



**I·C·A·C**

INDEPENDENT COMMISSION  
AGAINST CORRUPTION  
NEW SOUTH WALES



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**INVESTIGATION INTO THE  
CONDUCT OF A RAILCORP  
MANAGER AND A HOUSING  
NSW EMPLOYEE**

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**ICAC REPORT  
OCTOBER 2014**

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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 RailCorp manager and a Housing NSW employee.

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

A handwritten signature in black ink, appearing to read 'M Latham', written over a light blue rectangular background.

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 between February 2012 and February 2013 Joseph Camilleri, a senior RailCorp manager, corruptly solicited and received approximately \$1.6 million from various RailCorp contractors and employees and that, during 2012, his sister, Carmen Attard, an employee of Housing NSW, an agency of the NSW Department of Family and Community Services, corruptly solicited and received approximately \$180,000 from other Housing NSW employees. The purpose of the investigation was to ascertain whether Mr Camilleri, Mrs Attard and any of the persons who gave them money engaged in corrupt conduct.

## Results

Corrupt conduct findings are made against Mr Camilleri, Mrs Attard and four of the persons who provided money to Mr Camilleri.

The Commission found that Mr Camilleri engaged in corrupt conduct by:

- receiving \$428,000 from RailCorp contractor Kevin McCarthy between October 2012 and February 2013, the receipt of which Mr Camilleri knew would tend to influence him to exercise his official functions in favour of Mr McCarthy
- receiving \$57,000 from RailCorp contractor Terrance Coleman between November 2012 and January 2013, the receipt of which Mr Camilleri knew would tend to influence him to exercise his official functions in favour of Mr Coleman and which did influence him to exercise those functions by placing Mr Coleman in contact with other RailCorp employees
- receiving \$3,000 from RailCorp contractor Anthony Courtman on 13 August 2012, the receipt of which Mr Camilleri knew would tend to influence him to exercise his official functions in favour of Mr Courtman and which did influence him to exercise those functions by including the company for which Mr Courtman worked in a RailCorp tender panel and alerting Mr Courtman to an imminent RailCorp tender
- soliciting \$10,000 from RailCorp contractor Andrew Rogers on 14 February 2013, the receipt of which Mr Camilleri knew would tend to influence him to exercise his official functions in favour of Mr Rogers
- receiving \$36,000 from RailCorp contractor Mark Ross-Smith between 9 and 10 August 2012, the receipt of which Mr Camilleri knew would tend to influence him to exercise his official functions in favour of Mr Ross-Smith and which did influence him to exercise those functions to arrange for Mr Ross-Smith’s engagement as a RailCorp project manager
- receiving \$2,000 from RailCorp employee Theodore Vavayis in July 2012, the receipt of which Mr Camilleri knew would tend to influence him to exercise his official functions in favour of Mr Vavayis
- receiving \$56,000 from RailCorp employee Saviour (Sam) Cassar between May and July 2012, the receipt of which Mr Camilleri knew would tend to influence him to exercise his official functions in favour of Mr Cassar and which did influence him to exercise those functions by facilitating Mr Cassar’s application for a voluntary separation payment
- receiving \$32,000 from RailCorp employee Ray Oweis in October 2012, the receipt of which Mr Camilleri knew would tend to influence him

to exercise his official functions in favour of Mr Oweis

- receiving \$5,000 from RailCorp employee Ray Furfaro on 22 May 2012 and soliciting further payments from Mr Furfaro a short time later, the receipt of which Mr Camilleri knew would tend to influence him to exercise his official functions in favour of Mr Furfaro
- receiving \$9,000 from RailCorp employee Pierre Rochecouste between June 2012 and September 2012, the receipt of which Mr Camilleri knew would tend to influence him to exercise his official functions in favour of Mr Rochecouste.

The Commission found that Mrs Attard engaged in corrupt conduct in 2012 by soliciting and receiving \$44,000 from her subordinate Housing NSW employees, the receipt of which she knew would tend to influence her to exercise her official functions in favour of those staff members.

The Commission found that Mr McCarthy engaged in corrupt conduct by providing \$428,000 to Mr Camilleri or to Mr Camilleri's daughter, Jessica Camilleri, at Mr Camilleri's request, between October 2012 and February 2013, for the purpose of influencing Mr Camilleri to exercise his official functions in Mr McCarthy's favour.

The Commission found that Mr Courtman engaged in corrupt conduct by providing Mr Camilleri with \$3,000 on 13 August 2012 for the purpose of influencing Mr Camilleri to exercise his official functions in Mr Courtman's favour.

The Commission found that Mr Ross-Smith engaged in corrupt conduct by providing Mr Camilleri with a total of \$36,000 on 9 and 10 August 2012 for the purpose of influencing Mr Camilleri to exercise his official functions in Mr Ross-Smith's favour.


The Commission found that Mr Cassar engaged in corrupt conduct by providing \$56,000 to Mr Camilleri between May and July 2012 for the purpose of influencing Mr Camilleri to exercise his official functions in Mr Cassar's favour.

Statements are made 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 the five persons identified below for the following criminal offences:

- Mr Camilleri for offences of corruptly soliciting or receiving a benefit contrary to s 249B(1) of the *Crimes Act 1900* ("the Crimes Act")
- Mr McCarthy for offences of corruptly giving a benefit contrary to s 249B(2) of the Crimes Act
- Mr Cassar for offences of corruptly giving a benefit contrary to s 249B(2) of the Crimes Act
- Mrs Attard for offences of corruptly soliciting or receiving a benefit contrary to s 249B(1) of the Crimes Act
- Ms Camilleri for an offence under s 351A of the Crimes Act of recruiting Mr Camilleri to carry out a criminal activity, being the destruction of documents or other things relating to the subject matter of the Commission's investigation contrary to s 88(2)(a) of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act").

The Commission is also of the opinion that consideration should be given to the taking of action against Mrs Attard for the specified disciplinary offence of misconduct as defined in 4.2 and 4.3 (chapter 4) of the Housing NSW code of conduct with a view to dismissing her, dispensing with her services or otherwise terminating her services.





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The Commission did not consider it necessary to make any corruption prevention recommendations as the investigation did not raise any systemic issues.

### **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 background information concerning the Commission's investigation into Joseph Camilleri, a RailCorp manager, and Carmen Attard, an employee of Housing NSW, an agency of the NSW Department of Family and Community Services (DFACS). The investigation was concerned with Mr Camilleri's solicitation of money from other RailCorp employees and persons employed by RailCorp contractors, and Mrs Attard's solicitation of money from other Housing NSW employees. Between February 2012 and February 2013, Mr Camilleri obtained approximately \$1.6 million and, during 2012, Mrs Attard obtained \$180,000. The Commission investigated whether, in soliciting and receiving any of this money, Mr Camilleri and Mrs Attard acted corruptly.

At the relevant time, Mr Camilleri was a senior manager at RailCorp. From no later than 2008, Mr Camilleri provided large amounts of his personal funds to his daughter, Jessica Camilleri. Having largely exhausted his personal wealth by early 2012, Mr Camilleri commenced soliciting money from RailCorp employees and contractors.

The vast majority, if not all, of the solicited money was provided to Ms Camilleri. Ms Camilleri told the Commission that the explanations she provided to her father to obtain this money, which on any view were fanciful and absurd, were all false. Mr Camilleri maintained that he sought money from persons in a private capacity unrelated to his position at RailCorp, and that at all times he believed his daughter's explanations were truthful.

During the course of the investigation, the Commission became aware that Mr Camilleri's sister, Mrs Attard, assisted in acquiring money on behalf of Ms Camilleri by obtaining money from other Housing NSW employees.

Mr Camilleri was dismissed by RailCorp on 14 February 2013.

Mrs Attard was transferred to other duties in September 2013 when, as a result of the Commission's investigation, Housing NSW became aware of her solicitation of money from other Housing NSW employees.

## How the investigation came about

On 14 February 2013, Robert Mason, RailCorp's chief executive officer (CEO) made a report to the Commission pursuant to s 11 of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act"). This section requires the principal officer of a public authority to report matters to the Commission that the principal officer suspects involve or may involve corrupt conduct. The report concerned an allegation that Mr Camilleri had requested loans from two RailCorp employees and, despite having received a direction not to approach other RailCorp employees, had approached other RailCorp employees for loans. Mr Camilleri had claimed the money was needed to assist funding his daughter's legal case, which had been ongoing for a number of years. Mr Camilleri had disclosed to RailCorp management that he had borrowed over \$400,000 from work colleagues and one contractor. A preliminary review of his work email account undertaken by RailCorp revealed, however, that Mr Camilleri had also borrowed \$110,000 from another RailCorp contractor.

## 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 amount of money that Mr Camilleri had admitted to obtaining from RailCorp employees and the contractor was significant. He had failed to disclose having obtained money from other RailCorp contractors but a preliminary review by RailCorp had identified another contractor from whom he had obtained a significant payment. His failure to make a full disclosure to RailCorp was, in itself, serious. The Commission was particularly concerned to ascertain not only the extent of Mr Camilleri's financial dealings with RailCorp employees and contractors, but also whether he had offered to exercise his public official functions to favour those who provided him with 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 and to ascertain whether there were any corruption prevention issues that needed to be addressed.

## Conduct of the investigation

During the course of the investigation, the Commission:

- obtained documents from various sources by issuing 92 notices under s 22 and s 35 of the ICAC Act requiring production of documents
- lawfully executed two search warrants to obtain information relevant to the investigation
- obtained four warrants under the relevant legislation to enable the interception of telecommunications
- undertook physical surveillance of persons suspected of being involved in corrupt conduct
- interviewed and/or took statements from numerous persons
- conducted six compulsory examinations.

## The public inquiry

Information obtained during the investigation indicated that, over a 12-month period, Mr Camilleri obtained approximately \$1.6 million from RailCorp employees and contractors. Mr Camilleri held a position at RailCorp that gave him influence over the completion of large-scale procurement processes, which, at times, involved contractors from whom he had borrowed money. The investigation also indicated that Mrs Attard had obtained

approximately \$180,000 from other Housing NSW employees. After taking into account this information and 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.

The public inquiry was primarily concerned with Mr Camilleri's solicitation of money from RailCorp employees and contractors and Mrs Attard's solicitation of money from Housing NSW employees.

The Commission decided that it was not in the public interest to call to the public inquiry all of the persons from whom Mr Camilleri or Mrs Attard had sought money. To do so would have unnecessarily increased the duration and expense of the public inquiry. It was determined that it was appropriate to call evidence from a limited number of contributors. These witnesses were selected on the basis of the amount of money they had provided to Mr Camilleri and Mrs Attard and the extent to which their provision of money could impact on the exercise of the official functions of Mr Camilleri and Mrs Attard.

The public inquiry was conducted over eight days, between 17 and 28 February 2014. The Hon Megan Latham, Commissioner, presided at the inquiry. Nicholas Polin acted as Counsel Assisting the Commission and evidence was taken from 16 witnesses.

At the conclusion of the public inquiry, Counsel Assisting prepared submissions setting out the evidence and the findings and recommendations the Commission could make based on the evidence. These submissions were provided to all relevant parties and submissions were invited in response. All the submissions received in response have been taken into account in preparing the report.

## RailCorp

Rail Corporation NSW (referred to as "RailCorp") was established as a statutory body by Part 2 of the *Transport Administration Act 1988*. Until June 2013, RailCorp's principal objectives were to:

- deliver safe and reliable railway passenger services in NSW in an efficient, effective and financially responsible manner
- ensure that the part of the NSW rail network vested in, or owned by, RailCorp enables safe and reliable railway passenger and freight services to be provided in an efficient, effective and financially responsible manner.

From July 2013, RailCorp's responsibilities for railway services were transferred to newly-created entities, including Sydney Trains and NSW Trains.

RailCorp was a public authority within the meaning of the ICAC Act, as the Auditor General has power to inspect, examine or audit its accounts pursuant to the *Public Finance and Audit Act 1983*.

## Mr Camilleri

Mr Camilleri is a public official, for the purposes of the ICAC Act, as he is an individual who, at the relevant time, was an employee of a public authority, namely RailCorp. Prior to the termination of his employment on 14 February 2013, Mr Camilleri had worked at RailCorp for 37 years. His substantive position at the time of his termination was that of general manager, maintenance contract and commercial.

## Mrs Attard

Mrs Attard is a public official, for the purposes of the ICAC Act, as she is employed by Housing NSW, an agency DFACS, which comes within the definition of public authority according to the ICAC Act.

## Ms Camilleri

Until April 2013, Ms Camilleri was a public official working for the Ambulance Service of NSW. There is no evidence that any of her activities relevant to this matter involved the use of her public official functions.

## Codes of conduct

The RailCorp code of conduct applied to RailCorp employees, contractors and consultants. Mr Camilleri was required to be aware of, and comply with, the policies that related to him as an employee, such as the code of conduct and the conflicts of interests policy.

Similarly, the Housing NSW code of conduct applies to everyone employed by Housing NSW, including in-house contractors, consultants and casual staff. As a Housing NSW officer, Mrs Attard was required to adhere to the code in the course of her duties.

The relevant RailCorp code of conduct included provisions relating to gifts, benefits and conflicts of interest. It stated that “the acceptance of gifts and benefits has the potential to compromise us in our role at RailCorp” and “a conflict of interest arises where a personal interest, aim, goal, personal business interest or desired outcome influences or could be perceived to influence the way you carry out your duties”. Examples of acceptable and unacceptable conduct were included in the code. The Housing NSW code of conduct included similar provisions relating to gifts, benefits and conflicts of interest.

The RailCorp witnesses who gave evidence at the public inquiry were all aware of the code of conduct; however, several expressed a belief that the relevant gifts, benefits and conflicts of interest sections of the code applied only to the risks posed by external contractors. In drafting codes of conduct, most organisations understandably focus on addressing the most common areas of concern with regards to employees’ conduct. In terms of gifts, benefits and conflicts of interests, the most common risk for improper conduct and corruption arises from external parties seeking to influence a public official.


The RailCorp code of conduct clearly addressed these risks, and staff came to understand the code of conduct to have a focus on the risks of external influence. This does not mean, however, that there are no risks other than those posed by external parties.

When questioned in the public inquiry, all of the RailCorp witnesses ultimately accepted that an immediate, interest-free loan is a benefit. Whether the benefit is given by an external contractor or a fellow staff member, the acceptance of such a benefit could clearly compromise an individual in the exercise of their official duties at RailCorp and amount to a breach of the code of conduct. In Mr Camilleri’s position, seeking to obtain benefits from fellow employees over whose future career prospects he could exert influence compromised the exercise of his official duties and could amount to a breach of the code of conduct.

Codes of conduct can always be used as a guide to ethical decision-making. Indeed, the message from the chief executive at the start of the RailCorp code of conduct that was in place at the time of this corrupt conduct stated that the “Code cannot provide an answer to every ethical challenge that we may face, the principles and examples provided here will assist each of us to better understand our obligations to act ethically and professionally”.

The principles within the code of conduct about gifts, benefits and conflicts of interest could have assisted in consideration of the unique circumstances posed by Mr Camilleri seeking loans from fellow employees and highlighted the risk of Mr Camilleri having influence over those employees’ future career prospects. All organisations need to consider the broader applicability of their codes of conduct when faced with questions of staff conduct and not rely purely on the specific examples given. The Commission has been advised that, since the time of this corrupt conduct, Transport for NSW has commenced drafting a code of conduct for all of its cluster agencies, including a conflicts of interest policy.

The applicable Housing NSW code of conduct required Mrs Attard to inform her line manager of a conflict of interest as soon as possible and agree on a strategy to



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manage the situation. She did not inform her manager about the loans she had obtained until Commission investigators sought to interview Housing NSW staff from whom she had borrowed money. In Mrs Attard's position, continuing to have management responsibility for her team and making decisions and recommendations to senior managers regarding them, without disclosing that she had borrowed money from them or unsuccessfully sought to do so, could amount to a breach of the code of conduct.

In September 2013, DFACS released a code of ethical conduct that replaced the applicable Housing NSW June 2012 code of conduct. In the section addressing conflicts of interest, the 2013 code includes a paragraph that addresses internal staff relationships and also requires conflict arising from workplace relationships to be disclosed.

## Chapter 2: Why Mr Camilleri needed money

The Commission's investigation was primarily concerned with Mr Camilleri's financial dealings and whether they affected, or could affect, the exercise of his official functions. This required the Commission to examine Mr Camilleri's financial position.

Notwithstanding an annual salary of over \$300,000, Mr Camilleri was in a dire financial position prior to and during 2012. Mr Camilleri's financial difficulties arose due to his provision of large amounts of money to his daughter, Ms Camilleri. There is evidence that this outlay of money commenced from at least 2008. Mr Camilleri stated during the public inquiry that he had provided to his daughter over \$1 million from his own funds prior to his approaches to RailCorp employees and contractors for money.

Other members of Mr Camilleri's family also provided significant amounts of money to Ms Camilleri, including Charles Camilleri, Mr Camilleri's father, who re-financed his home in order to secure several hundred thousand dollars for Ms Camilleri's benefit. Another sister of Mr Camilleri's (not Mrs Attard) also provided a few hundred thousand dollars. Mr Camilleri also solicited funds from other persons not associated with RailCorp.

The Commission's examination of Mr Camilleri's RailCorp personnel file indicates that, between April 2010 and January 2013, Mr Camilleri made 32 applications to have his annual leave or long service leave converted to monetary payments or to have his salary paid in advance. In making the applications to RailCorp human resources staff or to his direct supervisor, Mr Camilleri made frequent references to a "personal financial situation" and to an "unpredicted family financial situation" as the reason for requiring the funds. Mr Camilleri told the Commission that each of these requests was made in order to obtain funds for Ms Camilleri. The particulars of the requests are set out in the table below.

Date	Amount requested
21 April 2010	20 days annual leave and one month long service leave
29 April 2010	Six weeks long service leave
5 May 2010	Six weeks long service leave
10 May 2010	Four weeks long service leave
17 May 2010	Six weeks long service leave
19 May 2010	Six weeks long service leave
21 May 2010	Seven weeks long service leave
25 May 2010	Seven weeks long service leave
8 June 2010	One month long service leave
16 June 2010	15 days annual leave and three weeks long service leave
11 August 2010	Urgent advance of \$3,000 from monthly pay
3 September 2010	49 hours annual leave
8 September 2010	60 hours long service leave
4 April 2011	51 hours of annual leave and 13 hours long service leave
24 May 2011	All current annual and long service leave entitlements
31 October 2011	64 hours annual leave and 14 hours long service leave
2 November 2011	November 2011 pay in advance
7 December 2011	Pay brought forward
28 December 2011	25 hours annual leave and 13 hours long service leave
29 December 2011	Advance of January 2012 pay
16 February 2012	25 hours annual leave and 14 hours long service leave
22 February 2012	Advance of March 2012 pay



Date	Amount requested
12 March 2012	Advance of April 2012 pay
28 March 2012	13 hours annual leave and seven hours long service leave
30 April 2012	13 hours annual leave and seven hours long service leave
10 May 2012	Advance of June 2012 pay
4 June 2012	12 hours annual leave seven hours long service leave
4 June 2012	Advance of July 2012 pay
22 June 2012	13 hours annual leave and seven hours long service leave
1 August 2012	13 hours annual leave and 6.9 hours long service leave
8 August 2012	Advance of September 2012 pay
2 January 2013	63 hours annual leave and 34 hours long service leave

Mr Camilleri also approached a financial adviser about obtaining funds and received significant amounts of money from the financial adviser's clients. These contributors had no relationship to RailCorp or Mr Camilleri's official duties.

These funds were obtained by Mr Camilleri on the false basis that his daughter needed the money to counter legal proceedings arising out of her identity being stolen. In addition to these efforts to obtain money for his daughter, by early 2012, Mr Camilleri began approaching RailCorp employees and contractors to obtain further money.

## The extent of Mr Camilleri's conduct

The Commission is aware of 48 RailCorp employees or RailCorp contractors who provided Mr Camilleri with money. A further 16 RailCorp employees, at least, were approached by Mr Camilleri but did not provide him with money.

Notwithstanding the large amounts of money involved, Mr Camilleri did not keep complete or comprehensive records of the money he obtained. Of the money Mr Camilleri obtained from RailCorp employees or contractors, only \$100,000 had been repaid at the time of the public inquiry. As Mr Camilleri has largely exhausted his own financial resources, there is little likelihood that those who advanced him money will be repaid.

## Mr Camilleri's reputation at RailCorp

Evidence before the Commission indicates that a significant factor in Mr Camilleri's ability to obtain money from so many people over such a protracted period, without that

conduct coming to the attention of his supervisors, was the formidable reputation he had attained over the previous decades. That reputation was based on two attributes.

The first was an aggressive demeanour that contributed to Mr Camilleri's promotion through the ranks to a senior position within RailCorp. Evidence before the Commission indicates that Mr Camilleri was a man who could be strongly opinionated and forceful. He was somebody known to "push things through". He was described by his former colleagues as a "headkicker" and an "attack dog". Secondly, Mr Camilleri was known and admired for his apparent probity and integrity. The evidence from his colleagues suggests that Mr Camilleri had forged a reputation as a man who could be trusted and relied on, to the point that he was known as "Mr Probity". This reputation was enhanced by his general refusal to socialise with RailCorp staff, on the basis that he may need to manage their performance in the future. In 2011, Mr Camilleri was honoured with an award for integrity and career achievement by the Australasian Railway Association. He also initiated the "Probity at the Coalface" program at RailCorp, which was aimed at training RailCorp staff on the risks of fraud. Mr Camilleri's reputation placed him in a position of influence within RailCorp, especially with respect to major procurement tenders and the organisational restructuring that occurred within RailCorp from 2010 to 2013.

## How Mr Camilleri obtained money

The Commission's investigation revealed common tactics that Mr Camilleri employed to obtain money from RailCorp employees and contractors throughout 2012 and early 2013.

In almost all circumstances, Mr Camilleri's initial solicitations were made without forewarning or time for the potential lender to consider their position. Mr Camilleri would usually contact a potential lender in person on RailCorp premises but at times via the telephone. He would then provide a brief, vague story related to his daughter's need for money and make a direct request for a specified amount of money; usually between \$10,000 and \$20,000. The differing versions employed by Mr Camilleri as to his daughter's financial circumstance are detailed below.

Mr Camilleri would assert that any monies provided would be a private loan and would be paid back within a very short timeframe. Mr Camilleri was known to exert emotional pressure by crying or appearing to be in a distressed state. Any request for more information by the potential lender was met with claims of confidentiality, based on the alleged confidential nature of Ms Camilleri's circumstances as a result of contractual or national

security constraints. On occasion, Mr Camilleri provided documentation to support his position, usually under the purported hand of a bank employee or other person of authority.

If a person agreed to provide funds, Mr Camilleri actively encouraged the urgent transfer of money into his bank account. This usually meant that Mr Camilleri would accompany the lender to a nearby bank and have that person physically withdraw the required amount in cash. In other instances, Mr Camilleri was satisfied with an electronic transfer via the internet conducted at the time of the request. Mr Camilleri did not routinely provide any documentation to the lender after the transaction. Although, if pressed, he would endorse a bank receipt or provide a handwritten recording the transfer. Mr Camilleri requested that the loans remain confidential.

Mr Camilleri made persistent, repeated requests for money from RailCorp employees. At times, he requested money from the same person on several occasions on the same day. It was not unusual for Mr Camilleri's predatory approaches for money to be made to persons who were in a vulnerable position in respect of their employment with RailCorp or who wanted to continue a business relationship with RailCorp.

## What Mr Camilleri said when seeking money

In every instance where Mr Camilleri solicited money from RailCorp employees or RailCorp contractors, he claimed that the money was required in relation to debts or fees that were owed by his daughter. The detail provided by Mr Camilleri to potential lenders concerning these debts or fees varied widely, often within a short period of time. The reasons provided by Ms Camilleri about the need for the funds, and therefore the reasons provided by Mr Camilleri, were fabricated.

During the public inquiry, Mr Camilleri was required to provide an account of the information that he was given by his daughter as to her need for money, which he then conveyed to potential lenders. The following is a summary of the account Mr Camilleri provided to the Commission:

*In 2008, Ms Camilleri's wallet and her identity were stolen. Using her identity, other persons incurred debts totalling approximately \$15,000 through the purchase of several mobile telephones and mobile telephone services. This amount was repaid by Mr Camilleri. Court proceedings against Ms Camilleri were then commenced by unspecified persons in relation to further mobile telephone charges. In 2009, money was required to pay for a lawyer.*

*Subsequently, Ms Camilleri's stolen identity was used, in a manner never explained, to purchase overseas properties*

*in her name. Related but separate court proceedings were commenced in relation to costs incurred through these purchases. These proceedings, which also included an action for defamation, required the services of many lawyers, who collectively invoiced fees of over \$1 million. At this point the Australian Security Intelligence Organisation (ASIO) became involved; requiring the proceedings to be cloaked in a veil of secrecy.*

*At some stage during this process, Ms Camilleri signed an agreement to the effect that she would not be able to access any money awarded to her as a result of any successful court proceedings unless all bank fees and charges were paid. It was claimed that these charges could not be deducted from the amounts awarded to her which had been paid into bank accounts but had to be paid in cash before the money could be withdrawn.*

*At some time in mid-2012, Ms Camilleri was successful in her claim and was awarded millions of dollars in damages. For reasons never explained, these damages were released separately to the Westpac Bank, which held \$175,000, the ANZ Bank which held \$975,000 and the Commonwealth Bank which held over \$90 million. None of the funds could be released until all fees, totalling tens of thousands of dollars, were paid by Ms Camilleri to the financial institutions. On occasions when Ms Camilleri's lawyers attempted to pay the fees, those lawyers were told by the relevant financial institution that the fees had increased and that more money was required. This happened on many occasions.*

*Eventually the Commonwealth Bank released an amount of \$5 million into Ms Camilleri's personal account, followed shortly after by a further \$5 million. On 30 December 2012, Ms Camilleri transferred \$5 million into Mr Camilleri's personal bank account and forwarded an email to Mr Camilleri containing a copy of the transfer receipt. The \$5 million was not deposited into Mr Camilleri's bank account, as the Commonwealth Bank cancelled the transaction due to there being more outstanding fees.*

*Unrelated to these court proceedings, Ms Camilleri leased a safety deposit box, which she called a "cashbox", with the National Australia Bank. At a time prior to 9 May 2012, Ms Camilleri placed, or caused to be placed, items in the safety deposit box, including:*

- *\$575,000 derived from an inheritance from a person Ms Camilleri cared for at some stage, though the person was not known to Mr Camilleri and no further details of this person or how they acquired the funds were available*
- *a cheque for the amount of \$250,000 derived from one of the legal proceedings*



- *valuable jewellery*
- *ASIO documents.*

*These items could not be retrieved from the safety deposit box until fees had been paid to the National Australia Bank.*

Mr Camilleri claimed that he was provided with all of this information by Ms Camilleri. He further claimed he believed what he was told by his daughter until late 2013, when she told him that she had a gambling problem. He conceded that some of the claims she made were unbelievable.

## Mr Camilleri's credit

An issue that the Commission considered relevant to Mr Camilleri's credit was the extent to which his solicitation of funds was dishonest because he lacked a reasonable belief in the various stories he gave to RailCorp employees and contractors. It is clear that, objectively, all of the explanations that Mr Camilleri gave for needing money were fabricated.

Ms Camilleri gave evidence that she had misled her father with respect to the availability of money derived from legal proceedings or an inheritance contained in a cashbox. Ms Camilleri also accepted responsibility for providing falsified documentation to her father. Ms Camilleri told the Commission that she invented stories about her involvement in a court case in order to enlist her father's aid to obtain money.

Mr Camilleri asserted that he doubted his daughter's representations only upon learning of her gambling habit in December 2013 – well after he had been dismissed from RailCorp.

There are several factors that indicate that Mr Camilleri must have known prior to that time that the stories he was told by his daughter, and therefore the representations he made to RailCorp employees and contractors, were false. These factors include the inherently implausible nature of the stories, Mr Camilleri's failure to take any steps to corroborate his daughter's claims, inconsistencies in the versions he gave to RailCorp employees and RailCorp contractors, and evidence disclosing Mr Camilleri's lack of belief in his daughter's claims.

## The implausible nature of the Mr Camilleri's representations

The Commission considers significant the absurd nature of the representations, outlined above, that Mr Camilleri made during his requests for money. Outlandish claims were made concerning the involvement of ASIO, continuous daily fee increases, the unexplained removal of \$5 million from a personal bank account and a mysterious

cashbox. These claims were supported by poorly drafted documentation that referred to the availability of over \$90 million upon the payment of a relatively small fee. Collectively, these stories are so lacking in credibility that no person could reasonably maintain that they held a belief in their veracity.

## Mr Camilleri's failure to corroborate his daughter's claims

Upon learning the reason Mr Camilleri wanted money, numerous persons, including long-time colleagues and his own son, suggested firmly to Mr Camilleri that his daughter's need for money was fraudulent. Mr Camilleri's assertion at the public inquiry that any doubts he had were quickly dispelled by simply deferring to his daughter are not accepted. This is particularly the case when Mr Camilleri failed to make the simplest of independent enquires, such as contacting the banks claimed to be involved or insisting on speaking to his daughter's lawyer.

The lack of action by Mr Camilleri to corroborate his daughter's version is especially telling given the 30 December 2012 receipt that she provided to show that a transfer of \$5 million had been made into his personal bank account. If Mr Camilleri genuinely believed that \$5 million was to be transferred to his account, it would be expected that he would have made enquiries with the relevant bank when he found the deposit did not appear in his account. The fact that Mr Camilleri did not even make a telephone call to the bank or enquire at a bank branch, which he attended regularly around that time, is consistent with his having knowledge that the purported transfer was a sham.

## Discrepancies in Mr Camilleri's versions

A further factor indicating that Mr Camilleri knew his representations were not true is the fact that there are fundamental inconsistencies in the various representations he made to RailCorp employees and contractors. Mr Camilleri's evidence before the Commission was that, sometime in mid-2012, he was told by Ms Camilleri that her legal case had been resolved and that a large amount of money was available to her upon the payment of certain bank fees. He then perpetuated these claims when soliciting money from RailCorp employees and contractors. If Mr Camilleri believed the claims he was making, there would be a clear demarcation in time between his solicitation of money on the basis of an ongoing legal proceeding and his solicitation of money in order to pay outstanding bank fees.

Evidence before the Commission includes testimony from various RailCorp employees and contractors as to Mr Camilleri's representations, including the reason his daughter needed the money. The Commission has

considered this evidence, which includes the following, provided in chronological order:

- Ray Furfaro stated that Mr Camilleri told him on 22 May 2012 that his daughter was in a legal case, he needed money immediately for legal bills and, if he did not pay them immediately, the case would not proceed and would be thrown out of court.
- Saviour (Sam) Cassar stated that Mr Camilleri told him on 29 May 2012 that a magistrate had awarded his daughter some money and that, if they paid some fees by 5 pm that day, the case would be all over.
- Pierre Rochecouste stated that Mr Camilleri told him on 26 June 2012 that a bank had started a legal process against Ms Camilleri. Money was owed to the bank and the matter was going to be settled but money was needed to pay the bank.
- Mark Ross-Smith stated that Mr Camilleri told him on 9 August 2012 that money had to be raised to pay bank and lawyers' fees in order to get money released.
- Ray Oweis stated that Mr Camilleri told him on 3 October 2012 that his daughter was in quite a bit of trouble after getting in with the wrong crowd, that it somehow ended up in court, and that she had won the court case but needed assistance to help release the funds and to pay some fees.
- Kevin McCarthy stated that Mr Camilleri told him on 10 October 2012 that his daughter was facing a significant personal issue and that money was required urgently for legal fees so that a court matter could progress. Mr McCarthy also said that Mr Camilleri told him on 7 December 2012 that, despite Ms Camilleri's success in the legal proceedings, the funds would be made available to his daughter only once certain legal and bank fees were paid.
- Andrew Rogers stated that on 14 February 2013, the day Mr Camilleri was dismissed, he was told by Mr Camilleri that someone had taken over Ms Camilleri's identity and that Mr Camilleri had to remunerate lawyers for a legal proceeding that was going to conclude over the next few weeks or months.

The Commission accepts these witnesses' evidence as to what they were told by Mr Camilleri. Based on this evidence, the following inconsistencies are evident in relation to Ms Camilleri's legal proceedings:

- Mr Cassar was told the legal proceedings were resolved in May 2012 while Mr Rochecouste was

told in June 2012 that the legal proceedings were ongoing

- Mr Oweis was told on 3 October 2012 that a resolution was reached
- Mr McCarthy was told that the proceedings were still on foot on 10 October 2012, a week after Mr Oweis was informed that they had ended
- Mr McCarthy was told on 7 December 2012 that the proceedings had finished, while Mr Rogers was told on 14 February 2013 that the legal proceedings would continue for some time.

### Inconsistencies with other witnesses

Mr Rochecouste gave reliable evidence before the Commission that Mr Camilleri told him during a conversation about Ms Camilleri's payment of bank fees that Mr Camilleri had difficulties with a lawyer in Sydney, whose child was ill, and had to use the services of a Melbourne lawyer. Mr Rochecouste was adamant that Mr Camilleri was claiming a personal engagement with the lawyer, not dealings through Ms Camilleri. In his evidence before the Commission, Mr Camilleri denied making such a statement.

Mr McCarthy said that Mr Camilleri told him he had guaranteed his daughter's debts. Mr McCarthy also said that Mr Camilleri read out a judgment or court order over the telephone to corroborate his story. Mr Camilleri told the Commission that he was not, and never said he was, a guarantor for his daughter's debts. He also stated that he "could not recall" reading out a judgment.

In December 2012, Mr Camilleri presented Mr Ross-Smith with falsified correspondence, purporting to be from the Commonwealth Bank, to support his claims that his daughter had access to substantial sums of money. Mr Ross-Smith was adamant in his evidence before the Commission that the correspondence was addressed personally to Mr Camilleri. In his evidence, Mr Camilleri stated that his daughter provided him with all correspondence concerning her debts and all such correspondence was addressed to her. Mr Camilleri specifically rejected any suggestion that any such correspondence was addressed to him.

The Commission prefers the evidence of Mr Rochecouste, Mr McCarthy and Mr Ross-Smith to that of Mr Camilleri. This is because Mr Rochecouste, Mr McCarthy and Mr Ross-Smith had no apparent interest in misleading the Commission with respect to the issues above, while any concessions by Mr Camilleri on these topics would be fatal to his assertion that he was ignorant of the false nature of his daughter's claims.

The Commission is satisfied that what Mr Camilleri told Mr Rochecouste about needing to use a Melbourne lawyer and what he told Mr McCarthy about guaranteeing his daughter's debts was false and was known by Mr Camilleri to be false.

### The 2008 email

Mr Camilleri claimed that he constantly questioned his daughter, but did not have any doubts as to the veracity of her claims until December 2013. The Commission has evidence that suggests that Mr Camilleri did not believe his daughter's claims from as early as 2008.

In 2008, Mr Camilleri was having difficulties accepting his daughter's word concerning her financial affairs. In email correspondence of 21 January 2008, Mr Camilleri and his daughter discussed her payment of certain debts. In the exchange, Mr Camilleri wrote:

*See if you can use your own money this time it would be good. Then we will discuss paying back nannu, Peter and me. No more lies.*

At this time, Mr Camilleri clearly believed that his daughter had been telling lies.

### Telephone conversations

On 15 July 2013, the Commission lawfully intercepted a telephone conversation between Mr Camilleri and Ms Camilleri. The conversation concerned previous conversations they had had with a person who had provided them with money. A heated disagreement occurred concerning conflicting representations made to this person. During the conversation, Ms Camilleri told Mr Camilleri that she and her husband were planning to go to Lebanon, to which Mr Camilleri responded:

*And that's what you are doing to steal ... is stealing this money to fucking keep you so you live like a queen over there? Is that what you are doing?*

It is clear from this statement that Mr Camilleri believed that his daughter was stealing money for her own private use. This, of course, is directly contrary to the evidence he gave to the Commission that it was only in December 2013 that he came to doubt the reasons his daughter gave for needing money. The following was also said during the same conversation:

*[Ms Camilleri]: I told you not to tell him that there was any more money involved. Why would you do that?*

*[Mr Camilleri]: Oh well, because I don't lie any more Jessica. Because enough is enough.*

On 28 August 2013, Commission investigators executed a search warrant at Mr Camilleri's home. The following day, the Commission lawfully intercepted a telephone conversation between Mr Camilleri and Ms Camilleri concerning the attendance of Commission officers at Mr Camilleri's home. During that conversation, the following was said:

*[Ms Camilleri]: Do you know what they took of mine? You don't know?*

*[Mr Camilleri]: Nothing of yours at all.*

*[Ms Camilleri]: Well, can you have a look because if they come back tomorrow or the next day I want to make sure it's all gone.*

*[Mr Camilleri]: Umm. Oh, we are looking but we don't know what we are looking at there's so much shit in there.*

*[Ms Camilleri]: Even bank anything [sic]. Throw it in the bin. Do you know what, put it in the barbeque and burn it. Don't even put it in the bin because they will go through your bin. Burn it.*

*[Mr Camilleri]: Well they didn't today Jess.*

*[Ms Camilleri]: Dad, they will come back. Don't be stupid.*

*[Mr Camilleri]: Yeah, alright. But anyway what, umm, you have to come and have a look because we are just confused about what's in there.*

*[Ms Camilleri]: Tonight. Just take any papers. Burn! Burn! Burn! That's all you got to do. It's not hard.*

*[Mr Camilleri]: Yeah. Yeah.*

*[Ms Camilleri]: Do it now.*

*[Mr Camilleri]: Yep. We are doing it now. Just put everything there and I will burn it all.*

It is clear that Ms Camilleri was asking her father to destroy incriminating material that may be found by the Commission's investigators. This indicates a consciousness of guilt on her part. Rather than query or reprimand his daughter, Mr Camilleri accepts the proposed course and agrees to participate. Mr Camilleri could not explain to the Commission why he did this.

If Mr Camilleri really believed the reasons he gave for seeking money, his logical reaction during this telephone conversation would have been to collect, rather than destroy, any documentation on the basis that it would

assist in proving the veracity of his claims. When this was put to him at the public inquiry, Mr Camilleri answered: "You could say that but I, I didn't. I believed and I don't even know what documents she was talking about". Mr Camilleri then agreed that his daughter was asking him to do something illegal in destroying evidence. Mr Camilleri claimed that he did not burn or destroy any documentation. There is insufficient evidence for the Commission to determine whether or not any documentation was destroyed.

The Commission is satisfied that, at the time he approached RailCorp employees and contractors for money, Mr Camilleri did not believe the reasons he gave them for needing money and, therefore, knowingly deceived them as to the purpose for which the money was being sought. This matter has been taken into account in assessing the credibility of Mr Camilleri's evidence at the inquiry.

## Chapter 3: Soliciting money from RailCorp contractors

This chapter examines the circumstances in which a number of RailCorp contractors, persons employed by RailCorp contractors or, in one case, a potential contractor, came to provide money to Mr Camilleri. For the reasons given in the preceding chapter, the Commission is satisfied that, in each case, Mr Camilleri knowingly provided false information about the reasons he wanted the money.

### Mr Camilleri and Mr McCarthy

Mr Camilleri and Mr McCarthy had known each other for over 30 years. Mr McCarthy first met Mr Camilleri when he commenced work as a cadet engineer at what was then the State Rail Authority. Mr Camilleri was employed in the same workshop as Mr McCarthy. Mr McCarthy considered that they were friends. At the time relevant to the Commission's investigation, Mr McCarthy was employed as a manager with UGL Rail Services Pty Ltd, part of the United Group Limited (UGL) group of companies.

Between 10 October 2012 and 12 February 2013, Mr McCarthy provided \$428,000 to Mr Camilleri or to Ms Camilleri at Mr Camilleri's request. The first approach Mr Camilleri made to Mr McCarthy for money occurred in October 2012.

Mr McCarthy told the Commission he received a telephone call from Mr Camilleri on 10 October 2012. Mr Camilleri told him that his daughter was facing a significant personal issue and that money was required urgently for legal fees so that a court proceeding could progress. Mr Camilleri asked for a loan of \$20,000 as a friend. Although the information provided by Mr Camilleri can best be described as scant, Mr McCarthy electronically transferred \$20,000 into Ms Camilleri's bank account.

Mr McCarthy said he received another telephone call from Mr Camilleri the next day. Mr Camilleri told him money

had been expected from other members of Mr Camilleri's family to pay the legal fees but that money was not forthcoming and he needed a further \$25,000 from Mr McCarthy. Mr McCarthy thought this was a large amount of money and asked for more details. Mr Camilleri told him the money was required in relation to a claim for damages. The claim arose from the theft of his daughter's credit cards or passport, which had allowed the thief to use her identity to incur debts in her name. He understood that the claim for damages was against debt collectors who, working on behalf of banks, had inappropriately attempted to recover the incurred debts from Ms Camilleri. The banks involved were not named. Mr McCarthy was also told that Ms Camilleri was seeking recovery of the amounts she had paid to reduce the incurred debts before she realised they had been incurred fraudulently. Mr Camilleri did not mention the amount of damages or costs his daughter was seeking to obtain. Although the story struck Mr McCarthy as unusual, he agreed to provide the money but told Mr Camilleri that he would like a written agreement to provide for the repayment of the money he lent. He also arranged to meet Mr Camilleri the next day.

At their meeting on 12 October 2012, Mr Camilleri asked for another \$7,000 because someone else who had promised to provide money had backed out. Mr Camilleri reiterated that his daughter had been the victim of an identity theft that had resulted in debts being fraudulently incurred in her name. Mr McCarthy understood that Ms Camilleri had not initially understood that her name had been used to accumulate debts and that, by the time she did, a significant debt, probably approaching \$100,000, had been incurred in her name. Mr McCarthy provided a further \$7,000 to Mr Camilleri.

By this time, Mr McCarthy had advanced \$52,000. Mr McCarthy told the Commission that he understood the money would resolve the problems recounted by Mr Camilleri.



Mr McCarthy telephoned Mr Camilleri regularly in the following weeks to enquire when the money would be repaid. Mr Camilleri told him the court proceedings were in the process of being finalised but were taking longer than expected. At some stage prior to 7 December 2012, Mr McCarthy was told that the claims had succeeded and the money claimed by Ms Camilleri would become available, which would allow him to be repaid.

On 7 December 2012, Mr Camilleri asked Mr McCarthy for more money. Mr Camilleri said that the legal case had been successful and his daughter was to receive costs and damages from the banks. The money, however, would become available only once certain legal fees associated with the case and bank fees were paid. The fees due to the banks could not be offset against the damages awarded against the banks because of an earlier agreement Ms Camilleri had entered into with the other party to the proceedings. At some stage, possibly in this conversation, Mr Camilleri told Mr McCarthy that the costs and damages awarded to Ms Camilleri came to \$5 million. Mr Camilleri told him \$10,000 was needed to clear the bank fees and legal fees so that the money awarded to Ms Camilleri could be released to her. Mr McCarthy agreed to pay a further \$10,000.

Later that day, Mr Camilleri asked Mr McCarthy for another \$10,000. This time the explanation was that an arrangement to get \$10,000 from someone else had fallen through. Mr McCarthy gave a further \$10,000.

Between 7 December 2012 and February 2013, Mr McCarthy made a number of payments totalling \$191,000 either to Mr Camilleri or to Ms Camilleri at Mr Camilleri's request. During this period, Mr Camilleri told Mr McCarthy that he was having difficulty getting enough money to pay the bank fees, which were accumulating each day. These fees had to be paid before the banks would release the money due to his daughter. By the time Mr Camilleri had collected money to pay the fees, they had

increased and more money was needed. Mr McCarthy was also told that an IT problem was causing delay and, at some stage, that a second amount of \$5 million had been awarded to Ms Camilleri. This had resulted in an increase in the bank fees that Ms Camilleri had to pay before any of the money could be released to her. He was also told that ASIO had been brought into the court case because it had proof of the identity theft but, because it was involved, it had been necessary to sign a confidentiality agreement and that agreement prevented Mr Camilleri from giving Mr McCarthy further information. Mr McCarthy recalled that, at one point, Mr Camilleri read out part of the judgment in his daughter's favour. When Mr McCarthy asked for a copy of the judgment, Mr Camilleri told him that it was covered by the confidentiality agreement and he could not give him a copy.

On 30 December 2012, Mr Camilleri forwarded an email to Mr McCarthy attaching a previous email sent from Ms Camilleri to Mr Camilleri. Ms Camilleri's email purported to contain a transfer receipt for the transfer on 28 December 2012 of \$5 million from a Smart Access Account into Mr Camilleri's account. The transfer receipt indicated the funds would be paid into Mr Camilleri's account within two business days. Despite the contents of this email, Mr McCarthy said that Mr Camilleri told him shortly after sending the email that the \$5 million had not been cleared into Mr Camilleri's account.

Between 2 and 12 February 2013, Mr McCarthy provided more money. He was still being told that the money was needed to pay bank fees so that the money awarded to Ms Camilleri could be released to her. He was also told that there was another amount of money, separate to the \$10 million, which represented the amount Ms Camilleri had originally paid against the fraudulent debts. This money was, however, linked to the \$10 million and was increasing the bank fees that had to be paid before any of the money could be released.

Mr McCarthy's evidence above as to what he was told by Mr Camilleri was not disputed in substance by Mr Camilleri, with the exception that he said that he could not recall reading out a judgment to Mr McCarthy. Mr McCarthy told the Commission he also communicated with Ms Camilleri who corroborated the information provided by Mr Camilleri concerning the legal proceedings and the need for money. In her evidence to the Commission, Ms Camilleri agreed that she communicated with Mr McCarthy with respect to her need for money.

Mr McCarthy told the Commission that he provided the money because he believed what he was told by Mr Camilleri at the time Mr Camilleri made the requests for money. He claimed that he realised Mr Camilleri had lied only after Mr Camilleri was dismissed from RailCorp and a lawyer that Mr McCarthy consulted about getting his money back likened what had happened to "a Nigerian bank scheme". It was submitted on Mr McCarthy's behalf that he had been naive.

The Commission does not accept that Mr McCarthy believed all of the stories that he was told by Mr Camilleri. Mr McCarthy was an unreliable and evasive witness and his assertion must be assessed in the overall context of the evidence. Even he accepted that, by mid-December 2012, the story had become "bizarre". Any moderately intelligent person would have considered absurd the various reasons advanced by Mr Camilleri for wanting money and for not being able to provide further information. The assertion that Ms Camilleri had been awarded over \$10 million was simply incredible.

Mr McCarthy held a senior managerial position with UGL. That he was both highly experienced and intelligent is demonstrated by the fact that he had been the bid manager for multi-million-dollar contracts, including a major RailCorp contract with a potential value of \$1.4 billion over seven years. He had dealt with lawyers and legal issues arising from claims for money. This is hardly the type of person who could be expected to believe such patently ridiculous accounts as those advanced by Mr Camilleri. Mr McCarthy had been in the position himself of having his credit card used fraudulently. He had contacted the relevant bank and arranged for his credit card to be cancelled. He was subsequently refunded the fraudulently-incurred debt. This additional experience, by itself, would have alerted him to the implausibility of what he was being told by Mr Camilleri. Although what Mr Camilleri told him clearly involved a large fraud, Mr McCarthy did not ask him about any police involvement. This failure supports the inference that he did not believe what he was being told by Mr Camilleri.

The Commission is satisfied that Mr McCarthy provided the money knowing that much of what he was being told by Mr Camilleri was false and without knowing the

purpose for which the money was required. The question then arises as to why Mr McCarthy provided any money.

### What was the purpose of the payments?

A preliminary point to make is that, at the time he made the payments, Mr McCarthy believed they were loans and that he would get his money back, together with the interest income he had foregone by lending the money. Indeed, he signed an agreement with Mr Camilleri to this effect. As Mr McCarthy explained to the Commission, he had what he considered excellent grounds for believing he would get his money back. He knew that Mr Camilleri was a well-paid RailCorp manager who owned his house and he also believed that Mr McCarthy had significant superannuation that could be used to repay any debt. Although it appears that, at some stage, Mr McCarthy became aware that Mr Camilleri had obtained money from another person, he never knew the extent of Mr Camilleri's borrowing from others or that Mr Camilleri had exhausted his own resources. From Mr McCarthy's point of view, at the time he was advancing the money he was not incurring any undue risk. The Commission is satisfied, however, that Mr McCarthy was aware that, by his making the payments as and when requested and not challenging the absurdity of the reasons advanced by Mr Camilleri for why the money was needed, Mr Camilleri had become obligated to him.

Mr McCarthy and Mr Camilleri maintained that the payments were loans between friends and had no connection with Mr Camilleri's public official functions. Although Mr McCarthy and Mr Camilleri were friends, this, of itself, cannot explain why Mr McCarthy would advance \$428,000 in circumstances where he knew the reasons being advanced by Mr Camilleri for needing the money were false. Indeed, Mr McCarthy rejected the description of their friendship as being close.

Mr Camilleri held an important and influential position within RailCorp. This was known by Mr McCarthy.

As of 2010, UGL had a longstanding and valuable maintenance contract with RailCorp. On 13 December 2010, Mr McCarthy sent an email to his boss and other UGL employees advising them he had met with Mr Camilleri to discuss the maintenance contract and that "Joe [Camilleri] is now neutral and no longer a strong supporter of UGL ... although he will not be negative either". RailCorp subsequently sought tenders for the maintenance contract. This became known as the "L3C contract".

Mr McCarthy was the L3C contract bid manager for UGL and responsible for ensuring the UGL bid complied with the RailCorp tender requirements. The UGL tender was ultimately successful and UGL was awarded a

seven-year contract in December 2011 to commence in mid-2012. Mr McCarthy does not appear to have had any ongoing involvement with the L3C contract after July 2012.

While Mr McCarthy's involvement with the L3C contract occurred before he commenced the payments to Mr Camilleri, he understood that Mr Camilleri was one of the RailCorp people involved in the ongoing administration of the L3C contract and that he would be involved in approving work and payments under that contract. Mr McCarthy also knew that the L3C contract contained an option to extend beyond its term of seven years and that this option was exercisable at RailCorp's discretion. He expected Mr Camilleri would have a role in assessing UGL's performance under the L3C contract and would have input into whether the option to extend should be exercised. In addition, Mr McCarthy believed that Mr Camilleri would be involved in any future RailCorp work awarded to UGL and accepted that Mr Camilleri might have a role in deciding whether other contracts were awarded to UGL. Mr McCarthy described part of his role with UGL as being "in the business development area", which involved keeping RailCorp work going to UGL.

Keeping RailCorp work going to UGL was important to Mr McCarthy because he was eligible under his contract of employment with UGL to receive, in addition to his salary, a "short term incentive allocation" calculated, in part, on his individual performance and the performance of UGL. Adverse business impacts on the UGL group of companies, including loss of RailCorp work, could affect the amount of Mr McCarthy's short-term incentive allocation. In November 2012, he received a short-term incentive allocation of \$50,000, made up of \$25,000 in cash and \$25,000 worth of UGL shares. Between 2008 and 2011, the value of his short-term incentive allocation varied between \$17,000 and \$54,000. For the five years between 2008 and 2012, he received about \$169,000 in total. Mr McCarthy was motivated to ensure, as far as he could, that he continued to receive generous incentive payments. It was in his interests to ensure that the UGL business continued to thrive financially so that UGL could continue making these payments to him. The Commission is satisfied that Mr McCarthy understood that developing and maintaining a favourable relationship with Mr Camilleri would assist the business prospects of his employer and, thereby, indirectly further his own financial position.

During 2012, RailCorp was undertaking a reform process that involved splitting it into two entities – Sydney Trains and NSW TrainLink. In late 2012, Mr McCarthy applied for a position as a general manager with Sydney Trains. He understood this position came about as a result of the reform process. Mr McCarthy rejected the propositions that Mr Camilleri might be influential in determining who

would be appointed to the position or that he could use Mr Camilleri as a referee.

Mr McCarthy was aware at the relevant time that Mr Camilleri was involved in the RailCorp reform process. Although he told the Commission that he was not aware of the details of Mr Camilleri's involvement in that process, he agreed that Mr Camilleri would have a significant input into that process and was a person who would be influential in the process. While he may not have understood the precise role played by Mr Camilleri, the Commission is satisfied that Mr McCarthy understood at the time he applied for the position with Sydney Trains that, in the event he needed to call upon Mr Camilleri's support for his application, the obligation under which Mr Camilleri had been placed by virtue of the payments was such that Mr Camilleri would be influenced to act in support of Mr McCarthy's application.

In assessing Mr McCarthy's conduct, it is also relevant to have regard to the fact that, once he became aware that Mr Camilleri had been dismissed by RailCorp, he commenced legal action to recover the money he had advanced. He took action to recover his money after he became aware that Mr Camilleri had lost his position with RailCorp and was, therefore, no longer in a position to exercise his official functions to benefit or favour Mr McCarthy's interests.

Another important factor in assessing the conduct of Mr McCarthy and Mr Camilleri is that the payments were kept secret from RailCorp.

The relevant RailCorp code of conduct applied to RailCorp employees and RailCorp contractors and contained a section dealing with conflicts of interest. It provided that a conflict of interest exists where a personal interest influences, or could be perceived to influence, the carrying out of duties and requires that a written disclosure must be made "if a private interest conflicts, could influence or may appear to conflict" with a person's RailCorp responsibilities. The Commission is satisfied that the payments made by Mr McCarthy constituted at the very least a perceived conflict of interest and should have been reported by both Mr McCarthy and Mr Camilleri. Neither did so.

Although Mr McCarthy knew RailCorp had a code of conduct, he said he had never seen it or had any training on its provisions. He was, nevertheless, aware of the concept of a conflict of interest and was aware that UGL had its own conflict of interest policy, which covered both actual and perceived conflicts of interest. He understood the basis of such policies was to ensure transparency and a level playing field. He agreed that, in his dealings with RailCorp, he would not want to do things that would be perceived as a conflict of interest and that, if such a



perceived conflict arose, it should be disclosed.

Mr McCarthy's understanding of the importance of avoiding potential conflicts is demonstrated by his decision to avoid having contact with Mr Camilleri during the L3C tender process because of their longstanding relationship. Mr McCarthy also conceded that, if he had lent money to Mr Camilleri during the L3C tender process, he would have disclosed that fact. He agreed that failure to do so would have been wrong. Despite this understanding, he did not make any disclosure, either to RailCorp or UGL, at the time he made the payments to Mr Camilleri and Ms Camilleri. He said this was because he did not believe the payments constituted a conflict of interest or a perceived conflict of interest because they were a personal loan between Mr Camilleri and him.

The Commission considers Mr McCarthy's reasoning to be disingenuous. He understood Mr Camilleri had an ongoing role in the administration of the L3C contract and would have understood that, at the very least, the payments he made to Mr Camilleri represented a perceived conflict of interest that he should have reported. Nor did he make any attempt to report a conflict or perceived conflict at the time he applied for a job with Sydney Trains. He disclosed the payments to RailCorp and UGL only after he became aware that Mr Camilleri had been dismissed for seeking money from RailCorp employees and contractors. The Commission is satisfied that Mr McCarthy made a deliberate decision to not disclose to RailCorp or UGL that he had made payments to Mr Camilleri. He made this decision because he wanted to keep the payments secret. His desire for secrecy is consistent with an appreciation on his part that the payments could be used to incline Mr Camilleri to exercise his public official functions in a way favourable to Mr McCarthy's interests.

The Commission is satisfied that, between October 2012 and February 2013, Mr McCarthy provided \$428,000 to Mr Camilleri or Ms Camilleri at Mr Camilleri's request, for the purpose of influencing Mr Camilleri to exercise his official RailCorp functions in Mr McCarthy's favour.

Mr Camilleri was familiar with the obligations imposed on him by the RailCorp code of conduct. This includes the obligation to declare actual and perceived conflicts of interest. During the tender process for the L3C contract, Mr Camilleri formally disclosed the fact that he was a referee for an employee of a bidder. He also sought advice from the RailCorp L3C tender probity officer as to the appropriate declarations to make concerning his association with persons bidding for the L3C contract. This behaviour is consistent with his understanding of the importance of declaring actual or perceived conflicts of interest.

Mr Camilleri told the Commission that he did not disclose

payments from Mr McCarthy to RailCorp as he believed that a conflict of interest did not arise because the money came from Mr McCarthy and not UGL. Even so, Mr Camilleri said that he would not have requested money from Mr McCarthy during the L3C tender process due to the creation of an adverse perception. Later in his evidence, Mr Camilleri conceded that, in hindsight, the failure to disclose the payments from Mr McCarthy was probably improper as a conflict did arise. He acknowledged that this impropriety derived from the perception that he would not be able to make impartial decisions in respect to Mr McCarthy. At the time of the loans, Mr Camilleri would have expected to make decisions in the future concerning Mr McCarthy and UGL. This may have involved the continuing administration of the L3C contract or other business opportunities.

The Commission is satisfied that, at all times, Mr Camilleri knew that he had an obligation to disclose the payments from Mr McCarthy. The Commission is satisfied that Mr Camilleri deliberately refrained from declaring the conflict of interest that arose from the payments made by Mr McCarthy despite knowing that he had a duty to do so. The Commission is satisfied that he refrained from reporting the conflict because he wanted to keep the payments secret.

The Commission rejects Mr Camilleri's evidence that the payments were merely loans between friends. Although Mr Camilleri had known Mr McCarthy for a number of years, they did not socialise outside the work environment. Mr Camilleri did not consider it necessary to declare his relationship with Mr McCarthy during the course of the L3C tender process. There is nothing in the evidence to suggest that their relationship was such that one would provide the other with \$428,000 merely because of the nature of their personal relationship.

Mr Camilleri knew that the payments were related to his position at RailCorp rather than being purely personal. Mr Camilleri made a handwritten list of persons who lent him money. One part of the list was headed "Work" and contained names of RailCorp employees. A second list detailed the names of RailCorp contractors, including Mr McCarthy. This second list was originally headed "Work Related" but the word "Work" was substituted with the word "Other", such that it was then titled "Other Related". Mr Camilleri gave no reason for the title change other than to say that it was his preferred title. The original title indicates that Mr Camilleri understood that the payments from RailCorp contractors were related to his work at RailCorp.

At the time Mr Camilleri was obtaining money from Mr McCarthy, he had exhausted his own funds, including cash reserves and work leave entitlements. He was also heavily indebted to other persons for amounts far exceeding his

capacity to repay. The Commission has already determined that he did not have an expectation that the windfall promised by his daughter would eventuate. Mr Camilleri referred Mr McCarthy to financial contingencies that would ensure his capacity to repay the loans. These included Mr Camilleri accessing his superannuation or selling his house. These representations may have satisfied Mr McCarthy, but Mr Camilleri knew that these representations were hollow given the extent of his debts. This is demonstrated by the fact that, when Mr Camilleri sold his house after Mr McCarthy commenced legal proceedings to get his money back, Mr McCarthy received only \$50,000. Mr Camilleri's superannuation entitlements were also several years from realisation.

By continuing to obtain money from Mr McCarthy, Mr Camilleri knew that he was placing himself in a financial position from which he could not extricate himself. He was doing so while working as a senior manager at RailCorp. Mr Camilleri was able, and knew he was able, to use his position and stature as a RailCorp senior manager to Mr McCarthy's advantage. He would have known that Mr McCarthy would also have understood this to be the case. Due to his personality and stature, Mr Camilleri was a person of great influence at RailCorp. He was influential in the continuing administration of the L3C contract. He was also in a position of influence with respect to the then ongoing restructure of RailCorp.

Given the size of the debt and his inability to repay, Mr Camilleri would have been aware that he had to rely on the clemency of Mr McCarthy not to disclose to RailCorp the fact of the payments or to commence legal proceedings to recover his money. Disclosure to RailCorp, in circumstances where he had deliberately refrained from declaring the payments in accordance with the RailCorp code of conduct, could have resulted in disciplinary proceedings being taken against Mr Camilleri and his dismissal. The commencement of legal proceedings to recover Mr McCarthy's money would have placed Mr Camilleri under further financial burden and would have been likely to expose his dealings with Mr McCarthy to RailCorp.

The Commission is satisfied that, between October 2012 and February 2013, Mr Camilleri solicited and received \$428,000 from Mr McCarthy, a person he knew to be employed by a RailCorp contractor. He was able to do so because of his position at RailCorp. Mr Camilleri knew at the times he solicited and received the payments of money that they were intended to influence him to exercise his official functions in favour of Mr McCarthy.

## Corrupt conduct – Kevin McCarthy

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

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of s 8(1) 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) of the ICAC Act.

In the case of subsection 9(1)(a), the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence.

Mr McCarthy's conduct in providing \$428,000 to Mr Camilleri or Ms Camilleri at Mr Camilleri's request, between October 2012 and February 2013, for the purpose of influencing Mr Camilleri to exercise his official functions in Mr McCarthy's favour, is corrupt conduct for the purposes of the ICAC Act. This is because his conduct is conduct that could have adversely affected, either directly or indirectly, the honest or impartial exercise of Mr Camilleri's official RailCorp functions and therefore comes within s 8(1)(a) of the ICAC Act. It is also conduct that could have adversely affected, either directly or indirectly, the exercise of Mr Camilleri's official RailCorp functions and could involve bribery or offering secret commissions and therefore comes within s 8(2)(b) and s 8(2)(d) of the ICAC Act.

For the purposes of s 9(1)(a) of the ICAC Act, it is relevant to consider s 249B(2) of the Crimes Act 1900 ("the Crimes Act"). That section provides that:

- (2) *If any person corruptly gives or offers to give to any agent, or to any other person with the consent or at the request of any agent, any benefit:*
  - (a) *as an inducement or reward for or otherwise on account of the agent's:*
    - (i) *doing or not doing something, or having done or not having done something, or*
    - (ii) *showing or not showing, or having shown or not having shown, favour or disfavour to any person,*
  - in relation to the affairs or business of the agent's principal, or*
  - (b) *the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,*

*the first mentioned person is liable to imprisonment for 7 years.*

In this matter, Mr Camilleri was, at the relevant time, an agent of RailCorp.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr McCarthy has committed criminal offences under s 249B(2) of the Crimes Act of corruptly giving a benefit the receipt of which would tend to influence Mr Camilleri to show favour to Mr McCarthy in relation to the affairs of RailCorp.

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

### Corrupt conduct – Joseph Camilleri

Mr Camilleri's conduct in soliciting and receiving \$428,000 from Mr McCarthy between October 2012 and February 2013, the receipt of which Mr Camilleri knew would tend to influence him to exercise his official functions in favour of Mr McCarthy is corrupt conduct for the purposes of the ICAC Act. This is because it is conduct that could have adversely affected, either directly or indirectly, Mr Camilleri's honest and impartial exercise of his official functions and therefore comes within s 8(1)(a) of the ICAC Act. It is also conduct that constitutes or involves a breach of public trust and therefore comes within s 8(1)(c) of the ICAC Act.

For the purpose of s 9(1)(a) of the ICAC Act, it is relevant to consider s 249B(1) of the Crimes Act. That section provides that:

- (1) *If any agent corruptly receives or solicits (or corruptly agrees to receive or solicit) from another person for the agent or for anyone else any benefit:*
- (a) *as an inducement or reward for or otherwise on account of:*
    - (i) *doing or not doing something, or having done or not having done something, or*
    - (ii) *showing or not showing, or having shown or not having shown, favour or disfavour to any person,*
  - in relation to the affairs or business of the agent's principal, or*
  - (b) *the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,*

*the agent is liable to imprisonment for 7 years.*

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Camilleri has committed criminal offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving a benefit the receipt of which would tend to influence Mr Camilleri to show favour to Mr McCarthy in relation to the affairs of RailCorp.

For the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act it is also relevant to consider chapter 9 of the RailCorp code of conduct. It provides that a RailCorp employee must not seek any gifts or benefits from any person or organisation. Mr Camilleri's acceptance of the payments made by Mr McCarthy was clearly a benefit.

The Commission is satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the requisite standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Camilleri has engaged in the disciplinary offence of misconduct constituting reasonable grounds for his dismissal.

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

### 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 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.

## Mr Camilleri

Mr Camilleri gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

There is, however, other admissible evidence that would be available. This includes RailCorp records, email correspondence, banking records, other documentary evidence and, potentially, the evidence of Mr McCarthy.

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 Camilleri for criminal offences of corruptly soliciting or receiving a benefit under s 249B(1) of the Crimes Act.

## Mr McCarthy

Mr McCarthy gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

There is, however, other admissible evidence that would be available. This includes RailCorp records, UGL records, email correspondence, banking records and other documentary evidence.

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 McCarthy for criminal offences of corruptly giving a benefit under s 249B(2) of the Crimes Act.

## Mr Camilleri and Mr Coleman

Mr Coleman first met Mr Camilleri in 1982, when they both worked for the then State Rail Authority. They developed a friendship, although they had limited contact after Mr Coleman left in 1993 to work in the private sector. From 2003, Mr Coleman undertook part-time contract work for various contractors in the railway industry. By 2012, he had effectively retired but took on some consulting work for an American-based company.

On eight separate occasions, from November 2012 to June 2013, Mr Coleman lent a total of \$82,000 to Mr Camilleri. The funds came from Mr Coleman's retirement savings. Mr Camilleri repaid part of this amount to Mr Coleman in January 2013.

Mr Coleman told the Commission that, prior to 2012, he had not spoken to Mr Camilleri for seven years. In about August 2012, Mr Coleman became aware of "rumours"

that "some railway employees" were unhappy with a machine he (Mr Coleman) had assisted to install at the RailCorp Waratah depot. Mr Coleman wanted to find out if there was a problem with the machine and also to protect his reputation if there was a problem. As there had been a restructure of the railway organisation since the machine had been installed, Mr Coleman was unsure who he should speak to at RailCorp about the matter. Sometime in August 2012, he contacted Mr Camilleri to ascertain who at RailCorp he should speak to about the machine. There is no evidence that Mr Coleman sought any other assistance from Mr Camilleri with respect to the machine. Mr Camilleri did not, at this stage, provide him with any information or take any other action in relation to Mr Coleman's request.

The next contact Mr Coleman had with Mr Camilleri was on 15 November 2012. Mr Coleman told the Commission that Mr Camilleri telephoned him and asked to borrow \$10,000. The reasons given by Mr Camilleri for wanting the money were vague. Mr Coleman understood Mr Camilleri needed money to get his daughter out of trouble arising from an identity fraud and that banks required money before funds could be released to Ms Camilleri. Mr Coleman agreed to lend \$6,000, but only for a short period of time. Mr Camilleri told him the money would be repaid in two or three weeks at the most.

Mr Coleman told the Commission he agreed to lend the money because "Joe and I do go back a fair way, [I] hadn't heard from him for a long time, yes, the guy's in trouble ... during our working relationship we dragged each other out of a hole that many times in the workplace it wasn't funny". There was no discussion on this occasion about the machine at the Waratah depot or Mr Coleman's previous request for information about who to contact regarding the machine.

On 17 November 2012, Mr Camilleri telephoned Mr Coleman and asked for more money. Once again, the information he gave Mr Coleman was vague. There was mention of a deadline for payment having been missed and more money being needed. Although Mr Coleman thought what he was told was "gibberish", he agreed to lend Mr Camilleri a further \$15,000.

Mr Coleman was contacted again by Mr Camilleri on 19 November 2012. Mr Camilleri said that his solicitor had "stuffed up" and that another deadline had been missed. Although Mr Coleman agreed to provide a further \$17,000, he told Mr Camilleri that he wanted to meet the solicitor to find out what was happening. There was, of course, no solicitor and therefore Mr Camilleri was unable to organise any meeting.

On 22 November 2012, Mr Camilleri asked for more money. Mr Coleman threatened to take legal action if he



did not get his money back. According to Mr Coleman, Mr Camilleri then broke down in tears and told him that if Mr Coleman commenced legal action to recover his money the banks would not release the money due to Ms Camilleri. Mr Coleman thought this explanation was plausible and provided Mr Camilleri with a further \$5,000. Mr Camilleri contacted Mr Coleman again on 27 November 2012 and successfully solicited a further \$6,000 from Mr Coleman. Mr Camilleri gave a similar explanation to the ones given on the previous occasions.

On 3 January 2013, Mr Camilleri contacted Mr Coleman and asked for more money because another deadline had been missed. Mr Coleman provided \$8,000. By this point in time, Mr Coleman had provided Mr Camilleri with \$57,000.

On 27 March 2013, Mr Coleman agreed to lend Mr Camilleri a further \$5,000. By this time, he knew that RailCorp had dismissed Mr Camilleri for borrowing money. Mr Coleman said that he lent the \$5,000 because “the problem had to be pretty great for him to borrow money and put his neck on the line”. Mr Coleman also said that Mr Camilleri was “at the end of his tether and I couldn’t help but help”.

Following a further request for money, Mr Coleman transferred \$20,000 to Mr Camilleri. By this stage, Mr Coleman had received some repayment of his previous loans.

None of the evidence above was disputed by Mr Camilleri.

### **Mr Coleman’s reason for providing money**

Mr Coleman clearly had doubts about the explanations Mr Camilleri proffered for needing money. His evidence is, however, that he made the payments initially because of their previous friendship and, later, because he felt sorry for Mr Camilleri.

Mr Coleman had sought Mr Camilleri’s assistance so that he could contact someone within RailCorp to ascertain whether there were problems with the machine he had helped to install at the Waratah depot. There was nothing wrong with this approach and there is no evidence that Mr Coleman asked Mr Camilleri to do anything with respect to the machine. Indeed, at the time Mr Coleman approached Mr Camilleri, he did not know whether there was in fact a problem with the machine or the nature of any problem.

Mr Camilleri did not take any action when the request was made in August 2012. At some point after 15 November 2012, during one or more discussions in which Mr Camilleri sought money from him, Mr Coleman reminded Mr Camilleri that he wanted to speak with someone at

RailCorp about the machine at the Waratah depot. There is no evidence that Mr Coleman asked Mr Camilleri to undertake any enquiries of his own or to otherwise involve himself in the matter.

There is some evidence that, when Mr Coleman eventually did meet other RailCorp employees to discuss the machine, he provided them with a copy of his curriculum vitae and suggested that, if any work came up, the company for which he did consulting work might be interested. He told the Commission he provided his curriculum vitae so that the RailCorp employees would understand his background when discussing the machine. He denied that, in the event there was a problem with the machine, he was interested in being engaged to fix it and told the Commission he did not consider he had either the capacity or capability to fix it. In his evidence to the Commission, Mr Camilleri initially accepted the proposition that Mr Coleman was seeking potential work with RailCorp. He later claimed that Mr Coleman had not expressed any interest in obtaining RailCorp work although he agreed that, once Mr Coleman was placed in contact with the relevant RailCorp employees, there was a potential for him to get some work.

The Commission is not satisfied that Mr Coleman at any stage expressed an interest to Mr Camilleri in obtaining work with RailCorp. The Commission accepts his evidence that his purpose in approaching Mr Camilleri was to find out who he could speak with to ascertain whether there was a problem with the Waratah depot machine. The Commission also accepts that his primary purpose for wanting to ascertain whether there was a problem was to protect his reputation.

In considering Mr Coleman’s motivation for providing money to Mr Camilleri, it is relevant to take into account that he continued to make payments to Mr Camilleri after he was aware Mr Camilleri had been dismissed from RailCorp for borrowing money. These payments were made at a time when Mr Coleman knew that Mr Camilleri was no longer able to exercise any public official functions and also at a time when he would have had real doubt as to the prospect of repayment.

The Commission is not satisfied that Mr Coleman made payments to Mr Camilleri for the purpose of influencing Mr Camilleri to exercise his official RailCorp functions in a manner favourable to Mr Coleman.

### **Mr Camilleri’s reason for requesting money**

Although Mr Coleman sought Mr Camilleri’s assistance in August 2012, it was not until sometime after he started receiving money from Mr Coleman that Mr Camilleri did anything about Mr Coleman’s request.

The first evidence of any action taken by Mr Camilleri is an email dated 22 November 2012 between two RailCorp employees in which reference is made to Mr Camilleri having asked one of the RailCorp employees to pass on Mr Coleman's telephone number to the RailCorp person responsible for the relevant area. This email is dated some days after Mr Camilleri's first approach to Mr Coleman for money. Mr Camilleri agreed that he passed on Mr Coleman's details only after he had succeeded in borrowing money from him. He denied that he passed on Mr Coleman's details because he had received money from Mr Coleman.

Mr Camilleri was a person of influence at RailCorp. He had the ability to use his influence to assist Mr Coleman. This is shown by his referral of Mr Coleman to other RailCorp employees and their timely response to the referral, which resulted in a meeting with Mr Coleman on 30 November 2012. This indicates that Mr Camilleri was prepared to exercise his public official functions for the purpose of assisting Mr Coleman at a time when he was seeking and obtaining money from Mr Coleman. He also understood, whether rightly or wrongly, that once Mr Coleman had spoken with the relevant RailCorp employees Mr Coleman could potentially benefit by arranging for some work opportunities.

Apart from Mr Coleman's approach to him in August 2012, there had been little contact between Mr Camilleri and Mr Coleman in the years prior to November 2012. Mr Camilleri told the Commission that he had not thought of asking Mr Coleman for money until after Mr Coleman contacted him. This strongly suggests that Mr Camilleri sought to obtain money from Mr Coleman only after he became aware that Mr Coleman needed his assistance as a public official.

In assessing Mr Camilleri's conduct, the Commission also takes into account that, although Mr Camilleri understood the need to report any actual or perceived conflict of interest, he deliberately refrained from making any disclosure concerning his financial dealings with Mr Coleman. The Commission is satisfied this is because he wanted to keep those dealings secret. Mr Camilleri also knew that he had little prospect of repaying Mr Coleman all of the money he borrowed. His financial dealings with Mr Coleman placed him under an obligation to Mr Coleman in circumstances where Mr Camilleri knew he could, and in fact did, exercise his official functions to favour Mr Coleman.

The Commission is satisfied that, between November 2012 and January 2013, Mr Camilleri solicited \$57,000 from Mr Coleman, a person he knew to be seeking his assistance as a public official to contact other RailCorp employees and who he believed might also obtain RailCorp work as a result of making such contact. Mr Camilleri

knew at the times he sought the money that he was placing himself under a considerable obligation to Mr Coleman, and that such an obligation would incline Mr Camilleri to exercise his public official functions in a way favourable to Mr Coleman. As a result of receiving some of this money, he did in fact exercise his public official functions to place Mr Coleman in contact with other RailCorp employees.

### **Corrupt conduct – Joseph Camilleri**

Mr Camilleri's conduct in soliciting and receiving \$57,000 from Mr Coleman between November 2012 and January 2013, the receipt of which Mr Camilleri knew would tend to influence him to exercise his official functions in favour of Mr Coleman, and which did influence him to favour Mr Coleman by placing him in contact with other RailCorp employees, is corrupt conduct for the purposes of the ICAC Act. This is because it is conduct that adversely affected or could have adversely affected, either directly or indirectly, Mr Camilleri's honest and impartial exercise of his official functions and therefore comes within s 8(1)(a) of the ICAC Act. It is also conduct that constitutes or involves a breach of public trust and therefore comes within s 8(1)(c) of the ICAC Act.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Camilleri has committed criminal offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving a benefit the receipt of which would tend to influence him to show favour to Mr Coleman in relation to the affairs of RailCorp.

The Commission is satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the requisite standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Camilleri has engaged in the disciplinary offence of misconduct constituting reasonable grounds for his dismissal, such misconduct being based on a breach of the RailCorp code of conduct provisions forbidding the soliciting of gifts or benefits.

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

### **Section 74A(2) statements**

The Commission is satisfied that Mr Camilleri and Mr Coleman are "affected" persons for the purposes of s 74(2) of the ICAC Act.

## Mr Camilleri

Mr Camilleri gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

There is, however, other admissible evidence that would be available. This includes RailCorp records, email correspondence, banking records and the evidence of Mr Coleman.

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 Camilleri for criminal offences of corruptly soliciting or receiving a benefit under s 249B(1) of the Crimes Act.

## Mr Coleman

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Coleman for any criminal offences.

## Mr Camilleri and Mr Courtman

Until his dismissal in early 2013, Mr Courtman was an employee with the consulting company Third Horizon Consulting Partners ("Third Horizon"). On 13 August 2012, Mr Courtman provided Mr Camilleri with \$3,000. Mr Camilleri repaid him \$1,000 in March 2013.

Mr Courtman told the Commission that he worked for RailCorp from 2008 until early 2011. During this period, he worked with Mr Camilleri on maintenance reform as a junior employee. Though they did not socialise outside work, Mr Courtman said that he considered Mr Camilleri "a mate" who was very supportive and who, at times, provided Mr Courtman with guidance. In 2011, Mr Courtman became aware that Mr Camilleri's daughter was involved in a legal case arising from a mobile telephone debt fraudulently incurred in her name. Mr Camilleri also disclosed to Mr Courtman that he had cashed in his long service leave and annual leave to obtain funds for the legal case.

Mr Courtman said that he had no interaction with Mr Camilleri between the time he left RailCorp in 2011 and April 2012. In early April 2012, Mr Courtman and Mr Camilleri entered into a course of email correspondence concerning potential opportunities for Third Horizon with RailCorp. A meeting between them was held on 4 April 2012.

On 17 April 2012, Mr Courtman sent Mr Camilleri an email setting out an overview of Third Horizon's capabilities and the work it could do for RailCorp. Further

email communications concerning opportunities for Third Horizon were sent between Mr Camilleri and Mr Courtman in late May 2012.

On 9 August 2012, Mr Courtman and his manager at Third Horizon arranged to meet with Mr Camilleri on 15 August 2012 to discuss opportunities for Third Horizon to undertake work for RailCorp.

Mr Courtman said that on 13 August 2012 Mr Camilleri called him in a distressed state. Mr Camilleri asked him for a personal favour as he urgently needed some money to pay legal fees involving his daughter. Mr Camilleri then asked for a loan of \$10,000. Mr Courtman said that he could not afford \$10,000 but arranged to lend Mr Camilleri \$3,000.

Mr Courtman told the Commission that he recalled the meeting on 15 August 2012 between him, his manager and Mr Camilleri. At the meeting, Mr Courtman's manager spoke at length about Third Horizon's experience and Mr Camilleri said that he would be happy to nominate Third Horizon to be placed on a RailCorp panel for future work.

On 23 August 2012, a RailCorp employee forwarded an email to Mr Camilleri with a list of the seven entities that would be approached for a tender for a benchmarking project. Third Horizon was not on the list. The next day, Mr Camilleri sent an email to a RailCorp staff member asking to "please include Third Horizon on the tender". No reason or explanation was given for this request. By 30 August 2012, Third Horizon was included on the benchmarking project tender panel and invited to tender. Mr Courtman told the Commission that he did not have any knowledge of these internal RailCorp communications.

On 17 September 2012, Third Horizon withdrew from the benchmarking project tender process, prior to submitting a tender, on the basis that other organisations were in a better position to provide the services RailCorp required.

Mr Courtman was concerned about Mr Camilleri's reaction to Third Horizon's withdrawal and contacted him. In an email Mr Courtman sent to other Third Horizon employees on 18 September 2012, he advised that Mr Camilleri was happy and had foreshadowed to Mr Courtman that a tender process for the position of program manager and analytical support was to be undertaken by RailCorp. This information was not in the public domain at that time. Mr Camilleri also told Mr Courtman that Third Horizon would be invited to submit a tender.

On 26 September 2012, Third Horizon was invited to tender for the program manager's contract. Ultimately, Third Horizon was successful in this tender; although, Mr Camilleri does not appear to have had any role in this decision.

Mr Camilleri did not dispute Mr Courtman's evidence about these matters.

### **Mr Courtman's intention**

Mr Courtman claimed that the \$3,000 loan was a personal matter and he did not make a link between the loan and Third Horizon's tender for contracts with RailCorp. He stated that, shortly after Third Horizon was invited to tender, he reflected on his position and formed a belief that he would have to declare a conflict of interest only if Mr Camilleri was appointed as panel convenor of the project manager contract. As Mr Camilleri was not appointed panel convenor, Mr Courtman did not consider that it was necessary to declare any conflict of interest.

Mr Courtman did not disclose the fact of the payment to his manager at Third Horizon. He said that he took the view that, unless Mr Camilleri was a decision-maker, a conflict did not arise. During his evidence before the Commission, Mr Courtman acknowledged that such a conflict did arise.

Mr Courtman told the Commission that part of his role at Third Horizon was to develop and foster good working relationships with people at entities such as RailCorp, to take advantage of any opportunities for Third Horizon. It was in his interests to ensure that Third Horizon obtained a favourable hearing from Mr Camilleri with a view to getting RailCorp work. He knew that Mr Camilleri was an influential person at RailCorp who was able to assist Third Horizon in procuring RailCorp work. It was clearly Mr Courtman's intention to establish and maintain good relations with Mr Camilleri. Mr Courtman provided \$3,000 to Mr Camilleri two days prior to Mr Courtman and his manager meeting with Mr Camilleri in order to advance Third Horizon's prospects of getting work with RailCorp. This payment had the potential to influence Mr Camilleri in his future decision-making with respect to Third Horizon. The Commission is satisfied this was understood by Mr Courtman. This potential was realised shortly afterwards when Mr Camilleri ensured that Third Horizon was added to the benchmarking tender panel list. This was done even though Third Horizon was not best suited to provide the required service. Mr Camilleri also disclosed the fact of another RailCorp tender to Mr Courtman before this information was publicly available.

Mr Camilleri and Mr Courtman previously worked together at RailCorp. Although Mr Courtman claimed that Mr Camilleri was a mate, they did not socialise outside work. They had no contact in the three years prior to 2012. In these circumstances, the loan could not reasonably be characterised as a personal financial matter between friends.

### **Corrupt conduct – Anthony Courtman**

The Commission is satisfied that Mr Courtman provided Mr Camilleri with \$3,000 on 13 August 2012 for the purpose of influencing Mr Camilleri to exercise his official functions in Mr Courtman's favour. Such conduct is corrupt conduct for the purposes of the ICAC Act. This is because it is conduct that adversely affected or could have adversely affected, either directly or indirectly, the honest or impartial exercise of Mr Camilleri's official functions and therefore comes within s 8(1)(a) of the ICAC Act. It is also conduct that adversely affected or could have adversely affected, either directly or indirectly, the exercise of Mr Camilleri's official functions and could involve bribery or offering secret commissions and therefore comes within s 8(2)(b) and s 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Courtman has committed a criminal offence under s 249B(2) of the Crimes Act of corruptly giving a benefit the receipt of which would tend to influence Mr Camilleri to show favour to Mr Courtman in relation to the affairs of RailCorp.

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

### **Corrupt conduct – Joseph Camilleri**

In August 2012, Mr Camilleri arranged for a meeting with Mr Courtman and another Third Horizon staff member. Mr Camilleri knew that Mr Courtman worked for Third Horizon and knew that Third Horizon was seeking RailCorp work at the time. Two days before the meeting, Mr Camilleri solicited \$3,000 from Mr Courtman. The meeting took place and, eight days later, Mr Camilleri arranged for Third Horizon to be included on a tender panel for the benchmarking project. A short time later, Third Horizon declined to submit a tender for the benchmarking project on the basis that its limited prospects of winning that particular tender did not justify the resources required to compile an application. Upon learning of Third Horizon's withdrawal from the tender panel, Mr Camilleri then passed on information to Mr Courtman that another tender was imminent. The timing of these events suggests that Mr Camilleri was influenced by Mr Courtman's payment of \$3,000 to favour Mr Courtman and his interests.

Mr Camilleri denied that he exploited Mr Courtman's desire to obtain RailCorp work on behalf of Third Horizon



to extract funds from him. He initially said that he did not contact Mr Courtman for funds until 13 August 2012 because he did not have his contact details prior to that time. This is inconsistent with the email correspondence between Mr Courtman and Mr Camilleri commencing as early as April 2012. Mr Camilleri acknowledged that the circumstances of his solicitation of money created a perception that he favoured Mr Courtman. He claimed, however, that his nomination of Third Horizon for the benchmarking project was legitimate, as it was his role as the subject matter expert to assist the tender process by making such nominations. The Commission does not accept this claim. Mr Camilleri was briefed by Mr Courtman and his manager on Third Horizon's capabilities just eight days prior to arranging for it to be placed on the benchmarking project tender panel. As an expert in the area, Mr Camilleri must have known that Third Horizon was not suitable for the project given that they eventually did not consider it worthwhile to even submit a tender.

Mr Camilleri sought money from Mr Courtman in contravention of the RailCorp code of conduct, which prohibited the seeking of benefits from RailCorp contractors. Mr Camilleri also failed to declare any conflict of interest that arose with respect to the payment from Mr Courtman, a conflict that arose because Mr Courtman and Third Horizon were likely to enter into contractual arrangements with RailCorp in the future. The Commission is satisfied that Mr Camilleri deliberately failed to declare the conflict of interest because he wished to keep his financial dealings with Mr Courtman a secret from RailCorp.

Mr Camilleri's conduct in soliciting and receiving \$3,000 from Mr Courtman on 13 August 2012, the receipt of which Mr Camilleri knew would tend to influence him to exercise his official functions in favour of Mr Courtman, and which did influence him to favour Mr Courtman by including Third Horizon on a tender panel and alerting Mr Courtman to the fact of an imminent tender, is corrupt conduct for the purposes of the ICAC Act. This is because it is conduct that adversely affected or could have adversely affected, either directly or indirectly Mr Camilleri's honest and impartial exercise of his official functions and therefore comes within s 8(1)(a) of the ICAC Act. It is also conduct that constitutes or involves a breach of public trust and therefore comes within s 8(1)(c) of the ICAC Act.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Camilleri has committed a criminal offence under s 249B(1) of the Crimes Act of corruptly soliciting or receiving a benefit the receipt of which would

tend to influence him to show favour to Mr Courtman in relation to the affairs of RailCorp.

The Commission is satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the requisite standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Camilleri has engaged in the disciplinary offence of misconduct constituting reasonable grounds for his dismissal, such misconduct being based on a breach of the RailCorp code of conduct provisions forbidding the soliciting of gifts or benefits.

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

## Section 74A(2) statements

The Commission is satisfied that Mr Camilleri and Mr Courtman are "affected" persons for the purposes of s 74A(2) of the ICAC Act.

### Mr Camilleri

Mr Camilleri gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

There is, however, other admissible evidence that would be available. This includes RailCorp records, email correspondence, banking records, other documentary evidence and, potentially, the evidence of Mr Courtman.

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 Camilleri for a criminal offence of corruptly soliciting or receiving a benefit under s 249B(1) of the Crimes Act.

### Mr Courtman

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Courtman for any criminal offences. In coming to this opinion, the Commission has had regard to the relatively small amount of money paid by Mr Courtman to Mr Camilleri and the frank nature of Mr Courtman's evidence about this matter.

## Mr Camilleri and Mr Rogers

From 2009 to 2011, Mr Rogers worked for a division at RailCorp in which Mr Camilleri was general manager. In 2012, Mr Rogers was a management consultant for Third

Horizon. In late 2012, Third Horizon won a RailCorp tender to provide a project manager. Mr Rogers undertook that role. On 14 February 2013, Mr Camilleri asked Mr Rogers for money. Mr Rogers refused to provide Mr Camilleri with any money.

Mr Rogers told the Commission that, on 14 February 2013, Mr Camilleri told him that he had a large number of legal bills that he needed to pay and that his daughter was involved. He further stated that someone had taken over her identity and that he had to pay lawyers for a legal proceeding that was going to conclude over the next few weeks or months. Mr Camilleri then indicated that he would pay Mr Rogers back upon receipt of the damages, which would be over \$1 million, and asked Mr Rogers for \$10,000.

Mr Rogers said that Mr Camilleri asked him about his personal finances and suggested that they both attend a bank to see what money Mr Rogers had available. Mr Rogers told Mr Camilleri that he had to discuss the matter with his wife. Mr Camilleri said that he should call his wife, as he needed the money urgently. Mr Rogers said that, under pressure from Mr Camilleri, he unsuccessfully attempted to call his wife. Mr Camilleri then left and said he would return after Mr Rogers had called his wife.

Mr Rogers told his line manager at RailCorp about Mr Camilleri's approach for money.

Mr Camilleri returned approximately 30 minutes later. Mr Camilleri asked Mr Rogers to follow him to the visual management room and then opened the conversation with, "Where is the cash?". Mr Rogers responded by saying, "You have compromised us and I am not giving you any cash". Mr Camilleri then said, "Where am I going to get the cash?" and "I need the cash". Mr Rogers repeated that he had been compromised. Mr Camilleri then said "Okay, this conversation did not happen". Mr Rogers took the last comment to mean that Mr Camilleri wanted Mr Rogers to act as though the meeting, and Mr Camilleri's request for money, had not taken place.

In his evidence, Mr Camilleri agreed with Mr Rogers' evidence; although, he recollected that Mr Rogers said, "I think you've compromised our position". Mr Camilleri then said, "That's fine if that's your view, leave it at that". When questioned as to his view on whether he had been compromised, Mr Camilleri said that he did not think much of it at the time as he was focused on where he was going to get money. Mr Camilleri said that he told Mr Rogers that "this conversation did not happen" as he wanted the meeting kept private because he was embarrassed that he had asked for money.

Mr Rogers reported the second conversation to his line manager, and shortly after reported the incident to Third Horizon.

By refusing to provide Mr Camilleri with any money, and reporting the matter to his RailCorp supervisor immediately, Mr Rogers acted appropriately.

## **Corrupt conduct – Joseph Camilleri**

Mr Rogers was employed at RailCorp under a consultancy contract with Third Horizon. He was employed in an area where Mr Camilleri was a senior manager. There is no suggestion that Mr Camilleri and Mr Rogers were close friends or had a personal relationship of such a nature that one would lend the other a substantial sum of money. Mr Camilleri approached Mr Rogers at a time when he could influence Mr Rogers' tenure at RailCorp, including by renewing, extending or terminating his consultancy contract. This influence could be exerted at the time of the solicitation as well as during Mr Rogers' ongoing work at RailCorp. Mr Rogers' decision on whether to accede to Mr Camilleri's request for \$10,000 could therefore impact on the exercise of Mr Camilleri's official functions as a RailCorp manager. This sentiment was articulated by Mr Rogers when he told Mr Camilleri that his solicitation of money compromised both of them.

Mr Camilleri's conduct in soliciting \$10,000 from Mr Rogers on 14 February 2013, the receipt of which Mr Camilleri knew would tend to influence him to exercise his official functions in favour of Mr Rogers is corrupt conduct for the purposes of the ICAC Act. This is because it is conduct that could have adversely affected, either directly or indirectly, Mr Camilleri's honest and impartial exercise of his official functions and therefore comes within s 8(1)(a) of the ICAC Act. It is also conduct that constitutes or involves a breach of public trust and therefore comes within s 8(1)(c) of the ICAC Act.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Camilleri has committed a criminal offence under s 249B(1) of the Crimes Act of corruptly soliciting a benefit the receipt of which would tend to influence him to show favour to Mr Rogers in relation to the affairs of RailCorp.

The Commission is satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the requisite standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Camilleri has engaged in the disciplinary offence of misconduct constituting reasonable grounds for his dismissal, such misconduct being based on a breach of the RailCorp code of conduct provisions forbidding the soliciting of gifts or benefits.

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

## Section 74A(2) statement

The Commission is satisfied that Mr Camilleri is an “affected” person for the purposes of s 74A(2) of the ICAC Act.

Mr Camilleri gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

There is, however, other admissible evidence that would be available. This includes RailCorp records, email correspondence and the evidence of Mr Rogers.

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 Camilleri for criminal offences of corruptly soliciting a benefit under s 249B(1) of the Crimes Act.

## Mr Camilleri and Mr Ross-Smith

Mr Ross-Smith was employed by a company that was successful in a bid to provide services to RailCorp. As part of that contract, in August 2010, Mr Ross-Smith took on a project support role at RailCorp. In August 2012, Mr Ross-Smith provided \$36,000 to Mr Camilleri.

In his project support role at RailCorp, Mr Ross-Smith reported to a RailCorp manager who, in turn, reported to Mr Camilleri. Mr Camilleri and Mr Ross-Smith had infrequent contact over the period of Mr Ross-Smith’s engagement. They did not otherwise socialise and Mr Ross-Smith did not consider that they were friends.

In early August 2012, Mr Ross-Smith’s contract with RailCorp was drawing to a close. He learnt around that time that a new role at Railcorp of project manager for inventory management, which would suit his skills, was being proposed for 2013.

On 8 August 2012, Mr Ross-Smith forwarded his curriculum vitae to Mr Camilleri for this new position. In the email, Mr Ross-Smith acknowledged that a procurement process might need to be undertaken. At that stage, the position had not been formally advertised.

Mr Ross-Smith told the Commission that, on 9 August 2012, Mr Camilleri attended Mr Ross-Smith’s work area. Mr Camilleri appeared to be in an agitated state and, after standing by Mr Ross-Smith’s manager’s desk for a short while, approached Mr Ross-Smith. Mr Camilleri asked Mr

Ross-Smith to join him in a meeting room. Mr Camilleri and Mr Ross-Smith then had an emotionally charged conversation during which Mr Camilleri cried. During the conversation, Mr Camilleri told Mr Ross-Smith that:

- he wanted “to ask something personal, this is nothing to do with work, you must please understand this is entirely between you and me”
- his daughter was in trouble, that she had her identity stolen by a girl who was a member of a gang that had been running up debts all over Australia and overseas.
- “they had welcomed this girl into their house and that some items of jewellery had gone missing”
- that he had exhausted all of his family means of raising money, including having a mortgage placed on his parents’ house
- his daughter might go to prison because the debts were huge and ASIO was brought in but they were not allowed to talk about it as ASIO required strict secrecy.

Mr Camilleri also mentioned that money had to be raised to pay bank and lawyers’ fees in order to get money released to Ms Camilleri. Mr Ross-Smith said that Mr Camilleri did not provide any specific information concerning the bank and lawyers’ fees.

At the time of the conversation, Mr Ross-Smith believed Mr Camilleri because he had observed Mr Camilleri’s deteriorating health over the previous 12 to 18 months, and had heard from other senior RailCorp staff about Mr Camilleri’s daughter’s issues. Mr Ross-Smith conceded, however, that elements of the story concerned him, such as the involvement of ASIO.

Mr Ross-Smith said that Mr Camilleri asked for “\$10,000 or \$11,000 and that would pay off all the fees and the money would be released tomorrow”. Mr Ross-Smith agreed to lend \$11,000 to Mr Camilleri, and they both walked to a nearby bank where Mr Ross-Smith transferred the money into Mr Camilleri’s account.

The next day, Mr Camilleri approached Mr Ross-Smith on three separate occasions for more money. Mr Ross-Smith transferred another \$25,000 to Mr Camilleri as a result of these approaches. On one of these occasions, Mr Camilleri called Mr Ross-Smith on his mobile telephone and had Mr Ross-Smith excuse himself from a boardroom meeting. Mr Camilleri told Mr Ross-Smith that “there was problem with his lawyer in Melbourne and he had fired his lawyer in Sydney”, and that he needed further funds. On another occasion at the bank, Mr Camilleri said to Mr Ross-Smith “that is the camera that caught the people or the girl who had stolen my daughter’s identity” and “I’ve borrowed millions but there are millions coming in”. Walking back

from the bank on the occasion of the last transfer of money, Mr Ross-Smith said to Mr Camilleri that “the probity auditor would have fun with this”.

On 15 August 2012, five days after the last transfer of money, Mr Camilleri forwarded Mr Ross-Smith’s curriculum vitae to two other RailCorp staff and stated: “Please find attached CV of the person I am bring [sic] on board to work with you on the Inventory Management Initiative”.

Also on 15 August 2012, Mr Ross-Smith forwarded an email to Mr Camilleri detailing RailCorp’s discretion to extend the period of his current role as project director and the payment increase that accompanied that extension.

On 23 August 2012, Mr Camilleri sent an email to a RailCorp employee stating that he was “hoping Mark [Ross-Smith] will start next week just sorting out a couple of issues”.

Mr Ross-Smith told the Commission that, in December 2012, Mr Camilleri approached him for more money. On this occasion, Mr Camilleri showed Mr Ross-Smith a letter purporting to be from the Commonwealth Bank. The letter advised that the Commonwealth Bank was holding two amounts of money totalling over \$90 million, which would be released in December 2012, but only if certain outstanding fees were paid first. Mr Ross-Smith said that Mr Camilleri told him that he had obtained the letter from his solicitor in Melbourne. Upon seeing that the amount of money that was supposedly going to be received by Mr Camilleri was over \$90 million, Mr Ross-Smith sat back in his chair and said “Joe, this is bullshit, mate”. He refused to provide Mr Camilleri with any further money.

Mr Camilleri told the Commission that, in general, he accepted the facts as stated by Mr Ross-Smith. Mr Camilleri said that he could not remember Mr Ross-Smith describing the content of the letter purportedly from the Commonwealth Bank as “bullshit”. He did recall Mr Ross-Smith picking out spelling errors in the letter and said that he responded by indicating that he did not know if the letter was true or not, but that that was the evidence available to him.

## **Corrupt conduct – Mark Ross-Smith**

Mr Ross-Smith was a contracted consultant at RailCorp. He sought opportunities to take up consultancy work with RailCorp. Mr Ross-Smith knew that Mr Camilleri, as the general manager for the area in which he worked, was influential in decisions affecting his future. This is supported by the fact that Mr Ross-Smith sent his curriculum vitae to Mr Camilleri upon learning of a new work opportunity at RailCorp. He would not have done so if he did not believe that Mr Camilleri was in a position to assist him.

Within two days of forwarding his curriculum vitae to Mr Camilleri, Mr Ross-Smith lent him \$36,000. Mr Ross-Smith told the Commission that he had previously undertaken the RailCorp probity and ethics course. He was, therefore, aware of the concept of conflict of interest and prohibitions on improper benefits. Mr Ross-Smith conceded that his loans created a conflict of interest that should have been declared in compliance with the RailCorp code of conduct. Mr Ross-Smith knew this at the time of the loans, as shown by his statement to Mr Camilleri on 10 August 2012, that “the probity auditor would have fun with this”. Mr Ross-Smith said that he did not declare the loans because he was overwhelmed by Mr Camilleri’s emotionally-charged story. This does not explain why Mr Ross-Smith did not make the necessary disclosure later, when he had had time to process its implications. His failure to disclose the loans is consistent with a desire to keep them a secret.

Mr Ross-Smith also acknowledged that the transfer of the money was a benefit to Mr Camilleri; although, he was reluctant to acknowledge that he knew this at the time of the loans. The Commission is satisfied that Mr Ross-Smith knew that he was providing a benefit to Mr Camilleri at the time he agreed to give him money.

Mr Ross-Smith and Mr Camilleri did not have a friendship or financial association that could explain loans totalling \$36,000.

The Commission is satisfied that, on 9 and 10 August 2012, Mr Ross-Smith provided Mr Camilleri with \$36,000 for the purpose of influencing Mr Camilleri to exercise his official functions in Mr Ross-Smith’s favour. Such conduct is corrupt conduct for the purposes of the ICAC Act. This is because it is conduct that adversely affected or could have adversely affected, either directly or indirectly, the honest or impartial exercise of Mr Camilleri’s official functions and therefore comes within s 8(1)(a) of the ICAC Act. It is also conduct that could have adversely affected, either directly or indirectly, the exercise of Mr Camilleri’s official functions and could involve bribery or offering secret commissions and therefore comes within s 8(2)(b) and s 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Ross-Smith has committed criminal offences under s 249B(2) of the Crimes Act of corruptly giving a benefit the receipt of which would tend to influence Mr Camilleri to show favour to Mr Ross-Smith in relation to the affairs of RailCorp.



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

### Corrupt conduct – Joseph Camilleri

As general manager of Mr Ross-Smith's work area, Mr Camilleri had influence, and knew he had influence, over future decisions affecting Mr Ross-Smith. Mr Camilleri sought money from Mr Ross-Smith knowing that Mr Ross-Smith wanted to take up a position of project manager for inventory management at RailCorp. Mr Camilleri had influence over who would be appointed to this position. Within one week of receiving \$36,000 from Mr Ross-Smith, Mr Camilleri indicated to other RailCorp staff his intention to appoint Mr Ross-Smith to the position.

Mr Camilleri sought money from Mr Ross-Smith in contravention of the RailCorp code of conduct, which prohibits the seeking of benefits from contractors. Mr Camilleri also failed to declare any conflict of interest that arose with respect to the payments from Mr Ross-Smith; a conflict that arose because Mr Camilleri would be involved in future decisions involving Mr Ross-Smith's consultancy at RailCorp, including any extension, renewal or termination of Mr Ross-Smith's employment contracts. The Commission is satisfied that Mr Camilleri deliberately failed to declare the conflict of interest because he wanted to keep secret from RailCorp the fact that he had borrowed money from Mr Ross-Smith.

Mr Camilleri's claim that the loan of money was based purely on the friendship he had with Mr Ross-Smith is rejected. The Commission accepts Mr Ross-Smith's evidence that he had only infrequent contact with Mr Camilleri and that they were not friends.

The Commission is satisfied that, in August 2012, Mr Camilleri solicited and received \$36,000 from Mr Ross-Smith as a reward or inducement for exercising his official functions in favour of Mr Ross-Smith and for showing such favour by arranging for Mr Ross-Smith to be contracted to RailCorp as a project manager.

Mr Camilleri's conduct in soliciting and receiving \$36,000 from Mr Ross-Smith between 9 and 10 August 2012, the receipt of which Mr Camilleri knew would tend to influence him to exercise his official functions in favour of Mr Ross-Smith, and which did influence him to exercise those functions to arrange for Mr Ross-Smith's engagement as a RailCorp project manager, is corrupt conduct for the purposes of the ICAC Act. This is because it is conduct that adversely affected or could have adversely affected, either directly or indirectly, Mr Camilleri's honest and impartial exercise of his official functions and therefore comes within s 8(1)(a) of the

ICAC Act. It also comes within s 8(1)(c) of the ICAC Act as it could constitute or involve a breach of public trust.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Camilleri has committed criminal offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving a benefit the receipt of which would tend to influence him to show favour to Mr Ross-Smith in relation to the affairs of RailCorp.

The Commission is satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the requisite standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Camilleri has engaged in the disciplinary offence of misconduct constituting reasonable grounds for his dismissal, such misconduct being based on a breach of the RailCorp code of conduct provisions forbidding the soliciting of gifts or benefits.

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

### Section 74A(2) statements

The Commission is satisfied that Mr Camilleri and Mr Ross-Smith are "affected" persons for the purposes of s 74A(2) of the ICAC Act.

#### Mr Camilleri

Mr Camilleri gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

There is, however, other admissible evidence that would be available. This includes RailCorp records, email correspondence, banking records, other documentary evidence and, potentially, the evidence of Mr Ross-Smith.

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 Camilleri for criminal offences of corruptly soliciting or receiving a benefit under s 249B(1) of the Crimes Act.

#### Mr Ross-Smith

Mr Ross-Smith gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this

declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

The Commission does not consider there is sufficient admissible evidence to support a criminal prosecution against Mr Ross-Smith. In the circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Ross-Smith for any criminal offence.

## Chapter 4: Soliciting money from RailCorp employees

This chapter examines the circumstances in which a number of RailCorp employees came to provide money to Mr Camilleri. Whether corrupt conduct arises on occasions when a public official borrows money from work colleagues depends on the circumstances in which the loan is sought or accepted. An important issue to determine in this regard is whether Mr Camilleri and those who provided him with money understood at the time that their conduct could adversely affect the exercise of Mr Camilleri's public official functions or could tend to influence him to show the lenders favour in carrying out his public official functions. This is because the definition of corrupt conduct in s 8 of the ICAC Act is directed at deliberate, and not inadvertent, conduct.

Mr Camilleri told the Commission that he did not think he was acting corruptly at the time he borrowed money from RailCorp employees. Several factors militate against accepting this evidence.

One factor to be taken into account is that in each case Mr Camilleri lied about the purpose for which he wanted the money. The fact that he was lying to his colleagues in order to obtain money undermines his claim that he believed that his conduct was appropriate.

Another factor to be taken into account is Mr Camilleri's senior position at RailCorp and the relatively junior positions of most of the staff from whom he solicited money. Mr Camilleri's substantive position was that of general manager, maintenance contract and commercial. In this role, he was the line manager for many RailCorp employees. In 2012, RailCorp was undergoing a reform process to split the organisation into separate entities. The reform was implemented to improve customer focus, efficiency and safety. During this period, Mr Camilleri was seconded to the reform team dedicated to designing the new organisation structure. Part of the reform process involved staff redundancies and some staff members having to re-apply for their positions.

In these circumstances, there was a potential for loans by junior staff members to tend to influence Mr Camilleri's exercise of his official functions to show favour or disfavour to those staff. Some staff reported directly to Mr Camilleri in his substantive role or as a member of the reform team. Depending on the outcome of the RailCorp reform, there was also the potential for Mr Camilleri to be the line manager for any RailCorp staff member.

In any of these situations, Mr Camilleri would make decisions that could directly affect the staff members who provided money to him, including by way of promotion, acting at higher duties or determining resourcing for an area where a staff member worked. All of these decisions would involve the exercise of Mr Camilleri's official duties. The Commission is satisfied that Mr Camilleri was well aware of these matters at the time he approached junior staff members for loans.

Mr Camilleri was a senior executive at RailCorp. He had been in the organisation for almost four decades and, a few years prior to 2012, he had been heavily involved in an earlier reform process involving the maintenance area at RailCorp. At the time of the loans in 2012, he knew the decisions that he would make in the reform process had the potential to affect the career development of subordinate RailCorp staff, irrespective of their position or work area at the time they provided money to him. In view of his long service and senior position, Mr Camilleri would also have been aware that other RailCorp staff knew of his influence and power at RailCorp. Mr Camilleri acknowledged that his solicitation of money from RailCorp staff created a conflict of interest; although, he claimed he was not aware of the conflict at the time of the loans.

Mr Camilleri was obliged by the RailCorp code of conduct to disclose the fact of the loans. If Mr Camilleri had made such disclosures, he would be in a stronger position to maintain that he did not intend to allow the loans to influence the exercise of his functions. This is because

RailCorp would have been in a position to manage the conflicts to ensure that they would not adversely interfere with Mr Camilleri's decision-making. RailCorp could do this by putting in place measures to ensure that Mr Camilleri was removed from any decision-making role affecting the lenders or, if he retained any such role, that it was monitored by senior RailCorp management. The RailCorp code of conduct outlines a process for declaring such conflicts of interest.

Mr Camilleri told the Commission that he thought that the code of conduct did not apply to his situation as the loans were personal and between friends. The Commission does not accept this reasoning. None of the persons who provided money to Mr Camilleri had any social engagement with him outside work. Their interaction with him was purely work related and, in some instances, it went no further than an employee–manager relationship. Mr Camilleri also had a reputation at RailCorp for not socialising with other RailCorp staff members.

Mr Camilleri asked his colleagues for immediate cash payments of between \$5,000 and \$40,000. Requests for such large amounts were completely at odds with the limited affiliation between Mr Camilleri and those RailCorp employees from whom he sought money. The Commission is satisfied that the loans solicited by Mr Camilleri were not made on a personal basis. The fact that Mr Camilleri did not declare the payments at the time they occurred is inconsistent with his reputation for integrity at RailCorp. The Commission is satisfied that Mr Camilleri did not declare the loans to RailCorp as he wanted to keep them secret. This is supported by the fact that Mr Camilleri often requested the person providing the loan to refrain from disclosing the fact of the loan to RailCorp.

Mr Camilleri said that he wanted the fact of his solicitation of loans kept secret because he was embarrassed by the fact that he was asking colleagues for money. In 2012, he asked for money from over 60 RailCorp staff members,

including executive and junior staff. That he asked so many people on an individual basis is inconsistent with his claimed desire for confidentiality. Mr Camilleri also downplayed the number of RailCorp staff members who lent him money during the initial RailCorp investigation, which suggests that Mr Camilleri knew that his conduct was inappropriate and contrary to the RailCorp code of conduct.

Mr Camilleri began to solicit money from RailCorp staff in early 2012, at a time when he had exhausted his personal wealth and cashed in his RailCorp leave entitlements. Mr Camilleri knew that he had limited prospects of repaying the large amounts of money he borrowed from RailCorp staff. He would have understood that he was placing himself under significant obligations to those who provided him with money and that those obligations could influence how he dealt with those persons in relation to their work at RailCorp.

## Mr Camilleri and Mr Vavayis

Theodore (Theo) Vavayis is manager of business operations at RailCorp. He provided \$2,000 to Mr Camilleri in July 2012. He was subsequently repaid by Mr Camilleri.

Mr Vavayis had been employed by RailCorp for the previous 29 years. In 2012, he worked in the same area at RailCorp as Mr Camilleri but not directly with him. Mr Vavayis said that the two of them did not interact socially and that he did not consider that they were friends.

Mr Vavayis told the Commission that he was given an opportunity to relieve as a RailCorp general manager for three weeks in July 2012. In this role, he reported directly to Mr Camilleri, who was acting as a RailCorp director. Mr Vavayis said that, during this period, he was offsite giving a presentation when he received a frantic voicemail message from Mr Camilleri. Mr Vavayis returned the



call soon after and Mr Camilleri told him that he needed approximately \$5,000 urgently, but did not give any further details. Mr Vavayis told Mr Camilleri that he had only \$2,000 available. Mr Camilleri said “that will do” and that Mr Vavayis should bring it to him urgently. Mr Camilleri told him that he should not “feel pressured” to provide the money.

Mr Vavayis said that he withdrew the money and made his way to the RailCorp office. He then handed the \$2,000 to Mr Camilleri. While he did not have a recollection of everything he was told, Mr Vavayis said that Mr Camilleri told him the reason he needed the money involved his daughter’s identity theft, that the “feds” were involved, and that the matter concerned international real estate. He said that Mr Camilleri was desperate and frantic at this time. Mr Camilleri also assured Mr Vavayis that the money would be repaid by the end of the week or at least by Christmas. Mr Camilleri told Mr Vavayis not to say anything about the transfer of the money and said that, if there were any issue, Mr Vavayis should come and see him.

In October 2012, Mr Camilleri again approached Mr Vavayis for money. On this occasion, Mr Camilleri said to Mr Vavayis, “I know I owe you two grand, you’ll get it, but I need 15”. Mr Vavayis refused to provide any money.

Shortly after this conversation, Mr Vavayis was asked by another RailCorp senior manager whether he had provided Mr Camilleri with money. Mr Vavayis said that he had.

Mr Camilleri did not dispute Mr Vavayis’ evidence.

### **Why did Mr Vavayis provide the money?**

At the time Mr Camilleri first approached him for money, Mr Vavayis was undertaking short-term higher duties, which Mr Vavayis saw as an opportunity to impress the senior RailCorp executive. Mr Vavayis knew that Mr Camilleri was in a position to influence his career at RailCorp.

Mr Vavayis told the Commission that he was intimidated by Mr Camilleri’s reputation at RailCorp. He said that Mr Camilleri was known as a “head kicker” and the “attack dog in the RailCorp maintenance area” for his aggressive approach to business. Mr Vavayis also described Mr Camilleri as “Mr Probity”, given Mr Camilleri’s then reputation for ethical behaviour. Mr Vavayis said that he did not report the matter as he was pressured by Mr Camilleri not to, he did not want to get Mr Camilleri in trouble and he did not have any proof of the transaction.

Mr Vavayis told the Commission that he gave the money to Mr Camilleri as he was pressured to act quickly and was not given a chance to consider what he was being told by Mr Camilleri. This is supported by Mr Vavayis’ refusal to provide more money when Mr Camilleri approached him on a subsequent occasion.

Mr Vavayis’ payment to Mr Camilleri may have been to his advantage. He was acting in a higher position and reported directly to Mr Camilleri. It is likely that Mr Camilleri would record, either formally or informally, Mr Vavayis’ performance in the role, which would have bearing on further opportunities being afforded to him. The circumstances of Mr Camilleri’s solicitation, however, do not suggest that Mr Vavayis provided money to Mr Camilleri with the intent to influence him.

Mr Vavayis was approached without advance warning and given little time to process the implications of the payment. Mr Vavayis saw Mr Camilleri as an assertive and strong-willed manager and appears to have been intimidated by him.

It is also significant that, although Mr Camilleri asked Mr Vavayis not to disclose the fact of his requests for money, Mr Vavayis disclosed the loan when asked by a senior RailCorp manager.

In the circumstances, the Commission is not satisfied that Mr Vavayis paid \$2,000 to Mr Camilleri for the purpose of influencing him to exercise his official functions in a manner favourable to Mr Vavayis.

### **Corrupt conduct – Joseph Camilleri**

Mr Camilleri approached Mr Vavayis for money knowing that Mr Vavayis was then undertaking higher duties. As Mr Vavayis’ direct manager, Mr Camilleri was influential, and knew he was influential, in decisions affecting Mr Vavayis’ employment prospects at RailCorp. This is likely to have included an assessment, whether formal or informal, of Mr Vavayis’ performance as general manager, which would affect Mr Vavayis’ employment prospects at RailCorp. Mr Camilleri’s influence in this regard was increased due to his involvement in the RailCorp reform process at that time.

Mr Camilleri put pressure on Mr Vavayis by claiming that the money was required immediately. This sense of urgency, combined with Mr Camilleri’s position as his direct manager, put pressure on Mr Vavayis to comply, irrespective of any assurances by Mr Camilleri to the contrary.

Although under a duty to do so, Mr Camilleri did not disclose the payment to RailCorp. Mr Camilleri did not dispute the fact that he asked Mr Vavayis to keep the matter confidential. The fact that Mr Camilleri asked Mr Vavayis not to disclose the payment and failed to declare the payment himself strongly suggests that he wanted the payment to be kept secret. This is consistent with Mr Camilleri knowing that his solicitation of money was wrong.

Mr Camilleri claimed that the payment was not improper as it was a personal financial matter between friends,

unrelated to their positions at RailCorp. Mr Camilleri, however, told the Commission that his relationship with Mr Vavayis was that of “work colleagues”. He did not dispute that he and Mr Vavayis did not socialise. Such a relationship would not justify a request for a loan of \$2,000. The Commission does not accept Mr Camilleri’s claim that the loan was a personal matter.

Mr Camilleri’s conduct in soliciting and receiving \$2,000 from Mr Vavayis in July 2012, the receipt of which Mr Camilleri knew would tend to influence him to exercise his official functions in favour of Mr Vavayis, is corrupt conduct for the purposes of the ICAC Act. This is because it is conduct that could have adversely affected, either directly or indirectly, Mr Camilleri’s honest and impartial exercise of his official functions and therefore comes within s 8(1)(a) of the ICAC Act. It is also conduct that constitutes or involves a breach of public trust and therefore comes within s 8(1)(c) of the ICAC Act.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Camilleri has committed a criminal offence under s 249B(1) of the Crimes Act of corruptly soliciting or receiving a benefit the receipt of which would tend to influence him to show favour to Mr Vavayis in relation to the affairs of RailCorp.

The Commission is satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the requisite standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Camilleri has engaged in the disciplinary offence of misconduct constituting reasonable grounds for his dismissal, such misconduct being based on a breach of the RailCorp code of conduct provisions forbidding the soliciting of gifts or benefits.

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

## Section 74A(2) statements

The Commission is satisfied that Mr Camilleri and Mr Vavayis are “affected” persons for the purposes of s 74A(2) of the ICAC Act.

### Mr Camilleri

Mr Camilleri gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him

in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

There is, however, other admissible evidence that would be available. This includes RailCorp records, email correspondence, banking records, other documentary evidence and the evidence of Mr Vavayis.

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 Camilleri for a criminal offence of corruptly soliciting or receiving a benefit under s 249B(1) of the Crimes Act.

### Mr Vavayis

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Vavayis for any criminal offence.

## Mr Camilleri and Mr Cassar

Mr Cassar worked for RailCorp from 1986 to 1993. He then worked for a private company in the railway industry before re-joining RailCorp in 2008. Until 2012, he was employed as a senior business consultant. Between May and July 2012, he provided \$56,000 to Mr Camilleri. Mr Camilleri subsequently repaid \$12,000 of that amount to Mr Cassar.

Mr Cassar told the Commission that he associated with Mr Camilleri prior to 2008 because the private company for which Mr Cassar was working had some involvement in the railway industry. From 2008, Mr Cassar reported to Mr Camilleri through another manager at RailCorp. Mr Cassar described their relationship as that of “work colleagues” rather than friends, although they would sometimes chat on public transport travelling home after work. In these conversations, Mr Camilleri disclosed some details about financial issues he claimed his daughter was facing.

On 24 May 2012, while on RailCorp premises, Mr Camilleri asked Mr Cassar for \$2,000 in cash. Mr Camilleri said that he needed the money urgently for issues in relation to his daughter. Mr Cassar agreed to provide the money and they both attended a local Commonwealth Bank branch where Mr Cassar withdrew \$2,000.

On 29 May 2012, Mr Camilleri again approached Mr Cassar and asked for \$10,000. Mr Camilleri said that he required the money because a magistrate had awarded his daughter money and they needed to pay some fees by 5 pm for the matter to be finalised. Mr Cassar provided \$4,500 to Mr Camilleri.

Between 29 May and 6 July 2012, Mr Camilleri asked Mr Cassar for money on several occasions. These requests

were refused by Mr Cassar. Subsequently, Mr Cassar made the following payments to Mr Camilleri:

Date	Amount
6 July 2012	\$2,000
9 July 2012	\$6,500
13 July 2012	\$4,000
16 July 2012	\$6,000
17 July 2012	\$8,000
18 July 2012	\$12,000
20 July 2012	\$15,000
21 July 2012	\$2,500

Mr Cassar said that Mr Camilleri told him that the money was required because the case involving Ms Camilleri had gone awry through not paying the fees in time or because “the solicitor could not raise his part of the bargain”. He said that Mr Camilleri also told him that his daughter had inherited some money that was available in a “cashbox” but could not be released as it was caught up in some process.

During these conversations, Mr Cassar said that he saw Mr Camilleri was in distress and, at times, in tears. Mr Cassar said that he felt a “Christian duty” to help Mr Camilleri. He also believed that the loans of money were going to be short-term. Attempts by Mr Cassar to get more information about why the money was needed were unsuccessful, as Mr Camilleri said the matter was “all secretive and governed by ASIO”.

Soon after the last payment was made on 21 July 2012, Mr Camilleri showed Mr Cassar a letter purporting to be from the ANZ Bank. The letter stated that just under \$1 million was available for Ms Camilleri upon the payment of \$98,000 to the ANZ Bank to cover all solicitor fees and taxes. The letter also stated that ASIO had advised that the funds would not be released until the fees were paid. Mr Cassar said that, immediately upon seeing this document, he formed the view that it was false. When he told Mr Camilleri that he thought the letter was fabricated, Mr Camilleri assured him that it was a genuine document and that the money was coming through.

On 30 December 2012, Mr Camilleri sent an email to Mr Cassar, which purported to show that \$5 million had been transferred from Ms Camilleri’s Commonwealth Bank account into Mr Camilleri’s bank account. Mr Cassar said that he suspected the document was fabricated, as he did not believe that that amount of money could be transferred electronically between personal accounts.

In early January 2013, Mr Camilleri confirmed to Mr Cassar that \$5 million had been transferred from Ms Camilleri’s Commonwealth Bank account into Mr Camilleri’s bank account. Mr Cassar told the Commission

that, after hearing this, he no longer believed Mr Camilleri’s story and, during a long telephone conversation, suggested to Mr Camilleri that someone had altered the receipt to make it look like \$5 million had been transferred. Mr Camilleri did not accept that this was the case.

### Mr Cassar’s application for a redundancy payment

Mr Cassar said that, sometime in late July 2012, he discussed his career prospects at RailCorp with his manager, who told him that he was not suitable for his existing role at RailCorp. This led Mr Cassar to reflect on his future at RailCorp. Mr Cassar then spoke to Mr Camilleri about his employment prospects. Mr Camilleri told him that he thought Mr Cassar was a “square peg in a round hole”, indicating that he thought he was a capable employee who was not in the ideal role for his skills.

On 8 August 2012, Mr Cassar forwarded an email to Mr Rochecoste, another RailCorp manager, asking for late inclusion in RailCorp’s voluntary separation program (VSP). Mr Cassar said that the primary reason he applied for the VSP was because of the feedback he had received from his manager. The VSP was being undertaken by RailCorp as part of its reform process. Acceptance into the VSP would result in staff members receiving a substantial payment upon termination of their employment.

Later that day, Mr Rochecoste forwarded the email to Mr Camilleri. Mr Camilleri responded almost immediately, stating, “Give it to me and I will talk to [the RailCorp employee managing the VSP]”. Mr Rochecoste told the Commission that the email signified to him that Mr Camilleri would talk to the RailCorp staff managing the VSP, negating the need for Mr Rochecoste to concern himself with the matter any further.

Mr Cassar was ultimately successful in his application for a redundancy as part of RailCorp’s VSP, and received a termination payment. On the same day that this payment was received, Mr Cassar received a telephone call from Mr Camilleri who asked for further funds on behalf of his daughter. Mr Cassar declined to make a payment.

In November 2012, Mr Camilleri again contacted Mr Cassar. Mr Camilleri told Mr Cassar that RailCorp had asked him to provide a list of RailCorp persons who had provided money to him. He said that he would not include Mr Cassar’s name on the list as Mr Cassar no longer worked at RailCorp.

Mr Camilleri did not dispute any of Mr Cassar’s evidence.

### Corrupt conduct – Saviour Cassar

Mr Cassar was interviewed by Commission investigators prior to the public inquiry. At that interview, Mr Cassar

agreed with a Commission investigator that his employment with RailCorp would have been affected if he had not lent Mr Camilleri money. Mr Cassar said that this was because RailCorp was undergoing a restructure and an employee's prospects were reliant on who they knew as much as the employee's capabilities. Mr Cassar also accepted that he was in breach of the RailCorp code of conduct in giving money to Mr Camilleri.

During the public inquiry, Mr Cassar gave different evidence. He said that his employment at RailCorp had nothing to do with him providing money to Mr Camilleri. He said that he was providing money to assist "a man who was feeding himself on \$5 a day". He also said that he was well qualified and did not need the support of a senior manager to succeed professionally. Mr Cassar also said that the money given to Mr Camilleri was a private loan that did not breach the RailCorp code of conduct, as the code applied only to RailCorp suppliers.

Mr Cassar told the Commission that at the time he was interviewed by Commission investigators he was depressed and "in a very dark place" and that his evidence at the public inquiry was the correct version. It was put to Mr Cassar that he changed his version because he thought he might get into trouble if he maintained the evidence he gave in his interview. Mr Cassar denied this, but said he was concerned that his good reputation would be "pulled apart for doing the right thing". Eventually, Mr Cassar agreed that, in hindsight, the loan of money should have been declared as it could influence future decisions that Mr Camilleri might make with respect to Mr Cassar's career. Mr Cassar said that he believed it was Mr Camilleri's responsibility to declare the payments as he had received the benefit.

The Commission has considered the versions that Mr Cassar provided during his interview and at the public inquiry. The inconsistencies between the versions can be explained by Mr Cassar's desire to protect his reputation during the public inquiry.

Mr Cassar told the Commission that the reason he provided money to Mr Camilleri was out of compassion for him, as he appeared to be in a distressed state. This may explain the \$6,500 that Mr Cassar lent to Mr Camilleri in May 2012. Mr Cassar, however, refused further requests for money in June 2012, but then lent a further \$56,000 over a 16-day period in July 2012. Mr Cassar also declined to provide money to Mr Camilleri after he received his redundancy payment. If Mr Cassar was motivated purely by compassion, it would be reasonable to expect him to continue to provide Mr Camilleri with money after he received his VSP. The fact that he did not, suggests that Mr Cassar made the payments to Mr Camilleri only when Mr Cassar was employed at RailCorp and when Mr

Camilleri was in a position to exercise his official functions to favour Mr Cassar.

Mr Cassar gave money to Mr Camilleri from May to July 2012, prior to his decision to leave RailCorp. It is open to infer that his motivation for providing the money was based on the expectation that he would continue his employment at RailCorp. In that regard, Mr Cassar knew that Mr Camilleri was influential at RailCorp during the ongoing restructure. He acknowledged that Mr Camilleri was an assertive person who "pushed things through".

Mr Cassar also believed that support from senior staff was necessary for career advancement at RailCorp. Mr Camilleri was well known within RailCorp as an influential senior manager. Mr Cassar would have understood that paying money to Mr Camilleri was a way to ensure Mr Camilleri's support. The Commission is satisfied that Mr Cassar was motivated to provide money to Mr Camilleri by a desire to ingratiate himself with a senior RailCorp executive, and to ensure that Mr Camilleri would show him favour in his career at RailCorp.

Mr Cassar's conduct in providing \$56,000 to Mr Camilleri between May and July 2012, for the purpose of influencing Mr Camilleri to exercise his official functions in Mr Cassar's favour, is corrupt conduct for the purposes of the ICAC Act. This is because it is conduct that adversely affected or could have adversely affected, either directly or indirectly, the honest or impartial exercise of Mr Camilleri's official RailCorp functions and therefore comes within s 8(1)(a) of the ICAC Act. It is also conduct that adversely affected or could have adversely affected, either directly or indirectly, the exercise of Mr Camilleri's official RailCorp functions and could involve bribery or offering secret commissions and therefore comes within s 8(2)(b) and s 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Cassar has committed criminal offences under s 249B(2) of the Crimes Act of corruptly giving a benefit the receipt of which would tend to influence Mr Camilleri to show favour to Mr Cassar in relation to the affairs of RailCorp.

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

### **Corrupt conduct – Joseph Camilleri**

Mr Camilleri sought money from Mr Cassar at a time when he had influence, and knew he had influence, over



the reform of RailCorp. He exercised this influence when he interceded on behalf of Mr Cassar to advance his application for a VSP. He did this even though he was not directly involved in that process and even though Mr Rochecouste appeared to have the matter in hand and did not request assistance.

In his evidence before the Commission, Mr Camilleri denied that he interfered with the VSP process. He said that he was merely facilitating the VSP, which was a priority for RailCorp, and that he did so because his office was near the office of the staff managing the VSP process. Mr Camilleri's credibility was diminished in this regard, as he said that he spoke to Mr Rochecouste between receiving the email from Mr Rochecouste and sending a reply. When it was pointed out to him that only one minute elapsed between the emails, Mr Camilleri said that he must have been confused and mistaken about the timing of the conversation with Mr Rochecouste. Mr Camilleri denied ensuring that Mr Cassar received a VSP so that Mr Cassar would have more money available to lend to him. He also told the Commission that the fact that he contacted Mr Cassar and requested money from him on the day that Mr Cassar received his lump sum redundancy payment was a coincidence. The Commission does not accept this evidence. The Commission is satisfied that Mr Camilleri showed favour to Mr Cassar by assisting in his application for a VSP and that he was influenced to do so as a result of the money he had received from Mr Cassar.

Mr Camilleri sought money from Mr Cassar in contravention of the RailCorp code of conduct, which prohibits the seeking of benefits from any person where it has the potential to compromise a RailCorp employee such that they may be unable to make an unbiased decision in the future with respect to that person. Mr Camilleri also failed to declare any conflict of interest that arose with respect to the payments from Mr Cassar, such conflict arising because Mr Camilleri may have been involved in future decisions involving Mr Cassar's employment, such as favourable treatment during the reform of RailCorp.

Mr Camilleri's claim that the loan of money was purely personal is rejected. Mr Cassar was a junior employee at RailCorp and their socialising, even at its highest, only went as far as the occasional conversation on public transport. This relationship does not explain payments by Mr Cassar totalling \$56,000.

Mr Camilleri's conduct in soliciting and receiving \$56,000 from Mr Cassar between May and July 2012, the receipt of which Mr Camilleri knew would tend to influence him to exercise his official functions in favour of Mr Cassar, and which did influence him to exercise his official functions by facilitating Mr Cassar's application for a VSP, is corrupt conduct for the purposes of the ICAC Act.

This is because it is conduct that adversely affected or could have adversely affected, either directly or indirectly, Mr Camilleri's honest and impartial exercise of his official functions and therefore comes within s 8(1)(a) of the ICAC Act. It also comes within s 8(1)(c) of the ICAC Act as it could constitute or involve a breach of public trust.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Camilleri has committed criminal offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving a benefit the receipt of which would tend to influence him to show favour to Mr Cassar in relation to the affairs of RailCorp.

The Commission is satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the requisite standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Camilleri has engaged in the disciplinary offence of misconduct constituting reasonable grounds for his dismissal, such misconduct being based on a breach of the RailCorp code of conduct provisions forbidding the soliciting of gifts or benefits.

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

## Section 74A(2) statements

The Commission is satisfied that Mr Camilleri and Mr Cassar are "affected" persons for the purposes of s 74A(2) of the ICAC Act.

### Mr Camilleri

Mr Camilleri gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

There is, however, other admissible evidence that would be available. This includes RailCorp records, lawfully-intercepted telecommunications, email correspondence, banking records and, potentially, the evidence of Mr Cassar.

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 Camilleri for criminal offences of corruptly soliciting or receiving a benefit under s 249B(1) of the Crimes Act.



## Mr Cassar

Mr Cassar gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

There is, however, other admissible evidence that would be available. This includes admissions made by Mr Cassar about the purpose for which he made the payments in the interview conducted by Commission investigators, RailCorp records, email correspondence, banking records and other documentary evidence.

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 Cassar for criminal offences of corruptly giving a benefit to Mr Camilleri under s 249B(2) of the Crimes Act.

## Mr Camilleri and Mr Oweis

Ray Oweis was a program manager at RailCorp. He provided Mr Camilleri with \$32,000 in October 2012.

Mr Oweis started working at RailCorp in 2001. He first had contact with Mr Camilleri in 2006, when he worked in the area where Mr Camilleri was general manager. In 2012, although Mr Oweis was subordinate to Mr Camilleri at RailCorp, Mr Camilleri was not his line manager. He had contact with Mr Camilleri once every three to six months. They did not socialise and Mr Oweis did not consider that they were friends.

Mr Oweis told the Commission that Mr Camilleri approached him on 3 October 2012 “looking desperate” and asked to talk to him privately. Mr Camilleri told him that his daughter was in a bit of trouble and that he had exhausted all possible ways of helping her. Mr Camilleri then referred to his daughter getting in with the wrong crowd and that somehow it had ended up in court. He said that she had won the court case but needed financial assistance to help release the funds awarded to her and to pay some fees. Mr Camilleri also told him that he had approached other RailCorp employees for money, including Mr Oweis’ manager and members of the RailCorp executive. Mr Camilleri then told Mr Oweis that he had exhausted all other options and he needed \$40,000 to “get it over the line”. Mr Oweis agreed to provide \$17,000 to Mr Camilleri and made an internet transfer of that amount into Ms Camilleri’s bank account. It was Mr Oweis’ understanding that the money would be repaid by Mr Camilleri within the next few days. Mr Oweis immediately reported the loan to his direct manager at RailCorp.

The next day, Mr Camilleri again approached Mr Oweis “looking even more frantic”. Mr Oweis expected Mr

Camilleri to tell him that he was able to repay the \$17,000. Instead, Mr Camilleri told him that he had spoken to his lawyer in Melbourne and he needed more money to again “get it over the line”. Mr Camilleri also referred to the Melbourne lawyer needing to pay off his own debts, the bank requiring legal fees and money being required for the release of a “cashbox”. Mr Camilleri requested a further \$15,000. Mr Oweis said that he was concerned with this second request for funds as Mr Camilleri’s story did not make sense. Mr Oweis told Mr Camilleri that, at another public authority where Mr Oweis had worked, managers were not allowed to borrow from staff who reported to them directly, in order to prevent the perception of favouritism. Mr Camilleri told Mr Oweis that he had checked the code of conduct and that was not the case at RailCorp. Despite some misgivings, Mr Oweis gave Mr Camilleri the benefit of the doubt and transferred a further \$15,000 to him. Mr Oweis again reported this loan immediately to his direct manager.

Over the next few days, Mr Camilleri made several more requests to Mr Oweis for money. Mr Oweis declined to provide more money as he was increasingly suspicious of the veracity of Mr Camilleri’s claims with respect to being repaid.

Mr Camilleri did not dispute Mr Oweis’ evidence.

Mr Oweis knew that Mr Camilleri was an influential senior executive at RailCorp. He said that he turned his mind to the propriety of the loans at the time he transferred the money to Mr Camilleri. Mr Oweis said that the only area where a conflict could arise for him was with respect to the RailCorp reform process, as Mr Camilleri might be on the panel selecting RailCorp employees for new roles. Mr Oweis raised this issue with Mr Camilleri but said that he gained the impression that Mr Camilleri did not expect to be with the organisation too much longer. This would reduce the potential for any conflict of interest caused by the loans. Mr Oweis also reported the fact of the loans as they happened and had, at that time, no reason to doubt Mr Camilleri’s assurances that the RailCorp executive was aware of his solicitation of money.

On 21 January 2013, Mr Oweis sent an email to Gavin Campbell, Mr Camilleri’s manager. In the email, Mr Oweis stated that he had concerns with Mr Camilleri returning from his role in the reform process to his general manager role due to the fact that “he is under financial stress and secondly his integrity is to be questioned following misrepresentations given to myself (and I believe other staff) from whom he borrowed”. This indicates that Mr Oweis did not seek to keep the loans a secret, was aware of the potential conflict of interest and was not seeking to take personal advantage of that situation.

Mr Oweis took steps to mitigate any potential conflict arising from his provision of money to Mr Camilleri. The

Commission is not satisfied that Mr Oweis paid \$32,000 to Mr Camilleri for the purpose of influencing Mr Camilleri to exercise his official functions in a manner favourable to Mr Oweis.

### Corrupt conduct – Joseph Camilleri

At the time of the loans from Mr Oweis, Mr Camilleri was a RailCorp general manager. He was influential, and knew he was influential, in decisions affecting the employment prospects of RailCorp staff. Even though Mr Oweis was employed in a different area of RailCorp, Mr Camilleri was still in a position to make decisions that would affect Mr Oweis. These decisions could have included opportunities for promotion or higher duties and the resourcing for areas where Mr Oweis worked. Mr Camilleri may also have been able to exert influence by sitting on a selection panel to employ staff members or by determining the staffing level required in Mr Oweis' area of RailCorp. Mr Camilleri owed Mr Oweis a significant amount of money.

Because of the potential for Mr Camilleri to make decisions affecting Mr Oweis, the debt of \$32,000 created a potential conflict of interest for Mr Camilleri. Mr Camilleri did not disclose the loans to RailCorp and sought to keep the payments secret. Mr Camilleri told Mr Oweis that the loans were not prohibited by the RailCorp code of conduct. The Commission is satisfied that Mr Camilleri, as an experienced RailCorp manager, was aware that the loans, at the very least, created a perceived conflict of interest and as such should have been reported to RailCorp under the code of conduct. Not only did Mr Camilleri not report the loans to RailCorp, he also sought to convince Mr Oweis not to do so.

Mr Camilleri claimed that he did not have to disclose the loans as they were a personal matter and not related to work. The Commission rejects this claim. The Commission is satisfied that the loans should have been declared to RailCorp as they created a conflict of interest or a perceived conflict of interest.

Mr Camilleri's loans from Mr Oweis were also a contravention of the provisions in the RailCorp code of conduct that prohibit the seeking of benefits from any person where it has the potential to compromise a RailCorp employee, on the basis that the employee may be unable to make an unbiased decision in the future with respect to the person who provided the benefit.

Mr Camilleri's conduct in soliciting and receiving \$32,000 from Mr Oweis in October 2012, the receipt of which Mr Camilleri knew would tend to influence him to exercise his official functions in favour of Mr Oweis, is corrupt conduct for the purposes of the ICAC Act. This is because it is conduct that could have adversely affected,

either directly or indirectly, Mr Camilleri's honest and impartial exercise of his official functions and therefore comes within s 8(1)(a) of the ICAC Act. It also comes within s 8(1)(c) of the ICAC Act as it could constitute or involve a breach of public trust.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Camilleri has committed criminal offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving a benefit the receipt of which would tend to influence him to show favour to Mr Oweis in relation to the affairs of RailCorp.

The Commission is satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the requisite standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Camilleri has engaged in the disciplinary offence of misconduct constituting reasonable grounds for his dismissal, such misconduct being based on a breach of the RailCorp code of conduct provisions forbidding the soliciting of gifts or benefits.

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

### Section 74A(2) statements

The Commission is satisfied that Mr Camilleri and Mr Oweis are "affected" persons for the purposes of s 74A(2) of the ICAC Act.

### Mr Camilleri

Mr Camilleri gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

There is, however, other admissible evidence that would be available. This includes RailCorp records, email correspondence, banking records, other documentary evidence and the evidence of Mr Oweis.

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 Camilleri for criminal offences of corruptly soliciting or receiving a benefit under s 249B(1) of the Crimes Act.

## Mr Oweis

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Oweis for any criminal offence.

## Mr Camilleri and Mr Furfaro

Mr Furfaro was a RailCorp program manager. He provided \$5,000 to Mr Camilleri in May 2012.

Until September 2013, Mr Furfaro had worked for RailCorp for 39 years. In the early 1990s, he reported directly to Mr Camilleri for several years. Other than that period, they had little contact and Mr Furfaro reported to another general manager in 2012. Mr Furfaro did not regard Mr Camilleri as a friend.

On 22 May 2012, Mr Camilleri approached Mr Furfaro and asked to have a private conversation with him about a personal matter. Mr Furfaro said that, as he was taken to a nearby conference room for privacy, he thought he was about to be asked to leave RailCorp. He knew Mr Camilleri was involved in the reform process and believed that Mr Camilleri had a role in determining who went and who stayed. It therefore came as “almost a relief” when Mr Camilleri asked him for a loan.

Mr Camilleri explained that his daughter was involved in a legal case and he needed money immediately for legal bills. Mr Camilleri went on to say that, if he did not pay the legal bills immediately, the case would not proceed and it would be thrown out of court. Mr Camilleri then asked for \$10,000 and said to Mr Furfaro, “I’m not trying to pressure you”. Mr Furfaro agreed to lend Mr Camilleri \$5,000. Mr Camilleri suggested that he go to the bank with Mr Furfaro, but Mr Furfaro preferred to go alone. Mr Furfaro said that he did not have sufficient time to process what he was doing and that when he was walking to the bank his “mind was in quite a jumble”. Mr Camilleri collected the \$5,000 in cash from Mr Furfaro when he returned from the bank. Mr Furfaro said that the entire episode, from the time of Mr Camilleri’s request to the handing over the money, took around 15 minutes. Mr Furfaro reported the loan to his direct supervisor at RailCorp that day.

Mr Furfaro said that he had two or three sleepless nights reviewing the implications of the loan. Once he had time to process the events, he became concerned that the loan may have contravened the RailCorp code of conduct. He said that, on reflection, Mr Camilleri’s explanation for needing the money was ludicrous.

A week after the loan, Mr Camilleri again approached Mr Furfaro for additional funds. By that time, Mr Furfaro had lost confidence in the story Mr Camilleri gave him and told Mr Camilleri that they were potentially breaching

the RailCorp code of conduct. Mr Camilleri replied that it was a personal matter that had nothing to do with the operations of RailCorp. This did not ease Mr Furfaro’s concerns and he declined to provide any more money to Mr Camilleri.

Mr Camilleri approached Mr Furfaro for more money a week or two later. At this point, Mr Furfaro suspected that Mr Camilleri might have a gambling problem. Mr Furfaro raised this with Mr Camilleri but Mr Camilleri denied it. Mr Camilleri then produced a document to corroborate his story about why the money was needed. Mr Furfaro could not recall details of the document, other than to say that it was a formal-looking letter. Mr Furfaro declined to provide any money to Mr Camilleri.

Mr Furfaro said that Mr Camilleri subsequently made further unsuccessful requests to him for money.

Mr Camilleri did not dispute the evidence of Mr Furfaro.

Mr Furfaro told the Commission that he understood that Mr Camilleri was highly influential in relation to who would receive redundancies as a result of the RailCorp restructure in 2012. This is supported by Mr Furfaro’s belief that his employment was going to be terminated when Mr Camilleri first asked to speak to him in private. Despite this, Mr Furfaro’s conduct indicates that he was not attempting to influence Mr Camilleri by providing him with money. Mr Furfaro said that he was caught completely off guard when Mr Camilleri first approached him for money. It was only after Mr Furfaro had had time to process the request for money that he realised its impropriety. Mr Furfaro’s evidence in this regard is consistent with his repeated refusals to provide more money to Mr Camilleri after he had had time to think about the request. If Mr Furfaro was motivated to influence Mr Camilleri in the exercise of his official functions, he would have acquiesced to Mr Camilleri’s further requests.

Mr Furfaro also reported the fact of the first loan to his direct manager at the time that it occurred. It is unlikely that he would have done this if he was attempting to inappropriately influence Mr Camilleri.

Mr Furfaro said that he provided money to Mr Camilleri almost out of obligation, given that Mr Camilleri was a “hero figure” at RailCorp who was looked up to by staff as a leader and guider. The Commission is not satisfied that Mr Furfaro paid \$5,000 to Mr Camilleri for the purpose of influencing Mr Camilleri to exercise his official functions in a manner favourable to Mr Furfaro.

## Corrupt conduct – Joseph Camilleri

Mr Camilleri was influential, and knew he was influential, in decisions affecting the employment prospects of

RailCorp staff. Mr Camilleri's potential influence in this regard was increased due to his involvement in the reform process at RailCorp and his favourable reputation amongst RailCorp staff. When Mr Camilleri requested money from Mr Furfaro, he was in a position to make decisions that would affect Mr Furfaro's future employment at RailCorp. This is shown by the fact that Mr Camilleri had previously managed Mr Furfaro, and by Mr Furfaro's concern that he was about to be dismissed when Mr Camilleri first asked to speak to him privately.

As Mr Camilleri had the potential to affect Mr Furfaro's employment prospects, the RailCorp code of conduct obliged him to declare the loan as a potential conflict of interest. Mr Camilleri said that he did not have to disclose the loan to RailCorp as it was a personal matter and not related to work. The Commission rejects Mr Camilleri's claim. Mr Furfaro and Mr Camilleri did not socialise and had only intermittent contact at work. Mr Furfaro also said that it was well known within RailCorp that Mr Camilleri preferred not to socialise with his subordinates or peers as, at some stage in his career, he may have to "undertake some difficult decisions". The Commission is satisfied that Mr Camilleri should have declared the loan of \$5,000 from Mr Furfaro to RailCorp as a potential conflict of interest. The fact that Mr Camilleri did not declare the loan to RailCorp as required indicates that he wanted to keep the loan secret.

Mr Camilleri also sought money from Mr Furfaro in contravention of the RailCorp code of conduct that prohibits the seeking of benefits from any person where it has the potential to compromise a RailCorp employee, on the basis that the employee may be unable to make an unbiased decision in the future with respect to the person who provided the benefit.

Mr Camilleri's conduct in soliciting and receiving \$5,000 from Mr Furfaro on 22 May 2012 and soliciting further payments from Mr Furfaro a short time later, the receipt of which Mr Camilleri knew would tend to influence him to exercise his official functions in favour of Mr Furfaro, is corrupt conduct. This is because it is conduct that could have adversely affected, either directly or indirectly, Mr Camilleri's honest and impartial exercise of his official functions and therefore comes within s 8(1)(a) of the ICAC Act. It also comes within s 8(1)(c) of the ICAC Act as it could constitute or involve a breach of public trust.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Camilleri has committed criminal offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving a benefit the receipt of which would

tend to influence him to show favour to Mr Furfaro in relation to the affairs of RailCorp.

The Commission is satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the requisite standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Camilleri has engaged in the disciplinary offence of misconduct constituting reasonable grounds for his dismissal, such misconduct being based on a breach of the RailCorp code of conduct provisions forbidding the soliciting of gifts or benefits.

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

## Section 74A(2) statements

The Commission is satisfied that Mr Camilleri and Mr Furfaro are "affected" persons for the purposes of s 74A(2) of the ICAC Act.

### Mr Camilleri

Mr Camilleri gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

There is, however, other admissible evidence that would be available. This includes RailCorp records, email correspondence, banking records, other documentary evidence and the evidence of Mr Furfaro.

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 Camilleri for the criminal offences of corruptly soliciting or receiving a benefit under s 249B(1) of the Crimes Act.

### Mr Furfaro

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Furfaro for any criminal offence.

## Mr Camilleri and Mr Rochecouste

Mr Rochecouste is a senior manager at RailCorp. Between June and September 2012, he provided \$9,000 to Mr Camilleri.

Mr Rochecouste commenced work at RailCorp in 1986. He told the Commission that he did not work with Mr



Camilleri until 2007, and that they did not socialise. From December 2011, Mr Rochecouste acted in Mr Camilleri's substantive role at RailCorp – acting maintenance contract commercial manager – while Mr Camilleri was seconded to the RailCorp reform team. Both Mr Camilleri and Mr Rochecouste reported to Mr Campbell.

Mr Rochecouste said that Mr Camilleri once confided to him that he never wanted to socialise with RailCorp staff because he might have to manage poor performance by a staff member and had to ensure that there was a clear separation between work and social interaction. This evidence, which the Commission accepts, emphasises Mr Camilleri's understanding of the importance of not placing himself in a position where there might be a perceived conflict of interest. It demonstrates Mr Camilleri's awareness that mixing social and personal relationships with work relationships was something to be avoided.

On 26 June 2012, Mr Camilleri approached Mr Rochecouste at the latter's office. Mr Rochecouste told the Commission that Mr Camilleri appeared distressed and asked to talk to him. Mr Camilleri said that his daughter had been involved in an identity fraud, where her details were borrowed or stolen. Her details were then used to make purchases in Australia and overseas. As a result of this, a bank had started a legal process against Ms Camilleri and money was owed to the bank. The matter was going to be settled but money was needed to pay the bank. A payment of \$10,000 was required by close of business that day.

Mr Camilleri then asked Mr Rochecouste for a loan of \$10,000. Mr Rochecouste told Mr Camilleri that he needed to speak to his wife about the loan. Mr Rochecouste spoke to his wife and agreed to lend \$5,000, as he empathised with Mr Camilleri's concern for his daughter. Mr Rochecouste also believed that Mr Camilleri was a man of integrity and that he would receive the money back within a short time. Mr Rochecouste and Mr Camilleri attended a local bank together where Mr Rochecouste withdrew \$5,000 and gave it to Mr Camilleri. That same day, Mr Camilleri returned to Mr Rochecouste and asked for more money. Mr Rochecouste declined.

Mr Rochecouste said that Mr Camilleri approached him again on 5 July 2012 and asked for a loan of \$10,000. Mr Rochecouste told Mr Camilleri that he did not have the money. Mr Camilleri asked whether he could spare anything. Mr Rochecouste gave him \$2,000.

On 28 September 2012, Mr Camilleri again approached Mr Rochecouste. He was in an agitated state and asked for more money. Mr Rochecouste asked for some corroborative evidence for Mr Camilleri's story. Mr Camilleri then produced a letter purporting to be on ANZ Bank letterhead. The letter was in the following terms:

23rd July 2012

To Mrs Jessica Nicole Camilleri,

*This letter is to inform you that the total of \$98,000 must be paid to the ANZ Bank to cover all solicitor, taxes and fees associated with your cheques and pay outs from Baycorp and ACMS Australia which have been banked into the ANZ Bank to the total of \$975,000.*

*No funds will be released from the advice of the ASIO unless outstanding Fees [sic] have been paid. Fail to do so can result in further legal action at the end of business on the 24th of July 2012.*

*Should you have any questions please have your legal representation call us on 13 13 14.*

*Yours Sincerely*

*Jenna Choi*

Mr Rochecouste said that, by this stage, he had concerns about the veracity of Mr Camilleri's story. However, because Mr Camilleri was a man he respected, Mr Rochecouste provided a further \$2,000.

Mr Camilleri did not dispute Mr Rochecouste's evidence.

### **Why did Mr Rochecouste provide the money?**

From December 2011, Mr Rochecouste was acting at higher duties. During that period, Mr Camilleri and he were on the same level at RailCorp. A completed higher duties form indicates that, on 2 October 2012 and on 16 November 2012, Mr Camilleri signed authority for Mr Rochecouste's higher duties to be extended from October to December 2012. This indicates that Mr Camilleri had the authority to extend Mr Rochecouste's higher duties period during 2012. Mr Rochecouste denied that he made payments to influence Mr Camilleri to extend his higher duties. He said that he decided to assist Mr Camilleri because he empathised with Mr Camilleri's desire to help his daughter.

Mr Rochecouste said that it was his understanding that Mr Campbell, not Mr Camilleri, decided if he remained on higher duties. The evidence does not establish that Mr Rochecouste knew that Mr Camilleri signed his higher duties forms at the time he made the payments to Mr Camilleri. He did accept that, in hindsight, Mr Camilleri's signature on the higher duties forms created a perception that he received partial treatment from Mr Camilleri in return for money.

Mr Camilleri told the Commission that, although he signed Mr Rochecouste's higher duties forms, Mr Campbell was the person who made the decision about whether



Mr Rochecouste would continue to act at higher duties. When discussing Mr Rochecouste's higher duties approval with Mr Campbell, Mr Camilleri did not disclose the money owed by him to Mr Rochecouste. Mr Camilleri conceded that, in hindsight, Mr Campbell should have signed the higher duties forms.

The Commission accepts that Mr Rochecouste understood that it was Mr Campbell who ultimately decided if he would continue on higher duties. At the time Mr Rochecouste began to give money to Mr Camilleri, he had been acting at higher duties for approximately seven months. The Commission accepts that Mr Rochecouste would have expected that his acting at higher duties was going to continue irrespective of any further payments he made to Mr Camilleri.

The Commission is not satisfied that Mr Rochecouste paid money to Mr Camilleri for the purpose of influencing Mr Camilleri to exercise his official functions in a manner favourable to Mr Rochecouste.

### Corrupt conduct – Joseph Camilleri

Though they were effectively peers in 2012, Mr Rochecouste was junior to Mr Camilleri before he acted in Mr Camilleri's position when Mr Camilleri was seconded to the RailCorp reform team.

When Mr Camilleri requested money from Mr Rochecouste, he was in a position to make decisions that would affect Mr Rochecouste's future employment at RailCorp. An example of this is Mr Camilleri's involvement in authorising Mr Rochecouste's higher duties, which included signing forms indicating that he had spoken to Mr Rochecouste and certified that he was competent to act at higher duties. In signing the forms, Mr Camilleri also confirmed that Mr Rochecouste was an appropriate staff member to perform higher duties and recommended that he be paid a higher rate. No other person was required to sign the forms and it was then sent to RailCorp's payroll section.

Because of this, Mr Rochecouste's loans to Mr Camilleri, totalling \$9,000, created a conflict of interest. Mr Camilleri failed to declare this conflict of interest as required by the RailCorp code of conduct. Mr Camilleri claimed that he did not have to disclose a conflict, as the loans were personal and unrelated to work. The Commission does not accept this claim. Mr Rochecouste made a point of stating that he did not socialise with Mr Camilleri and Mr Camilleri did not dispute this assertion.

Mr Camilleri sought money from Mr Rochecouste in contravention of the provisions in the RailCorp code of conduct that prohibited the seeking of benefits from any person where it has the potential to compromise a

RailCorp employee, on the basis that the employee may be unable to make an unbiased decision in the future with respect to the person who provided the benefit. The reason Mr Camilleri did not declare the loans from Mr Rochecouste was because he wanted to keep the loans secret.

Mr Camilleri's conduct in soliciting and receiving \$9,000 from Mr Rochecouste between June and September 2012, the receipt of which Mr Camilleri knew would tend to influence him to exercise his official functions in favour of Mr Rochecouste, is corrupt conduct for the purposes of the ICAC Act. This is because it is conduct that could have adversely affected, either directly or indirectly, Mr Camilleri's honest and impartial exercise of his official functions and therefore comes within s 8(1)(a) of the ICAC Act. It also comes within s 8(1)(c) of the ICAC Act as it could constitute or involve a breach of public trust.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Camilleri has committed criminal offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving a benefit the receipt of which would tend to influence him to show favour to Mr Rochecouste in relation to the affairs of RailCorp.

The Commission is satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the requisite standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Camilleri has engaged in the disciplinary offence of misconduct constituting reasonable grounds for his dismissal, such misconduct being based on a breach of the RailCorp code of conduct provisions forbidding the soliciting of gifts or benefits.

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

### Section 74A(2) statements

The Commission is satisfied that Mr Camilleri and Mr Rochecouste are "affected" persons for the purposes of s 74A(2) of the ICAC Act.

### Mr Camilleri

Mr Camilleri gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

There is, however, other admissible evidence that would be available. This includes RailCorp records, email correspondence, banking records, other documentary evidence and the evidence of Mr Rochecouste.

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 Camilleri for criminal offences of corruptly soliciting or receiving a benefit under s 249B(1) of the Crimes Act.

## Mr Rochecouste

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Rochecouste for any criminal offence.

## Mr Camilleri and Mr Mason

Mr Mason was RailCorp's CEO. He provided \$10,000 to Mr Camilleri in August 2012.

Mr Mason had known Mr Camilleri since Mr Mason started working at RailCorp in 2005. Mr Camilleri reported to Mr Mason around twice a week in 2006 and 2007, when Mr Mason was acting group general manager. Mr Mason said that Mr Camilleri and he had quite a close working relationship during the reform of the rolling stock depot in 2008 and 2009. They never socialised, however, and Mr Mason characterised their relationship as one of good workplace colleagues, rather than friends.

On 2 August 2012, Mr Camilleri visited Mr Mason's office in a distressed state. Mr Camilleri asked to speak to Mr Mason "as a colleague". He then told Mr Mason that he was desperate to borrow some money as his daughter was involved in some "identity theft" and that some associated legal fees were due to be repaid. He asked Mr Mason for \$17,000. Mr Camilleri also mentioned that ASIO was involved and that he would repay the money in due course. Mr Mason said that there was a sense of urgency in Mr Camilleri's request. Mr Mason agreed to provide \$10,000. The following day, Mr Mason and Mr Camilleri attended the bank together and Mr Mason withdrew \$10,000 in cash and gave it to Mr Camilleri. Mr Mason understood that the money was to be repaid within weeks. Mr Mason said that his concern for Mr Camilleri was paramount and he offered him access to the employee assistance program.

Mr Mason did not speak to Mr Camilleri's direct manager, Mr Campbell, about the request for money. He said that he was made aware that Mr Camilleri had approached other RailCorp employees only when the RailCorp internal investigation commenced in November 2012. Mr Mason had no involvement in that investigation as he was one of

the RailCorp staff members who had given money to Mr Camilleri.

Mr Mason was RailCorp CEO at the time he provided Mr Camilleri with \$10,000. Mr Camilleri was his subordinate. Mr Mason told the Commission that he provided the money because Mr Camilleri was in severe distress and that the size of the loan did not concern him as "if you go on holiday you spend that much".

The Commission is not satisfied that Mr Mason paid \$10,000 to Mr Camilleri for the purpose of influencing Mr Camilleri to exercise his official functions in a manner favourable to Mr Mason.

Mr Camilleri asked Mr Mason for a loan of \$17,000. At the time he did so, Mr Camilleri was not in a position to exercise his influence in Mr Mason's favour as he was in a subordinate position to Mr Mason. Notwithstanding that Mr Camilleri was dishonest in the reason he gave Mr Mason for needing money, the Commission is not satisfied that Mr Camilleri solicited and received \$10,000 from Mr Mason on the basis that it would tend to influence Mr Camilleri to exercise his official functions in favour of Mr Mason.

## Section 74A(2) statement

The Commission is satisfied that, in respect of the matters canvassed in this chapter, Mr Camilleri is an "affected" person for the purposes of s 74A(2) of the ICAC Act.

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Camilleri for any criminal offence.

## Chapter 5: Mrs Attard

Mrs Attard is Mr Camilleri's sister. She is employed as an access and demand coordinator within Housing NSW, an agency of DFACS. She has worked for Housing NSW for approximately 25 years. In 2012, she was working at the Housing NSW Liverpool office, supervising a number of staff.

Mrs Attard told the Commission that, since 2012, she had solicited approximately \$180,000 from 10 Housing NSW employees. At the time of the public inquiry, approximately \$90,000 of this money had been repaid.

### Mrs Attard's solicitation of funds

Mrs Attard denied having any knowledge of Ms Camilleri's financial troubles prior to 2012. She told the Commission that Mr Camilleri first approached her for money in February 2012.

According to Mrs Attard, Mr Camilleri told her that he was "in a bit of a bind". He then asked for a \$7,000 loan to be provided urgently that day. Mrs Attard told the Commission that she provided the money without asking her brother why he needed the money.

Mr Camilleri contacted her again about two weeks later and asked for more money. On this occasion, Mrs Attard asked for details about why the money was needed. Mr Camilleri told her that Ms Camilleri had been a victim of identity fraud and that money was required to pay solicitors for a court case. Mr Camilleri also said that Ms Camilleri had been at a party one day and did not realise that someone had stolen her purse, including her identity cards. Mr Camilleri told her that the court case was required so that Ms Camilleri could receive compensation for the banks having made her liable for others' debts.

Although she had some concerns about this information, Mrs Attard provided a further \$4,000.

Mr Camilleri contacted Mrs Attard a third time and asked

for money for solicitors' fees. Mrs Attard provided a further \$9,000 to Mr Camilleri. By this stage, Mrs Attard was of the understanding that Mr Camilleri had exhausted all of his own funds.

Approximately a week after the \$9,000 loan, Mr Camilleri telephoned Mrs Attard again and asked for another \$10,000. Mrs Attard did not provide Mr Camilleri with any money on this occasion, as she did not have the funds to do so. Mr Camilleri, who was in a distressed state, then asked Mrs Attard if she could borrow the money from someone. Mrs Attard said that a Housing NSW employee called into her office about this time and saw that she was in a distressed state. Mrs Attard told the employee about her brother's requests for money and the employee volunteered to lend her some money. Mrs Attard did not tell this employee that she had lent \$20,000 to her brother over the previous month or that her brother had not repaid any of this money. The employee gave Mrs Attard \$5,000, and she passed this on to Mr Camilleri.

Two days later, Mr Camilleri approached Mrs Attard for more money. He was in the same state of distress as on previous occasions and gave the same reason for needing the money. On this occasion, Mrs Attard approached another Housing NSW employee and obtained \$10,000 for Mr Camilleri.

Having exhausted her own funds and borrowed money from two Housing NSW employees, Mrs Attard then obtained \$4,000 from a money lender at a high interest rate. From that point on, Mrs Attard started actively soliciting funds from other Housing NSW employees, perpetuating the story that Mr Camilleri had given her.

In total, Mrs Attard obtained \$180,000 from 10 Housing NSW employees. All of these employees were subordinate to her. Three of the 10 from whom she borrowed money were from within her Housing NSW team. She obtained a total of \$44,000 from these three Housing NSW employees. There were other Housing NSW employees,

including two from her team, who were approached but declined to lend her money.

Mrs Attard continued to make decisions with respect to her team members, and to make recommendations to senior managers concerning members of her team, without disclosing to those managers that she had either borrowed money from, or unsuccessfully sought money from, members of her team. One of Mrs Attard's recommendations during this period was to extend the period for which one of the Housing NSW employees who had lent her money could act at higher duties.

There is insufficient evidence to establish whether there was an expectation that Mrs Attard was in a position to exercise her official functions to favour the interests of the Housing NSW employees who lent her money but were not members of her team.

Mrs Attard was an unreliable and, at times, evasive witness. This is demonstrated by the conflicting evidence she gave as to when she came to disbelieve Mr Camilleri's reasons for needing money. Initially, Mrs Attard said that she stopped believing Mr Camilleri's account only near the middle of 2013; a point well after Mr Camilleri had been dismissed and she had stopped seeking money from other Housing NSW employees. Mrs Attard was then shown the following email, forwarded to her from her brother on 9 May 2012. It purports to be a communication from a bank to Ms Camilleri.

*Dear Ms Camilleri*

*We recognize that there may be occasions when customers are entitled to be compensated for incorrect charging due to employee or system errors including process failures or breaches of legislation including Fraud and other vigilant activity.*

*Due to your circumstantial issues we are happy to advise once the balance of \$107,000 has been paid*

*to the National Australia Bank we will release your contents including the follow [sic]:*

- *\$575,000 in cash*
- *\$250,000 cheque to the payee of Miss Jessica Nicole Camilleri*
- *Jewellery – 5 rings, 2 chains*
- *Writing documentation provided by the ASIO Australia*

*The above payment of \$107,000 is to cover Solicitor fees over the period time matter of 1st June 2007 – 1st June 2012. Please also find a detailed statement of Invoices attached.*

Mrs Attard conceded that the contents of the email do not make sense and that the absence of any bank letterhead raised her suspicions. She ultimately conceded that, after considering the email, she came to the view that the reasons advanced by Mr Camilleri for needing money were nonsense. Despite having reached this conclusion in May 2012, she did not confront Mr Camilleri and continued to solicit funds from Housing NSW employees knowing that the reasons she was giving them for needing the money were false.

Mrs Attard's direct supervisor at Housing NSW was Paul Davy. She did not consider approaching Mr Davy for money, even though they had a much longer and closer friendship than Mrs Attard had had with many of the other Housing NSW employees from whom she solicited money. Mrs Attard rejected the suggestion that she did not approach Mr Davy because she was concerned that soliciting money from Housing NSW employees was inappropriate and she did not want her supervisor to know about it.

Mr Davy told the Commission that he was not told that Mrs Attard was obtaining money from fellow Housing

NSW employees until September 2013; well after Mrs Attard had ceased approaching them for money.

## Reaction of DFACS

Mrs Attard first reported her conduct to Mr Davy in September 2013. Mrs Attard told the Commission that she decided to tell Mr Davy about the loans upon hearing that Commission investigators were seeking to interview Housing NSW employees from whom she had borrowed money.

After hearing from Mrs Attard, Mr Davy reported the matter to the DFACS legal branch and the DFACS Professional Conduct Ethics and Performance Team. After several discussions about how to manage the matter, Mr Davy spoke to Mrs Attard a few days later.

Mrs Attard subsequently took sick leave for a month. Mr Davy spoke to his line manager soon after and recommended that, upon her return, Mrs Attard should take up a position in another branch that did not require the management of other staff. This course was implemented, and Mrs Attard has remained in that role pending the outcome of the Commission's investigation.

## Housing NSW's code of conduct

Housing NSW, an agency of DFACS, had a code of conduct and ethics during the period that Mrs Attard was soliciting money from her work colleagues. The following are relevant sections.

### 4.2 Misconduct

...

*Corrupt conduct is conduct of any person (public employee or not) that adversely affects the honest or impartial exercise of official functions by any public official or authority.*

*Examples of corrupt conduct may include:*

...

- *offering or accepting bribes, commissions or payments to provide unfair advantage to contractors or clients*
- *accepting a personal gift or benefit in return for providing services*
- *fraud*

...

### 4.3 Conflicts of interest

*A conflict of interest exists when a personal/private interest (financial or otherwise) interferes, or could*

*be perceived to interfere, with an official's ability to carry out work impartially for Housing NSW. This can result in an official not being able to act impartially when carrying out their official duties for Housing NSW.*

*The Independent Commission Against Corruption states that "conflicts of interest are not wrong in themselves — public officials are also private individuals and there will be occasions when their private interests come into conflict with their duty to put the public interest first at all times — but such conflicts must be disclosed and effectively managed."*

*If officials find themselves in such a situation, their own reputation and that of Housing NSW is at risk if the situation is not managed appropriately.*

...

### Managing conflicts of interest

*If an official thinks they have a conflict of interest, including a potential or perceived one, they should take the following steps:*

1. *Inform the line manager of the conflict as soon as possible and agree on a strategy to manage the situation immediately at hand. Record actions and decisions appropriately.*
  2. *Do whatever possible to reduce the conflict of interest (e.g. if practical, remove themselves from the task(s) or ask a colleague to take over).*
  3. *Use the Conflicts of Interest Form (to be registered with the Business Assurance once approved)*
- ...
4. *Review these management strategies, especially if the situation changes, and make any necessary amendments, registering with Business Assurance after approval by the manager.*

Mr Davy told the Commission that he believed that Mrs Attard, by soliciting funds from her subordinates, had created a potential conflict of interest in terms of the Housing NSW code of conduct. This conflict should have been reported so that it could be managed by Housing NSW.

Mrs Attard claimed that the loans were personal, between friends, and had nothing to do with work. Mrs Attard claimed that she did not realise at the time of her solicitation that she was creating a conflict of interest, although she conceded at the public inquiry that such a conflict did arise. It is clear that there was a conflict of interest between Mrs Attard's private interests and her ability to impartially carry out her duties as a Housing



NSW officer, at least with respect to those members of her team from whom she sought or obtained money.

## Corrupt conduct – Carmen Attard

Mrs Attard was involved in decisions that affected the employment of her Housing NSW team members, including managing the staff roster, approving staff leave, appointing staff to higher duties and advising on the renewal or extension of employee contracts. Mrs Attard had an obligation under the code of conduct and ethics to disclose the fact that she was seeking and obtaining money from Housing NSW team members subordinate to her. Mrs Attard conceded this at the public inquiry and acknowledged that the receipt of money from subordinate Housing NSW staff would cause problems for her in carrying out her role as a more senior Housing NSW officer.

Mrs Attard borrowed money from other Housing NSW employees after she had exhausted her own funds. She then continued to borrow money from other Housing NSW employees after she had borrowed money from a money leader. She used her position as a Housing NSW officer to obtain money from other, more junior, Housing NSW officers in her team. By accepting money from persons she supervised or whose employment could be affected by her recommendations, she compromised her ability to impartially exercise her public official functions with respect to them. She would have understood at the time she borrowed from Housing NSW staff that she was placing herself under an obligation to them. She agreed with Counsel Assisting the Commission that those from whom she had borrowed wanted their money back and that there was pressure on her to repay the loans. The Commission is satisfied that Mrs Attard understood when she borrowed the money that, given her seniority to those Housing NSW staff from whom she borrowed money, her actions gave rise to a conflict of interest. Her failure to declare the conflicts of interest at the appropriate time indicates a clear intention on her part to keep the transactions secret. To do so, she needed to rely on the discretion of those from whom she obtained money.

The Commission is satisfied that Mrs Attard was placed in a position whereby her obligations to those in her Housing NSW team from whom she borrowed money could tend to influence her to favour those persons in relation to her role at Housing NSW. The Commission is satisfied that Mrs Attard understood this at all relevant times.

Mrs Attard's conduct in soliciting and receiving \$44,000 from her subordinate Housing NSW team members, the receipt of which Mrs Attard knew would tend to influence her to exercise her official functions in favour of those staff members, is corrupt conduct for the purposes of the ICAC

Act. This is because it is conduct that adversely affected or could adversely affect, either directly or indirectly, Mrs Attard's honest and impartial exercise of her official functions and therefore comes within s 8(1)(a) of the ICAC Act.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mrs Attard has committed criminal offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving a benefit the receipt of which would tend to influence her to show favour to other Housing NSW officers in relation to the affairs of Housing NSW.

The Commission is satisfied for the purpose of s 9(1)(b) and s 9(1)(c) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the requisite standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mrs Attard has engaged in disciplinary offences of misconduct constituting reasonable grounds for her dismissal, such misconduct being based on a failure to disclose a conflict of interest or a perceived conflict of interest as required by 4.3 (chapter 4) of the Housing NSW code of conduct.

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

The evidence before the Commission does not establish that any of the Housing NSW staff who provided money to Mrs Attard engaged in corrupt conduct.


## Section 74A(2) statement

The Commission is satisfied that, in respect of the matters canvassed in this chapter, Mrs Attard is an "affected" person for the purposes of s 74A(2) of the ICAC Act.

Mrs Attard gave her evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that her evidence cannot be used against her in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

There is, however, other admissible evidence that would be available. This includes Housing NSW records, email correspondence, banking records, other documentary evidence, the evidence of Housing NSW staff from whom Mrs Attard borrowed money and the evidence of Mr Davy.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with



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respect to the prosecution of Mrs Attard for criminal offences of corruptly soliciting or receiving a benefit under s 249B(1) of the Crimes Act.

Section 114A of the ICAC Act provides that evidence given to the Commission by a public official may be admitted and used in disciplinary proceedings against the public official, despite the evidence of that public official having been given subject to a s 38 declaration, where the Commission has made a finding of corrupt conduct against the public official. As such a finding is made in this report, Mrs Attard's evidence before the Commission would be available to be admitted and used in disciplinary proceedings instituted by Housing NSW.

The Commission is of the opinion that consideration should be given by Housing NSW to the taking of disciplinary action against Mrs Attard for disciplinary offences of misconduct, as set out in this chapter, with a view to dismissing her, dispensing with her services or otherwise terminating her services.

## Chapter 6: Ms Camilleri

Ms Camilleri did not appear before the public inquiry. Instead, her evidence at a prior compulsory examination held by the Commission was admitted into evidence. None of the legal representatives at the public inquiry, having been given the opportunity, sought leave to cross-examine her.

Ms Camilleri told the Commission that, in all, approximately \$2 million had been provided to her by her father. This included money that Mr Camilleri acquired from persons with whom he worked at RailCorp. Of that amount, Ms Camilleri said that no more than \$300,000 had been repaid.

Ms Camilleri said that her financial problems started in 2008 when she accrued some credit card and mobile telephone debts. Ms Camilleri said that, although her father assisted her in paying off these debts, by early 2012 she found herself in financial trouble again. This was due to her having a “big gambling problem”.

Ms Camilleri said that she also provided money to an associate who was struggling to pay debts. From August 2012, this associate began to extort money from her and also made threats demanding money. Ms Camilleri said that this was why she required large amounts of money. Rather than tell her father the real reason she needed money, Ms Camilleri invented stories about her involvement in a court case and a cashbox. She said that she also told her father that she was going to get a big payout of a few million dollars and that she would then be able to pay him back. To support this story, Ms Camilleri created false documentation that she passed on to her father in order to acquire more money.

Ms Camilleri said that her father told her that he was obtaining money from his colleagues at RailCorp and that, in at least some cases, he was passing on her fabricated story concerning a legal proceeding to obtain money.

### Corrupt conduct – Jessica Camilleri

Ms Camilleri was a public official until April 2013, but there is no evidence that she exercised any public official functions in relation to these matters. There is also insufficient evidence that she sought to adversely affect Mr Camilleri’s official functions. In these circumstances, her conduct does not come within s 8 of the ICAC Act and therefore does not constitute corrupt conduct for the purposes of the ICAC Act.

### Section 74A(2) statement

The Commission is satisfied that, in respect of the matters canvassed in this chapter, Ms Camilleri is an “affected” person for the purposes of s 74A(2) of the ICAC Act.

Ms Camilleri gave her evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that her evidence cannot be used against her in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

There is, however, other admissible evidence that would be available. This includes telecommunications interception evidence of a conversation on 28 August 2013, where Ms Camilleri counselled and incited Mr Camilleri to destroy documents or other things relating to the subject matter of the Commission’s investigation.

The Commission is of the opinion, therefore, that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Camilleri for a criminal offence under s 351A of the Crimes Act of recruiting Mr Camilleri to carry out a criminal activity, being the destruction of documents or other things relating to the subject matter of the Commission’s investigation contrary to s 88(2)(a) of the ICAC Act.

## 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 facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In*

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

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

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

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

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



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