

Select Committee on the Agistment of Horses at Yaralla Estate

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I·C·A·C

INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

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INVESTIGATION INTO CONCERNS THAT SYDNEY LOCAL HEALTH DISTRICT ENGAGED CONSULTANTS AT THE YARALLA ESTATE BECAUSE OF POLITICAL DONATIONS AND LINKS TO THE LIBERAL PARTY

**ICAC REPORT
OCTOBER 2014**

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Mr President
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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 concerns that Sydney Local Health District engaged consultants at the Yaralla Estate because of political donations and links to the Liberal Party.

It was not necessary to conduct a public inquiry for this investigation.

The Commission's findings 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 came about as a result of a resolution passed by both Houses of Parliament to refer certain matters to the NSW Independent Commission Against Corruption (“the Commission”). Section 73 of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) provides that it is the duty of the Commission to fully investigate a matter so referred.

The matters identified for investigation arose from an inquiry conducted by the NSW Legislative Council Select Committee (“the Select Committee”) into actions taken by Sydney Local Health District (SLHD) regarding the agistment of horses at the Yaralla Estate, an historic estate situated in the suburb of Concord. The Select Committee undertook the inquiry and tabled the *Report of the Select Committee on the Agistment of Horses at Yaralla Estate* (“the Yaralla Report”) in Parliament on 24 October 2013.

The matters referred by the Houses of Parliament for investigation related to two companies – Blue Visions Management Pty Ltd and Conrad Consulting and Capital Pty Ltd – with whom SLHD had commercial dealings relating to Yaralla Estate matters. With regard to Blue Visions Management Pty Ltd, the referral made to the Commission noted concerns expressed by inquiry participants about relationships (although no specific persons were named) between that company and certain members of the Liberal Party. With regard to Conrad Consulting and Capital Pty Ltd, the referral noted concerns expressed by the Select Committee in the Yaralla Report relating to payment of funds made by SLHD to the company for what was described as “limited communications advice” and relating to the company’s relationships with certain members of the Liberal Party. No specific persons were named, either in the Yaralla Report or in the referral.

Results

The Commission found that:

- the concerns expressed by inquiry participants about improper relationships between Blue Visions Management Pty Ltd and members of the Liberal Party were without foundation
- there was no evidence that Conrad Consulting and Capital Pty Ltd received excessive remuneration for its work concerning the Yaralla Estate
- the concerns expressed by the Select Committee in the Yaralla Report about improper relationships between Conrad Consulting and Capital Pty Ltd and members of the Liberal Party were without foundation.

There were no corruption prevention issues identified in the Commission’s investigation.

Recommendation that this report be made public

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

Chapter 1: Background

This chapter sets out some background information concerning the investigation conducted by the Commission.

How the investigation came about

Section 73 of the ICAC Act provides that both Houses of Parliament may, by resolution of each house, refer to the Commission any matter for investigation.

On 29 October 2013, the Legislative Council passed the following resolution:

1. *That this House notes the report of the Select Committee on the Agistment of Horses at Yaralla Estate, tabled on 24 October 2013, in which the Committee:*
 - (a) *noted that concerns were raised by some inquiry participants about relationships between Blue Vision[s] Management, the Liberal Party and certain members of the Liberal Party,*
 - (b) *expressed concern at the engagement of Conrad Capital Consulting relating to the payment of funds from the Sydney Local Health District budget for what appeared to be limited communications advice, and the relationship between Conrad Capital and certain members of the Liberal Party, and*
 - (c) *recommended that the Legislative Council consider referring the claims regarding Blue Vision[s] Management and Conrad Capital to the Independent Commission Against Corruption (ICAC), pursuant to section 73 of the Independent Commission Against Corruption Act 1988.*

Both the Legislative Council and the Legislative Assembly resolved that the claims raised during the

Select Committee's inquiry into the agistment of horses at the Yaralla Estate relating to Blue Visions Management Pty Ltd and Conrad Consulting and Capital Pty Ltd be referred to the Commission for investigation under s 73 of the ICAC Act.

The Yaralla Report refers variously to "Conrad Capital" and "Conrad Capital Consulting". In this report, the Commission has used "Conrad Consulting and Capital Pty Ltd", as registered under the Australian Securities and Investments Commission (ASIC), except when quoting from submissions or evidence.

Why the Commission investigated

Pursuant to s 73(2) of the ICAC Act, it is the duty of the Commission to fully investigate any matter referred to it by both Houses of Parliament. Section 13(1)(b) of the ICAC Act mandates that investigating any matter referred to the Commission by both Houses of Parliament is one of the principal functions of the Commission.

The referral is expressed in terms of concerns raised, rather than allegations of corrupt conduct. The concerns relate to suggestions that Blue Visions Management Pty Ltd and Conrad Consulting and Capital Pty Ltd were awarded work due to relationships they had with the Liberal Party and certain members of the Liberal Party. In the case of Conrad Consulting and Capital Pty Ltd, it was suggested that the payment the company received was out of proportion to the work it completed.

The role of the Commission is set out in Appendix 1.

Conduct of the investigation

The Yaralla Report contains limited evaluation of the concerns raised by inquiry participants regarding Blue Visions Management Pty Ltd or of the concerns regarding



Conrad Consulting and Capital Pty Ltd. The following extract shows the Select Committee’s comments about the concerns raised:

The Committee notes that concerns were raised by some inquiry participants about relationships between Blue Vision[s] Management, the Liberal Party and certain members of the Liberal Party.

...

The Committee expresses concern at the engagement of Conrad Capital Consulting in two respects:

- *the payment of funds from the SLHD budget for what appears to be limited communications advice*
- *the relationship between Conrad Capital and certain members of the Liberal Party.*

The report does not identify the “certain members of the Liberal Party” to whom reference is made.

The Commission reviewed all publicly-available documents from the Select Committee’s inquiry, including public hearing transcripts, submissions to the Select Committee and the Yaralla Report.

The Commission identified and obtained relevant documentation from various sources by issuing notices under s 22 of the ICAC Act, requiring production of documents, and also interviewed a number of persons. All documents were reviewed thoroughly and follow-up details were obtained as required.

As a result of these inquiries, the Commission determined that it was not necessary or desirable in the public interest to conduct a public inquiry in this matter, as the investigation did not disclose any evidence of corrupt conduct.

Chapter 2: Sydney Local Health District

SLHD was formed on 1 January 2011, when the NSW Government implemented a restructure of the state's area health services. SLHD is responsible for all public hospitals and healthcare facilities in the local government areas of Sydney, Leichhardt, Marrickville, Ashfield, Burwood, Strathfield, Canada Bay and Canterbury. It employs over 10,000 people and has an annual budget of approximately \$1.5 billion. SLHD has responsibility for Balmain Hospital, Canterbury Hospital, Concord Repatriation and General Hospital, Royal Prince Alfred Hospital and Sydney Dental Hospital.

Dr Teresa Anderson has been SLHD's chief executive since its inception in 2011. Dr Anderson has been employed in the public health system for over 30 years, working under both Labor and Liberal governments. In that time, she has held the positions of acting chief executive of Sydney South West Area Health Service (SSWAHS), director of clinical operations of SSWAHS and general manager of Liverpool Hospital, among others.

As chief executive, Dr Anderson is responsible for the strategic and operational management of SLHD, and reports to both the chair of SLHD's board and the director general of the Department of Health. Dr Anderson advised the Commission that she is not, and has never been, a member of a political party.

The Hon Ron Phillips is chair of SLHD's board. He is also a member of the Liberal Party. He was a member of parliament for the state seat of Miranda from 1984 to 1999 and was minister for health from 1991 to 1995, a period covering both the Greiner and Fahey governments. Mr Phillips was appointed by the Keneally Labor government as chair of SLHD's board since its inception in 2011. Mr Phillips outlined the responsibilities of the board with respect to SLHD as oversight, strategy, compliance, risk management and direction setting.

The Yaralla Estate

SLHD is the current trustee of the Yaralla Estate. The Yaralla Estate is the common name for the Dame Eadith Walker and Thomas Walker Estate, bequeathed by the Walker family to the state of NSW following Dame Eadith Walker's death in 1937. The Yaralla Estate, which runs along the Parramatta River foreshore, is located in the suburb of Concord and is part of the Canada Bay local government area.

The Yaralla Estate covers an area of over 100 acres, comprising the Yaralla Mansion, stables, several cottages, gardens and extensive open lands, and is adjacent to the Concord Repatriation and General Hospital. Since 1940, the Yaralla Mansion has been used for a succession of purposes related to public health; for example, for many decades, it was used as a convalescent hospital for men, and it has also been used as a dialysis training centre. Following a major refurbishment, which was completed in 2013, the Yaralla Mansion is now a statewide supported accommodation service for HIV/dementia patients.

The Yaralla Estate became vested in the Crown under the *Walker Trusts Act 1938* with stipulations in keeping with Thomas Walker's will; the stipulations being that the Yaralla Estate be used for public health services and public open space. The *Walker Trusts Act 1938* was amended in 1997 to also make reference to the use of the land for the purposes of horse agistment.

Since 1996, under a licence agreement (and prior to that on an informal basis), a large part of the open space of the Yaralla Estate has been used for the agistment of privately-owned horses. The Select Committee's inquiry and the subsequent Yaralla Report came about as a result of proposals by SLHD to discontinue horse agistment at the Yaralla Estate and as a result of general community concern about future plans for the Yaralla Estate.

SLHD problems with horse agistment at the Yaralla Estate

According to Dr Anderson, a number of issues arose that caused SLHD to look at horse agistment arrangements. These included observable problems with the state of the paddocks and fencing, unauthorised use of the area for riding horses that exposed SLHD to litigation risks, unauthorised civil works, the removal of protected trees, and, most problematically, an incident where two horses had escaped the paddocks and were found grazing on the hospital helipad. The helipad services the burns unit at Concord Repatriation and General Hospital; a statewide burns unit that must be available at all times to receive patients, many of whom arrive by helicopter.

In November 2012, SLHD issued a termination notice to Colin Wade. Mr Wade had lived on the grounds of the Yaralla Estate since 1982, and in 1987 took over the management of the horse paddocks. In 1996, Mr Wade signed a formal licence agreement with the then Central Sydney Area Health Service, the trustee of the Yaralla Estate at the time, to provide horse agistment on the site for an annual licence fee of \$16,000. Under the terms of the licence agreement, Mr Wade sub-contracted with private agisters, and set, collected and retained the agistment fees from horse owners. Following SLHD's termination notice to Mr Wade, he issued termination advice to the horse agisters in December 2012.

What the Select Committee investigated

There was substantial negative publicity around the actions of SLHD. These were not limited to the matter of horse agistment, but also included broader issues concerning the future use of the Yaralla Estate, including possible development plans.

The terms of reference of the Select Committee were set by the Legislative Council on 27 June 2013 and required the Select Committee to:

...inquire into and report on the current and future agistment of horses at Yaralla Estate ... and in particular:

- 1. the actions of the Sydney Local Health District*
- 2. the eviction of community members whose horses were agisted on the Estate lands*
- 3. the "independent audit of the site" referred to in a 19 April 2013 media release issued by the Sydney Local Health District, and*
- 4. any other related matter.*

The Select Committee called for written submissions and conducted two days of public hearings. Allegations about Blue Visions Management Pty Ltd and its connection to the Liberal Party were contained in two of the written submissions received. These allegations are dealt with in chapter 3 of this report. Allegations about Conrad Consulting and Capital Pty Ltd were raised by the Hon Luke Foley MLC, Select Committee member, in the public hearing during the evidence of Dr Anderson. These allegations are dealt with in chapter 4 of this report.

Chapter 3: Blue Visions Management Pty Ltd

Blue Visions Management Pty Ltd is an international project and contract management consultancy that was registered and began operating in 2001. The company website states that its clients have included the NSW Department of Education and Training, Sydney Olympic Park, Corrective Services NSW, NSW Health, NSW Service Technology and Administration, NSW Roads and Maritime Services, NSW Human Services, the University of NSW, RailCorp and the Australian Museum.

ASIC records reveal that the current and sole shareholder of Blue Visions Management Pty Ltd is AMK Securities Pty Ltd. Adel Khreich is the sole company officer and sole shareholder of AMK Securities Pty Ltd. AMK Holdings Pty Ltd is a related company of which Mr Khreich is the sole company officer and the majority shareholder.

Blue Visions Management Pty Ltd was retained by SLHD in late 2012 to conduct an audit of the agistment facilities at the Yaralla Estate and to provide a report that included a condition investigation, a schedule of recommended maintenance works and recommendations for future leasing options. This report was completed in February 2013.

Two submissions received by the Select Committee inquiry took issue with parts of the Blue Visions Management Pty Ltd's agistment facilities report on the Yaralla Estate and, in doing so, raised allegations of links between the Liberal Party and Blue Visions Management Pty Ltd.

The submission of Dr Renata Bali disputed some of the findings of that report and contained a general comment asserting links between Blue Visions Management Pty Ltd and the Liberal Party. The joint submission of Bianca Kinnear and Kathryn Hall alleged improper connections between Blue Visions Management Pty Ltd's prequalification status to supply goods and services to NSW government departments and donations made by the company to the Liberal Party.

NSW Government's prequalification scheme

The NSW Department of Finance and Services administers the prequalification scheme. The scheme provides NSW government departments and agencies with access to a list of suppliers and service companies that have been prequalified to supply goods and services. The prequalification scheme is carried out by the Department of Finance and Services, not by individual government departments or agencies, and is intended to support the selection of suitable prequalified contractors and consultants.

Prequalification is based on a proven record of satisfactory performance and financial and technical capacity. To be eligible for prequalification, contractors and consultants must demonstrate a sound business structure, adequate finances, effective management systems, appropriate qualifications and expertise, relevant experience and a history of good project performance.

The prequalification scheme streamlines the competitive tendering process for NSW government departments and agencies. Where the estimated cost of a project is less than or equal to \$150,000, an engagement can be made directly from the prequalification scheme by inviting one written quotation from a prequalified service provider. The prequalification scheme also allows for additional or flow-on engagement of the same service provider in circumstances where satisfactory performance standards have been met, where knowledge and expertise have been developed during the first engagement, and where the service provider represents value for money for additional related engagements.

There are financial limitations for additional or flow-on engagements of the same service provider; that is, the total value of the first and related flow-on engagements

cannot exceed the lesser of three times the value of the first engagement or \$500,000. Where it is likely that one of those limits will be exceeded, a minimum of three service providers from the prequalification scheme should be invited to provide quotations, unless exceptional circumstances can be demonstrated.

When it was engaged to provide the agistment facilities report in 2012, Blue Visions Management Pty Ltd was a prequalified consultant for construction and related works under the NSW Government's prequalification scheme. A review of the records produced by the Department of Finance and Services confirms that Blue Visions Management Pty Ltd initially became a prequalified company in 2002 and remained prequalified through the various ongoing processes by which prequalification is reviewed and updated every few years. In 2011, Blue Visions Management Pty Ltd was prequalified for the "construction and related works" scheme (categories 335 Project Director and 313 Project Management) for the period up to 2014.

Blue Visions Management Pty Ltd and SLHD

Dr Anderson told the Commission that Blue Visions Management Pty Ltd had been engaged by SLHD on the Yaralla Estate since 2010, managing the renovation and refurbishment of the Yaralla Mansion for the HIV/dementia supported accommodation unit. Blue Visions Management Pty Ltd was paid \$341,960 for this project.

Documents produced by SLHD confirm that, in November 2010, SSWAHS, the predecessor of SLHD, invited three prequalified companies to submit fee proposals for the refurbishment of the Yaralla Mansion. This was consistent with NSW Government procurement guidelines. A selection committee was established, which comprised three officers of SSWAHS. Documents provided by SLHD

to the Commission show that Blue Visions Management Pty Ltd was not the least expensive tender, but was selected on the basis of the selection committee's view that the company had relevant health experience and demonstrated a good understanding of the brief.

The review conducted by the Commission of the tender documents and process that resulted in the subsequent engagement of Blue Visions Management Pty Ltd by SSWAHS confirms that the engagement was in line with NSW Government procurement guidelines. The prequalification scheme was used appropriately and the selection committee provided reasons for its final decision.

Dr Anderson also told the Commission that, when SLHD decided to look at the agistment issues and required expert information to make decisions about the future use of the open spaces at the Yaralla Estate, Blue Visions Management Pty Ltd was invited to submit a project management services fee proposal to provide a report that included a condition report, a schedule of recommended site works and a recommendation for future leasing.

The Commission notes that, in the Yaralla Report, the Select Committee did not take any issue with the findings of the Blue Visions Management agistment facilities report. The Yaralla Report simply acknowledged both the findings and the concerns of the inquiry participants in relation to these findings.

Many of the submissions criticised the Blue Visions Management Pty Ltd agistment facilities report for not holding SLHD (and its predecessors) responsible for what they saw as a lack of proper management of the Yaralla Estate and a failure to act properly as trustee. The Commission did not examine or evaluate these issues, looking only at the concerns and allegations about how and why Blue Visions Management Pty Ltd were engaged to work for SLHD, as this is the issue that was referred to the Commission by Parliament.

Blue Visions Management Pty Ltd and the Liberal Party

Blue Visions Management Pty Ltd and AMK Holdings Pty Ltd's donations to the Liberal Party

On 11 February 2011, Blue Visions Management Pty Ltd donated \$1,000 to the Liberal Party. AMK Holdings Pty Ltd's donations to the Liberal Party were \$23,500 on 11 November 2010, \$3,975 on 31 December 2010 and \$990 on 3 February 2011. These donations came about in the context of Liberal Party fundraising in the period before the NSW state election, which took place on 26 March 2011, and resulted in the election of a Liberal National Party Government.

Under the provisions of the *Election Funding, Expenditure and Disclosures Act 1981*, a person or entity making political donations of more than \$1,000 in a tax year is required to lodge a "disclosure of political donations and electoral expenditure" form with the NSW Election Funding Authority (EFA). Under the *Election Funding, Expenditure and Disclosures Act 1981*, political parties are also required to lodge declarations of reportable political donations received.

The Commission obtained documents from the EFA and from the Australian Electoral Commission. These documents show that declarations of donations made in 2010 and 2011 by Blue Visions Management Pty Ltd and AMK Holdings Pty Ltd were made in November 2011 in accordance with legal requirements.

In addition, once the declarations are processed by the EFA, they are placed on the EFA website and are accessible to the public through a search facility. The documents obtained by the Commission also showed that the Liberal Party of Australia, NSW Division, declared the receipt of these donations from Blue Visions Management Pty Ltd and AMK Holdings Pty Ltd.

Concerns raised by inquiry participants and noted in the Yaralla Report

As detailed above, references to Blue Visions Management Pty Ltd's links to the Liberal Party were raised in two of the submissions received by the Select Committee inquiry. One was the submission of Dr Bali and the second was a joint submission by Ms Kinnear and Ms Hall.

Submission of Dr Renata Bali

Dr Bali did not have a horse agisted at the Yaralla Estate but walked her dogs there regularly. In her written submission to the Select Committee inquiry, she stated

that she became aware of alleged links between Blue Visions Management Pty Ltd and the Liberal Party when she was researching the company. Dr Bali seems to have inferred that the shortcomings she perceived inherent in the Blue Visions Management Pty Ltd agistment facilities report were somehow connected with the company's links to the Liberal Party, although she did not make this clear. Dr Bali did not specify in her submission what these Liberal Party links were or with whom these links existed.

Commission investigators interviewed Dr Bali, who repeated her general concerns about the Blue Visions Management Pty Ltd agistment facilities report. Dr Bali told Commission investigators that she had no independent evidence or source to validate her assertion that there were links between Blue Visions Management Pty Ltd and the Liberal Party. She decided to include the assertion in her submission after finding articles on the internet containing comments by the Hon John Robinson, NSW opposition leader, and Mr Foley, in which they asserted links between the company and the Liberal Party.

Joint submission of Ms Kinnear and Ms Hall

The joint submission of Ms Kinnear and Ms Hall asserted the following:

It is known that blueVisions [sic] is a front company for AMK Holdings PTY LTD who in 2010-2011 secretly funnelled the liberal party \$30,000 in "donations" ... The company blueVisions [sic] is based in North Sydney and following the Liberal parties [sic] NSW State election win this project management company became a prequalified tender company listed on state government schedules. This is seen from our public lay person point of view as close to corruption that you can get it without having an ICAC inquiry called.

There were no further details contained in the submission naming particular persons either in Blue Visions Management Pty Ltd or in the Liberal Party who Ms Kinnear and Ms Hall allege were involved in the corrupt behaviour they described.

The Commission found no evidence to support these assertions. On the contrary, evidence gathered by the Commission shows these assertions to be incorrect.

Regarding prequalification, Ms Kinnear and Ms Hall asserted that it was after the 2011 NSW state election that Blue Visions Management Pty Ltd became a prequalified company; the inference being that the prequalification came about because the Liberal Party won the election in 2011 and because Blue Visions Management Pty Ltd had made donations to the Liberal Party. As stated earlier, Blue Visions Management Pty Ltd was established as a

prequalified company in 2002 and had been prequalified since then until 2014. In addition, Blue Visions Management Pty Ltd was initially engaged by SLHD to work on the Yaralla Estate in 2010 under a Labor government and for a much larger contract than the one relating to the agistment facilities report on the Yaralla Estate.

Ms Kinnear and Ms Hall are incorrect in their assertion that \$30,000 was “secretly funnelled” to the Liberal Party by a front company. Donations totalling \$28,475 were properly declared by Blue Visions Management Pty Ltd and AMK Holdings Pty Ltd in a timely manner, resulting in that information being available to the public through the EFA website.

Regarding the further assertions of Ms Kinnear and Ms Hall about corruption, given that there was no “secret funnelling” and no possible connection between the company’s 2002 prequalification and donations made to the Liberal Party in 2010 and 2011, it is clear that these assertions are without foundation.

In both her evidence at the Select Committee’s public hearing and her interview with the Commission, Dr Anderson made it clear that her decision to engage Blue Visions Management Pty Ltd in 2010 and again in 2012 had absolutely nothing to do with any political affiliations it may have had or any donations it may have made, as she had no knowledge of any affiliations or donations at the time she made her decisions.

The Commission accepts Dr Anderson’s evidence, which is entirely consistent with the information obtained by the Commission from the Department of Finance and Services, confirming that all proper procurement policies were followed by Dr Anderson and SLHD in 2011 and 2012, and were followed previously by SSWAHS in 2010.

There is no credible evidence to support the concerns raised about the engagement of Blue Visions Management Pty Ltd by SLHD. On the contrary, the concerns are inconsistent with the facts as established by the Commission’s investigation.

Section 74A(2) statement

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 specific grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

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

Regarding Blue Visions Management Pty Ltd and SLHD, the Commission is satisfied that there are no persons involved who fall within the definition of “affected” persons. Accordingly, the question of seeking the advice of the DPP does not arise and there are no issues of disciplinary offences or actions against public officials.

Chapter 4: Conrad Consulting and Capital Pty Ltd

Conrad Consulting and Capital Pty Ltd was registered with ASIC in September 2011 and lists John Simos as sole director and shareholder. On its website, the company is described as having specific expertise in change management and strategic engagement, and its executive chairman, Richard McKinnon, as having expertise in marketing and communication, particularly in relation to issues of significant and wide community awareness.

In the Yaralla Report, the Select Committee expressed concern about two aspects of the involvement of Conrad Consulting and Capital Pty Ltd, specifically the:

- quantum of payments by SLHD to Conrad Consulting and Capital Pty Ltd for what is described in the Yaralla Report as limited communications advice
- relationship between Conrad Consulting and Capital Pty Ltd and certain members of the Liberal Party.

These concerns were not raised by inquiry participants; rather, they were raised by Mr Foley in the questioning of Dr Anderson in her public hearing evidence. No detail is provided in the Yaralla Report identifying Liberal Party individuals whose relationship with Conrad Consulting and Capital Pty Ltd was cause for concern.

Work performed for SLHD by Conrad Consulting and Capital Pty Ltd

Dr Anderson told the Commission that she had met Mr McKinnon at a NSW Health Ministry communications committee meeting, and that Mr McKinnon had already been engaged by other areas of NSW Health for communications advice. Dr Anderson said she had been impressed by the sound communications advice Mr McKinnon had provided to NSW Health on public health issues and believed it was prudent to engage his company

because he had already demonstrated a clear understanding of communication issues experienced by NSW Health.

SLHD engaged Conrad Consulting and Capital Pty Ltd in June 2012, prior to any of the issues arising about horse agistment at the Yaralla Estate. Conrad Consulting and Capital Pty Ltd were engaged to provide strategic, corporate and issue management advice and were retained pursuant to a formal agreement at the rate of \$8,800 per month.

The issues about horse agistment on the Yaralla Estate arose some months after SLHD had engaged Conrad Consulting and Capital Pty Ltd, and its advice on Yaralla Estate issues was only part of the advice it was providing to SLHD. In addition, the advice from Conrad Consulting and Capital Pty Ltd to SLHD on the Yaralla Estate issues first occurred in April 2013; 10 months after its initial engagement with SLHD. Documents obtained by the Commission show that, between 27 June 2012 and 31 December 2013, Conrad Consulting and Capital Pty Ltd provided advice to SLHD on 59 occasions on a wide range of issues, and only on seven of these occasions was the advice in relation to the Yaralla Estate.

Dr Anderson also told the Commission that the rate of pay agreed between SLHD and Conrad Consulting and Capital Pty Ltd was consistent with the rates being paid to other consultants, such as PricewaterhouseCoopers, Deloitte and Ernst & Young, doing work for SLHD.

The Yaralla Report quotes Dr Anderson as advising the Select Committee that SLHD paid \$105,000 to Conrad Consulting and Capital Pty Ltd in the 2012–13 tax year. The Yaralla Report then connects this amount to what is described as limited communications advice on Yaralla Estate issues. This suggests that \$105,000 was paid by SLHD to Conrad Consulting and Capital Pty Ltd for Yaralla Estate advice alone and that it was an unreasonable amount of money for a small parcel of work. This suggestion is not supported by the evidence.

The Commission is satisfied that there is no evidence that Conrad Consulting and Capital Pty Ltd received excessive remuneration for its work concerning the Yaralla Estate.

Relationship between Conrad Consulting and Capital Pty Ltd and certain members of the Liberal Party

As mentioned previously, no details are provided in the Yaralla Report about the specific relationships between Conrad Consulting and Capital Pty Ltd and the Liberal Party that have caused concerns to be raised. The only reference to this is contained in the transcript of the evidence provided by Dr Anderson at the Select Committee's public hearing, where Mr Foley asks her if she knew that Mr Simos was formerly employed as chief of staff to Peter Collins, former Liberal leader.

Mr Foley also asked Dr Anderson about Mr McKinnon in terms of what work he was engaged to do, but did not ask about any former relationship between Mr McKinnon and Mr Phillips, chair of SLHD's board. The Commission has also examined this relationship.

Dr Anderson was very clear in both her evidence to the Select Committee inquiry and in her interview with the Commission that she was not aware of any political affiliations held by Conrad Consulting and Capital Pty Ltd. Dr Anderson emphasised that she engaged contractors based on their abilities and value for money for SLHD and was not concerned with, nor made inquiries about, any political affiliations they may or may not have had. Dr Anderson stated that, around the same time that she engaged Conrad Consulting and Capital Pty Ltd, she also engaged other consulting companies and she did not know, nor did she wish to know, the political affiliations of those companies or any of the people in them. The Commission accepts Dr Anderson's evidence.

Dr Anderson said that she talked to Mr Phillips about engaging Conrad Consulting and Capital Pty Ltd after she had met Mr McKinnon and in light of the fact that Mr McKinnon had been doing other work at that time for the Health Ministry. Dr Anderson recalled that Mr Phillips told her that Mr McKinnon had worked for him back in the 1990s. She said this did not affect her decision either way, as her assessment was based on the skills and knowledge she personally judged Mr McKinnon to have through her previous dealings with him, and on how his skills and knowledge could help SLHD. Dr Anderson also noted that, as chair of SLHD's board, Mr Phillips could not make any hiring decisions since those sorts of operational decisions were hers alone.

Mr Phillips told the Commission that, since leaving Parliament in 1999, he had worked as a consultant in health-related areas and had also acquired some health-related business interests.

He told the Commission that he did not influence or attempt to influence Dr Anderson in the decision to engage Mr McKinnon, as the decision was totally in her purview. He further advised that he had enjoyed good relations with both sides of politics, as evidenced by the Keneally government inviting him in 2010 to be chair of the newly-created SLHD.

The Commission is satisfied that the concerns about Conrad Consulting and Capital Pty Ltd and its relationship to the Liberal Party are without foundation.

Section 74A(2) statement

Regarding Conrad Consulting and Capital Pty Ltd and SLHD, the Commission is satisfied that there are no persons involved who fall within the definition of "affected" persons. Accordingly, the question of seeking the advice of the DPP does not arise and there are no issues of disciplinary offences or actions against public officials.

Appendix 1: The role of the Commission

The ICAC Act is concerned with the honest and impartial exercise of official powers and functions in, and in connection with, the public sector of NSW, and the protection of information or material acquired in the course of performing official functions. It provides mechanisms which are designed to expose and prevent the dishonest or partial exercise of such official powers and functions and the misuse of information or material. In furtherance of the objectives of the ICAC Act, the Commission may investigate allegations or complaints of corrupt conduct, or conduct liable to encourage or cause the occurrence of corrupt conduct. It may then report on the investigation and, when appropriate, make recommendations as to any action which the Commission believes should be taken or considered.

The Commission can also investigate the conduct of persons who are not public officials but whose conduct adversely affects or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority. The Commission may make findings of fact and form opinions based on those facts as to whether any particular person, even though not a public official, has engaged in corrupt conduct.

The ICAC Act applies to public authorities and public officials as defined in s 3 of the ICAC Act.

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

The role of the Commission is to act as an agent for changing the situation which has been revealed. Its work involves identifying and bringing to attention conduct which is corrupt. Having done so, or better still in the course of so doing, the Commission can prompt the relevant public authority to recognise the need for reform or change, and then assist that public authority (and others with similar vulnerabilities) to bring about the necessary changes or reforms in procedures and systems, and, importantly, promote an ethical culture, an ethos of probity.

The principal functions of the Commission, as specified in s 13 of the ICAC Act, include investigating any circumstances which in the Commission's opinion imply that corrupt conduct, or conduct liable to allow or encourage corrupt conduct, or conduct connected with corrupt conduct, may have occurred, and cooperating with public authorities and public officials in reviewing practices and procedures to reduce the likelihood of the occurrence of corrupt conduct.

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

Appendix 2: Making corrupt conduct findings

Corrupt conduct is defined in s 7 of the ICAC Act as any conduct which falls within the description of corrupt conduct in either or both s 8(1) or s 8(2) and which is not excluded by s 9 of the ICAC Act.

Section 8 defines the general nature of corrupt conduct. Section 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.*

Section 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.

Section 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.

Section 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.

Section 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 s 9(4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from the ICAC Act) and the Commission identifies that law in the report.

The Commission adopts the following approach in determining whether corrupt conduct has occurred.

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

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

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

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

such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

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

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

See also *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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