-interested way. Waste, inefficiency and ineffective controls within the procurement and inventory system created ample opportunity for corrupt behaviour to take place at Yass Valley Council (YVC) and Bathurst Regional Council (BRC).

Nowhere in this inquiry was the opportunity to act corruptly through ineffective controls better demonstrated than by the purchase of 400 kilometres of barrier mesh by Geoffrey Hadley of BRC. That the procurement controls, inventory systems and stocktakes were not able to detect such gross over-ordering demonstrates the ineffectiveness of the system. In both BRC and YVC, storepeople were able to over-order, hold stock outside of inventory, operate stores in the absence of target levels and avoid effective stocktakes. Both councils had little idea of who was buying what, what they owned, what was obsolete or waste, and whether capital was tied up unproductively.

While the majority of staff in public sector agencies may not take the opportunity to act in their self interest, it is naive to think that none will, and there is no justification for running a wasteful procurement and inventory system. In the cases of BRC and YVC, poor procurement and inventory control processes gave storepeople the opportunity they needed to act in their own self interest, with the result being corruption that may well have cost these councils in excess of \$1.5 million.

The design of the procurement system, the management of inventory and the stocktake process should all work together to ensure that procurement and stores are run as efficiently as possible, and when the whole system works well, the opportunity for corrupt behaviour is minimised.

Design of the procurement system

In any process, including procurement, the involvement of multiple people creates coordination costs. In procurement, these costs include communication, such as the communication of end user needs to the individual who raises the order, loss of expert market intelligence

and the time required for the physical creation and moving of pieces of paper. In theory, coordination costs are best reduced by assigning procurement to one public official who understands what the agency requires and what items are available from the market, and who has the discretion to purchase.

In practice, however, total control introduces unacceptable corruption risks into the procurement process. It was this total control by single staff members that created the opportunities for the corruption identified by this inquiry. Constraints are necessary to limit such opportunities and these can be costly.

An organisation must balance the risk of self-interested behaviour by staff against the cost of controlling such behaviour. Opportunity may stem from control of two or more critical points within the procurement process, but can equally stem from unmanaged control of a single critical point, such as selection of the supplier. Where the risk is unacceptable, mechanisms of control, such as segregation of duties, limitation of financial delegations and closer monitoring, can be applied. These controls should then be written into the organisation's policies and procedures.

Segregation of duties

Neither BRC nor YVC designed their stores' procurement processes with separation of critical points of the process in mind. In both councils, the storepeople could select a supplier, place orders with that supplier, certify delivery of goods and authorise invoices for payment. They could do all this without obtaining approval from anyone else.

At BRC, Mr Hadley was one of the few people who could both create a requisition and raise a purchase order for goods up to \$10,000. David Rowe, YVC general manager, told the Commission that "council had a very basic purchasing policy which dealt [only] with the issue of local suppliers", but not how procurement should actually occur. The processes and procedures that had emerged in the absence of a designed process created an opportunity for end-to-end control for whoever occupied the storeperson position at YVC.

While segregation of duties is a relatively strong approach to reducing corruption opportunity stemming from control by one person of two or more key points in the process, it creates expensive coordination costs. It also provides no protection from opportunity that arises from control of a single key point in the process, such as selection of the supplier.

Control via delegation

A less onerous approach that is equally effective in reducing corruption that arises from access to a single point in the process is delegation limitation. Limiting

financial delegations does not remove opportunity for corruption, however, it limits the possible damage from such behaviour. Financial delegations were the primary control that both BRC and YVC relied upon in relation to stores procurement.

Delegation limits are an effective control only if they are enforced. At both BRC and YVC, creditor's clerks were relied upon to ensure that staff did not order beyond their delegation. In terms of the storepeople's orders, this check was done at the time the invoice was received for payment. The enforcement of delegations was not effective, and at various times Mr Hadley and Kerry Smith ordered beyond their delegation without any sanction or consequence.

When a new director of corporate and community services started at YVC in late 2008 and detected that there was some confusion in the finance area about delegations, steps were taken to ensure the practice of exceeding delegations was no longer possible. These steps included issuing a clear directive to finance staff that invoices were not to be paid until a manager with the correct delegation had authorised it.

Delegations, even where enforced, do not detect or stop corruption. Reducing delegation size can slow down the functioning of an agency, but still not remove the opportunity for corruption entirely. Rather, delegations are a limit on the damage that can be done at any one time and, generally, only effective oversight of the use of the delegation will increase the likelihood of detection of corrupt behaviour.

Oversight

The opportunities for self-interested behaviour identified through an analysis of a procurement process may be minimised by the segregation of duties or may be monitored by managers. The design of the procurement processes should build in the mechanisms of controls, including audit and stocktake processes, and provide the manager with final approval and access to information necessary to carry out the oversight function and to manage delegations.

The financial system at YVC, however, allowed the manager, Tony Stevens, to see purchases made against his own budget, but not the purchases made by YVC's storeperson, Mr Smith, across several projects drawing on different budgets and cost centres. In fact, YVC had no way of determining the overall dollar value of the purchases made by Mr Smith in any financial year because the total value was split between different cost centres.

A similar technological limitation existed at BRC. In a statement to the Commission, the manager of corporate governance at BRC, Brian Dwyer, explained that "using our old computer software ... it was quite difficult to generate a report in relation to the total goods ordered by the Stores Officer".

Like the majority of storepeople in NSW, the officers at BRC and YVC worked at depot locations somewhat distant from their managers in the civic centre, making close supervision difficult. The processes in place at both councils effectively cut their managers out of the loop. Both storepeople had such a degree of control and discretion that there was little risk that their activities would be detected.

Efficient control of procurement: e-procurement

Segregating duties and imposing strict financial delegations and close supervision on the procurement process can generate significant costs and detract from effective operations. Separating every point of potential conflict within a process may well create an unacceptable burden for an organisation, particularly in a manual system. Similarly, the enforcement of delegations and review of financial information can be controls that come at too high a cost in a manual or semi-automated system.

E-procurement is an approach that is widely used to significantly reduce the costs of procurement and the costs of procurement control. Coordination costs generated by segregation are minimised by automated systems, and additional control costs that exist in manual processes, such as verification of signatures and checking of delegations, are largely eliminated. E-procurement systems are set up with electronic permissions, which ensure that all purchases are tracked, including the relevant approvals. They also prevent any individual from authorising a purchase outside of his or her delegation and automatically separate duties.

Mr Scott of LGP gave evidence to the Commission about the benefits of e-procurement systems:

Electronic processes speed up the processes. They also reduce the likelihood of errors in documentation and they also provide a permanent record that's easily ascertained as to what's actually taken place. Every transaction that takes place is obviously recorded, whereas in a paperwork type system, signatures I suppose could be forged, paperwork gets lost, documents can easily be changed.

But e-procurement is only as good as the design of the process it is automating. The analysis of the procurement process for points of vulnerability remains critical to deciding which segregations, delegations and approvals are required. Mapping the procurement process is one way of conducting such an analysis. Process maps are an analytical tool that can be used to identify corruption risks and to improve business practices. They can show where an individual has end-to-end control over an entire process, or control over two or more points in the process that could allow the opportunity for corrupt conduct.

Process maps can also highlight points where no one is in charge, where there is ambiguity over authority and who

is or is not involved in the process. Further, process maps can show where external associations pose risk, such as the relationships that developed with suppliers in this case. Once a process is mapped, it allows an organisation the opportunity to review it for flaws and consider which points are best controlled by separate individuals, what are appropriate delegation levels and where management supervision is required. It is a crucial first step before the introduction of an e-procurement system.

At BRC, the new process that was introduced after the corrupt conduct became known was designed to segregate duties and enforce delegations. The BRC e-procurement system is configured so that any staff member can be given a log on to create a requisition. It does not rely on an individual to ensure that there has been adherence to the correct delegations.

If an item is outside the delegation of the initiating staff member, it automatically goes to the staff member's manager for approval. Once approved, the requisition goes to the purchasing officer for review. The purchasing officer checks the request to determine if it seems reasonable and whether sufficient quotations have been received. The purchasing officer then places the order with the supplier. The purchasing officer is not permitted to record the receipt of goods into the system. Items cannot be received by the same person who created or approved the requisition. The role of the storeperson is to receive goods at the store. The introduction of the e-procurement system at BRC allowed the organisation to control corruption risk, but not at a cost to the efficient running of the procurement function.

YVC also made the decision to move to an e-procurement system. In its case, the existing software had an electronic purchasing module but it had not previously been activated. As a smaller council, YVC had different considerations from BRC, but again getting the design of the process right for its particular circumstances was the key to a successful roll out of e-procurement.

Managers can be held accountable for the actions of their staff when they are supported by systems that can inform them about what their staff are doing. As mentioned above, neither BRC nor YVC could previously run a report showing the total amount ordered by the storeperson across all cost centres. Review of financial information and simple data analysis can enable management to detect irregularities that may indicate fraudulent activity. Running some simple reports on a periodic basis may have flagged the over-ordering of particular items and ordering beyond delegation. Again, running these types of reports should be more straightforward using an e-procurement system.

Recommendation 7

That councils, if they have not already done so, analyse their procurement processes to identify points of corruption risk and take steps to improve the design of their procurement processes.

Recommendation 8

That councils, if they have not already done so, consider introducing e-procurement as an efficient method of controlling possible vulnerabilities in their system.

Recommendation 9

That councils, if they have not already done so, review which reports are available to the managers of stores and ensure they (councils) can generate a report showing the orders placed by any individual across all cost centres.

Inventory management

Inventory management is a key target for efficiencies in most industries. With some exceptions, minimising the amount of stock held and accurately managing the stock reduces working capital tied up in non-productive assets, loss and waste. Such a tight system also reduces the opportunity for staff to corruptly over-order, falsely verify delivery of stock or steal from the inventory.

The inventory systems examined in this investigation were far from tight. Inventory management processes at BRC and YVC followed few of the principles of good inventory control.

Good inventory control principles include having:

- an accurate understanding of what is an appropriate inventory level to have on hand
- an accurate understanding of what items are currently held in stock
- an organised stores area with everything labelled clearly
- stock that is securely stored with only a small number of authorised personnel having direct access to it
- a system that tracks all inventory activity
- regular stocktakes and random spot checks by managers.

The Commission heard evidence from Mr Scott that an efficient and well-run store, while having corruption prevention benefits, also has benefits from a business efficiency perspective once regular reports are available:

Certainly if there's no record indicating what the level of stock is, for instance, at the end of the month, then there's no way that management can ascertain whether they've got more stock than they need, whether stocks are increasing unnecessarily, whether stocks are actually decreasing because the organisation is running its inventory more efficiently. In the private sector they rely very much on what we call a stock turnover figure which is an indicator of a balance between the level of stock you're holding and how long it's going to last. It's an important factor in indicating at first glance how well the stock is being managed. There's also a need I believe to segregate the level of obsolete stock because that can easily build up where stock isn't managed properly and ... you could find a high level of your inventory's actually stock that you're never going to use again.

Previously, minimum and maximum store levels at YVC were determined by Mr Smith observing when goods were getting low, and determining what was an appropriate amount to order. YVC has now begun the task of better understanding its goods usage, as outlined by Mr Rowe:

Reorder and maximum stock levels of all inventory items are currently being analysed based on the usage history. In the past there has been little science in how these amounts were calculated, particularly given that not all stock was entered into the inventory system. As a result, the reorder and maximum stock levels in the system were rarely used to control stock levels.

Recommendation 10

That councils, if they have not already done so, analyse inventory management systems with a view to improving controls and reducing waste.

Push and pull inventory: stores and non-stock items

Generally, NSW councils run a mix of push and pull inventory. Push inventory is held in stores until needed and levels are based on forecasts of usage, bulk buy benefits, delivery times, capital issues, emergency planning, and so forth. The goal is the minimisation of stock along with optimal use of working capital. Pull inventory purchases are triggered by a customer order. The goal is to avoid tying up capital in inventory by only ordering goods when needed for the relevant project and having the supplier deliver straight to the project site.

A number of private sector organisations run a mixed push and pull system strategy, which requires all aspects of their inventory management system to be well organised, and requires very accurate forecasting of what goods are required and subsequent adjustments to inventory levels. This is known as a lean inventory system.

Councils in NSW are using a mix of both a push and a pull system, but it is not lean in the proper sense. When using the push approach to inventory management, goods are ordered in larger quantities and stored in the council's warehouse until they are required (these are known as "stores items"). "Non-stock items" is the term used for those goods that are ordered for specific projects, as and when they are required. This practice of having stores and non-stock items is commonplace throughout local government. The basic idea of having a mixed push and pull approach to inventory is not in itself problematic. The problem arises where the push items are dealt with as inventory, which is separate from but overlaps with the management of the pull items through individual budgets and costs centres. The result is that agencies have difficulty knowing how much of each item has been purchased, what has become part of capital assets, what is consumed, what is returned to inventory and what is wasted.

Mr Scott described non-stock items as follows:

A non-stock item is an item which is what we call expensed, a purchase order presumably is raised, the goods are... delivered, they're paid for but from then on there's absolutely no further control over them. They are placed somewhere within the organisation, it may be within the stores, it may be outside in the yard area, it could be in the possession of another section within the organisation but basically no one's got any control over it.

Accountability for non-stock items is meant to be achieved through budgetary controls rather than inventory controls. The idea is that those who are responsible for the budgeted project check each item expensed against it. At BRC, the financial system did not support managers in carrying out this task, as it was laborious for them to check each budgeted line item. Even if a manager did go to the effort of checking, the practices employed by the storepeople at both BRC and YVC meant that it was unlikely the manager's suspicions would be aroused. Items such as gloves and mesh are commonly used across all jobs and are not expensive in the context of the overall cost of a medium- or large-scale project. In addition, as the director of corporate services and finance at BRC, Bob Roach, stated in evidence to the Commission:

He [Mr Hadley] would purchase the mesh, for arguments sake, and it would be expensed out against five or six or seven areas.

A single order of mesh would therefore not stand out as unusual. Many non-stock items were not required straight away, meaning they would either sit in the store or elsewhere around BRC awaiting use. Some non-stock items were used immediately on the job they were ordered for, while others were used in partial quantities. Left over items were again poorly controlled. Sometimes they were

taken to the store, but at other times they remained at the job site or were held elsewhere in council.

Those items taken to the store were not officially added to the store's inventory because they had already been expensed or costed out to the job for which they had been ordered, and there was no easy facility to add them back into the system. This practice meant that as soon as the item was expensed to the cost centre, BRC and YVC lost all track of the item from there on, including control of the value of those assets.

Often, those items that were taken to the store became mixed in with stores items and only the storeperson knew whether they were actually stores items or non-stock items. This overall level of disorganisation made it easier for both Mr Hadley and Mr Smith to hide phantom orders (that is, non-existent items) and excessive stock that they had over-ordered in order to obtain corrupt receipts.

Control of pull-based inventory

Control of pull-based inventory delivered to project sites rather than a central workplace, such as a factory, is difficult. Points at which control can be lost include determining the quantities of goods required, management of goods on a project site, transport to secure areas, accounting for loss, waste, dealing with left-overs and returning items to inventory. Despite this, a pull-approach may be the most efficient way for councils to order certain goods, and the Commission does not wish to impede this efficiency. A number of options are available that can go some way to gaining control of the non-stock inventory. No option is a perfect solution; each has its own set of costs, benefits and risks.

One option is to reconfigure the process for receiving non-stock items. Goods could physically be received at the job site, and the goods received, docket signed and forwarded, onto accounts. The goods would then be entered into the inventory system as received and immediately costed out to the relevant job by accounts staff. The benefit of this approach is that the council does not lose track of the value of the inventory and, if there are leftovers, the goods can easily be returned to the store and treated as a return in the inventory system.

If councils cannot accommodate the above process, then another option is to hold project managers accountable for all non-stock items from the point at which they are ordered until those goods are used or returned to inventory. Previous work by the Commission has found that some managers view procurement as simply a means of achieving an end goal. It is understandable that project managers are focused on completing the job in hand, however, the non-stock items being purchased for their projects have significant value and there are corruption risks when they are poorly controlled.

Given this, it is reasonable for councils to assign clear responsibilities to project managers for the management of non-stock items. This may require the development of a separate project-specific inventory list. Councils could consider establishing key performance indicators for project managers in this area. This would help focus the attention of the project manager not only on corruption prevention but also achieving value for money for the council.

In terms of dealing with leftover non-stock materials, most councils could take guidance from their asset capitalisation policy. Using such a policy, councils capitalise assets if they are valued at a certain threshold (for example, \$5,000 or more) and expense anything with a lower value. Councils could develop a process whereby the remaining non-stock items are assessed at the completion of the job and those above the threshold are returned to the council's inventory at their current value.

Recommendation 11

That councils examine options for control of their pull-based inventory and implement an option that is suitable for their operations.

Organisation and operation of the store

In a poorly organised store, it is not apparent what stock is actually required, what is in excess or what is non-existent. Both Mr Hadley and Mr Smith used this disorganisation to their advantage. In BRC and YVC, stores were disorganised, with only the storeperson understanding where everything was kept, which items were stores items and which were non-stock items. The location of items was not recorded electronically and items were not barcoded.

The benefits of an organised store are not only relevant from a corruption prevention perspective but also from a business efficiency perspective. When inventory is organised in a logical order and clearly labelled, less time is spent searching for items and productivity is increased. Mr Scott listed a number of advantages of a well organised store.

In summary, a well organised store allows management to:

- keep items subject to pilferage or of high value in areas clearly visible to all staff and supervisors or in areas with greater security
- achieve a recognised reduction in data entry and processing errors where barcoding is introduced
- facilitate stock rotation of inventory where stock expires or becomes obsolete.

Mr Rowe gave evidence that YVC has totally reorganised its store since the allegations of corrupt conduct became known. All areas, rows and shelves within the store have

been labelled and the exact location of each item has been recorded in the electronic inventory management system. YVC has recruited a new storeperson with extensive stores experience in both the public and private sector. When stock is now issued from the store to a staff member, the staff member is required to provide his or her name, employee number and a job allocation number before signing the relevant "stores issue" docket and receiving the goods. This transaction is recorded in an electronic inventory management system.

Similar changes have been undertaken at BRC. The manager of corporate governance at BRC, Mr Dwyer, provided the following information in a statement to the Commission:

Once the store became my responsibility, I directed that it be reorganised and that all shelves be labelled to indicate the location on a diagram of each shelf. This was to allow for the recording in the Civica software of the location of each stores item.

BRC also improved security at the store and has established a record of who has after-hours access, which allows for greater accountability.

The minimum changes required to organise a store are relatively straightforward. More advanced systems may involve barcoding of items. In all systems, it is crucial to record all movements of goods in and out of the store in an electronic inventory management system, including to which individual and/or job the goods have been allocated.

Recommendation 12

That councils, if they have not already done so, organise their stores so that all items are labelled clearly, stock is securely stored and movement of all goods in or out of the store is recorded on an integrated inventory management system.

Stocktakes

Regardless of the quality of inventory and procurement control, it is standard procedure for organisations to conduct stocktakes. Stocktakes are carried out to physically verify the quantities of items held in the store. At YVC, the storeperson pre-counted certain items before the official stocktake. At BRC, the finance staff assigned to assist the storeperson with the stocktake were not familiar with standard stocktake procedures. Crucially, non-stock items were not counted at either council, placing them entirely outside the scope of the stocktake and therefore any scrutiny.

Mr Scott gave the following evidence to the Commission in relation to stocktakes:

The only way that you'll obtain good stores management is where you have some senior member of staff who's actually got their fingers dirty and understands what is actually down there and how well that store is actually organised. If they stay in the administration centre and don't get... [their] hands... in those stocktakes, then they're going to miss an opportunity to have a much better feel for what's actually happening.

At both BRC and YVC, stocktakes are now supervised by senior staff members. Both councils have found stocktakes much easier to complete due to the reorganisation of their stores areas.

There are alternative approaches or supplements to stocktaking, such as cycle counting, where items are counted on a schedule throughout the year so that all items are counted at least once a year. Generally, higher value items are counted more frequently, while lower value items are counted less frequently. Cycle counting allows management to promptly ascertain stock discrepancies on key items. This approach may have utility for some councils. Random checks can also be used to heighten the fear of detection of corrupt conduct or other poor behaviour. Random checks were not undertaken by management at either BRC or YVC, but have now been introduced in relation to various elements of inventory management and procurement.

Recommendation 13

That councils ensure stocktakes are conducted independently of store officers and by staff knowledgeable about the principles of stocktaking.

Recommendation 14

That council management assesses the residual risk in its store and, if appropriate for the organisation, conducts random spot checks or cycle counts of select aspects of inventory management.

Audit

The Commission's investigation showed how widespread the practice of relational selling and gift giving was amongst public sector agencies in NSW, and the conflicts of interest that this creates for council staff. The investigation also showed how, in the cases of BRC and YVC, poorly designed and managed procurement and inventory management systems provided the opportunity for fraudulent activity. All councils in NSW could learn from the cases of BRC and YVC, and assess their operational controls to determine if they are susceptible to the risks identified in this chapter.

Recommendation 15

That councils, if they have not already done so, consider the risks highlighted by this report, namely,

- **relational selling and gift giving**
- **procurement processes**
- **inventory management,**

and, where they consider the council is at risk, add these topics to their internal audit programs.

While the corruption prevention recommendations that the Commission has made in this matter could provide assistance to all NSW councils and public authorities, they are formally directed to the 14 councils in respect of whom evidence was called at the public inquiry, as these are the councils where the corruption prevention issues identified during the inquiry largely arose.

These recommendations are made pursuant to section 13(3)(b) of the ICAC Act and, as required by section 111E of the ICAC Act, will be furnished to the relevant councils and the Minister for Local Government.

As required by section 111E(2) of the ICAC Act, the councils must inform the Commission in writing within three months (or such longer period as the Commission may agree to in writing) after receiving the recommendations whether they propose 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 councils are required to provide a written report to the Commission of their 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 ICAC Act is concerned with the honest and impartial exercise of official powers and functions in, and in connection with, the public sector of NSW, and the protection of information or material acquired in the course of performing official functions. It provides mechanisms which are designed to expose and prevent the dishonest or partial exercise of such official powers and functions and the misuse of information or material. In furtherance of the objectives of the ICAC Act, the Commission may investigate allegations or complaints of corrupt conduct, or conduct liable to encourage or cause the occurrence of corrupt conduct. It may then report on the investigation and, when appropriate, make recommendations as to any action which the Commission believes should be taken or considered.

The Commission can also investigate the conduct of persons who are not public officials but whose conduct adversely affects or 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. The Commission may make findings of fact and form opinions based on those facts as to whether any particular person, even though not a public official, has engaged in corrupt conduct.

The ICAC Act applies to public authorities and public officials as defined in section 3 of the ICAC Act.

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 role of the Commission is to act as an agent for changing the situation which has been revealed. Its work involves identifying and bringing to attention conduct which is corrupt. Having done so, or better still in the course of so doing, 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 principal functions of the Commission, as specified in section 13 of the ICAC Act, include investigating any circumstances which in the Commission's opinion imply that corrupt conduct, or conduct liable to allow or encourage corrupt conduct, or conduct connected with corrupt conduct, may have occurred, and cooperating with public authorities and public officials in reviewing practices and procedures to reduce the likelihood of the occurrence of corrupt conduct.

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 section 7 of the ICAC Act as any conduct which falls within the description of corrupt conduct in either or both sections 8(1) or 8(2) and which is not excluded by section 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 9(1) provides that, despite section 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 section 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 section 8 is not excluded by section 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.

The Commission adopts the following approach in determining whether corrupt conduct has occurred.

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 sections 8(1) or 8(2) of the ICAC Act. If they do, the Commission then considers section 9 and the

jurisdictional requirements of section 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.

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 *Rejcek 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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