

COURT HOUSE

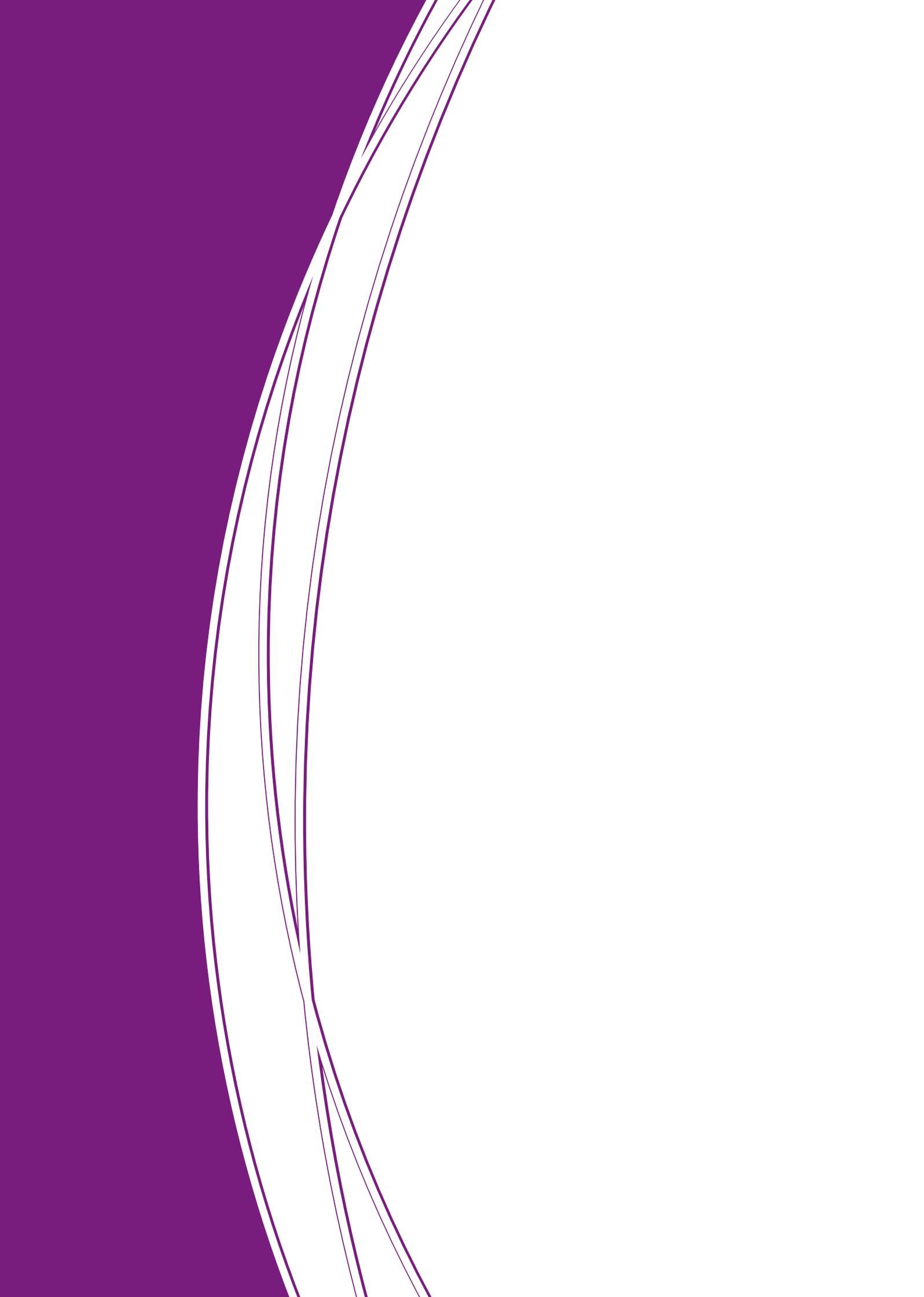
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INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES



**INVESTIGATION INTO THE
CONDUCT OF A SENIOR
OFFICER OF THE NSW
DEPARTMENT OF JUSTICE
AND OTHERS**

**ICAC REPORT
NOVEMBER 2016**



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Mr President
Madam Speaker

In accordance with s 74 of the *Independent Commission Against Corruption Act 1988* I am pleased to present the Commission's report on its investigation into the conduct of a senior officer of the Department of Justice and others in relation to the awarding of construction and project management contracts in 2013.

I presided at the public inquiry held in aid of the investigation.

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

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

Yours sincerely



The Hon Megan Latham
Commissioner

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Summary of investigation and results

This investigation by the NSW Independent Commission Against Corruption (“the Commission”) concerned allegations that, in 2013, Anthony Andjic, the assistant director of the Capital Works unit of the Asset Management Branch of the NSW Department of Attorney General and Justice (“the Department”), corruptly arranged to award contracts for departmental construction and project management work to Triton Group Co Pty Ltd (“Triton”) and SAFF Projects Pty Ltd (“SAFF”). There was evidence that contracts had been awarded to these companies contrary to relevant procurement rules and that they had been paid almost \$1.3 million despite doing little or no work.

The investigation examined whether there was an arrangement between Mr Andjic and one or more of Fatima Hammoud (another departmental employee), her sister, Fayrouz Hammoud, and Shadi Chacra, the owner of the two companies, for Mr Andjic to exercise his official functions to improperly benefit Mr Chacra and whether Mr Andjic received any benefits in return. The investigation also examined whether Mr Andjic had misused his position as convenor of a selection panel to recommend the appointment of Fatima Hammoud to a more senior position within the Department despite having a conflict of interest arising from the nature of their relationship.

Results

In chapter 8 of this report, the Commission found that, during 2013:

- Mr Andjic and Mr Chacra engaged in serious corrupt conduct by agreeing that Mr Andjic would improperly exercise his official functions to financially benefit Mr Chacra. This agreement involved Mr Andjic arranging for the awarding of departmental contracts to Triton for the project management of the Camden and Picton courthouses upgrade project, and

the departmental construction contracts for the Cessnock, East Maitland and Tamworth courthouses upgrades, and the Spring Street, Sydney, office refurbishment, and the awarding of contracts to SAFF for the project management of the Cessnock, Cowra, East Maitland and Gunnedah courthouses upgrades and a consultancy services contract

- Mr Andjic and Fayrouz Hammoud engaged in serious corrupt conduct by agreeing that Mr Andjic would improperly exercise his official functions to financially benefit Mr Chacra and Fayrouz Hammoud. This agreement involved Mr Andjic arranging for the awarding of the departmental construction contract to Triton for the Cessnock courthouse upgrade and the awarding of the departmental contracts to SAFF for the project management of the Cessnock, Cowra, East Maitland and Gunnedah courthouses upgrades and a consultancy services contract
- Mr Andjic and Fatima Hammoud engaged in serious corrupt conduct by agreeing to financially benefit Fatima Hammoud through the preparation and submission to the Department of an application by Fatima Hammoud for employment as a project development officer, which they both knew contained false information, with the intention that the false information would assist her to obtain a higher paying position within the Department, and whereby Mr Andjic would improperly favour Fatima Hammoud in the selection process by recommending she be appointed to the position.

Chapter 8 of this report also contains statements made pursuant to s 74A(2) of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public

Prosecutions (DPP) with respect to the prosecution of Mr Andjic, Mr Chacra and Fayrouz Hammoud for offences under s 192E(1) and s 192G of the *Crimes Act 1900* (“the Crimes Act”) and of Mr Chacra and Fayrouz Hammoud with offences under s 193B(2) of the Crimes Act of knowingly dealing with the proceeds of crime in relation to their dealings with the money improperly obtained from the Department.

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 Fatima Hammoud with an offence under s 193C(2) of the Crimes Act of dealing with property where there are reasonable grounds to suspect the property is proceeds of crime in relation to her dealing with part of the money improperly obtained from the Department.

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 Andjic and Fatima Hammoud for an offence of conspiracy to commit an offence under s 192G of the Crimes Act in relation to the publishing of a false application for the position of project development officer.

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 Andjic, Fatima Hammoud and her mother, Hakime Hammoud, for offences under s 87 of the ICAC Act.

Chapter 9 of this report sets out the Commission’s review of the corruption risks identified during the course of the investigation. The Commission has made the following recommendations:

Recommendation 1

That the NSW Department of Justice ensures that the implementation of its upcoming program of capital works

contains a mechanism to periodically review the program to ensure that its projects remain consistent with its business strategy and operating environment.

Recommendation 2

That the Department of Justice finalises its restructure of Asset Management Services as a priority and recruits staff to permanently fill the associated positions.

Recommendation 3

That the Department of Justice completes the implementation of its proposed electronic document and records management system.

Recommendation 4

That the Department of Justice develops a framework for governing its procurement activities that:

- assigns governance roles and responsibilities for different types of procurement, such as goods and services procurement and construction procurement
- has mechanisms to detect non-compliance with procedural controls, such as the mandated use of pre-qualified suppliers.

Recommendation 5

That, when developing its procurement governance framework, the Department of Justice reviews its resourcing of procurement governance to ensure that this resourcing is sufficient to successfully fulfil the associated procurement governance roles and responsibilities.

Recommendation 6

That, as part of the implementation of its new enterprise resource planning system, the Department of Justice

reviews its procure-to-pay processes to ensure that:

- there is scrutiny around the creation of new vendors, especially if they are newly established companies
- system controls are designed to make certain an individual who certifies performance of service is familiar with the work in question.

These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E of the ICAC Act, will be furnished to the Department of Justice and the responsible minister.

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

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

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

Recommendation this report be made public

Pursuant to s 78(2) of the ICAC Act, the Commission recommends that this report be made public forthwith. This recommendation allows either Presiding Officer of a

House of Parliament to make the report public, whether or not Parliament is in session.

Chapter 1: The Commission's investigation

This chapter sets out some background information on how this investigation originated, how it was conducted, why the NSW Independent Commission Against Corruption (“the Commission”) decided to conduct a public inquiry and the conduct of the public inquiry.

How the matter came to the Commission's attention

By letter dated 31 October 2013, the acting director-general of the then NSW Department of Attorney General and Justice (“the Department”), which is now the Department of Justice, made a report to the Commission pursuant to s 11 of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”). This section of the ICAC Act requires the principal officer of a public authority to report to the Commission any matter the person suspects on reasonable grounds concerns or may concern corrupt conduct. The report concerned a review of the processes and governance arrangements across the Department that had identified a number of concerns relating to breaches of government and departmental policies and procedures in relation to the procurement of construction work.

After assessing the information provided, the Commission wrote to the acting director-general recommending the Department continue its review and report any further suspicions of corrupt conduct arising from the review. The Department then commenced a preliminary investigation.

In March 2014, the Commission received further correspondence from the Department advising that additional information obtained by the Department indicated that Anthony Andjic, assistant director of the Capital Works unit of the Asset Management Branch, was involved in significant and extensive breaches of departmental procurement rules with respect to the engagement of two companies, Triton Group Co Pty Ltd “Triton” and SAFF Projects Pty Ltd (“SAFF”), in relation to construction

and project management contracts for work on various courthouses. The departmental investigation identified almost \$1.3 million in payments to these two companies and raised concerns as to whether all the work had been done for which payment had been made.

Why the Commission investigated

One of the Commission's principal functions, as specified in s 13(1)(a) of the ICAC Act, is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

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

The role of the Commission is explained in more detail in Appendix 1.

The matters brought to the Commission's attention concerned potentially significant and widespread breaches of procurement rules by a senior public official and involved a substantial amount of public money. In these circumstances, the Commission decided that it was in the public interest to conduct an investigation to establish whether corrupt conduct had occurred, the extent of any corrupt conduct, and whether there were corruption prevention issues that needed to be addressed.

Conduct of the investigation

During the course of the investigation, the Commission:

- obtained documents from various sources by issuing 31 notices under s 22 of the ICAC Act

- requiring the production of documents
- interviewed and/or took statements from numerous persons
- conducted 11 compulsory investigations.

The investigation identified 15 departmental contracts awarded to Triton and SAFF between February and June 2013, under which those companies were paid a total of \$1,285,537.48 (inclusive of GST). Eight of these contracts were the subject of detailed examination by the Commission. These were contracts relating to the courthouse upgrade projects at Camden and Picton, Cessnock, Cowra, East Maitland, Tamworth and Gunnedah, an office refurbishment at Spring Street, Sydney, and a consultancy services contract.

These contracts were selected because they were among the largest in terms of cost and because the Commission was able to obtain some records relating to them. It was a feature of the investigation, as discussed further in chapters 2 and 9 of this report, that many records that should have been available could not be located.

Evidence obtained by the Commission tended to confirm that departmental contracts had been awarded to the two companies contrary to departmental procurement rules and the departmental conflict of interest policy. The Commission's investigation indicated that Mr Andjic had worked with another departmental officer, Fatima Hammoud, who was the sister of the wife of Shadi Chacra, the owner of Triton and SAFF. There was evidence that Mr Andjic was romantically interested in Fatima Hammoud and that they were in a relationship during the relevant period. This provided a possible motive for Mr Andjic improperly favouring Mr Chacra's companies in the awarding of departmental work.

There was also evidence that invoices had been submitted to the Department on behalf of Triton and SAFF for work that had not been done. Additionally, there was evidence that indicated that Mr Andjic had deleted or destroyed pertinent departmental records concerning the engagement of Triton and SAFF. Other evidence obtained by the Commission suggested that Mr Andjic had attempted to use his position as the convenor of a departmental recruitment panel to award a senior position to Fatima Hammoud without disclosing their relationship. There was also evidence that he and Fatima Hammoud knew that she did not hold the necessary qualifications and experience and that the application for the position contained false and misleading information.

The public inquiry

After taking into account each of the matters set out in s 31(2) of the ICAC Act, the Commission determined

that it was in the public interest to hold a public inquiry, for the purpose of furthering its investigation. In making that determination, the Commission had regard to the following matters:

- cogent evidence had been obtained in the course of the investigation indicating the likelihood of corrupt conduct
- the public interest in exposing corrupt conduct that affects public authorities, particularly where those public authorities are involved in the administration of justice
- the allegations were serious and involved a public official who exercised a considerable amount of discretion in his dealings with contractors
- the alleged corrupt conduct was said to have taken place over an extended period of time and involved up to \$1.3 million
- the conduct was alleged to have occurred notwithstanding the existence of policies, procedures, and processes that might have been expected to minimise conduct of the type alleged
- while there was a risk to the reputation of Mr Andjic and other witnesses called before the public inquiry, that risk was not undue in the light of the seriousness of the allegations, the cogency of the evidence then available to the Commission, and the public interest in exposing conduct of the kind alleged
- the prospect that conducting a public inquiry may encourage the reporting of other instances of similar conduct that highlight inadequacies in procurement processes and assist in the promotion of best practices.

The allegations investigated during the public inquiry were that:

- Mr Andjic corruptly engaged SAFF and Triton as project managers for upgrades to Department buildings
- Mr Andjic co-opted Fatima Hammoud to act contrary to the interests of the Department in managing court upgrade projects which he corruptly awarded to SAFF and Triton
- Mr Andjic and Fatima Hammoud deleted or destroyed pertinent departmental records pertaining to the engagement of Triton and SAFF once they became aware of the investigation into their conduct
- Mr Andjic was the convenor during the recruitment by the Department for a project

officer and used his position to award the position to Fatima Hammoud without declaring their relationship and for which she did not hold the necessary qualifications and experience.

The public inquiry was conducted over nine days, from 22 June to 3 July 2015. The Hon Megan Latham, Commissioner, presided at the public inquiry and Grant Brady acted as Counsel Assisting the Commission. Evidence was taken from 18 witnesses.

At the conclusion of the public inquiry, Counsel Assisting prepared submissions setting out the evidence and identifying the findings and recommendations that the Commission could make based on the evidence. Completion of these submissions was delayed in order to address changes made to the ICAC Act by the *Independent Commission Against Corruption Amendment Act 2015*, which commenced on 28 September 2015. These submissions were provided to relevant parties on 30 November 2015. The Commission's Corruption Prevention Division also prepared submissions concerning departmental procurement practices. During early 2016, submissions in response were received from the Department of Justice, Fatima Hammoud and her mother, Hakime Hammoud. No submissions were received from Mr Andjic or Mr Chacra. The last submission was received on 1 March 2016. All the submissions received in response have been taken into account in preparing the report.

Chapter 2: Some background information

This chapter sets out some background information on the Department's Asset Management Branch, of which Mr Andjic's Capital Works unit was a part, the courthouse upgrade project, relevant procurement rules and the principal persons of interest.

Asset Management Branch

During the period relevant to the Commission's investigation, the Department's Asset Management Branch (now known as Asset Management Services) was responsible for maintaining, improving and creating buildings and facilities for the Department. It was divided into four units:

- Facilities Maintenance
- Capital Works
- Procurement Services
- Asset Planning.

From 2008 to January 2013, the director of the Asset Management Branch was Kerry Marshall. From January to July 2013, Jamie Maslen acted in this role. Mr Maslen's substantive position was assistant director of the Facilities Maintenance unit and he continued in this role while acting as director of the Asset Management Branch. Steve Honeywell commenced as director on 30 July 2013.

Mr Andjic was assistant director of the Capital Works unit from 2009 to 2014. The Capital Works unit was responsible for managing the creation, maintenance and improvement of departmental buildings, particularly courthouses. Mr Andjic reported to the director of the Asset Management Branch.

The courthouse upgrade program

In 2001, the Department commenced a 10-year program to upgrade NSW courthouses. Some \$250 million was allocated to the program, with funds to be released during the currency of the program. The upgrade program was

conducted as a series of smaller projects rather than a single project. Completion of the project was delayed because the scope of many courthouse upgrades changed from that originally planned and work was still being undertaken in 2013. Most of the upgrades were finished by the end of June 2015, with only some major projects continuing to run with the expectation that they would be completed by early 2017.

The Asset Management Branch undertook overall management of the program. At the start of each financial year, following consultation between the deputy director-general of Courts and Tribunal Services and the Capital Works unit, a decision was made within the Assets Management Branch as to which courthouses would be upgraded for that year. The work involved design, project management and construction.

Once a particular courthouse upgrade project had been approved, Mr Andjic could appoint a Capital Works unit officer as project owner. The project owner had control of the project and was required to liaise between consultants, contractors and clients such as courthouse staff. The project owner also managed the tender process, including the making of decisions about what contractors were necessary, arranging for the engagement of contractors, signing off on the relevant works, and arranging for the payment of the invoices submitted by contractors. Mr Andjic supervised the project owners. He could also allocate projects to himself, in which case he became the project owner. If this occurred, he was meant to be supervised by the director of the Asset Management Branch.

Relevant procurement rules and processes

Given this investigation primarily concerned procurement, it is important to understand the relevant rules that operated at the time.

The NSW Government Procurement Guidelines apply to all NSW Government departments and set the minimum standards by which departments must abide. Departments may adopt procurement rules that differ from the guidelines but only if these rules are more stringent.

The Department's procurement rules generally followed the guidelines. The Department's procurement rules, as set out in its Service Provider Selection Matrix, required that all construction projects worth under \$30,000 (inclusive of GST) required one written quote while those between \$30,001 and \$250,000 (inclusive of GST) required a minimum of three written quotes or tenders. For project management services, one written quote was required, where the cost was estimated to be under \$50,000 (inclusive of GST), and three written quotes or tenders were required where the value was estimated to be \$50,001 or more.

Departmental policy required that all contractors for these construction services and consultancies were to be selected from the NSW Department of Finance and Services (DFS) list of pre-qualified contractors, unless there were no pre-qualified contractors, in which case approval could be sought to seek quotes from other contractors. A major exception to this policy was that NSW Public Works could be engaged by direct negotiation as a project manager. Construction projects over \$250,000 (inclusive of GST) required an open tendering process where tenders were sought from the public.

Lists of pre-qualified contractors for each region were compiled by the DFS. A contractor was required to make an application to be added to the pre-qualified list. Aside from being incorporated, a contractor had to:

- be in existence for at least two years
- provide financial details and meet financial criteria
- meet certain standards regarding quality assurance and environmental and occupational

health and safety compliance

- provide a summary evidencing a track record of successfully completed projects
- provide client referee reports on those projects.

The DFS ranked each contractor on the basis of the quality of previous work.

The benefit of using the pre-qualified list was that potential contractors had been vetted by the DFS so the project owner could have confidence in the stability of the selected contractor as well as its ability to complete the work.

It was only in exceptional circumstances that a contractor that was not on the pre-qualified list could be invited to quote. This could include work in rural areas, where there were no local contractors on the pre-qualified list. In such cases, the project owner would still need to contact the DFS. The DFS would then advise the project owner that alternate contractors could be considered. Such a decision also had to be discussed at a senior level with the director of the Asset Management Branch. Mr Maslen told the Commission that a direct appointment would only be considered if there was no one else available.

The Department's "default" project delivery methodology required separate project managers, designers and contractors. Use of independent project managers was required to ensure improved governance of project delivery. For smaller fit-out projects it was acceptable to have combined design and project management but separate construction contractors were still required.

In the case where tenders were sought, a Tender Opening Committee (TOC) was established to open tenders. It usually consisted of three people, chaired by a member of the Procurement Services unit (at the time relevant to this investigation, Fatima Hammoud was the chair of the TOC). Each member of the TOC signed a code of conduct declaration. Any conflict of interest was to be reported to the head of the Procurement Services unit.

After the tenders were opened, they were provided to a Tender Evaluation Committee (TEC) convened by the project owner. The TEC was meant to evaluate the tenders and prepare a Tender Evaluation Report (TER). If a decision had been made by the Asset Management Branch to appoint an external contractor as project manager, and the project under consideration by the TEC was for construction works, then a representative of the external project manager contractor was a member of the TEC. Each member of the TEC was required to sign a code of conduct declaration under which they acknowledged that any conflict of interest was to be reported to the convener of the TEC.

The TER required consideration of price criteria and non-price criteria when reviewing tenders. The non-price criteria amounted to 60% of the score and the price criteria amounted to 40% of the score. The TER was required to be sent to all TEC members for review. Each member of the TEC was required to sign the TER. It then had to be submitted for approval to the assistant director of the Capital Works unit. If the assistant director was the project owner, then the TER had to be submitted to the director of the Asset Management Branch. The successful contractor was engaged and a purchase order prepared and approved by the assistant director of the Capital Works unit.

Payments to contractors were arranged in the following way. When a contractor submitted invoices, the project owner was required to confirm that the work had been completed and to assess the amount claimed to determine whether it was appropriate. A purchase order was then signed off as accurate by the project owner and then approved by a more senior member of the Department with appropriate delegation. It was then sent to the departmental finance office for payment. Sometimes, for small amounts, a payment voucher form might be used. If there was a variation to the contract, the contractor submitted a variation for assessment against the scope of works. Approval for the variation had to be obtained from the assistant director of the Capital Works unit or the director of the Asset Management Branch.

Conflict of interest policy

The Department's code of conduct for a tender process required that any potential conflict of interest "such as a personal or financial interest, no matter how remote, in the outcome of the tender process" had to be immediately declared. The code required each person involved in the tender process to sign a declaration in relation to personal interests and potential conflicts. Examples offered in the code of a relevant conflict of interest included a family member working for a prospective supply company or the officer or a family member or relative holding shares

in companies dealing with the Department. The code stated that it is the responsibility of the officer to identify any possible conflict of interest and then complete a declaration in writing for submission to the officer's manager. A decision would then be made whether the conflict of interest could be managed, whether by individual restrictions or by the removal of the individual from the process.

Principal persons of interest

Mr Andjic has a Bachelor of Building and Construction Economics from the University of Technology, Sydney. He has substantial experience in project management, particularly of construction projects. Before being appointed as an assistant director of the Capital Works unit in 2009, Mr Andjic was the manager of development at the NSW Zoological Parks Board for approximately two years. Before that, he was a development manager for approximately five years at RailCorp. Mr Andjic was suspended from the Department in March 2014 as a result of the departmental investigation. He resigned in October 2014.

Fatima Hammoud has a Bachelor of Business, majoring in management, marketing and industrial relations from the University of Western Sydney. In November 2011, she was contracted by the Asset Management Branch as a procurement officer within the Procurement Services unit. She was permanently employed in that role in March 2012. In that role, she was responsible for loading, publishing and opening tenders and convened the TOC.

As at February 2013, she had no experience and no qualifications in project management and no experience of building operations. From about February 2013, she worked one day a week for Mr Andjic to assist him with Capital Works projects. It was intended that this arrangement would provide her with some experience in construction procurement, which she would be able to use in her work for the Procurement Services unit. She had no role in the Capital Works unit in allocating budgets, making payments or confirming work done before payment. By the end of May 2013, she had worked the equivalent of a little more than a month full-time on project management. She left the Department in early 2014.

Fayrouz Hammoud (now Fayrouz Abou Chacra) is the sister of Fatima Hammoud. At the time of the public inquiry, she had been a physical health and education teacher, employed by the NSW Department of Education, for about nine years. Before that, she had worked for Bankstown City Council as a receptionist and learn-to-swim co-ordinator. She had no experience of, or qualifications in, project management or construction. She had been in a personal relationship with Mr Chacra for some years before marrying him in 2014.

Mr Chacra began his apprenticeship as a carpenter when he was 17 years old. His apprenticeship took four years. After that, he studied for about two years to qualify as a builder. His company, Triton, became a licensed builder in 2012. He worked as a subcontractor for a large building company throughout 2013 when he was also engaged to perform work for the Department. In his evidence to the Commission, Mr Chacra claimed that he had also done some domestic renovations but was unable to give the name of any client for whom he had done such work. He was able to give only a very general description of two such jobs that he had done. Neither was so substantial that they required local council development approval.

Mr Chacra registered Triton as a company on 27 April 2012. Mr Chacra was the sole director and shareholder. SAFF was registered as a company on 19 February 2013, with Triton as the sole shareholder. Mr Chacra was the sole director.

Neither Triton nor SAFF were ever placed on the DFS list of pre-qualified contractors.

The relationship between Mr Andjic and Fatima Hammoud

The nature of the relationship between Fatima Hammoud and Mr Andjic and how their relationship developed is relevant to assessing Mr Andjic's conduct both in relation to the awarding of departmental contracts to Mr Chacra's companies and the recruitment process for the project development officer position.

Mr Andjic and Fatima Hammoud became engaged in March 2014. They bought a house together that month. They were married in January 2015.

Mr Andjic told the Commission that he and Fatima Hammoud were "good friends" or "very good friends" but they only commenced a more personal relationship from August 2013. He told the Commission he had "flirted" with her and, by early July 2013, he had gone from liking her a lot to being "infatuated" with her. He denied they were "a couple" before August 2013. Later in his evidence, he said that he was "infatuated" with her as early as February 2013, but then denied this was the case until early July 2013; although, he then agreed that he had been "flirting" with her to a significant degree for some time before July 2013. Fatima Hammoud also told the Commission they commenced a personal relationship in August 2013.

August 2013 is significant as it was subsequent to the date on which several contracts were awarded to Triton and SAFF, and just after Mr Andjic had been the convenor of a selection panel for the position of project development officer, for which Fatima Hammoud was an

applicant. If Mr Andjic and Fatima Hammoud had been in a relationship before August 2013, Mr Andjic would have been required to declare a conflict of interest identifying that he was in a relationship with her. He never did so.

There was other evidence, however, that indicated they were in a close personal relationship well before August 2013.

The Commission obtained a number of emails between Mr Andjic and Fatima Hammoud dating from August 2012, which they believed had been deleted. The emails included numerous messages of a romantic nature, such as love songs, romantic poetry and expressions of romantic affection.

The available emails commence with one on 7 August 2012, in which Mr Andjic sent Fatima Hammoud the words to a song he had composed. It can be best described as a love song. Shortly thereafter, on 21 August 2012, Mr Andjic sent Fatima Hammoud an email inviting her to lunch. She sent an email in response: "I would love to go to lunch with you, when do you want to go?". Although in their evidence to the Commission they both denied the lunch was a date, the Commission is satisfied that the lunch was a date. This is supported by the fact that Mr Andjic had previously sent her a love song, the terms of her response to his invitation, and the significant text message contact between them immediately before and after the lunch.

For example, on 20 August 2012, Mr Andjic sent Fatima Hammoud 13 text messages. The next day, he sent her 16 text messages, including after work hours (at 6.04 pm, 8.09 pm and 8.30 pm). From then on, he continued to send her numerous texts every day, including 35 texts on 23 August 2012, two days after the lunch. Mr Andjic said at the public inquiry that this may have been part of his "flirting" with her.

In any event, Mr Andjic admitted that, as of August 2012, both he and Fatima Hammoud were going out to lunches together and that she was "flirting" with him. He told the Commission that she generally responded to his approaches.

There was other email correspondence clearly showing that Mr Andjic was seeking more than a friendly work relationship with Fatima Hammoud, and that Fatima Hammoud was receptive to his approaches. For example, on 29 August 2012, he sent her an email in which he said, "...because you mean so much to me it is important that you are happy always". On 31 August 2012, she sent an email to him advising "I miss you AA!!", to which Mr Andjic replied, "Missy, I miss you too. It actually hurts missing you this much. I miss you bigger than the sky. I closed my eyes and just sent you a huge hug, did you get it?". Despite this evidence, Mr Andjic denied that he

was in a personal relationship with Fatima Hammoud at this time.

Between 20 and 31 August 2012, Mr Andjic sent Fatima Hammoud 196 text messages, an average of over 16 text messages a day. Thereafter, there continued to be a prolific amount of text and email messages between them. The available content of the communications indicates that their relationship was more than one of a casual friendship.

For example, on 18 September 2012, Mr Andjic sent Fatima Hammoud an email telling her that, "Once in your life someone comes into your life that turns your world upside down. That is exactly what you have done to me". He told the Commission that he sent this email to her as a good friend and claimed she had not done or said anything to indicate that she was romantically attracted to him. He told the Commission that he was not disheartened "because we were close". In another email he sent her on 24 September 2012, he told her "I will die for you and with every beat of my heart I will do whatever you ask of me no matter what". A number of similar emails were sent at other times, including one on 11 October 2012, in which Mr Andjic wrote, "I absolutely loved being with you ... I have never ever connected with someone like you or this before ... You have captured my heart in an awesome way".

Telephone records obtained by the Commission show a pattern of prolific texting to each other each day, including texts after work, late at night, and early in the morning as well as numerous texts on the weekends. For example, in March 2013, they exchanged 664 texts, or about 22 texts per day. In April 2013, they exchanged 1,021 text messages, an average of 34 each day. On one day in April 2013, they exchanged 70 text messages.

Mr Andjic and Fatima Hammoud spent the nights of 7, 8 and 9 June 2013 together at Port Stephens. He told the Commission that the purpose of the trip was that Fatima Hammoud wanted to go whale-watching. They stayed at the Anchorage resort, sharing a bedroom. They were booked in as "Mr and Mrs Andjic". Mr Andjic paid \$250 a night for the room. He told the Commission that Fatima Hammoud slept in the bed and he either slept on the couch or on the floor. He took no steps to alert the resort that they were not a couple and did not ask for a second bed to be brought into the room for his use. In her evidence to the Commission, Fatima Hammoud agreed that Mr Andjic drove her to Port Stephens, where they shared a room, had meals together and went for walks together. She denied, however, that they were in a personal relationship at that time.

It was submitted on behalf of Fatima Hammoud that Mr Andjic's interest in her during 2012 and the first half of 2013 was unrequited; although, Fatima Hammoud

had told the Commission that by August 2012 they were "friends". Certainly, she was not as prolific or as effusive in her emails as Mr Andjic. On the other hand, she never told him to stop sending her romantic emails or to stop contacting her. Indeed, her emails show that she was responsive to Mr Andjic's emails. For example, on 21 August 2012, she sent him an email asking him to "Entertain me".

While the evidence does not allow the Commission to establish the precise date that Mr Andjic and Fatima Hammoud became romantically involved, the Commission is satisfied that, at least from August 2012, Mr Andjic was interested in establishing a romantic relationship with Fatima Hammoud and she encouraged his interest. The Commission is satisfied that their relationship progressed quickly until they became romantically involved sometime during the later part of 2012.

Witness credibility

The Commission does not regard Mr Andjic, Fatima Hammoud, Fayrouz Hammoud or Mr Chacra as truthful witnesses. Their evidence was often internally inconsistent and contradictory or inconsistent with other more reliable evidence. This is more fully illustrated in the course of this report. Particular reference, however, can be made here of Mr Chacra's evidence. His most common answer to questions asked of him in the public inquiry was "I don't remember" or "I can't remember". He gave this response approximately 260 times over four or so hours. He said at one point that he had a serious memory problem but did not provide any medical evidence about it or elaborate on it. The Commission is of the view that Mr Chacra's memory was not poor at all but he used this as a standard excuse when he was reluctant to provide a truthful answer to a question put to him.

Lack of documentary evidence

One concerning aspect of the Commission's investigation was the absence of relevant departmental records either in hardcopy or electronic form. This is an issue dealt with in more detail in chapter 9, the corruption prevention chapter.

In September 2013, Mr Honeywell sought relevant hardcopy files so that he could undertake a review. It then became apparent that many files were either missing or had not been created. When his executive assistant telephoned Mr Andjic asking about the files, he expressed surprise about their absence and suggested Fatima Hammoud be asked if she knew where they were. When Fatima Hammoud was asked about the files she said she had given them back to Mr Andjic. When the executive assistant sought other files from Mr Andjic, he told her that they had gone missing. Mr Honeywell

told the Commission that he spoke to Mr Andjic about obtaining files but got varying responses from him. At first, Mr Andjic told him the files were missing. He then told Mr Honeywell some files had been found at Darlinghurst courthouse. Later, Mr Honeywell was told by Mr Andjic that he had found files at his home. Later again, Mr Honeywell was told by him that the files had gone missing. The upshot was that Mr Honeywell was unable to access relevant files.

Mr Andjic told the Commission that he had deleted emails between himself and Fatima Hammoud. The Commission is satisfied that this was done by Mr Andjic in an attempt to conceal the true history of his relationship with Fatima Hammoud.

Chapter 3: The Camden and Picton courthouses upgrade project

This chapter examines the circumstances under which Mr Andjic came to award a contract to Triton, one of Mr Chacra's companies. The contract was for project management of the upgrades to the Camden and Picton courthouses.

The engagement and termination of NSW Public Works as project manager

In September 2012, Mr Marshall authorised the engagement of NSW Public Works as the project manager for the combined Camden and Picton courthouses upgrade project. Although project management was expected to cost \$50,000, the Department's procurement rules permitted the engagement of NSW Public Works rather than seeking competitive quotes. The proposed NSW Public Works fee for project management was \$56,300 (exclusive of GST).

NSW Public Works was provided with a list of pre-qualified companies to carry out the construction works. It failed, however, to advise those companies of the tender. Mr Andjic complained to NSW Public Works about this in an email dated 14 February 2013. NSW Public Works responded by proposing a means by which it could ensure that the construction work would be kept on track for completion by 30 June 2013. Mr Andjic rejected this proposal and, by letter dated 14 February 2013, which he sent to NSW Public Works by way of email on 18 February 2013, terminated the contract with NSW Public Works.

Triton is awarded the project management contract

On 19 February 2013, Mr Andjic sent an email to Mr Chacra, asking him to provide a fee proposal for the project management of the Camden and Picton

courthouses upgrade. Mr Andjic attached a copy of the Department's 13-page project plan to his email. In this email, he set out the scope of the work to be performed and advised that, "The engagement will commence effective immediate[ly]".

On the same day, Mr Chacra replied by email with a fee proposal of \$42,950 (exclusive of GST). In contrast to the 27-page NSW Public Works fee proposal for the same contract, the Triton fee proposal was just over one page in length.

The fee proposal included the scope of work set out in Mr Andjic's email. Although the fee proposal specified that Triton would undertake the work set out in that scope of work, Mr Chacra was unable to explain a number of the terms in the scope of work. For example, the fee proposal referred to the services Triton would provide as including "Budget tracking including provision of RFI and variation registers to track associated costs" but Mr Chacra told the Commission that he did not know what "RFI" meant. It means "request for further information". The fee proposal advised that construction work would be overseen to ensure compliance with "AS 1428 Part 2", but Mr Chacra could not remember what this was and told the Commission he would "have to look it up". While he agreed that it would be good practice to carry out an inspection of a site before submitting a fee proposal, he acknowledged that he had not done so in this case and could not give a reason why he did not do so. Mr Chacra also said he had "no idea" how he arrived at the amount of \$42,950.

Mr Chacra gave evidence at the public inquiry that he had no prior experience of, or training in, project management.

The Commission is satisfied that Mr Chacra merely copied the scope of work from Mr Andjic's email, and had no real understanding of what the scope of work entailed. That is consistent with the fact that he lacked the necessary skills or experience to undertake effective project management.

Mr Andjic accepted the fee proposal.

Mr Andjic's engagement of Triton was contrary to relevant departmental procurement rules. Given that the cost of the project management component of the project was expected to exceed \$50,000, Mr Andjic should have sought three competitive quotes from contractors on the DFS list of pre-qualified project management contractors. Had Mr Andjic followed this rule, Triton, which was not on the pre-qualified list of contractors, would not have been engaged.

Mr Andjic claimed that, because there was an urgent need to complete the works by the end of the financial year, it was necessary for him to engage a contractor as soon as possible. The Commission rejects this explanation. NSW Public Works had set out a program to ensure the works would be completed by the end of the financial year. Mr Andjic could have continued to utilise the experience of NSW Public Works to ensure the project was completed before the end of the financial year or, if not satisfied that NSW Public Works should be given a second chance, he could have selected a suitably qualified and experienced project manager from the pre-qualified list to undertake the work in a timely manner.

If urgency was a factor then it would have been particularly prudent for Mr Andjic to engage an established project manager with a track record in meeting deadlines rather than an inexperienced, unknown and unqualified contractor such as Triton. Mr Andjic knew that Triton was an untested company and that Mr Chacra's fee proposal, which was plainly lacking any detailed breakdown of the proposed work, was prepared without the benefit of a site inspection. In these circumstances, the Commission does not accept that Mr Andjic had any reasonable belief that Triton was able to oversee the completion of the construction work in an efficient and timely way. Further, Mr Marshall, the director of the Asset Management Branch, had authorised the engagement of NSW Public Works and so, if it were

to be replaced as project manager, the authorisation to do so should have come from his replacement, Mr Maslen.

Explaining how Triton came to be selected

In his evidence to the Commission, Mr Andjic claimed that it was merely coincidence that he awarded a contract to a company owned by the partner of Fatima Hammoud's sister.

During his evidence at a compulsory examination, Mr Andjic said he selected Triton because he was impressed with the work Mr Chacra performed on the Tamworth courthouse upgrade. This evidence could not be correct because the Tamworth courthouse upgrade project was only put out to tender in April 2013, well after Mr Andjic awarded Triton the project management contract for upgrades of the Camden and Picton courthouses on 21 February 2013. At the public inquiry, Mr Andjic explained that "I probably got confused" when giving this evidence at his compulsory examination.

During his evidence at the public inquiry, Mr Andjic said that he had, in fact, become aware of Mr Chacra when he dealt with him during work that Mr Chacra had carried out at Blacktown courthouse. He decided to give Triton the project management contract because of its experience with work at the Blacktown courthouse and also based on a "portfolio" provided by Triton setting out what work it had done. The work at Blacktown courthouse involved the movement of an internal wall and installation of a handrail; not project management. Mr Andjic acknowledged this but claimed Triton had also undertaken "design" work for that project. He did not explain how this would qualify Triton to undertake project management.

Despite having had regard to the "portfolio", he made no enquiries to ascertain whether the information in that document was correct. He said that he did not feel that

there was a need to do so because he took everything “at face value”. It is highly improbable that Mr Andjic, who, according to the evidence of other witnesses, applied himself to his duties before 2013 in a careful and rigorous way, would award a contract to a company that was not a pre-qualified contractor and whose principal lacked the experience, skills or knowledge to undertake project management work in a timely or efficient manner.

During his compulsory examination, Mr Andjic said that Kerrie Kent, a Capital Works unit officer he supervised, recommended Triton for the contract. At the public inquiry, he told the Commission that either Ms Kent recommended he engage Triton or the decision was made jointly with her.

Ms Kent denied she suggested Triton be engaged. She told the Commission that it was Mr Andjic who asked her to telephone Mr Chacra with a view to engaging Triton. This was the first time she had heard of that company. When her evidence was put to Mr Andjic, he told the Commission that he could not recall the conversation he had with her in which she had recommended Triton as the project manager. The Commission accepts Ms Kent's evidence on this issue. She impressed the Commission as an honest witness. The Commission is satisfied that Ms Kent did not recommend Triton to Mr Andjic and that he was solely responsible for the decision to award the contract to Triton.

Ms Kent also told the Commission that, after she telephoned Mr Chacra, Mr Andjic had a meeting with Mr Chacra. On returning from that meeting, Mr Andjic told her that Triton would be engaged as the project manager. The Commission accepts this evidence.

Mr Chacra told the Commission that he did not remember how he came to receive the invitation for the project management work for the Camden and Picton courthouses project.

Assessing the value of Triton's work

Triton submitted four invoices for project management work on these projects. Although the Triton fee proposal amounted to \$47,245 (inclusive of GST), Triton was actually paid over \$65,000 (inclusive of GST).

The first invoice was dated 12 March 2013 and was for \$1,859 (inclusive of GST). It was expressed as being for three hours preparation of a risk register and five hours of document review at \$180 per hour and “incidentals relating to preparation of works”, for which \$250 was charged.

The second invoice was dated 2 April 2013 and was

for \$28,358 (inclusive of GST). It was expressed as being for eight hours in relation to a site visit, 32 hours of “associated contract work”, five hours in relation to “meeting minutes”, 30 hours for a “PCG report”, four hours for tender evaluation review, 35 hours for preparation of the tender evaluation report and “incidentals”. The hourly rate charged was \$180.

The third invoice was dated 21 June 2013 and was for \$16,896 (inclusive of GST). It did not specify an hourly rate or the number of hours spent on work. It included an amount of \$5,500 (inclusive of GST) for “site inspection, review of construction site [and] established & finalised program of works” and \$11,396 (inclusive of GST) for “additional works relating to the postponement of the works due to departmental review of court operations to Camden CH including financial assessment”.

The fourth invoice was dated 15 August 2013 and was for \$18,557 (inclusive of GST). It was expressed as being for “additional PM works including meeting and review of contract documents outside of original scope”.

Mr Chacra was unable to provide the Commission with any satisfactory information about what work Triton actually did. He told the Commission that he could not remember the name of the company that carried out the construction work, even though he claimed that he was involved in the tender process, drafted the TER, and then project managed the construction over a period of four months. Although Triton charged for site visits, he was unable to provide details of any site visits he made or any issues that he identified when on any site visits. He told the Commission he had kept a diary that recorded his movements but he had either thrown it out or lost it. He said he could not remember what he did for the 35 hours he claimed for preparing the TER.

When he was shown the TER in the course of his evidence, it became evident that he knew little about its contents, even though he claimed to have written it. For example, he did not know the meaning of the phrase “the submission outlined holistically the experience of the organisation” in the TER. Nor did he know what a MW21 contract was, even though that was referred to in the TER (the MW21 contract is a relatively simple standard form contract designed to assist NSW Government agencies in managing construction contracts valued at up to \$1 million).

Although the Triton invoice of 2 April 2013 charged 32 hours for the preparation of a “PCG report”, he could not explain what it was and did not know “PCG” stood for “Project Control Group”. He was unable to explain the nature of the “incidentals” for which he charged in the invoice of 2 April 2013 or describe the additional work for which Triton charged in its 15 August 2013 invoice.

Although he maintained that all the work for which Triton had invoiced had been done, he ultimately conceded that the hours for which Triton claimed payment in its invoices “may be false” and that he had overcharged.

Mr Andjic signed the purchase order form certifying payment of some of Triton’s invoices. He also persuaded another Asset Management Branch officer, Neil Murphy, to sign payment vouchers for some of the Triton invoices certifying that the work claimed for had been done. This was despite Mr Murphy knowing nothing about the project. Mr Murphy told the Commission he signed these forms because Mr Andjic told him that the work had been done and because there was a practice in the Asset Management Branch that officers would sign-off on such forms. He told the Commission that he signed another 10 payment vouchers for other invoices submitted by Triton and SAFF without knowing whether the work claimed had been done because Mr Andjic directed him to do so and he felt obliged to comply as Mr Andjic was his manager.

After becoming the director of the Asset Management Branch, Mr Honeywell undertook a review of all of the works claimed to have been completed by Triton and SAFF for the Department. Prior to joining the Department, Mr Honeywell had spent about 30 years working with NSW Public Works. He had extensive experience in the planning and management of major construction projects. He held a Building Clerk of Works certificate and had a degree in construction management and had completed his masters in business administration. He was eminently qualified to assess the value of work undertaken by Triton and SAFF and the Commission accepts his evidence as to the real value of the work undertaken by those companies.

In the case of the work claimed to have been carried out by Triton for the Camden and Picton courthouses, Mr Honeywell examined available documentation and also took into account information from the site manager. Using what he described as “a generous approach”, he assessed the work done by Triton on this project as being \$5,000. This low estimate was made, he said, because so little work was actually done by Triton.

Mr Honeywell’s assessment is supported by evidence from Paul Richardson, the director of Patterson Group Pty Ltd. His company was awarded the construction contract for the project. Mr Richardson told the Commission that, while he was told that Mr Chacra was the project manager, he never saw him. He said his company received only about three emails from Mr Chacra over the four months of the construction work. Mr Richardson told the Commission he was in regular contact with Patterson Group’s in-house manager on this project, Adrian Moeskops, who informed him that Mr Chacra did not visit the site. Mr Richardson also said that he was directed

by Mr Andjic to forward his company’s invoices for the construction work directly to Mr Andjic rather than the project manager. He considered the amount paid to Triton for its management of this project was “extremely over the top”.

Mr Moeskops told the Commission that, during his entire time on the project, he never once met Mr Chacra. He had “two sort of one-liner emails with him”. He told the Commission that, based on his experience, he would expect an external project manager to attend meetings on at least a weekly or fortnightly basis.

The Commission is satisfied that the project management work undertaken by Triton was of a minimal nature. The Commission accepts Mr Honeywell’s estimate that the true value of the work carried out by Mr Chacra’s company was no more than \$5,000, and not the \$65,670 claimed by Mr Chacra.

Even casual checking by Mr Andjic would have alerted him to the fact that Triton was not providing value for the money it was claiming from the Department. Mr Andjic did not undertake checks with the construction contractor or other objective observers to ascertain whether Triton was fully performing services as a project manager. Some of the claims made in the Triton invoices, such as the 35 hours to prepare a tender evaluation report, would have alerted him to at least the possibility that the Department was being overcharged. Although an experienced senior manager, Mr Andjic did nothing to ensure the Department was achieving value for the money it was paying Triton.

Chapter 4: The Cessnock courthouse project

This chapter examines the circumstances under which a contract for the project management of the Cessnock courthouse upgrade project was awarded to Mr Chacra's newly created company, SAFF, and the construction contract for that project was awarded to Triton. The awarding of these contracts meant that one of Mr Chacra's companies was project managing another of his companies. This was clearly contrary to the Department's project delivery methodology, which required the project manager to be independent of the construction contractor.

The creation of SAFF

Mr Chacra said that he created SAFF solely for the purpose of obtaining project management contracts from the Department. It was registered on 19 February 2013, the same day that Mr Andjic asked Mr Chacra to provide a fee proposal for project management of the Camden and Picton upgrade project. Triton was the sole shareholder of SAFF and Mr Chacra was its sole director.

Mr Chacra told the Commission that he registered the company in anticipation of getting government project management work but initially claimed that he could not recall what led him to assume he might get such work. He subsequently agreed that Mr Andjic knew he was behind SAFF and he assumed that he would get further project management work because he knew Mr Andjic.

Fayrouz Hammoud was the only public representative of SAFF, attending meetings and dealing with all correspondence for SAFF with the Department. She was always represented as "Fay Rouz" on SAFF letterhead, emails and all other SAFF communications with the Department. In dealings with the Department, she was given the title "Senior Project Manager".

Fayrouz Hammoud's use of the alias "Fay Rouz" was exceptional. In her dealings with her employer, the Department of Education, she used her real name. She

told the Commission that Mr Chacra gave her business cards with this alias. She said she did not question him about his use of the alias on the business card. She denied that the alias was used to disguise from anyone in the Department that there might be a connection between her and Fatima Hammoud.

Mr Chacra was more forthright in his evidence to the Commission. He admitted the alias "Fay Rouz" was used to avoid people within the Department connecting Fayrouz Hammoud with Fatima Hammoud. He said that the alias was used "to get the work" from the Department.

SAFF is awarded the project management contract

Documents obtained by the Commission show that Mr Andjic arranged for SAFF to be awarded the contract for project management of the Cessnock courthouse upgrade project. In doing so, he breached departmental procurement rules because he did not select a contractor from the DFS list of pre-qualified contractors.

On 14 February 2013, five days before the registration of SAFF, Mr Andjic sent an email to "Fay", advising that he was available to meet to discuss the Department's protocols and procedures for companies wishing to provide consultancy services. On 21 February 2013, he sent a further email to "Fay" advising that "Further to your phone call regarding works within the Department, we have a number of projects that we need the services of a qualified and panelled Project Manager. I will request a fee proposal from your organisation next week and will forward the scope accordingly". In fact, no one involved in SAFF was a qualified project manager. On 23 February 2013, just two days after engaging Triton as project manager for the Camden and Picton courthouses upgrade project, he sent her a further email advising that a project manager was needed for the Cessnock courthouse upgrade project and that he would send her a project plan.

Mr Andjic told the Commission that he knew in February 2013 that SAFF was Mr Chacra's company. He said that "Fay" from SAFF had called him and asked if he had any project management work that needed to be done. He claimed that, at the time, he did not know that "Fay" was Fatima Hammoud's sister. Despite having only recently engaged Triton to undertake project management work, he told the Commission that he did not consider it necessary to ascertain how Triton performed before engaging another of Mr Chacra's companies to undertake project management work.

On 27 February 2013, Fayrouz Hammoud sent an email to Mr Andjic attaching a one-page fee proposal of the same date for project managing the Cessnock courthouse upgrade project. The fee proposal was signed "Fay Rouze Senior Project Manager". The fee proposal was for \$44,270, with an hourly rate of \$210 for "the Director" and \$190 for the "Senior Project Manager". It lacked a breakdown of the proposed fees or the work to be done. Fayrouz Hammoud told the Commission that the fee proposal was prepared by Mr Chacra. Mr Chacra was unable to explain how he arrived at the figure of \$44,270.

On 7 March 2013, Mr Andjic signed a requisition form approving the engagement of SAFF. He did this despite the lack of detail in the fee proposal as to what would be done by SAFF. He told the Commission that he considered the SAFF quote as reasonable because "I used the rule of thumb with project management fees based on total project cost".

During the public inquiry Mr Andjic accepted there was no urgency justifying departure from the relevant departmental procurement rules and was unable to identify any other circumstances justifying his departure from those rules. Mr Andjic claimed that it was "convenient" for him to award the contract to SAFF because he knew that Mr Chacra had done work at the Blacktown courthouse. However, he conceded that he had never checked whether Mr Chacra's previous work had been completed to a satisfactory standard. In any event, that work had not involved project management.

Assessing the value of SAFF's work

During the currency of the contract, SAFF submitted four invoices and was paid \$48,695.55 (inclusive of GST). These invoices contained little detail of the work done by SAFF.

The first invoice was dated 13 March 2013 in the amount of \$11,159.50 (inclusive of GST). It was expressed as being for 9.5 hours for a site visit, two hours preparation of meeting minutes, 20 hours "Administration Works", 12 hours "tender Documentation Preparation", and two hours for preparing a risk register and "Incidentals". The hourly rate was charged at \$190.

According to minutes prepared by Fayrouz Hammoud, the site meeting occurred on 4 March 2013. This was a Monday, when Fayrouz Hammoud should have been at work in her teaching job. Records obtained by the Commission from the Department of Education showed that she had taken sick leave from work on this day. She told the Commission that she took sick leave, even though she was not sick, so that she could attend the meeting. She said she probably took other days off from her work as a teacher to attend to SAFF business.

The second invoice was dated 17 April 2013 in the amount of \$23,067.20 (inclusive of GST). It was expressed as being for work associated with the tender review, preparation of a tender report and "Other tender requirements". The number of hours spent on this work was not specified, but the amount charged represents over 110 hours at the hourly rate of \$190.

The third invoice was dated 12 June 2013 in the amount of \$7,768.75 (inclusive of GST). It was expressed as being for a site visit, preparation of meeting minutes and "Incidentals". Once again, the number of hours spent on this work was not specified.

The final invoice was dated 30 July 2013 in the amount of \$6,700 (inclusive of GST). It was expressed as being for finalisation of works and another site visit. The number of hours spent on this work was not specified.

Fayrouz Hammoud had no experience or qualifications as a project manager and had never conducted a tender process. Payment at the rate of \$190 per hour for any time she spent as a project manager was excessive. She told the Commission that Mr Chacra told her what amounts to claim in the invoices. She said that she had attended some site meetings and prepared minutes of meetings but relied on Mr Chacra, who was responsible for the construction work, to advise whether or not that construction work was done to the appropriate standard and how much SAFF should charge. In relation to the invoice of 13 March 2013, she could not recall what was involved in "Administration Works" and could not recall whether she prepared any tender documentation; although, she did recall that the risk register was prepared by her and Mr Chacra. She could not recall how often she visited the Cessnock courthouse to oversee the work. Although minutes of a meeting at Cessnock courthouse on 30 May 2013 recorded her as being present, she conceded in her evidence to the Commission that she had been teaching school that day but claimed that Mr Chacra would have attended the meeting instead of her. She then conceded that Mr Chacra was running the project management work "to some extent".

Fayrouz Hammoud told the Commission that she wrote the TER containing the recommendation that Triton be awarded the contract. Although this was a relatively complex document, she said she based its contents on a document she found by searching the internet. In his evidence to the Commission, Mr Andjic agreed that she had written the report but said that he provided her with assistance and checked her work. Given her lack of relevant experience and qualifications, it is probable that much of the report was either written by Mr Andjic or written with his guidance. Fayrouz Hammoud also told the Commission that Mr Andjic assessed the value of the claims submitted by Triton. She was unable to explain why this was not her responsibility as project manager.

Mr Chacra told the Commission that some of the project management work was done by Fayrouz Hammoud and he did the rest, but he was unable to recall any details of the work done or who did what. He said he did not consider it was dishonest to charge \$190 per hour for Fayrouz Hammoud when she had no project management experience. He claimed that he believed SAFF was entitled to claim the amount set out in its fee proposal regardless of the amount of work actually done.

Mr Andjic told the Commission that he took on part of the project manager role for this project, despite having engaged

Fayrouz Hammoud to do this work. He was unable to explain how SAFF could legitimately claim over 110 hours, for a total of \$23,000, for work associated with the tender evaluation review and report preparation in the 17 April 2013 invoice, given that the TEC met on 15 April 2013 and the report was completed on 17 April 2013. He told the Commission he just took the invoice "at face value".

Mr Honeywell assessed the value of the work done by SAFF for this project as being about \$1,500.

The Commission is satisfied that the invoices submitted by SAFF did not reflect the true value of the project management work conducted on the Cessnock courthouse upgrade project. The Commission accepts Mr Honeywell's assessment that the true value of the work did not exceed \$1,500.

Triton is awarded the construction contract

As the estimated cost of the construction work for the Cessnock courthouse project was about \$250,000, it was necessary to undertake a competitive tender process. A request for tender was issued on 27 March 2013 to three companies, including Triton. Triton submitted a tender for \$203,450 (inclusive of GST). The two other tenders received were for \$192,000 and \$102,363 (both inclusive of GST). Unlike Triton, both of these companies were on the DFS pre-qualified list. The Triton tender had no breakdown of work and costs, overstated the amount of work done at the Blacktown courthouse, and falsely represented other work undertaken by Triton.

The TEC for this matter comprised Mr Andjic, Fatima Hammoud and "Fay Rouze". This membership represented significant conflicts of interest, which are discussed below. It is perhaps unsurprising that, given its membership, the TEC recommended the contract be awarded to Triton.

Mr Andjic told the Commission that Triton was awarded the contract because it submitted the strongest bid in terms of the non-price criteria. Triton secured a score of 60 for non-price criteria, as opposed to 36.76 and 22.7 for the other companies. This gave Triton an overall score of 82.38 as opposed to 61.13 and 62.7 for the other companies. Even though the non-price criteria would normally include an evaluation of past work and experience, Mr Andjic admitted that he did not carry out any checks of Triton's past work.

Fayrouz Hammoud also told the Commission that she had not checked the accuracy of Triton's claims as to its previous experience. Had they undertaken even rudimentary checks, they would have discovered that Triton was claiming previous work experience on the

Huntley's Point redevelopment for a supermarket chain in March 2011 – more than 12 months before Triton was registered as a company.

Fatima Hammoud was unable to recall any details of the TEC process. She told the Commission that she signed the TER without reading it.

On 19 April 2013, Mr Andjic sent an email to Mr Chacra advising that Triton had been selected as the successful tender. Fatima Hammoud prepared the formal letter to Triton for Mr Andjic to sign. She marked the letter to the attention of Mr Chacra, indicating she clearly understood that he was the owner of that company.

Assessing the value of Triton's work

During the currency of the contract, Triton was paid \$301,725.16 (inclusive of GST). This was more than the tender price quoted by Triton because Triton claimed for a variation to the contract involving some additional work. Mr Andjic told the Commission the additional work involved further work to the roof and guttering system.

Like the SAFF invoices, the work described in these invoices was expressed in general terms.

The first invoice was dated 27 May 2013 in the amount of \$64,328 (inclusive of GST). The second invoice was dated 14 June 2013 in the amount of \$26,197.16 (inclusive of GST). The third invoice was dated 29 July 2013 in the amount of \$133,595 (inclusive of GST). The fourth invoice was dated 18 September 2013 in the amount of \$45,760 (inclusive of GST). It was for "Installation of disability lift". The final invoice was dated 21 November 2013 in the amount of \$31,845 (inclusive of GST) and was simply expressed as being for finalisation of the works.

Although the 18 September 2013 invoice refers to the installation of a disability lift, that lift was not installed until April 2014. Mr Andjic explained to the Commission that his decision to approve payment on the basis that, although the work had not been done at the time the invoice was received, it was work that had to be done.

Although he insisted that Triton did do more than \$300,000 worth of work, Mr Chacra told the Commission that he could not recall any details of the work claimed in the invoices. He was unable to tell the Commission how much he paid out for materials and how much of the amount paid to Triton represented his time. He said he engaged subcontractors for the project but was unable to remember who they were. He could not recall the reason that there was a need to vary the contract that resulted in Triton receiving an additional payment of over \$100,000.

Richard Hemsworth was appointed as the interim assistant director of the Capital Works unit after Mr Andjic was suspended. At that time, Mr Hemsworth had in excess of 30 years of project management experience. He was asked by Mr Honeywell to inspect the work done by Triton at Cessnock courthouse. He reviewed the scope of works, visited the site in March 2014, inspected the work done by Triton and took photographs. His evidence to the Commission was that some of the work Triton had claimed to have completed and been paid for had not been commenced or only partially completed. The work that had not been done included work in relation to toilet facilities and the installation of a stair lift. The installation of an electronic gate system had been included in the scope of works. Mr Hemsworth found that an electronic gate system had been installed by another contractor who had been separately paid \$49,000 by the Department. Mr Hemsworth prepared a report on his review. Mr Honeywell had regard to Mr Hemsworth's report and the photographic evidence in assessing the value of the work done by Triton, which he assessed at \$47,355.

The Commission accepts Mr Honeywell's assessment that the value of the work actually done did not exceed \$47,355.

Conflicts of interest

There were obvious conflicts of interest that needed to be declared and managed, given that each of Mr Andjic, Fatima Hammoud and Fayrouz Hammoud were the members of the TEC that determined the successful tenderer of the construction contract for the Cessnock courthouse project. There was, however, no documentary evidence that any conflicts of interest were declared.

At the very least, the fact that Fatima Hammoud and Fayrouz Hammoud, her sister and the partner of one of the contractors, were members of the TEC, involved significant conflicts of interest that departmental policy required to be disclosed so that they could be appropriately managed.

Mr Andjic told the Commission that, once he became aware that "Fay", the SAFF project manager, was Fatima Hammoud's sister he knew the relationship had to be declared because it could look as if he was giving SAFF work out of a desire to please Fatima Hammoud. He claimed that he told Mr Maslen that "one of ... the project managers that have been engaged is a relative of one of the staff members". This was not an adequately detailed description of the actual conflict of interest. Mr Andjic agreed that he did not tell Mr Maslen that he was in a relationship with Fatima Hammoud and merely mentioning that the project manager was a "relative" of a

staff member was different from saying she was a sister. Despite the lack of detail he provided to Mr Maslen, Mr Andjic said Mr Maslen told him the conflict was manageable “as long as you can declare it”.

Mr Maslen denied that Mr Andjic advised him of any such conflict of interest. He told the Commission that, if Mr Andjic had advised him of such a conflict, he would have directed Fatima Hammoud to remove herself from the process. Mr Maslen was a senior officer of considerable experience. The Commission accepts that, if Mr Andjic had told him what Mr Andjic claimed to have said, Mr Maslen would have asked questions about the identity of the persons who had a conflict of interest and the nature of their relationship. Having this information would have led to him directing that Fatima Hammoud be removed from the TEC. He would not have told Mr Andjic that the conflict could be managed by making declarations. The Commission is satisfied that Mr Maslen was not told anything by Mr Andjic about a conflict of interest.

Mr Andjic also claimed that he completed a conflict of interest declaration and also had Fatima Hammoud and Fayrouz Hammoud complete such declarations. He could not explain why he completed a declaration, given that, on his evidence, he was only friends with Fatima Hammoud and did not know that Fayrouz Hammoud was in a relationship with Mr Chacra. He could not recall whether the declarations made by Fatima Hammoud and Fayrouz Hammoud disclosed that they were sisters or relatives. Both Fatima Hammoud and Fayrouz Hammoud agreed they completed written declarations and gave them to Mr Andjic.

The Commission could not locate the written conflict of interest declarations that Mr Andjic claimed had been completed. He said this was because the file into which he placed them had gone missing. The Commission rejects this explanation. The Commission is satisfied that no declarations were made. In reaching this conclusion, the Commission also takes into account that no mention

was made of any conflict of interest in the minutes of the meeting of 4 March 2013 prepared by Fayrouz Hammoud. She was unable to provide a reason for the failure to record this in the minutes other than it had not occurred to her to do so.

Fayrouz Hammoud also knew that Mr Chacra, a person with whom she was in a relationship, was the owner of one of the companies she was required to assess as part of the TEC process for the Cessnock construction project. There is no evidence that she made any written declaration of a conflict of interest.

Chapter 5: Other contracts awarded to Mr Chacra's companies

This chapter deals with a number of other contracts Mr Andjic arranged to be awarded to SAFF and Triton. In each case, Mr Andjic breached departmental procurement rules because neither SAFF nor Triton were on the DFS list of pre-qualified contractors and he did not seek competitive quotes or tenders.

The Cowra courthouse contract

SAFF was awarded a project management contract for this project. Ultimately, there was no construction work undertaken to project manage.

At 1.40 pm on 6 March 2013, Mr Andjic sent an email to "Fay" at SAFF requesting a fee proposal for project management services for Cowra courthouse. In his email, he advised that the project budget was \$350,000. No other company was invited to provide a quote.

At 8.16 pm that day, Fayrouz Hammoud sent an email to Mr Andjic attaching a one-page SAFF fee proposal for the project management services. The proposed fee was \$44,270 (exclusive of GST) and included an hourly rate of \$210 "for the Director" and \$190 "for the Senior Project Manager in charge". At 8.57 pm that night, Mr Andjic sent an email to SAFF advising that he would be shortly issuing a statement of works.

On 7 March 2013, Mr Andjic approved a requisition form for the engagement of SAFF to provide project management services for the Cowra courthouse project for a total amount of \$48,697 (inclusive of GST).

Mr Andjic admitted there were a number of pre-qualified project managers he could have chosen for this contract but that he did not contact any of them. He told the Commission that he awarded SAFF the contract because it was convenient "on my behalf in having someone already there on the books". This was despite knowing that Fayrouz Hammoud had no real experience as a project manager. When asked what value a completely

unqualified and inexperienced "senior project manager" could add to the work, he said he was only using her for "grunt work".

SAFF submitted and was paid on two invoices for this contract. The first invoice, dated 17 April 2013, was for \$4,158 (inclusive of GST) and was expressed as being for a site visit, preparation of meeting minutes, preparation of a risk register and "incidentals". The first three items were charged at an hourly rate of \$190 for a total of 17 hours, which, given the SAFF fee proposal of 6 March 2013, indicates these hours were the work of the SAFF senior project manager, who was Fayrouz Hammoud. The second invoice, dated 12 June 2013, was for \$35,200 (inclusive of GST), and was expressed as being for preparing the first stage of the tender documents, updating the risk register, "reinforcing" the scope of works and "incidentals". This invoice did not specify any hourly rate.

In each case, Mr Andjic signed a purchase order for payment of the invoices. SAFF was paid a total of \$39,358 (inclusive of GST). Although Mr Andjic agreed that there had not been any construction work to project manage, he justified the amount paid to SAFF on the basis that there had been "a lot of pre-emptive work that needed to be done to allow for that construction phase to happen".

The amount charged by SAFF represents a significant amount of work at the "Senior Project Manager in charge" rate of \$190 (exclusive of GST). If Fayrouz Hammoud had conducted this work, it would amount to a considerable number of hours work at a time when she was also working full-time as a teacher.

At the public inquiry, Fayrouz Hammoud could not describe how to get to Cowra, whether she flew there or drove and could not recall whether she attended a site meeting at Cowra. One of the few records recovered by the Commission was minutes of a meeting at Cowra on 5 April 2013. The minutes record the attendees as including "Fay Rouze". This was a Friday, when she

should have been working as a teacher. Records indicate that she took sick leave from her teaching job on that day. She told the Commission she took sick leave in order to attend the meeting at Cowra. She admitted that she had lied in order to take sick leave. Apart from this visit and preparing minutes of a meeting and a risk register, she could not recall what work she did for this project. She eventually accepted that she worked “nowhere near” the amount of hours charged. She agreed that, in these circumstances, SAFF was paid an amount of money to which it was not entitled and ultimately conceded that submitting invoices for work not done was “dishonest”.

Mr Chacra told the Commission he could not remember anything about the Cowra project and was unable to explain what was done by SAFF to justify the amounts claimed in its invoices.

Mr Honeywell assessed the value of a site visit and the preparation of a risk register at between \$1,500 and \$2,000. That assessment was dependent on the work being done by an experienced project manager. Mr Honeywell gave evidence that an appropriately qualified and experienced senior project manager would have 10 or 15 years experience. In this case, the site meeting was purportedly attended by Fayrouz Hammoud who had no qualifications or experience at all. Given this, Mr Honeywell considered that the any work done by SAFF was of no value.

The Commission accepts Mr Honeywell's assessment that the work claimed by SAFF was of no value.

The East Maitland courthouse contract

For this project, Mr Andjic arranged for SAFF to be engaged as project manager and for Triton to be engaged to undertake construction work. This was another case of Mr Andjic acting contrary to the Department's project delivery methodology, which required the project manager to be independent of the construction contractor.

On 27 March 2013, Mr Andjic sent an email to “Fay” at SAFF seeking a fee proposal for project management of construction work to be undertaken at the East Maitland courthouse. In his email, he advised the project budget was \$100,000 (exclusive of GST).

At 11.11 am on 2 April 2013, Fayrouz Hammoud sent Mr Andjic an email attaching a one-page SAFF fee proposal for \$18,550 (exclusive of GST). The fee proposal specified the same hourly rates as the fee proposal for the Cowra project. At 12.48 pm that day, Mr Andjic sent an email to “Fay” at SAFF accepting the fee proposal. During the course of that day, he also approved a departmental requisition for the engagement of SAFF.

SAFF submitted three invoices for project management work on this project.

The first SAFF invoice was dated 7 May 2013 for \$4,158 (inclusive of GST). Apart from the reference to East Maitland rather than Cowra, it was in the same terms and for the same amount as the invoice of 17 April 2013 for the Cowra project. The invoice was expressed as being for a site visit, preparation of meeting minutes, preparation of a risk register and “incidentals” with the first three items charged at an hourly rate of \$190 for a total of 17 hours. The hourly rate indicates the work was charged as having been done by Fayrouz Hammoud, the SAFF senior project manager.

Fayrouz Hammoud told the Commission that the 7 May 2013 invoice for East Maitland was similar to the 17 April 2013 invoice for Cowra because “they're probably the same works that were done at the time”. She was, however, unsure as to the extent of the project management work done for the East Maitland project. Mr Chacra also explained the similarity in work as the reason for the similarity between the invoices.

Mr Andjic told the Commission that he could not recall whether Fayrouz Hammoud was at the meeting for which she charged minute preparation and that it was possible he wrote the minutes. He conceded that, in these circumstances, the SAFF claim for payment for preparation of the meeting minutes “may” have been fraudulent.

The second SAFF invoice was dated 12 June 2013 for \$12,980 (inclusive of GST). It was expressed as being for a site visit, “[p]aperwork review of works by contractor” and “incidentals”. No hourly rate was specified.

Although the invoice includes a charge for a site visit, Fayrouz Hammoud told the Commission that she could not recall when she visited the site.

The third SAFF invoice was dated 30 July 2013 for \$3,267 (inclusive of GST). This was expressed to be for “[f]inalisation of project”. No hourly rate was specified.

Mr Andjic signed purchase orders for payment of each of these invoices. In each case, the purchase orders were signed on the same date that he received the invoices.

Mr Honeywell assessed the work done by SAFF for East Maitland as of no value. This was because he could not find any material on the project that had been done by SAFF and because, as the project was being managed by the same firm as doing the construction, there was no “value add” to the Department as a result of any project management services performed by SAFF. The Commission accepts his assessment.

On 1 May 2013, Mr Andjic sent an email to Mr Chacra at Triton inviting him to provide a quote for work to be

undertaken at the East Maitland courthouse. This was after his email of 27 March 2013 to Fayrouz Hammoud, in which he had advised her that the project budget was \$100,000. Given the estimated value of the project, under departmental procurement rules he should have sought quotes from three pre-qualified contractors.

Mr Andjic received an email response from Mr Chacra on 21 May 2013, attaching a Triton quote for \$80,608.22 (inclusive of GST). The quote set out the work to be performed. The main work involved installation of a pergola, replacement of carpet in some areas and the installation of four external lights. There was no breakdown of costs against this work. The next day, Mr Andjic sent an email to Mr Chacra accepting the Triton quote.

Mr Andjic told the Commission that he decided to engage Triton "because they were working at Cessnock which was in close proximity", which would involve "economies of scale". He also told the Commission he chose Triton because it was necessary to "fast track" the work so that it could be completed within the time someone else had promised the registrar.

Mr Andjic told the Commission that he advised Mr Maslen that he was going to contract Triton on a direct-negotiation basis, that SAFF was the project manager for the upgrade project, and that he had previously told Mr Maslen that both companies were owned by the same person. Mr Maslen denied that Mr Andjic told him any of this. The Commission accepts Mr Maslen's evidence. It defies logic that an experienced senior officer such as Mr Maslen, who was acting director of the Assets Management Branch at the time, would approve related companies to conduct both the actual construction work and the project management of that work. This is particularly so, as the relevant procurement rules, of which Mr Maslen was well aware, set out the necessity for separation of responsibility between project management and construction and, for construction work of this estimated value, the need to obtain three competitive quotes from the DFS list of pre-qualified contractors.

Two invoices were subsequently submitted on behalf of Triton.

The first invoice was dated 24 May 2013 for \$85,921.22 (inclusive of GST). It included the work specified in the quote of 21 May 2013 and some additional work involving removal and replacement of "carpet to judges room as requested" and removal and disposal of "all building waste". The second Triton invoice was dated 12 June 2013 for \$31,295 (inclusive of GST). It was expressed to be for "site Establishment", completion of "all general building requirements", "floor preparation" and "completed materials handling component".

Mr Andjic signed expenditure approval forms for both invoices.

Mr Chacra told the Commission that he could not recall what work Triton did at East Maitland.

Mr Honeywell had not visited the site and did not have any photographic evidence on which to base an assessment of the value of the work done by Triton. He was, therefore, unable to provide an assessment of the value of Triton's work on this project.

The Tamworth courthouse contract

Triton was engaged to undertake construction work at the Tamworth courthouse.

This project involved the design and construction of a safe room. As the estimated cost was \$75,000, departmental procurement rules required three quotes from pre-qualified contractors. Three quotes were received. The quote from Triton was for \$68,301 (inclusive of GST). The quotes from the two other companies were for \$48,697 (inclusive of GST) and \$44,496 (inclusive of GST). These two companies were not on any DFS list of approved tenderers. Mr Andjic told the Commission that he found them by going through the "Yellow Pages".

Mr Andjic could not explain why Triton won the contract over cheaper quotes from other contractors. He claimed it was "a collective decision" made by all the members of the TEC but he was not able to explain what factors were taken into account that were so compelling in the light of a bid that was roughly \$20,000 more than the other two bids.

There is differing evidence as to whether there was any TEC. There is evidence that, on 12 April 2013, Mr Andjic sent an email to Hannan Le and Alex Cheung, two departmental officials, attaching a copy of the tender evaluation plan for the project. In his evidence to the Commission, Mr Andjic was adamant that there had been a meeting of the TEC for this project involving Ms Le and Mr Cheung. Neither Ms Le nor Mr Cheung could recall being part of the TEC or attending any meetings with Mr Andjic in relation to this project. Neither had calendar entries concerning a TEC meeting for Tamworth. There is no documentation recording any TEC meeting. No TER was completed, despite this being a requirement under departmental procurement rules. In these circumstances, the Commission is satisfied that no TEC had been convened.

Mr Andjic also claimed that the decision to award the contract to Triton was approved by Mr Marshall or Mr Maslen. It could not have been Mr Marshall, as he had left the Asset Management Branch in January 2013. Mr Maslen had no recollection of the project, much less

seeing any report from Mr Andjic seeking approval to engage Triton.

All tenderers were required to provide details of demonstrated experience on comparable work. The Triton tender provided details of four projects. Only one of these projects had been undertaken by Triton. Mr Andjic told the Commission that he made no enquiries about any of the work that Triton claimed to have done. One of the projects Triton claimed to have completed was the upgrade of railway station facilities for RailCorp in 2004. By the time Triton tendered for the Tamworth project, Mr Andjic, on his own evidence, knew Mr Chacra. He would, therefore, have known that Mr Chacra was too young to have undertaken such major work in 2004, when he would have been only 20 or 21 years old.

It is difficult to see how Triton, bearing in mind the large discrepancy in quotes, could have been successful in the tender if a proper tender analysis had been conducted. The Commission is satisfied that Mr Andjic had already decided to award the contract to Triton, regardless of its higher cost and the relative lack of Mr Chacra's experience.

Triton submitted two invoices. The first was dated 15 May 2013 and was for \$81,048.77 (inclusive of GST). This is higher than the amount originally quoted. The invoice referred to variations involving the relocation of a security camera and alarm sensor, removal and relaying of carpet and "incidentals". The second invoice was dated 10 June 2013 and was for \$10,543.50 (inclusive of GST) for "Variation to joinery units". Both invoices were paid. Mr Andjic signed a purchase order for the first invoice and an expenditure approval form for the second invoice.

Mr Honeywell assessed the value of the construction work performed by Triton at the Tamworth courthouse at \$44,592. He came to this assessment after having regard to the tenders that had been submitted. He told the Commission that he could not understand why a "premium" had been paid for Triton's work and that the amount charged by Triton "doesn't cut the mustard". The Commission accepts Mr Honeywell's assessment of the value of the work performed by Triton at the Tamworth courthouse.

The level 13, Spring Street, Sydney contract

Triton was awarded the contract to refurbish office accommodation on level 13, Spring Street in Sydney to accommodate the Inspector of Custodial Services and staff.

No documentation could be located regarding any decision to engage Triton to undertake work on this project. There was no physical or electronic file. It is likely that Triton was engaged in early June 2013, given

that the refurbishment was only approved on 28 May 2013 and that the first reference to Triton is in an email of 17 June 2013 from Mr Andjic to the Spring Street building manager advising that Mr Chacra would be there on 18 June 2013 to undertake some relocation works. Although the value of the construction contract exceeded \$30,000, no competitive quotes were sought. Mr Andjic told the Commission that he gave the work to Triton because "...it was a matter of urgency to get the job or works done there by the end of the financial year" and it was convenient to give the contract to Triton because it was "currently the company that I was dealing with". The Commission does not accept that there was such urgency but, in any event, that does not adequately explain why quotes were not sought from pre-qualified contractors. When it was pointed out to Mr Andjic that a pre-qualified company was, at the time, undertaking construction work on the Camden and Picton courthouses, he told the Commission that he had forgotten about that company.

Mr Chacra submitted two invoices to Mr Andjic. The first was dated 21 June 2013 for \$84,128 (inclusive of GST). The invoice described the work done as completion of "original scope of works" and variations involving completion of "all general building requirements ... materials handling component" and the supply and installation of blinds. On 25 June 2013, Mr Andjic signed an expenditure approval form approving payment of the invoice.

Louise Pounder, a senior departmental officer responsible for requesting the Spring Street office work, told the Commission that the work involved moving an internal wall to create a larger office, conversion of an existing office into a meeting room with a table suitable for conference meetings, providing an additional meeting table, minor reconfiguration of five existing workstations and the installation of secure cupboards to store confidential documents. In August 2013, she inspected the work that had been done. She was happy with the work except that the office that was supposed to have been converted into a meeting room still contained a workstation. She asked Mr Andjic to arrange for the removal of the workstation and to provide a larger table for the meeting room. He told her he that would get the contractor to attend to these matters. Ms Pounder told the Commission that this additional work was completed by early September 2013.

Triton's second invoice was dated 6 September 2013 and was for \$31,779 (inclusive of GST). This invoice described the work done as workstation "rectification", "Additional works as highlighted on site walk around, provision of associated services requirements in line with additional scope [and] miscellaneous builders working in connection [sic]". The Commission is satisfied that this invoice relates to

the work Ms Pounder requested be attended to in August 2013. That work was minor in nature, did not require a variation to the contract, as it should have been undertaken as part of the original contract and, in any event, was not worth anywhere near the amount charged by Triton.

On 11 September 2013, Mr Andjic signed an expenditure approval form approving payment of the September invoice. Even on Mr Andjic's evidence, he was in a personal relationship with Fatima Hammoud at this time. Despite this, he took no steps to make any declaration of a conflict of interest arising from his relationship with Fatima Hammoud and his involvement in approving payment of an invoice from a company owned by her sister's partner.

Mr Chacra claimed that he did not remember what work he did other than a broad description of removing walls, putting up walls and installation of office furniture. He could not recall how long it took him to do this work.

Mr Honeywell assessed the value of the work done by Triton as \$10,000. He came to this assessment after visiting the site and comparing an old floor plan with the current layout. It does not appear that Mr Honeywell took into account the need to reconfigure some existing workstations or the installation of secure cupboards. It may, therefore, be the case that the value of the work performed by Triton somewhat exceeded Mr Honeywell's assessment. The Commission, however, considers that the amount charged by Triton was excessive and the true value of the work was closer to \$10,000, rather than the amount charged by Triton.

The Gunnedah courthouse contract

The Commission was not able to find any documentation relating to the engagement of SAFF for work relating to the Gunnedah courthouse upgrade. Once again, there was no physical or electronic file. The only available records were an email with an attached invoice from SAFF, records showing the invoice was paid and an email about a proposed site visit.

On 14 June 2013, Fayrouz Hammoud, once again using the name "Fay Rouze", sent an email to Mr Andjic attaching a SAFF invoice of the same date for \$36,245 (inclusive of GST). The invoice was expressed as being for "Project Manager Costs" in relation to works "associated with Gunnedah Court House". On 25 June 2013, Mr Andjic signed an expenditure approval form, approving payment of the invoice. It was paid the next day.

Mr Andjic told the Commission that there was no construction undertaken at Gunnedah courthouse but there was a need to remove a tree that was causing

damage. He explained that the project management work involved a site inspection, making enquiries about who might be engaged to remove the tree, and preparing relevant tender documentation. He was unable to explain how SAFF could justify charging over \$36,000 for this work.

Fayrouz Hammoud told the Commission that she could not remember whether any work was actually done in relation to this matter. She could not explain what, if anything, was done to justify charging the Department over \$36,000. Mr Chacra was also unable to recall what work SAFF had done in relation to this project.

Mr Honeywell assessed the value of the work done by SAFF as of no value because he could find nothing that had been done by SAFF in relation to the project.

The Commission is satisfied that SAFF did no work of any value in relation to the Gunnedah courthouse project. SAFF should not have been engaged in any event as it was not on the DFS list of pre-qualified contractors.

Other courthouse upgrade contracts awarded to Mr Chacra's companies

Mr Andjic also awarded a number of other contracts to Triton and SAFF. The awarding of those contracts was not investigated by the Commission. The GST-inclusive payments made to Triton and SAFF under those contracts is set out in the table below.

Company	Courthouse	Payment
SAFF	Hornsby	\$39,015.90
Triton	Blacktown	\$8,250.00
Triton	Lake Cargellico	\$109,409.38
Triton	Dunedoo	\$60,544.00
Triton	Rylston	\$60,410.00
Triton	Peak Hill	\$61,440.50
Triton	Nyngan	\$59,494.00
TOTAL		\$398,563.78

The consultancy contract

On 18 April 2013, Mr Andjic sent an email to "Fay" inviting SAFF to submit a fee proposal "to support the court upgrade program". He specified the services required as including a:

...dedicated project manager to do at least 3 full working days per week until the end of the financial year

(10 weeks effective as of week commencing 21st April)– the PM [project manager] does not have to be located in our offices but may need to come in from time to time to brief me on the progress of the works ... the PM to be fully cognisant with the process and procedures relating to Government guidelines.

He advised that the project manager would report directly to him. He told the Commission that he needed a project manager to assist him with his work.

No other company was invited to put forward a fee proposal. SAFF should not have been invited as it was not on the DFS list of pre-qualified contractors. Mr Andjic knew at the time that SAFF was merely Fayrouz Hammoud and Mr Chacra. He admitted to the Commission that he knew at this time that Fayrouz Hammoud had no experience or qualifications as a project manager. He claimed that he engaged SAFF because it was convenient to do so, even though he acknowledged that there were other more experienced companies that could provide the services at less cost.

On 24 April 2013, Fayrouz Hammoud, using the name "Fay Rouze", sent an email to Mr Andjic attaching a one-page SAFF fee proposal of the same date. The fee proposal was for \$45,600 (exclusive of GST) with hourly rates to be charged out at \$210 per hour for "the Director" and \$190 per hour "for the Senior Project Manager in charge".

SAFF sent Mr Andjic two invoices for this work. The first invoice was dated 17 May 2013 and was for \$3,317.27 (inclusive of GST). It included charges at an hourly rate of \$190, thereby indicating that work had been completed by the "Senior Project Manager in charge". The second invoice was dated 12 June and was for \$46,842.73 (inclusive of GST). It included charges for work by a senior project manager "based on agreed rate". Mr Andjic signed expenditure approval forms for both invoices. Both invoices were paid.

Mr Andjic told the Commission that Fayrouz Hammoud "did a lot of programming works in terms of highlighting where projects should sit, what needs to be set. She set out the scope of the works with me in regards to what the projects would be scoped out as". He agreed that she did not know anything about programming construction work, but told the Commission that he "took the lead" on this work. Based on the \$190 per hour rate, the two invoices submitted by SAFF represent some 240 hours of work. Despite this, Mr Andjic told the Commission he did not question the amount charged by SAFF. Mr Andjic told the Commission that Fayrouz Hammoud provided him with a lot of paperwork but he did not know what happened to it. The Commission was unable to locate any such paperwork.

Fayrouz Hammoud told the Commission she could not remember any work she had done in respect of the matters referred to in the two invoices. When it was pointed out to her that she was working full-time as a teacher when she submitted the fee proposal, she told the Commission she may have done some of the work during school holidays and that Mr Chacra may have helped by doing some work. The Commission does not accept this evidence. The school holidays during the relevant period were the last week in April and a two-week period from 1 July. This is not sufficient time for Fayrouz Hammoud to work the hours claimed in the SAFF invoices. Mr Chacra could not recall any work that was done in relation to this contract.

There is no objective evidence of any work having been done by SAFF in relation to this contract. Apart from Mr Andjic, no other Capital Works officer had any dealings with Fayrouz Hammoud in relation to this contract. Mr Andjic told the Commission that this was because she was not required to have contact with other departmental officers. There is no paperwork evidencing any work produced by SAFF. The Commission is satisfied no work was done by Fayrouz Hammoud or SAFF.

Chapter 6: Explaining the conduct

Previous chapters have set out how Mr Andjic arranged for Triton and SAFF to be awarded and paid for lucrative contracts with the Department over a relatively short period of time. In doing so, he repeatedly ignored relevant departmental procurement rules that he was obliged to follow. He knew that Mr Chacra had little construction experience, particularly of the type required for the projects for which Triton was awarded a departmental construction contract. He knew that neither Mr Chacra nor Fayrouz Hammoud were qualified or experienced project managers and yet arranged for project management contracts to be awarded to Triton and SAFF knowing that Mr Chacra or Fayrouz Hammoud would be undertaking the project management work.

For two of the projects, Cessnock and East Maitland, he allowed SAFF to project manage Triton's work, despite knowing that the Department's project delivery methodology required the project manager to be independent of the construction contractor. He knowingly participated in a flawed tender process resulting in the awarding of the Cessnock courthouse construction contract to Triton. He failed to take even basic steps to ensure that the Department received value for money in relation to the contracts awarded to Triton and SAFF. This is starkly illustrated by the evidence that Triton and SAFF were paid \$719,597.48 (inclusive of GST) for work allegedly performed in relation to the Camden, Picton, Cessnock, Cowra, East Maitland, Gunnedah and Tamworth courthouse projects and work at Spring Street when the real value of that work was subsequently assessed at about \$108,000.

These figures do not include the work allegedly performed by Triton at East Maitland because Mr Honeywell was unable to provide an assessment of the value of that work. However, based on the real value of the work performed by Triton at other sites, the Commission considers that the actual value of the work performed by Triton at East Maitland was considerably less than the \$117,216.22 it was paid. Nor do these figures include the \$50,160 paid

to SAFF for the consultancy contract, for which the Commission has found no work was done by SAFF, or the almost \$400,000 paid to Triton and SAFF for the other courthouse upgrade projects that was not investigated by the Commission.

Mr Andjic's explanation

Mr Andjic sought to explain his conduct on the basis of incompetence on his part. That explanation is contrary to other evidence before the Commission that Mr Andjic had been a very competent director and a stickler for following departmental policies and procedures.

Martin Gordon was a development manager in the Capital Works unit between September 2010 and November 2014. Mr Andjic was his manager. He told the Commission that he found Mr Andjic "was really professional. He was strict. His adherence to guidelines and standards were [sic] impeccable" and that he "drilled ... home fairly regularly" the policies and procedures in relation to ensuring that work had actually been done. He noticed a change from about early 2013, resulting in a more "lackadaisical" approach by Mr Andjic to his work.

Robert Ingram was a project officer with the Capital Works unit. Mr Andjic was his manager. He described Mr Andjic as "very professional. A stickler for everything, you know, right down to the last cross the Ts and dot the Is" but also noticed a change in 2013.

Ms Kent worked with Mr Andjic for about 12 months up to February 2012 on a project involving the relocation and fit-out of the Public Defenders office. She told the Commission that while working with him on that project, she found Mr Andjic to be "extremely professional" and "a stickler for the guidelines and the rules".

It is also relevant to note that the only instances of complaint concerning Mr Andjic's performance of his duties related to his involvement in the awarding of

contracts to Triton and SAFF and his participation in the selection process for the project development officer position, for which Fatima Hammoud was a candidate. This latter matter is dealt with in the next chapter.

The Commission does not accept that Mr Andjic acted in the ways set out in chapters 3, 4 and 5 of this report because of incompetence. The Commission accepts the evidence of Mr Gordon, Mr Ingram and Ms Kent that he was highly competent at his job and not only applied relevant departmental policies and procedures himself but ensured that others in his unit did likewise.

Having come to this conclusion, the explanation for his behaviour with respect to Triton and SAFF must be found elsewhere.

Another explanation

The Commission examined whether Mr Andjic's aberrant behaviour with respect to his dealings with Triton and SAFF was the result of an agreement involving himself and one or more of Mr Chacra, Fatima Hammoud and Fayrouz Hammoud to improperly benefit Mr Chacra and others.

The Commission has found that, from at least August 2012, Mr Andjic was interested in establishing a romantic relationship with Fatima Hammoud and that she encouraged that interest, leading to them becoming romantically involved during the latter part of 2012. By 2013, Fayrouz Hammoud had been in a relationship with Mr Chacra for some time, which led to their marriage in 2014.

For there to have been any opportunity for an agreement, it is necessary to consider when Mr Andjic became aware that Mr Chacra was connected to Fayrouz Hammoud and through her to Fatima Hammoud. As it is most probable that any knowledge Mr Andjic had of these connections came from Fatima Hammoud, it is first necessary to examine what she knew about her sister and Mr Chacra.

Fatima Hammoud told the Commission that she first found out her sister was doing work for the Department on behalf of SAFF when she "bumped into her" at the Asset Management Branch office. This was when she first told Mr Andjic that they were sisters. She said this occurred prior to the 4 March 2013 meeting at Cessnock courthouse. Fayrouz Hammoud, however, told the Commission that the first time she attended the Asset Management Branch offices was for the Cessnock courthouse project's TEC meeting, which took place on 15 April 2013. Fatima Hammoud also told the Commission that she only became aware that Fayrouz Hammoud was working for SAFF as a project manager

at the meeting at Cessnock courthouse. Despite knowing that her sister had no qualifications or experience as a project manager, Fatima Hammoud told the Commission that she did not raise this with her sister or mention it to Mr Andjic. She said she only became aware that Mr Chacra owned SAFF on 15 April 2013, when she attended the TEC meeting for the Cessnock courthouse construction contract; although, she had been aware that he owned Triton at the time of the 4 March 2013 meeting at Cessnock courthouse.

Fayrouz Hammoud initially claimed that she had no idea that Fatima Hammoud worked for the Department until 15 April 2013, when she attended a meeting at the Asset Management Branch offices and saw Fatima Hammoud there. She told the Commission she was "surprised" to see her sister and then told Mr Andjic of their relationship. She was then shown minutes of a meeting on 4 March 2013 at Cessnock courthouse. The minutes recorded her, Fatima Hammoud and Mr Andjic as being present. She agreed that she prepared the minutes and told the Commission this was the first time she became aware that her sister worked for the Department.

The Commission does not accept their evidence on these issues. Fatima Hammoud and Fayrouz Hammoud were sisters and were very close. They socialised and lived in the family home together in 2012 and 2013. The Commission is satisfied that they discussed matters, such as each other's employment and their personal relationships, with others. Mr Chacra told the Commission that Fatima Hammoud told him when she got the job at the Department. There is no reason to disbelieve his evidence on this issue. The fact that Fatima Hammoud told her sister's boyfriend about her job makes it more likely that she would have told her sister.

The Commission is satisfied that Fayrouz Hammoud knew that Fatima Hammoud worked for the Department from about the time of her initial engagement in November 2011. The Commission is also satisfied that, from at least 2012, Fatima Hammoud knew that her sister was in a relationship with Mr Chacra, knew from about that time that Mr Chacra owned Triton, and was aware in February 2013 that Fayrouz Hammoud was working for Mr Chacra's other company, SAFF. The Commission is also satisfied that, by at least late 2012, Fayrouz Hammoud knew that her sister was in a relationship with Mr Andjic and she would have communicated this knowledge to Mr Chacra.

Mr Andjic told the Commission that he knew from about August 2012 that Fatima Hammoud had sisters and brothers because she mentioned them to him. The Commission is satisfied that, particularly given the closeness of the relationship between him and Fatima Hammoud, Mr Andjic was made aware from Fatima

Hammoud sometime in late 2012 that she had a sister called Fayrouz Hammoud.

Mr Andjic first met Mr Chacra in late 2012. Mr Andjic said, however, that he could not recall whether, at the time he arranged for Triton to be awarded the project management contract for the Camden and Picton courthouses project, he knew Mr Chacra was the partner of Fatima Hammoud's sister. The Commission does not accept Mr Andjic's evidence that he could not recall if he knew Mr Chacra was Fayrouz Hammoud's partner in February 2013. The Commission is satisfied that, given the close relationship between Mr Andjic and Fatima Hammoud and that Fatima Hammoud knew her sister was in a relationship with Mr Chacra, Fatima Hammoud had communicated to Mr Andjic sometime before February 2013 that Fayrouz Hammoud and Mr Chacra were in a relationship.

Fatima Hammoud told the Commission that she only became aware her sister was using an alias on 15 April 2013, when they met at the TEC meeting for the Cessnock courthouse project. Despite her awareness that her sister was using a false name for the purposes of her work for the Department, she told the Commission that she did not alert Mr Andjic to this important fact and she did not recall having any discussion with her sister about why she was using a false name. That she did not see any need to alert Mr Andjic to the fact that her sister was using a false name is consistent with her knowing at the time that Mr Andjic was well aware that "Fay Rouz" was really her sister, Fayrouz Hammoud.

Mr Andjic claimed that he only became aware that "Fay" from SAFF was Fatima Hammoud's sister when there was a meeting at the Asset Management Branch offices in late February or early March 2013 and he noticed the interaction between them. This, he said, prompted him to ask questions, which led to him ascertaining that they were sisters. Despite knowing her real identity, he said he did nothing about her continuing to deal with the Department under a false name and did not even ask her why she was not using her real name. That he did nothing to ensure she used her correct name in her dealings with the Department is consistent with him intending to disguise from anyone in the Department that Fayrouz Hammoud and Fatima Hammoud were sisters. He knew SAFF was Mr Chacra's company and that Mr Chacra was in a relationship with Fayrouz Hammoud. The Commission is satisfied that, at all relevant times, Mr Andjic knew "Fay" was Fayrouz Hammoud.

Fatima Hammoud was the connecting link between all the parties. There is direct evidence that Mr Andjic awarded contracts to Mr Chacra's companies because of Mr Andjic's relationship with Fatima Hammoud.

When Mr Chacra was asked why he got work so quickly

from Mr Andjic, he told the Commission that "I thought he [Mr Andjic] wanted to impress her [Fatima Hammoud] to eventually maybe build a relationship but I don't know but I knew I was favoured, I don't know why". When this evidence was put to Mr Andjic, he told the Commission that "subconsciously I probably was favouring that company based on [trying to impress Fatima Hammoud]".

During the public inquiry, it was put to Mr Andjic that he favoured Triton in the awarding of the construction contract for the Cessnock courthouse project in April 2013 because of his relationship with Fatima Hammoud. He gave the following evidence:

[Counsel Assisting]: And you were favouring them [Triton] because of your relationship with Fatima. Right?

[Mr Andjic]: Ah, not just because of that.

[Q]: Partially because of that?

[A]: Possibly, yes.

[Q]: It's a straight yes, isn't it?

[A]: Possibly, yes.

Even on Mr Andjic's evidence, that he only commenced a relationship with Fatima Hammoud in August 2013, he continued to exercise his official functions in relation to Mr Chacra's companies despite having a clear conflict of interest in authorising payments to someone who was effectively a member of her family. For example, in September 2013, he signed an expenditure approval form to pay Triton's invoice for \$31,779 in relation to work it claimed to have carried out at Spring Street. He also authorised payment for other projects after August 2013, including in relation to the projects at Dunedoo, Rylston, Peak Hill and Nyngan, and sought a fee proposal from Mr Chacra in relation to a project at Tumberumba. Mr Andjic's explanation was that "it was no one's business that I was in a relationship" with Fatima Hammoud. This attitude showed a decided contempt for the Department's rules in relation to declaring conflicts of interest and is consistent with there being an agreement that Mr Andjic would exercise his official functions to favour Mr Chacra, irrespective of such conflicts.

The Commission is satisfied that, prior to the awarding of the Camden and Picton courthouses project management contract to Triton, each of Mr Andjic, Mr Chacra, Fatima Hammoud and Fayrouz Hammoud knew one another and, in particular, that Mr Andjic and Fatima Hammoud knew that Mr Chacra and Fayrouz Hammoud were in a relationship and that Mr Chacra and Fayrouz Hammoud knew that Mr Andjic and Fatima Hammoud were also in a relationship.

The Commission finds that, during 2013, there was an agreement between Mr Andjic and Mr Chacra that Mr Andjic would improperly exercise his official functions to financially benefit Mr Chacra. This agreement involved Mr Andjic arranging for the awarding of contracts to Triton for the project management of the Camden and Picton courthouses project, and the construction contracts for the Cessnock, East Maitland and Tamworth courthouses upgrades, and the Spring Street office refurbishment, and the awarding of contracts to SAFF for the project management of the Cessnock, Cowra, East Maitland and Gunnedah courthouses upgrades and the consultancy services contract. The existence of this agreement is inferred from the findings made by the Commission. These include the following:

- prior to 2013, Mr Andjic and Fatima Hammoud were in a romantic relationship, as were her sister, Fayrouz Hammoud, and Mr Chacra
- Mr Andjic knew that Mr Chacra was in a relationship with Fatima Hammoud's sister
- at all relevant times, Mr Andjic knew that Mr Chacra owned Triton and SAFF
- SAFF was created by Mr Chacra in February 2013, in anticipation of obtaining project management work from Mr Andjic, despite Mr Chacra and Fayrouz Hammoud having no qualifications or experience as project managers
- Mr Andjic was in a position to arrange for contracts to be awarded to Mr Chacra's companies, and this was known by Mr Chacra
- Mr Andjic arranged for lucrative contracts to be awarded to Triton and SAFF over a relatively short period of time without undertaking checks to ensure the ability of either company to undertake the required work to an acceptable standard
- Mr Andjic deliberately failed to comply with departmental procurement rules when it came to engaging the services of Triton and SAFF
- Mr Andjic deliberately failed to comply with departmental project delivery methodology by arranging for SAFF to project manage Triton for the Cessnock and East Maitland projects
- Mr Andjic arranged for project management contracts to be awarded to Triton and SAFF, despite knowing that Mr Chacra and Fayrouz Hammoud had no qualifications or experience as project managers
- Mr Andjic arranged for construction contracts to be awarded to Triton despite knowing that Mr Chacra had limited construction experience
- Mr Chacra and Fayrouz Hammoud submitted inflated invoices, including for work not actually done, without any apparent concern that this might be discovered by Mr Andjic and action taken against them
- Mr Andjic failed to scrutinise the Triton and SAFF invoices to ensure the Department received value for the money for the payments made to Triton and SAFF

The Commission also finds that Fayrouz Hammoud was a party to an agreement that Mr Andjic would improperly exercise his official functions to financially benefit Mr Chacra and herself. This agreement involved Mr Andjic arranging for the awarding of the construction contract to Triton for the Cessnock courthouse upgrade and the awarding of contracts to SAFF for the project management of the Cessnock, Cowra, East Maitland and Gunnedah courthouses upgrades and the consultancy services contract. The existence of this agreement is inferred from the findings made by the Commission. In addition to those set out above, these include the following:

- at all relevant times, Mr Andjic knew that Fayrouz Hammoud was employed by SAFF and would benefit financially from any contracts awarded to SAFF
- Mr Andjic arranged for Fayrouz Hammoud to be a member of the TEC for the Cessnock courthouse construction tender, despite knowing that she had a conflict of interest because her partner, Mr Chacra, had submitted a tender and despite knowing that she lacked the experience and qualifications to properly assess the tenders
- Fayrouz Hammoud participated as a member of the TEC, which awarded the Cessnock courthouse construction contract to Triton, despite knowing that she had a conflict of interest, and that Triton was the least price competitive and its tender contained false information as to its previous work experience
- in her dealings with the Department, Fayrouz Hammoud used the alias "Fay Rouz", with the knowledge of Mr Andjic, to disguise from departmental scrutiny that Triton and SAFF were owned by the same person, and that there was a connection between her, Fatima Hammoud and Mr Andjic.

Did Mr Andjic receive any financial benefit?

An additional issue considered by the Commission during the course of its investigation was whether Mr Andjic

obtained any financial benefit from Mr Chacra or Fayrouz Hammoud, either directly or indirectly through Fatima Hammoud, in return for favouring Mr Chacra's companies.

During the course of 2013, the Department paid SAFF and Triton a total of \$1,285,537.48 (inclusive of GST). This includes the amounts paid for those contracts identified in chapter 5 that were not the subject of investigation by the Commission. During the course of 2013, Mr Chacra withdrew \$760,159 from Triton's bank account and \$198,031 from SAFF's bank account. Most of that money was either transferred or deposited in cash into his or Fayrouz Hammoud's bank accounts. Mr Chacra said that he used some of the money he was paid by the Department to build a house. Fayrouz Hammoud told the Commission that they used the money "to build a life together", which included paying for her wedding to Mr Chacra, their honeymoon to North America, furniture, a property, demolishing the existing house and building of a new house.

About \$150,000 of the funds withdrawn were not transferred or deposited into their bank accounts. This cash was potentially available to Mr Chacra and Fayrouz Hammoud to provide to Mr Andjic and Fatima Hammoud. Mr Chacra and Fayrouz Hammoud denied giving any money to Mr Andjic or to Fatima Hammoud. Both Mr Andjic and Fatima Hammoud denied receiving any money from Mr Chacra or Fayrouz Hammoud.

There is no evidence to establish any payments of money by Mr Chacra or Fayrouz Hammoud directly to Mr Andjic.

There was evidence of a number of large cash deposits made into Fatima Hammoud's bank account. There was evidence from Fatima Hammoud that money from this account had been used towards the payment of a deposit and stamp duty on the purchase of a house in March 2014 for her and Mr Andjic. The Commission examined the evidence concerning these cash deposits with a view to ascertaining whether any of these funds came from Mr Chacra or Fayrouz Hammoud. The table below identifies the cash deposits examined by the Commission.

Date of deposit	Amount
28 November 2013	\$10,000
30 December 2013	\$8,800
16 January 2014	\$7,200
28 February 2014	\$30,000
7 March 2014	\$22,218
15 April 2014	\$3,950
29 May 2014	\$35,000
30 May 2014	\$40,000

The amounts come to just over \$157,000. This approximates the amount of \$150,000 withdrawn from the Triton and SAFF bank accounts but not subsequently deposited into the accounts of Mr Chacra or Fayrouz Hammoud.

Fatima Hammoud told the Commission that this money came from cash she kept in a box in a cupboard in her bedroom, family members and cash given to her for her engagement and wedding.

She claimed that it had been her habit for many years to keep cash in a box in a cupboard in her bedroom and that, at one point, she had over \$50,000 in the box. She explained that the money came from savings and gifts she had received over the years. It is difficult to accept her evidence about this. Her wages were paid directly into her bank account and, although there were some withdrawals, most of this money remained in her bank account so that by 2014 she had accumulated about \$180,000 in this account. Although she told the Commission that she deposited into her bank account the substantial amounts of cash she claimed to have received from her mother, she claimed that it did not occur to her to also deposit the cash in her box. Aside from lack of security, this method of saving money by keeping it at home in a box prevented her earning interest. Fatima Hammoud was not an unsophisticated person; she had a degree in business and had been employed in positions involving knowledge of financial and banking systems. The Commission does not consider it credible that someone with a professional business background, such as Fatima Hammoud, would store a decade or so of savings in cash in a box in a cupboard in her family home.

Fatima Hammoud claimed that her brother, Abdul Hammoud, loaned her \$75,000. This involved two payments. The first payment was for \$35,000 made on 29 May 2014. The second payment was the next day, and was for \$40,000. There was no satisfactory explanation for why she obtained these loans over two consecutive days rather than on one day.

Mr Hammoud was a security guard. He told the Commission that he had loaned Fatima Hammoud \$300,000. This amount was transferred from his bank account. He said he had saved the money from his wages. Bank records obtained by the Commission confirmed that the \$300,000 came from savings accumulated over 10 years in his bank account. He also told the Commission he had loaned Fatima Hammoud \$75,000 in cash. He said that he was often paid in cash and that led him to having \$75,000 cash at home. There were no records to enable the Commission to verify whether Mr Hammoud had been able to accumulate such a large amount of cash.

Fatima Hammoud also told the Commission that she had

received four gifts of cash from her mother. These were for \$8,800, \$7,200 and \$3,950, and explained the deposits for the same amounts in the above table. The fourth gift, of \$53,000, is examined in more detail below. She told the Commission that she asked her mother for money, even though, at the time, she had about \$50,000 in cash in the box in her cupboard. Her mother never asked her why she needed the cash and she never gave a reason to her mother. She told the Commission that she used the cash given to her by her mother towards the purchase of the house and offsetting the mortgage.

Hakime Hammoud is Fatima Hammoud's mother. She told the Commission that she gave Fatima Hammoud the three cash payments referred to by Fatima Hammoud. She said that she did not know why her daughter wanted the cash and that she did not ask her because she trusted her. She told the Commission that, over a period of about 40 years, she had accumulated amounts of cash that she kept at home. She had managed to accumulate these amounts of cash despite not being in paid employment and her husband not being in paid employment for about 20 years. He had, however, received between \$30,000 and \$40,000 in compensation payouts following two injuries and was in receipt of a disability pension. Hakime Hammoud also received a carer's benefit for caring for her own mother.

In addition to the cash deposits identified in the table above, there was a transaction described in one of Fatima Hammoud's bank statements as a "cash deposit" of \$53,000. The transaction was dated 15 April 2014. During her compulsory examination, prior to the public inquiry, Fatima Hammoud was taken to the page of her bank statement showing the cash deposit of \$3,950 on 15 April 2014. She told the Commission that that money was a gift from her mother. That page of her statement also recorded a \$53,000 "cash deposit" on the same date. Before she could be asked about this transaction she said that this money also came from her mother: "My mum, so that 53,000 you see deposited, again that's my mum's...".

At both her compulsory examination and the public inquiry, Fatima Hammoud said she remembered going to the bank to deposit the money and gave evidence about how long it took the teller to count the money.

At her compulsory examination and at the public inquiry, Hakime Hammoud gave evidence that she had given the \$53,000 to Fatima Hammoud to put into Fatima Hammoud's bank account. She told the Commission this was money her own mother had saved over 17 years. This time she asked Fatima Hammoud why she wanted the money and was told that it would be used to reduce the amount of interest she was paying on her mortgage. She denied that she was telling the Commission that she had given \$53,000 to Fatima Hammoud because Fatima

Hammoud had asked her to give that evidence to the Commission.

There was, however, no "cash deposit" of \$53,000. Although described as such on the bank statement, the transaction was simply a reversal by the bank of an amount transferred by mistake into Fatima Hammoud's mortgage account. Bank records show that \$53,000 had been transferred into the mortgage account. Fatima Hammoud wrote a letter to her bank asking for the transaction to be reversed because it was an accidental transfer. An affidavit from the bank confirms that it was a reversal even though it was described as a "cash deposit".

When this evidence was put to her at the public inquiry, Fatima Hammoud agreed that there had been a reversal of a \$53,000 transfer to the mortgage account but maintained that her mother had also given her \$53,000. She could not explain what she had done with that \$53,000 but denied having lied about her mother giving her the \$53,000.

The Commission does not accept that Hakime Hammoud gave Fatima Hammoud \$53,000. The Commission accepts the submission of Counsel Assisting that there is no reasonable possibility that Hakime Hammoud happened to give her daughter the exact amount mistakenly described in her daughter's bank statement as a cash deposit. The Commission is satisfied that Fatima Hammoud concocted her evidence about the \$53,000 transaction because she believed she was about to be confronted with another cash payment that required explanation and that Hakime Hammoud concocted her evidence to support the account given to the Commission by her daughter. This raises doubt as to the truthfulness of Fatima Hammoud's evidence concerning the sources of the other cash deposits into her account and the evidence of Hakime Hammoud in relation to the other amounts of money she claimed to have given to her daughter.

The Commission does not accept that Fatima Hammoud saved \$50,000, which she kept at home in a box. Her evidence on this, as on other issues, was unreliable. Savings she made from her wages were accounted for by the balance in her bank account. She had no credible explanation for how she came to amass an additional \$50,000 in cash. While the Commission has doubts as to whether her brother and mother provided her with any cash, even putting aside the amounts it was claimed came from them, there remain cash deposits of over \$62,000. The Commission is satisfied that the bulk, if not all, of this came from Mr Chacra and was part of the money he had obtained from the Department. In reaching this conclusion, the Commission takes into account the fact that Mr Chacra had been able to obtain significant amounts of money from the Department because of Mr Andjic's conduct and the reason for that conduct

emanated from his relationship with Fatima Hammoud. In these circumstances, it is logical that Mr Chacra would share some of the funds he obtained with his sister-in-law and, through her, the man responsible for his windfall. The money provided by Mr Chacra to Fatima Hammoud was used by her towards the purchase of a house for herself and Mr Andjic and has therefore been of benefit to Mr Andjic.

Chapter 7: The project development officer position

This chapter examines the circumstances surrounding an application made by Fatima Hammoud for the position of project development officer with the Capital Works unit.

Fatima Hammoud's application

In early 2013, a decision was made to recruit for the position of project development officer. The selection criteria for the position included "superior" expertise in building project management, "extensive" experience in the delivery of major capital works and a sound knowledge of relevant building codes and standards. Expressions of interest were called for the position. Mr Andjic was the convenor of the selection panel. The other member was Helen Doherty from the Department's human resources section.

Three people applied for the position. Although she clearly lacked the necessary experience for the position, Fatima Hammoud was one of the applicants.

Fatima Hammoud's application, which was dated 12 June 2013, included a résumé as well as a written response to the selection criteria. At the public inquiry, she admitted that there were numerous statements in both her résumé and written response to the selection criteria that were exaggerated or false, and that she knew she did not have the necessary experience for the position. The false information was extensive and included that she had completed a Diploma of Project Management and that she had managed the delivery of major refurbishments for a privately owned restaurant chain. She told the Commission that Mr Andjic had assisted her to draft her application, including the false information.

She told the Commission, however, that her completion of these documents containing information she knew to be false had merely been a "learning exercise" so that she could practise for future job applications and that she had no intention of actually applying for the position.

Fatima Hammoud's evidence at her previous compulsory examination differed from that she gave at the public inquiry. During her compulsory examination, she told the Commission that, while the process was a learning exercise for her, the résumé and her answers to the selection criteria accurately reflected her qualifications and experience. She also said that Mr Andjic did not assist her with the contents of her application.

At the public inquiry, she attempted to explain the discrepancies in these accounts on the basis that when she gave her evidence at the compulsory examination she had forgotten that Mr Andjic had assisted her with her application and that she thought, at that time, that the information in her application was accurate. She claimed that she had forgotten that she had exaggerated and included false information in her application. The Commission rejects these explanations.

Mr Andjic also gave evidence at the public inquiry that Fatima Hammoud's application was not intended to be a genuine application but was for training purposes. This contrasted with his evidence at a previous compulsory examination where he said nothing about completing the application for training purposes and claimed that Fatima Hammoud was worthy of being interviewed for the position.

There was nothing on the face of the documentation that Fatima Hammoud submitted in support of her application to indicate the application was for a training exercise.

On 8 July 2013, Fatima Hammoud also attended an interview for the position. She told the Commission that she did this for training purposes and told Ms Doherty that this was the case. Mr Andjic also claimed that he told Ms Doherty that Fatima Hammoud was being interviewed for training purposes.

When first questioned by Commission investigators, Ms Doherty said she had no independent recollection of the interview. By the time she gave evidence at the public

inquiry, she had recalled the interview process and, in particular, the fact that Fatima Hammoud attended with a broken arm in plaster. She said that nothing was said by either Mr Andjic or Fatima Hammoud that the application and interview were a training exercise for Fatima Hammoud. She told the Commission:

[i]f someone was to raise that with me I would be saying this is not a training session, right. You need to either formally withdraw from the process and I can – I've got a team upstairs that can actually help you. The Department had quite an extensive coaching, recruitment training program in place.

The Commission regards Ms Doherty as a reliable witness and accepts her evidence.

In his evidence to the Commission, Mr Andjic denied that, at the time of the interview, he and Fatima Hammoud were “a couple”. For the reasons given in chapter 2 of this report, the Commission is satisfied that Mr Andjic and Fatima Hammoud were romantically involved from late 2012. It will be recalled that he and Fatima Hammoud spent the nights of 7, 8 and 9 June 2013 together at a Port Stephens resort (roughly one month before she attended the interview). Mr Andjic did admit to being “infatuated” with Fatima Hammoud at the time of the interview but, despite knowing the necessity of declaring any conflict of interest, failed to notify anyone of this conflict of interest.

On 9 July 2013, the day after Fatima Hammoud's interview, Mr Andjic sent her an email requesting her referee contact details so that “I can undertake reference checks”. She sent him a list of names, including the name of an alternative referee, if one of her preferred referees was unavailable. None of this was necessary if her participation in the process had been for training purposes. Mr Andjic's explanation to the Commission for requesting the names of her referees was, because the other candidates had supplied names of their referees, he thought it was a good idea for her to do so as well. Fatima

Hammoud was unable to explain why she provided her referee details to Mr Andjic.

That Fatima Hammoud's application was not a training exercise is reinforced by Mr Maslen's evidence, which the Commission accepts, that after the interview process had been completed Mr Andjic recommended her for the position. Mr Maslen was “extremely suspicious” of this recommendation given what he knew to be Fatima Hammoud's level of experience and his knowledge that one of the other candidates had a considerable amount of project management experience. Mr Maslen examined her application and became aware that it contained significant false information. Mr Maslen said that, apart from the false information in Fatima Hammoud's application, he was also concerned that there was a conflict of interest in Mr Andjic being convenor of the selection panel because he believed there was a personal relationship between Mr Andjic and Fatima Hammoud. On 18 July 2013, he sent an email to the Department's director of human resources advising that he was stopping the recruitment process.

The Commission is satisfied that Fatima Hammoud's application was a genuine application and not made as part of some training exercise. In making this finding, the Commission takes into account that there was nothing on the face of her application to indicate that it was not intended as a serious application, that she attended an interview for the position, neither she nor Mr Andjic did anything to advise Ms Doherty that her application was not genuine, that, at Mr Andjic's request, Fatima Hammoud subsequently provided Mr Andjic with the names of her referees for the position, and that Mr Andjic recommended her for the position.

The Commission is satisfied that Mr Andjic and Fatima Hammoud were parties to an agreement to financially benefit Fatima Hammoud by arranging for her to be appointed to a higher paying position of project development officer with the Department. The existence of this agreement is inferred from the findings made by the



Commission, including the following:

- Mr Andjic and Fatima Hammoud were in a romantic relationship at the time the application was made
- as the convenor of the selection panel, Mr Andjic was in a position to influence the selection process
- both Mr Andjic and Fatima Hammoud knew that she lacked the necessary experience for the position
- both Mr Andjic and Fatima Hammoud were aware that her application contained exaggerated or false information
- Fatima Hammoud's application was a genuine application and not made as part of some training exercise
- Mr Andjic participated in the selection process, despite having a conflict of interest, because of being in a romantic relationship with Fatima Hammoud and failed to declare any conflict of interest so that he could arrange for the position to be offered to Fatima Hammoud
- Mr Andjic recommended to Mr Maslen that Fatima Hammoud be appointed to the position.

Chapter 8: Corrupt conduct and s 74A(2) statements

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

First, the Commission makes findings of relevant facts based on the balance of probabilities. The Commission then determines whether those facts come within the terms of s 8(1), s 8(2) or s 8(2A) of the ICAC Act. If they do, the Commission then considers s 9 of the ICAC Act and the jurisdictional requirements of s 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 criminal offence.

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

Corrupt conduct – awarding of contracts

The Commission finds that, during 2013:

- There was an agreement between Mr Andjic and Mr Chacra that Mr Andjic would improperly exercise his official functions to financially benefit Mr Chacra. This agreement involved Mr Andjic arranging for the awarding of contracts to Triton for the project management of the Camden and Picton courthouses project, and the construction contracts for the Cessnock, East Maitland and Tamworth courthouses upgrades, and the Spring Street, Sydney, office refurbishment, and the awarding of contracts to SAFF for the project management of the Cessnock, Cowra, East Maitland and Gunnedah courthouses upgrades and the consultancy services contract.

- Fayrouz Hammoud was also a party to an agreement that Mr Andjic would improperly exercise his official functions to financially benefit Mr Chacra and herself. This agreement involved Mr Andjic arranging for the awarding of the construction contract to Triton for the Cessnock courthouse upgrade and the awarding of contracts to SAFF for the project management of the Cessnock, Cowra, East Maitland and Gunnedah courthouses upgrades and the consultancy services contract.

The Commission finds that, in each case, Mr Andjic's conduct was corrupt conduct for the purposes of s 8(1)(b) of the ICAC Act because it is conduct that constitutes or involves the dishonest or partial exercise of Mr Andjic's official functions. In the case of Mr Chacra and Fayrouz Hammoud, it was corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act because it is conduct that could adversely affect the honest or impartial exercise of official functions by Mr Andjic. It is also corrupt conduct for the purposes of s 8(2A)(c) of the ICAC Act because it is conduct on the part of each of Mr Andjic, Mr Chacra and Fayrouz Hammoud that could impair public confidence in public administration and involve dishonestly obtaining, or assisting in obtaining, the payment of public funds for private advantage.

For the purposes of s 9 of the ICAC Act it is relevant to consider the following sections of the *Crimes Act 1900* ("the Crimes Act").

Section 192D of the Crimes Act provides that:

(1) *In this Part,*

"obtain" a financial advantage includes:

- (a) obtain a financial advantage for oneself or for another person, and
- (b) induce a third person to do something that results in oneself or another person obtaining a

financial advantage, and

(c) keep a financial advantage that one has,

whether the financial advantage is permanent or temporary.

(2) In this Part,

“cause” a financial disadvantage means:

(a) cause a financial disadvantage to another person, or

(b) induce a third person to do something that results in another person suffering a financial disadvantage,

whether the financial disadvantage is permanent or temporary.

Section 192E(1) of the Crimes Act provides that:

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

(a) obtains property belonging to another, or

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

is guilty of the offence of fraud.

Section 192G of the Crimes Act provides that:

A person who dishonestly makes or publishes, or concurs in making or publishing, any statement (whether or not in writing) that is false or misleading in a material particular with the intention of:

(a) obtaining property belonging to another, or

(b) obtaining a financial advantage or causing a financial disadvantage,

is guilty of an offence.

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

The Commission is also satisfied for the purposes of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Andjic, Mr Chacra and Fayrouz Hammoud engaged in a joint enterprise

to commit offences under s 192G of the Crimes Act in relation to the publishing of false and misleading Triton and SAFF invoices with the intention of obtaining a financial benefit.

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

The Commission is satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct because:

- Mr Andjic held a senior position of trust within the Department, which he abused
- the conduct of each of Mr Andjic, Mr Chacra and Fayrouz Hammoud was part of an elaborate scheme to improperly award contracts to Mr Chacra’s companies and arrange for payment of false invoices
- the amount of public money improperly obtained was significant
- the conduct of each of Mr Andjic, Mr Chacra and Fayrouz Hammoud involves serious criminal offences.

Corrupt conduct – the recruitment process

The Commission finds that, during 2013, Mr Andjic and Fatima Hammoud were parties to an agreement to financially benefit Fatima Hammoud through the preparation and submission to the Department of an application by Fatima Hammoud for employment as a project development officer, which they both knew contained false information, with the intention that the false information would assist her to obtain a higher paying position within the Department, and whereby Mr Andjic would improperly favour Fatima Hammoud in the selection process by recommending she be appointed to the position.

This is corrupt conduct for the purposes of s 8(1)(b) of the ICAC Act because it is conduct that constitutes or involves the dishonest or partial exercise of Mr Andjic’s official functions. It is also corrupt conduct in the case of both Mr Andjic and Fatima Hammoud for the purposes of s 7(2) and s 8(2A)(e) of the ICAC Act because it is conduct on their part that could impair public confidence in public administration and involve an attempt to fraudulently obtain employment as a public official.

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

beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Andjic and Fatima Hammoud were involved in a joint enterprise to publish a false application for the position of project development officer with the intention of Fatima Hammoud obtaining a financial benefit in breach of s 192G of the Crimes Act.

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

The Commission is satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct because:

- Mr Andjic held a senior position of trust within the Department, which he abused by participating in the selection process for the purpose of improperly favouring a person with whom he was in a personal relationship
- they each had a serious conflict of interest, arising from their close personal relationship, which they failed to declare
- they were both knowingly involved in providing significantly false information to the Department in support of the application for employment
- they both acted with the intention of securing a promotion and concomitant increase in pay for Fatima Hammoud to which they knew she was not entitled.

Section 74A(2) statements

In making a public report, the Commission is required by the provisions of s 74A(2) of the ICAC Act to include, in respect of each “affected” person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:

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

An “affected” person is defined in s 74A(3) of the ICAC

Act as a person against whom, in the Commission’s opinion, substantial allegations have been made in the course of, or in connection with, the investigation. The Commission considers Mr Andjic, Fatima Hammoud, Fayrouz Hammoud, Mr Chacra and Hakime Hammoud to be “affected” persons.

Each of Mr Andjic, Fatima Hammoud, Fayrouz Hammoud, Mr Chacra and Hakime Hammoud gave evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that their evidence cannot be used against them in any criminal prosecution other than a prosecution for an offence under the ICAC Act. There is, however, other available admissible evidence, including the evidence of Mr Maslen, Mr Marshall, Mr Hemsworth, Mr Honeywell, Mr Richardson, Mr Moeskops, Ms Pounder, Ms Le, Mr Cheung, and others. There is also relevant documentary evidence, including departmental and financial records.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Andjic, Mr Chacra and Fayrouz Hammoud for offences under s 192E(1) and s 192G of the Crimes Act.

The Commission is also of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Chacra and Fayrouz Hammoud with offences under s 193B(2) of the Crimes Act of knowingly dealing with the proceeds of crime in relation to their dealings with the money improperly obtained from the Department.

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 Fatima Hammoud with an offence under s 193C(2) of the Crimes Act of dealing with property where there are reasonable grounds to suspect the property is proceeds of crime in relation to her dealing with part of the money improperly obtained from the Department.

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 Andjic and Fatima Hammoud for an offence of conspiracy to commit an offence under s 192G of the Crimes Act in relation to the publishing of a false application for the position of project development officer.

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 the following persons for offences under s 87 of the ICAC Act:

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- Mr Andjic and Fatima Hammoud in relation to their evidence that Fatima Hammoud's application for the position of project development officer was submitted as part of a training exercise the purpose of which had been declared to Ms Doherty
 - Fatima Hammoud and Hakime Hammoud in relation to their evidence that Hakime Hammoud gave \$53,000 to Fatima Hammoud
 - Mr Andjic and Fatima Hammoud in relation to their evidence that they did not commence a close personal relationship until August 2013.

Chapter 9: Corruption prevention

This investigation involved supplier fraud and conflicts of interest involving work performed under the courthouse upgrade program. The program was a 10-year program of capital works projects commencing in 2001 that was undertaken by the Department and its predecessor agencies.

It is not uncommon that corrupt conduct occurs in situations where there are multiple gaps in the control environment. In this investigation, these gaps occurred in areas such as the management of project information, budget management, procurement and procure-to-pay processes.

The projects examined in this investigation provide a good example of the nexus between corrupt conduct and other organisational control gaps. For instance, the initial quotation for construction work relating to the Cessnock courthouse project was \$203,450 but the Department ultimately paid \$301,725.¹⁶ Despite this overpayment, it was estimated that the likely value of the completed work was \$47,355, with much of the work within the project scope not even commenced. Even if this disparity had been not due to corrupt conduct, it would represent very poor value for money.

In addition to the gaps in the control environment, the design of the capital works program presented a significant control challenge. It was long term, contained a large number of minor projects, was geographically spread and was not the core business of the Department.

The business case for the program arose from a long-term underspend on courthouse maintenance, which meant that many courthouses were inadequately supporting court operations and/or not meeting requisite building standards. While some courthouses required major work, many courthouses required remedial works or minor renovations. Examples of remedial or minor works included repairing facades and installing access ramps.

As programs of minor works increase in number and

time, they become increasingly hard to control. The touchstones of priorities, scope, budget and business cases can all drift from the original plan, resulting in increased uncertainty about what should and did happen. At the same time, long-term minor works can be vulnerable to relationships developing between project managers and suppliers. The monitoring of work such as facade restorations is not a core business and, accordingly, it received less attention from management.

Such challenges create risks not only of corruption but more generally of waste and poor value for money. The management of such a program requires careful attention at both the strategic and operational levels to ensure control. At the strategic level, bodies such as steering committees and executive working groups need to monitor the program to ensure that it remains consistent with business needs. At the operational level, the key elements of the control environment, such as project reporting and procurement, need to function successfully.

Program governance

The successful management of a 10-year program of capital works requires both initial planning and ongoing review. Initial planning is important for ensuring that the program *as designed* is consistent with organisational needs and for establishing a program governance framework. Over a 10-year period, however, it is inevitable that an organisation's operating environment will change. New business needs may arise or existing business needs may be reprioritised, and the market for contractors, such as builders and project managers, may also change. Consequently, it is very unlikely that initial plans will survive the program's duration intact. Instead, the program will very likely need to be modified to ensure that it consistently meets organisational needs.

While the Department's business priorities evolved over time, the mechanisms for linking the program to

business needs proved inadequate. As the needs and program drifted, management visibility dropped and waste increased. For example, in some instances, upgrades were performed on courthouses that were no longer being used, with few stakeholders having any incentive or opportunity to determine whether the work that had been performed (or if it even had been performed at all) represented value for money.

This misalignment also contributed to marked instability in the scopes of projects. The initial scoping of program projects was limited, and program budgeting failed to account for the additional cost of performing work years into the future. These rendered initial project scopes increasingly unreliable. Further scope uncertainty was created by a decision to refocus upgrades to ensure building code compliance. Together, these factors created an environment where scope changes were viewed as routine, facilitating the hiding of non-delivery of work as work removed from the project scope.

Misalignment of projects with business needs

As with most capital works programs, the program was conceived to address specific business needs. One of its key aims was to allow courthouse buildings to better support the operations of NSW's courts system. Given that court operations were not an area of expertise of the Department's Asset Management Branch, representatives of this business unit and Courts and Tribunal Services would liaise at the start of each financial year regarding which courthouses were going to be upgraded. Following this consultation, the Asset Management Branch would then submit proposed projects to the Department's capital expenditure committee, which would, in turn, submit them to the Department's executive committee for approval.

While this approach seemed to work well initially, it was ultimately overwhelmed by substantial changes in the Department's operating environment that had accrued during the life of the program. Over recent years, there has been a general population migration from inland NSW to coastal regions that has decreased the need for justice services in inland regional areas. Additionally, the Department has been increasingly using information communications technology to deliver court services remotely, decreasing the need for physical courthouse operations more generally.

In response to these changes in its operating environment, the Department modified its business strategy in two ways. First, the operations of a number of physical courthouses were reduced and, in some cases curtailed, especially in regional areas. Secondly, the JusticeLink Program to create a computer-based case management system for court cases was devised and implemented.

Consequently, as time passed and business needs changed, the program was left with an increasingly high percentage of projects with limited *current* business value, making it increasingly difficult to successfully prioritise projects.

The Department did not, however, substantially revise the program to support its revised business strategy. The focus of the program remained the upgrade of all physical courthouses, and representatives from both Asset Management and Courts and Tribunal Services acknowledged that ultimately the projects conducted under the program were not those of greatest priority to the courts system.

This created the scenario whereby courthouse upgrades were being proposed and/or delivered despite there being little business value to do so. In one case, the Asset Management Branch planned to perform a \$6 million upgrade of Hornsby courthouse despite the chief magistrate having decided to no longer hold sittings there. Similarly, hundreds of thousands of dollars were paid for work at Camden and Picton courthouses despite the fact that they were no longer being used.

In addition to being a less than ideal use of public money, upgrading non-operational courthouses creates corruption opportunities. These upgrades are subject to reduced scrutiny from both Department employees and the public, as each has reduced incentives and opportunity to determine whether the work was performed properly. This lack of scrutiny, in turn, decreases the likelihood that corrupt conduct will be detected. For example, it is far easier for an Asset Management Branch employee to corruptly engage a contractor or have fraudulent invoices paid in such circumstances because individuals outside the Asset Management Branch have little interest in how the work is performed.

Uncertainty over project scope

Even if aligned with business needs, it is difficult for a project to achieve its objectives if it has been inadequately scoped. In the Commission's experience, projects are less likely to succeed if they are either not properly scoped prior to delivery or have been subject to marked changes in scope during delivery. Without an understanding of the boundaries of a project, it is difficult to ensure that it achieves value for money and to make judgments about topics such as whether specific variations are consistent with project objectives.

Projects conducted under the capital works program were often subject to marked changes in scope. The courthouse upgrades that were ultimately performed often were not those that were originally planned. The scoping work that had been performed to justify projects could not be relied upon to describe even in general terms what works would

ultimately be performed on courthouses.

A number of the causes of these changes to the scopes of projects trace back to the development of the program itself.

First, the 10-year duration of the program meant that scope changes were almost inevitable. Over time, assets deteriorate and their usage patterns change. As a result, initial scoping for a works project may well be markedly out-of-date if it was conducted years before the project actually commenced. While there is little that can be done to prevent this effect of time, the likelihood of it occurring can be recognised and controls implemented to manage scope change processes.

Secondly, the program's business case was very high level and very little project scoping had been performed to support it. While a consultant was hired to ascertain the upgrade needs of courthouses in general, it does not appear that this consultant visited every courthouse. There was certainly no detailed needs analysis performed for each courthouse. The fact that the needs and circumstances of different courthouses were not considered in detail when designing the program ultimately meant that the scope of projects needed to be modified once work commenced upon them.

Thirdly, the budgeting approach used in the program's business case also resulted in changes to project scopes. The capital works were designed to be undertaken over a 10-year period. Generally speaking, capital works performed years into the future are likely to cost more than originally estimated because of both inflation and likely deterioration in the condition of the relevant assets over time. To manage this, an "escalation" is often built into the budget of future capital works to allow for this likely increase in costs. At the beginning of the program, each courthouse upgrade had a set amount of funds allocated to it but no escalations were included as part of this funding. This lack of escalations ultimately meant that scopes and/or budgets of projects needed to be changed because a project's originally scoped works would often be unachievable with the funds originally allocated to it.

While changes to project scopes are sometimes unavoidable, unnecessary scope changes can create corruption opportunities. In an environment where scopes change frequently, it is very difficult for management to meaningfully compare performed work with scoped work and delivered costs with budgeted cost, which can undermine operational controls such as budgetary and work review. Interested parties are less likely to know what a given project is trying to achieve and therefore whether it has achieved its objectives, making it more difficult to detect fraudulent non-delivery. Moreover, an individual is more likely to be able to corruptly alter the

scope of a project, as scope changes are more likely to be viewed as routine.

Once the program commenced, additional scope changes arose because of a departmental decision to refocus the general nature of program works. About five years into the project, the Department decided to alter the aims of the program to ensure that courthouses were compliant with the Building Code of Australia (BCA) and the Commonwealth's *Disability Discrimination Act 1992*. Given that many courthouses were not built to be compliant with these standards, this resulted in major changes to the scopes of the relevant upgrades.

A number of options are available to organisations facing this situation. In terms of program planning, more detailed project scoping and the inclusion of budgetary escalations for projects conducted in the future could reduce the risk of scope changes. In terms of program implementation, a mechanism could have been included to review the program's portfolio of projects (instead of simply prioritising existing projects), as it became increasingly misaligned with business needs, or when project scopes needed to change to ensure compliance with the BCA and the *Disability Discrimination Act 1992*.

As the capital works program is all but completed, the Department has recently prepared a business case for a new four-year program of capital works. A considerable amount of planning has gone into this program, and its business case was submitted to NSW Treasury and assessed by both the Total Asset Management and Gateway processes, which are designed to independently assess the robustness of such programs. As part of developing this program, the Department has prepared detailed strategies surrounding capital works. These have involved detailed project scoping and more robust budgetary analysis than were prepared to justify the program.

The implementation of these strategies should be aided by a mechanism that periodically reviews the program to ensure that it is still consistent with the Department's business needs. This mechanism would allow the Department to modify the program to eliminate any gaps between program outcomes and business needs that may develop as its implementation progresses.

Recommendation 1

That the NSW Department of Justice ensures that the implementation of its upcoming program of capital works contains a mechanism to periodically review the program to ensure that its projects remain consistent with its business strategy and operating environment.

Delivery of projects

While it was always going to be difficult for the program to deliver successful projects given these strategic governance challenges, operational levels gaps in information systems, budget controls, procurement arrangements and procure-to-pay controls increased the Department's vulnerability to corruption.

Project information

Limited recording and transmission of information about courthouse upgrades allowed Mr Andjic to have unwarranted control over project information. Mr Andjic kept control of key project information, preventing the acting director of the Asset Management Branch (now Asset Management Services) from being able to independently verify the progress of projects. Mr Andjic also did not comply with requests for information about projects, making it very difficult for anyone to challenge his account of project progress. Departmental processes were such that other potential sources of information could not support the oversight of Mr Andjic. Court registrars and other Asset Management Branch staff were unable to provide independent information about project progress, physical files were not created or went missing, and electronic documents were kept on a shared drive that was vulnerable to unauthorised modification.

When he first commenced as acting director of the Asset Management Branch, Mr Maslen did not closely oversee Mr Andjic's management of the Capital Works unit. Mr Maslen faced an overwhelming workload, as his substantive position of assistant director of the Facilities unit was not backfilled. He often worked 16-hour days to try and meet the obligations of both jobs. Mr Maslen's predecessor as director of the Asset Management Branch had informed him that he did not need to devote too much attention to overseeing the Capital Works unit, as Mr Andjic was managing it adequately. As a result of these two factors, Mr Maslen initially did not closely oversee Capital Works unit projects.

As Mr Maslen's appointment as acting director was extended, however, he became concerned about Mr Andjic's management of the Capital Works unit. Mr Maslen was required to periodically report project information to the Department and, naturally, wished to ensure that the information reported was accurate. However, he found it very difficult to substantiate the information that Mr Andjic had provided to him, and was not fully confident of either the financial or performance information being provided about these projects.

The reason for this inability to substantiate project information was that Mr Maslen was almost completely reliant on Mr Andjic to provide project information.

He was unable, for instance, to independently obtain information about project scope, budget, status and expenditure to date.

Mr Maslen attempted to manage this situation by demanding pertinent information from Mr Andjic but Mr Andjic refused to comply with his requests. Mr Maslen made a number of approaches to Mr Andjic to request project information but did not receive satisfactory responses. Examples of the types of requested information that Mr Andjic did not provide included information about project progress and finances.

Mr Maslen had two alternate avenues by which he could obtain information about the progress of Capital Works unit projects. The first was from other departmental staff and the second was from departmental records. In practice, neither were able to provide him with satisfactory information.

To varying degrees, Court registrars, other Capital Works unit staff and Asset Management Branch staff who did not work in the Capital Works unit all had the potential to provide useful information about project progress. In practice, however, none of them were able to be a reliable source of information.

Court registrars were, themselves, deprived of key information. As clients of the courthouse upgrades, they should have been in a good position to provide information regarding project progress. However, they were often given limited information about the upgrades to be made on their courts. For example, the registrars of the Tamworth and Cessnock courthouses were not informed of what works were to be performed on their courthouses. Similarly, the registrar of Cowra courthouse was unaware that *any* capital works were to be done on the Cowra courthouse until less than a month before the first site inspection had occurred. What could have been an inexpensive, independent and high-integrity source of information about delivery was not engaged, resulting in a key control opportunity being missed.

Asset Management Branch staff were another potential source of information but were kept in the dark by Mr Andjic. Mr Andjic's responsibilities included assigning project owners to oversee capital works projects and managing the performance of these project owners. However, Mr Andjic would sometimes assign himself the role of project owner, which restricted the visibility of the projects in question to him. No one else in the Capital Works unit, then, had any involvement with these projects.

Asset Management Branch staff in units other than Capital Works also had little visibility regarding capital works projects. Staff from the Facilities Maintenance unit, for instance, could have been a source of information about the progress of works given they managed

maintenance work on courthouses. However, there appeared to be a disconnect between the staff of the Capital Works unit and the staff of the Facilities Maintenance unit, resulting in relevant information not being shared between these units. More generally, there was not a strong team culture in the Asset Management Branch – people stuck to their own projects and did not assist each other, reducing knowledge transfer and therefore informal oversight.

Theoretically, project records could have provided Mr Maslen with useful project information. In particular, properly maintained project files relating to courthouse upgrade projects could have provided Mr Maslen with information on topics such as supplier selection processes, and the cost and quality of work performed to date. However, both electronic and physical recordkeeping practices did not allow for contemporaneous records to be kept.

The recordkeeping within the Asset Management Branch was primarily paper-based. There was no functioning electronic document and records management system (EDRMS) and electronic documents were kept on a shared drive. Files on this drive were deleted, altered and renamed without authorisation and, in each case, it was difficult to prove who had made these improper modifications. This vulnerability to improper modification resulted in the drive being of little recordkeeping value.

In terms of physical recordkeeping, when a project was allocated, a physical file should have been created. The Commission's investigation found that files were sometimes not created and documents were sometimes stored in unofficial folders. A review of projects that commenced in the years from 2011 to 2014 (inclusive) identified 45 Asset Management Branch projects where project files had not been created. These included a number of projects that were examined in this investigation, including the upgrades of Cessnock, Camden, Picton and Tamworth courthouses. Sometimes key documents were placed in unofficial folders instead of official files. Mr Andjic, for example, told the Commission he kept an unofficial manila folder into which he placed key documents such as signed approvals. This meant that these documents were not retained within the Department's records repository and were ultimately lost when this folder could not be found.

Even when official files were created and documents properly placed within them, they were not well maintained. The physical movements of files were not tracked and they were sometimes improperly taken offsite. Perhaps unsurprisingly, these files sometimes went missing, resulting in the loss of key departmental documents. In one case, part of a missing file was eventually found in the boot of a departmental vehicle.

In general, it is difficult for a person to oversee the management of a project unless they have ready access to key project information. For instance, if a manager cannot obtain accurate information about the progress of a given project, it is very difficult for them to ascertain whether funds spent on the project represent value for money.

A corruption opportunity exists if all project information being reported to organisational management comes from one source whose self-interest is not aligned with the organisation's interest. If management does not have the capacity to verify the information being provided from the source, it is not in a position to ascertain whether this source has provided false information. This source is then able to provide false information to hide any corrupt conduct in which they are engaging.

Since the time period applicable to this investigation, there have been substantial changes to the way that project information is managed within what is now Asset Management Services. New systems and processes have been set up to improve the governance of capital works projects. Examples include the establishment of a governance committee to review projects, a prohibition on the director of the Capital Works unit conducting his or her own projects, and training of staff in new procedures. There is also better reporting of project information to the Department's senior management.

These changes have markedly improved Asset Management Services' management of project information and are such that the Commission does not make any recommendations regarding the processes by which this project information is managed.

The effects of these changes would, however, be further strengthened if a current restructure of Asset Management Services was finalised. An inability to permanently fill positions has resulted in about half of Asset Management Services staff being either contractors or staff performing higher duties. As a result of this lack of permanent appointments, there is high staff turnover, making the implementation of new processes and systems more challenging.

Recommendation 2

That the Department of Justice finalises its restructure of Asset Management Services as a priority and recruits staff to permanently fill the associated positions.

Beyond Asset Management Services, the Department is attempting to systematise and improve its recordkeeping. There is a project underway to standardise its records management across the Department, which should ultimately result in a standardised EDRMS being used

by all of the Department's business units. In preparation for the implementation of this EDRMS, a process of standardising records management policies and procedures across the Department has been implemented. A standardised EDRMS would markedly enhance the Department's recordkeeping capacity, which would, in turn, markedly enhance the capacity of project records to contribute to project governance.

Recommendation 3

That the Department of Justice completes the implementation of its proposed electronic document and records management system.

Project finances

The management of project finances by the Asset Management Branch provided cover for the payment of false invoices. A primary focus on the spending of budgets created a disincentive to ensure that value for money was achieved. Project governance processes allowed for repeated, serious cost blowouts to be accepted as normal practice. Together, these created an environment where both under-delivery and overpayment could occur without detection.

Careful management of project finances is central to the control of projects and is an effective control on corruption. The comparison of projected and actual expenditure can result in the identification of problems in areas such as project scoping and project implementation that may create opportunities for waste and corrupt conduct. Similarly, the tight control of project variations can help reduce opportunities for corrupt conduct by ensuring that extra funds that are approved can be sufficiently justified.

In the Asset Management Branch, the management of project finances was not primarily focused on achieving value for money from project activities. Instead, there was a focus on spending the allocated budget by the end of the financial year, meaning that the achievement of value for money from project expenditure was secondary to the spending of project funds. The organisation effectively became awash with money that had to be spent somehow. Corrupt appropriation becomes relatively easy in such a wasteful environment.

Additionally, variations to project expenditure frequently occurred and were sometimes used to overcome process or delegation limits in a manner similar to order splitting. There was very little questioning of how or why these variations occurred. Instead, the Asset Management Branch focused on moving funds around to cover cost blowouts. This approach to managing project finances resulted in budgetary uncertainty for courthouse

upgrades and, ultimately, other Asset Management Branch expenditure. Courthouse upgrades often ran over budget, resulting in the Asset Management Branch needing to cover shortfalls from its own budget, usually by transferring money from either other Capital Works unit projects or from other Asset Management Branch areas.

Procedural requirements regarding variations were also not followed. Variations should have been approved by requisition forms, with approval resulting in an amended purchase order. In practice, however, they were sometimes approved via payment vouchers and sometimes by the approval of amended purchases orders.

Some financial uncertainty traced back to the program design issues discussed earlier. The amount of money allocated to each courthouse upgrade changed over the duration of the program in part due to the issue of scope uncertainty. The misalignment between the Department's business needs and the projects conducted under the program resulted in it transferring funds from the program to projects outside of it. Moreover, the program's funding was ultimately merged with that of the JusticeLink Program, creating further financial uncertainty.

Overall, the financial control of projects conducted under the program resulted in the budget for a particular project being alterable by any or all of the following:

- funds being transferred out of the program, resulting in a decreased project budget
- funds being transferred to the project from other Capital Works unit projects or from other Asset Management Branch areas, resulting in an increased project budget
- funds being transferred within the program from one project to another, resulting in either increased or decreased funds being available to a project.

In an environment where variations are frequent and poorly managed, and money is transferred from budget to budget, cost blowouts become accepted as normal practice. This provides cover for corrupt actions such as intentionally approving the payment of inflated false invoices.

Expenditure on Capital Works unit projects is now reviewed more thoroughly. Within Asset Management Services, owners of projects over \$50,000 are required to generate monthly reports and an officer in a newly created role reviews these reports in detail. Information about project expenditure and progress is also submitted to the Department's strategic asset management committee and executive committee for further review.

The Department is also currently implementing SAP as an enterprise resource planning (ERP) system (software

designed to integrate and manage organisational functions such as operations, finance, information technology and human resources), with completion scheduled for the end of 2016. Given that enterprise asset management will be incorporated into this system, it will markedly improve the financial management of capital works projects, as it will provide better information concerning incurred and forecasted expenditure.

In light of these changes, the Commission does not make any recommendations concerning the Department's financial management of capital works projects.

Construction procurement

Procedural controls on construction procurement were undermined within the Asset Management Branch. While the Department had policy requirements to use pre-qualified suppliers for capital works projects, the manager with responsibility for enforcing these requirements did not have access to information that would allow him (Mr Maslen) to detect non-compliance. An individual was able to perform dual roles with respect to a tender process that resulted in tender evaluation controls being overridden. The override of these controls was, at least in part, facilitated by resourcing issues.

A key element of most capital works projects is procurement. It is rare that NSW public authorities are able to perform capital works without engaging external parties, necessitating procurement processes to complete these works. In the case of works such as courthouse upgrades, often these procurement processes include the engagement of professionals such as project managers and quantity surveyors to help manage the works, as well as contracted building companies to actually undertake the works.

Pre-qualification schemes can help control construction procurement. There are lots of challenges relating to the selection of construction procurement suppliers. In addition to usual supplier-selection verification processes, such as ensuring that a supplier has appropriate experience and is financially viable, there are a number of other important compliance requirements such as having relevant building licences and meeting construction-related workplace health and safety requirements. To an extent, these particular requirements can be dealt with en masse through establishing pre-qualified panels of suppliers where all panel members meet these requirements. The use of such panels can ultimately make construction procurement easier to control.

The Department used a system of pre-qualified suppliers for construction procurement but departmental requirements to use pre-qualified suppliers were not always enforced in practice. Pre-qualification was required among suppliers to capital works projects. Deviations

from this policy needed to be approved by the director of the Asset Management Branch or a more senior officer. However, this investigation identified almost \$1.3 million worth of work on courthouse upgrades that was awarded to companies that were not pre-qualified. Triton was not pre-qualified, yet it was awarded \$1,051,658.03 worth of work from the Department. SAFF was not pre-qualified, yet it was awarded \$233,879.45 worth of work from the Department.

This non-compliance with requirements to use pre-qualified suppliers arose in part because the Department's systems made the enforcement of these requirements very difficult. There was no process in place that could reliably detect a failure to select a supplier from a pre-qualified panel. The Asset Management Branch had overall responsibility for the conduct of construction procurement and, as the relevant operational business unit, also had responsibility for ensuring that pre-qualified suppliers were used on capital works projects. The director of the Asset Management Branch, however, did not have access to information that would allow him to readily detect if a supplier that was not on the pre-qualified list had been used.

There was also non-compliance with other procedural requirements relating to procurement. For instance, Fayrouz Hammoud was able to sit on both a TOC and a TEC for the same tender process. TEC members were required to assess non-price criteria in the absence of pricing information to help ensure that they assessed bid quality objectively. However, TOC members have access to pricing information, meaning that Fayrouz Hammoud would already know pricing information before she had seen the tender bids, undermining this control on TEC assessment.

An inability to detect non-compliance with policy requirements, such as relating to membership of tender panels or the use of pre-qualified suppliers, creates corruption opportunities. If policy requirements that have the capacity to prevent corruption can be broken with impunity, they have limited value as operational controls.

The Department is working to improve its procurement governance. Its procurement business unit has been restructured, and a policy and compliance group within this unit will undertake random reviews and record non-compliance. Procurement training is also being progressively delivered across the Department. In relation to construction procurement, the current executive director of Asset Management Services is attempting to establish improved capacity within the branch. The Department has also procured contract management software, rewritten goods and services procurement documentation, and employed an analyst to report on procurement expenditure.

Despite these improvements, there are further issues still to be addressed. Examples of these issues include the need for better monitoring of procurement systems to ensure that they are being used appropriately, making the data used for historic analysis of expenditure more reliable, and introducing standard terms and conditions of supply. Critically, there is still no process in place to reliably detect the use of a supplier that is not pre-qualified. Responsibility for developing and implementing such improvements will vary according to the type of procurement being conducted.

Recommendation 4

That the Department of Justice develops a framework for governing its procurement activities that:

- **assigns governance roles and responsibilities for different types of procurement, such as goods and services procurement and construction procurement**
- **has mechanisms to detect non-compliance with procedural controls, such as the mandated use of pre-qualified suppliers.**

The development and implementation of such a governance framework is somewhat labour-intensive. The assessment of business requirements, the development and implementation of processes and systems, and the implementation of governance mechanisms all require input from a range of Department staff and/or consultants. Moreover, it is currently unclear whether the Department has sufficient resources assigned to fulfil roles and responsibilities related to procurement governance.

Recommendation 5

That, when developing its procurement governance framework, the Department of Justice reviews its resourcing of procurement governance to ensure that this resourcing is sufficient to successfully fulfil the associated procurement governance roles and responsibilities.

Procure-to-pay processes

The Department's procure-to-pay processes helped allow improper payments to be made. Triton and SAFF were created as new vendors, primarily upon Mr Andjic's approval of their requisition forms, with only their names and Australian Business Numbers (ABNs) being independently verified. Once they began providing invoices to the Department, Mr Andjic arranged for his subordinates to certify delivery of their work despite these subordinates having no knowledge of the work in question.

The procure-to-pay function acts as a critical control on organisational procurement expenditure. This is because it is procure-to-pay activities that ultimately result in payments being made to suppliers. While a company may be corruptly awarded a contract via a tender process, it is ultimately procure-to-pay activities that result in it receiving corruptly obtained funds.

The process by which vendors are created in the vendor master file (VMF) is an important control in the procure-to-pay process. It is very easy for an individual to create a fraudulent invoice and submit it for payment. However, in order for this individual to profit from such an action, funds need to be directed to a bank account that they can directly or indirectly access. A well-controlled VMF can make it difficult for funds to be directed to an accessible account because potential vendors are scrutinised prior to their details being entered into the VMF.

The process by which new vendors engaged by the Department were created included little scrutiny of the vendor creation request. When he commenced working as the Department's chief information officer, Mr Liu felt that the speed with which these vendors were added was suspiciously fast compared to what would be expected from a properly controlled vendor creation process. In the Asset Management Branch, such speed was possible because the need to create a new vendor was identified when a requisition form had been approved and the vendor did not already exist in the VMF. Mr Andjic approved the requisition forms that led to Triton and SAFF first being engaged by the Department and his approval of these requisition forms was taken as approval to create these vendors within the VMF.

Once Mr Andjic's requisition forms had been received, the main check performed on SAFF and Triton was whether their names and ABNs matched entries on the ABN register. When Mr Andjic approved Triton's creation as a vendor, it had been registered as a company for less than one year and, when he approved SAFF's creation, it had been registered as a company for less than one month. The infancy of these companies in such an industry is, generally, a red flag that requires further investigation.

Approving the payment of an invoice is another key procure-to-pay control point. Good control over invoice approval can help ensure that relevant work has actually been completed and that the price invoiced is appropriate. One key element of invoice approval is certification of performance of service. This certification essentially attests that the goods or services have been delivered as agreed. Consequently, it should only be completed by an individual who knows whether or not the relevant goods or services have been provided.

In the Asset Management Branch, it was not an

uncommon occurrence that the individual who certified performance of service did not know whether the relevant goods or services had been provided. Mr Murphy, for example, did not do any work in relation to the Camden courthouse but certified performance of services simply because Mr Andjic, his manager, had asked him to certify the relevant work. He gave evidence that such actions were common practice within the Asset Management Branch.

In such an environment, a public official can collude with a contractor to accept non-completed work without themselves falsely attesting that the work was completed. Similarly, certifying performance of services on behalf of others can be used to bypass process controls. Because Mr Andjic arranged for others to certify performance of service on invoices from Triton and SAFF, he was able to approve payment of the invoices himself, meaning that his manager, Mr Maslen, was not required to review them.

Subsequent to the period applicable to this investigation, the Department has made a number of changes to its procure-to-pay processes. Asset Management Services has revised its process of certifying performance of service so that two individuals are now required to be involved. One individual certifies performance as per prior practice, while the other is required to certify that they have checked that the work is complete. Additionally, the executive director of Asset Management Services has directed that individuals who certify performance of services must be familiar with the work in question.

More broadly, the Department is planning to enhance its financial controls in the context of its ERP implementation. This implementation will include a procure-to-pay component that will utilise electronic workflows and delegations. As part of this implementation process, procure-to-pay processes will be harmonised with whole-of-government shared service standards, ultimately allowing for better control of key processes such as vendor creation and certification of delivery. The development and implementation of new processes to accompany the ERP provides the Department with an opportunity to address the procure-to-pay issues identified in this investigation.

Recommendation 6

That, as part of the implementation of its new enterprise resource planning system, the Department of Justice reviews its procure-to-pay processes to ensure that:

- **there is scrutiny around the creation of new vendors, especially if they are newly established companies**

- **system controls are designed to make certain an individual who certifies performance of service is familiar with the work in question.**

Recruitment

In addition to the allegations involving work on program projects, this investigation examined the attempt to appoint Fatima Hammoud to a more senior departmental role. This appointment was prevented by informed review by the delegated officer. Mr Andjic recommended the appointment of Fatima Hammoud to a temporary employment position despite having a strong association with her. As delegated officer, Mr Maslen reviewed this recommendation and ended the recruitment process when he was unable to substantiate the reasons for the recommendation to appoint her.

Mr Andjic was in a personal relationship with Fatima Hammoud at the time. Despite this, he did not excuse himself from the panel but continued to serve on the panel as convenor without declaring his association with Fatima Hammoud. Ultimately, the panel recommended her for the position.

The Department had a review mechanism in place to manage the risk of a convenor of a recruitment panel acting improperly. An officer with delegated authority is required to review the recruitment panel's recommendation before the recommendation can be actioned. This review is designed to ensure that the convenor is not able to misuse their position to appoint someone in a partial manner. Such a mechanism is important because threats to the integrity of convenors of recruitment panels pose particular control challenges. Convenors have a responsibility for ensuring that recruitment processes are conducted openly, honestly and ethically. Consequently, if a convenor's integrity is jeopardised, a key recruitment process control is undermined, creating significant corruption opportunities.

In the case of Mr Andjic's attempt to appoint Fatima Hammoud, this review mechanism worked successfully. When Fatima Hammoud was recommended for the position in question, Mr Maslen requested information about her and the other shortlisted candidates. As he did not receive this information, he approached the Department's human resources section and ultimately stopped the recruitment process. Mr Maslen's actions in relation to this recruitment process indicate that the mechanism in question worked as designed. As the delegated officer, he had a role to review the actions of the recruitment panel; he did so, found it lacking, and took appropriate action.



Given the mechanism in question controlled the recruitment process in the manner intended, the Commission does not make any recommendations regarding the Department's recruitment processes.

These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E of the ICAC Act, will be furnished to the Department of Justice and the responsible minister.

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

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

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

Appendix 1: The role of the Commission

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

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

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

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

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

The Commission may make findings of fact and form

opinions based on those facts as to whether any particular person has engaged in serious corrupt conduct.

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

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

Appendix 2: Making corrupt conduct findings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

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

A finding of corrupt conduct against an individual is a serious matter. It may affect the individual personally, professionally or in employment, as well as in family and social relationships. In addition, there are limited instances where judicial review will be available. These are generally limited to grounds for prerogative relief based upon jurisdictional error, denial of procedural fairness, failing to take into account a relevant consideration or taking into account an irrelevant consideration and acting in breach of the ordinary principles governing the exercise of discretion. This situation highlights the need to exercise care in making findings of corrupt conduct.

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

...reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or fact to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

This formulation is, as the High Court pointed out in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171, to be understood:

...as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct.

See also *Rejtek v McElroy* (1965) 112 CLR 517, the *Report of the Royal Commission of inquiry into matters in relation to electoral redistribution, Queensland, 1977* (McGregor J) and the *Report of the Royal Commission into An Attempt to Bribe a Member of the House of Assembly, and Other Matters* (Hon W Carter QC, Tasmania, 1991).

Findings of fact and corrupt conduct set out in this report have been made applying the principles detailed in this Appendix.



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