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INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

**INVESTIGATION INTO THE
CONDUCT OF JOHN CASSIDY,
THEN CHANCELLOR OF THE
UNIVERSITY OF NEW ENGLAND,
IN RELATION TO THE SALE OF
THE TATTERSALLS HOTEL**

**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 John Cassidy, when chancellor of the University of New England, in relation to the sale of the Tattersalls Hotel.

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 grid 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 of corrupt conduct engaged in by John Cassidy, then chancellor of the University of New England (UNE), in connection with the sale of the Tattersalls Hotel in Armidale, NSW. In particular, it was alleged that Mr Cassidy had misused his position as chancellor to pass on confidential information concerning the valuation of the hotel and the prices being offered by other interested purchasers to his friend and business partner, Darrell Hendry. It was also alleged that Mr Cassidy failed to disclose to UNE the true nature of his relationship with Mr Hendry and had involved himself in deliberations about the sale despite having a potential conflict of interest arising from that relationship. These events occurred in 2005 and 2006.

Results

Findings are made in chapter 3 that Mr Cassidy engaged in corrupt conduct by:

- misusing confidential information on or about 11 November 2005, which he acquired by reason of his position as chancellor of UNE, to gain advantage for Mr Hendry by informing Mr Hendry that the purchase of the Tattersalls Hotel would be a good investment that Mr Hendry should consider making
- failing to disclose, at a meeting of the UNE Council Standing Committee on 21 November 2005, that he had a “material interest” in discussions concerning the sale of the hotel that appeared to raise a conflict with the proper performance of his duties because he knew that Mr Hendry, his business partner and friend, was interested in purchasing the hotel

- failing to disclose to Rob Watt, a director of Services UNE Ltd (which was considering Mr Hendry’s tender for the purchase of the hotel), the full nature of his relationship with Mr Hendry
- failing to disclose, at a meeting of the UNE Council on 8 December 2005, that he had a material interest in matters relating to the sale of the hotel that appeared to raise a conflict of interest with the proper performance of his duties because he knew that Mr Hendry, his business partner and friend, was interested in purchasing the hotel.

A finding is made in chapter 5 that Mr Cassidy engaged in corrupt conduct by providing misleading information to the UNE Audit and Compliance Committee in his letter of 5 February 2006. The misleading information concerned his role in the decision to sell the Tattersalls Hotel, the true nature of his relationship with Mr Hendry, when Mr Hendry invited him to become a partner in the hotel, and when he decided to become a partner in the hotel.

As Mr Cassidy’s conduct involved disciplinary matters rather than criminal offences, it is not necessary for the Commission to consider obtaining the advice of the Director of Public Prosecutions (DPP) with respect to his prosecution for any criminal offence. As Mr Cassidy is no longer chancellor of UNE, it is not necessary for the Commission to consider whether any disciplinary action should be taken against him or any other action should be taken with a view to his dismissal.

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 investigation, UNE, Mr Cassidy and Mr Hendry.

How the investigation came about

On 6 December 2005, Services UNE Ltd entered into a contract to sell the Tattersalls Hotel in Armidale to Mr Hendry for \$2.65 million. Under the contract, Mr Hendry could nominate a company to purchase the hotel. The company he nominated was Armpub No 1 Pty Ltd, which was jointly owned by him and his wife. On 30 January 2006, Mrs Hendry resigned as a director of Armpub No 1 and was replaced by Mr Cassidy. Vercot Pty Ltd, a company owned by Mr Cassidy, became the majority shareholder in Armpub No 1 Pty Ltd and, thereby, obtained an interest in the Tattersalls Hotel.

In October 2008, the Commission received a complaint alleging that Mr Cassidy took advantage of his position as UNE chancellor to arrange for the sale of the hotel to be postponed so that Mr Hendry could lodge a bid for its purchase. UNE had previously engaged an independent investigator to investigate the allegation and also obtained legal advice from senior counsel. The finding of the independent investigator was that there were good reasons for postponing the sale and the hotel was ultimately sold at the best price available after appropriate marketing. Having considered this investigation report, the Commission decided not to investigate the allegation.

On 5 June 2013, the UNE vice-chancellor wrote to the Commission advising that, after recently receiving enquiries concerning the sale of the hotel, he had re-examined UNE's records and was concerned about anomalies relating to the sale. Further enquiry by the Commission indicated that these anomalies concerned whether Mr Cassidy had misused his position as chancellor to pass on confidential information to Mr Hendry concerning the valuation of the hotel and the prices being

offered by other interested purchasers. There was also concern that Mr Cassidy had failed to disclose to UNE the true nature of his relationship with Mr Hendry and had involved himself in deliberations about the sale despite having a potential conflict of interest arising from that relationship.

Why the Commission investigated

One of the Commission's principal functions, as specified in s 13(1)(a) of the *Independent Commission Against Corruption Act 1988* ("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 vice-chancellor's letter raised serious concerns about the conduct of Mr Cassidy in his role as chancellor of UNE. The chancellor had duties set out in the *University of New England Act 1993* ("the UNE Act"). These duties included that he act honestly and exercise a reasonable degree of care and diligence in carrying out his functions and that he not use information acquired through his position to gain an advantage for himself or another person. As chancellor, he was also required to declare any "material interest" he had in a matter that was being considered, or about to be considered, at a meeting of the UNE Council, if the interest appeared to raise a conflict

with the proper performance of his duties in relation to the consideration of the matter.

The allegations raised suggested that Mr Cassidy had contravened these duties. The Commission recognised that allegations of this nature not only undermine confidence in the chancellorship but could also be detrimental to UNE's standing as an institution of higher learning among its students and the public. In these circumstances, the Commission decided that it was in the public interest to conduct an investigation to establish what had occurred, whether any person had acted corruptly, and whether there were any corruption prevention issues that needed to be addressed.

Conduct of the investigation

During the course of the investigation, the Commission:

- obtained documents from various sources by issuing 29 notices under s 22 and seven summonses under s 35 of the ICAC Act requiring production of documents
- interviewed 21 people
- conducted six compulsory examinations.

The public inquiry

The Commission reviewed the information that had been gathered during the investigation and the evidence given at the compulsory examinations. After taking into account the material 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. In coming to that decision, the Commission also had regard to the following considerations:

- there was cogent evidence that supported the allegations
- the allegations were already in the public domain and a public inquiry would provide a transparent mechanism for establishing whether the allegations could be substantiated.

The principal issues for determination were whether Mr Cassidy provided confidential information to Mr Hendry, whether Mr Cassidy had failed to declare potential conflicts of interest arising from his relationship with Mr Hendry, and whether, in 2006, he had knowingly provided inaccurate information to the UNE Audit and Compliance Committee concerning how he became an investor in the Tattersalls Hotel.

The public inquiry was conducted over five days commencing on 21 July 2014. The Hon Megan Latham,

Commissioner, presided at the inquiry. Anna Mitchelmore acted as Counsel Assisting the Commission. Evidence was taken from 19 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. Further submissions were prepared by Counsel Assisting responding to the submissions received from the relevant parties. All the submissions received in response have been taken into account in preparing this report.

The university and the position of chancellor

UNE is established as a body corporate under the *University of New England Act 1993* ("the UNE Act"). It is a "public authority" for the purposes of the ICAC Act, as it is a body in relation to whose functions an account is kept of administration or working expenses, which is required to be audited by the auditor-general.

The UNE Act establishes the Council of the UNE. The Council acts for, and on behalf of, UNE in the exercise of UNE's functions and has the control and management of the affairs and concerns of UNE. The Council consists of a number of persons, including the chancellor.

The Council has a Standing Committee (of which Mr Cassidy was a member), which is authorised to deal with matters requiring urgent attention.

The chancellor is elected by the Council and is a public official for the purposes of the ICAC Act.

As a member of the Council, the chancellor is subject to the duties of Council members set out in Schedule 2A to the UNE Act. These duties include:

...carry out his or her functions:

(a) *in good faith in the best interests of the University as a whole, and*

(b) *for a proper purpose ...*

act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions ...

not make improper use of his or her position:

(a) *to gain, directly or indirectly, an advantage for the member or another person ...*

not make improper use of information acquired because of his or her position:

(a) *to gain, directly or indirectly, an advantage for the member or another person, or*

(b) *to cause detriment to the University ...*

Disclosure of material interests... *in a matter being considered or about to be considered at a meeting of the Council [if] the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter...*

Mr Hendry, and the companies in which he had an interest, were also shareholders in Mr Cassidy's company, Vercot Pty Ltd, until March 2011. Between 1988 and 2001, Mr Hendry was Vercot Pty Ltd's company secretary, and between 2004 and 2011 he was also one of its directors.

The Council may remove a member from office for a breach of a duty set out in Schedule 2A to the UNE Act.

Mr Cassidy

Mr Cassidy became a member of the UNE Council in 2001. At that time, he was also the chairman and chief executive officer (CEO) of Abigroup Ltd.

Mr Cassidy became a consultant with Abigroup Ltd in the mid-1980s when it was called Abignano Ltd. In 1988, he was approached to lead a management buy-out of Enacon Ltd, which was the major Abigroup Ltd shareholder. He invited others, including Mr Hendry, to participate in the buy-out.

The management buy-out was achieved through a company called Vercot Pty Ltd. Mr Cassidy has always been the majority shareholder in Vercot Pty Ltd. At the time of the public inquiry, Mr Cassidy and his wife were the only shareholders in that company. Mr Cassidy has always been a director of Vercot Pty Ltd.

In 2004, a full takeover of Abigroup Ltd was triggered by Vercot Pty Ltd, selling its interest to Bilfinger Berger Australia. At the public inquiry, both Mr Cassidy and Mr Hendry agreed that they made a substantial profit from this transaction, which was somewhere in the vicinity of \$92.8 million (before tax). Mr Cassidy resigned from Abigroup Ltd after the takeover.

On 11 December 2003, Mr Cassidy was elected as the chancellor of UNE for a term of five years – the maximum period provided for under the UNE Act.

Mr Hendry

Mr Hendry had been a chartered accountant. He commenced work with Abignano Ltd in 1984 as chief financial officer of its building and construction companies. By 1988, he was the chief financial officer of Abigroup Ltd.

Mr Hendry told the Commission that he worked very closely with Mr Cassidy between 1988 and the early 1990s.

Chapter 2: Preparing to sell the hotel

Tattersalls Hotel is located in the middle of the Beardy Street Mall in Armidale's central business district. At the time of its sale in 2006, the hotel premises comprised of a front and back bar, a poker machine area with 15 machines, a dining area and kitchen, 40 guest rooms, a manager's residence and an open space area at the rear.

The hotel was owned by UNE Union Ltd. A separate entity, the UNE Union, carried out the day-to-day operations and management of the hotel. The hotel was subject to a bank mortgage securing a \$700,000 loan.

Why the hotel had to be sold

By 2005, the foreshadowed introduction of voluntary student unionism raised questions as to the continued financial viability of the UNE Union, which relied, in part, on students paying union membership fees. Graham Dennehy, UNE executive director of business and administration in 2005 and early 2006, told the Commission that the change would result in a significant decrease to the UNE Union's revenue.

Both Mr Cassidy and Mr Dennehy told the Commission that they were concerned about the UNE Union's capacity to continue to operate solvently. The UNE Council and the UNE Union board agreed to engage Stephen Hall, a chartered accountant and registered liquidator with Forsyths Chartered Accountants, to examine the affairs of the UNE Union and UNE Union Ltd and provide recommendations.

On 11 May 2005, Mr Hall was appointed as receiver and manager of the UNE Union and administrator of UNE Union Ltd.

Mr Hall engaged Gerry Quinlan of Manenti Quinlan, a registered valuer of hotels, to value the hotel. After inspecting the hotel, Mr Quinlan prepared a valuation report dated 25 May 2005, assessing the fair market value of the hotel at \$2.35 million.

Although Mr Quinlan's valuation report is not marked "confidential", the Commission is satisfied that it was a

confidential document because it contained commercially-sensitive information about the market value of the hotel as well as the income, expenses and annual net profit of the hotel business. This information was relevant not only to establish the value of a UNE Union Ltd asset but also to assess any offers to purchase that asset in the likely event it was offered for sale. The Commission is satisfied that those officers of UNE who saw the valuation report would have appreciated that it contained sensitive information as to the value of the hotel and was, therefore, a confidential document.

Mr Quinlan's valuation report was provided to Mr Hall who, in turn, annexed it to his report of 2 June 2005 on the financial affairs of the UNE Union and UNE Union Ltd. The report notes that voluntary student unionism would likely reduce the revenue of the UNE Union by about \$770,000 per year, and that it would be difficult in these circumstances for the UNE Union to restructure its operations sufficiently to operate at a surplus. In the report, Mr Hall noted that the UNE Union would have traded insolvently if it had continued to trade. He recommended the establishment of a new entity, to be controlled by UNE, which could enter into a deed of arrangement to transfer the existing assets and liabilities of the UNE Union to that entity. He also recommended that UNE Union Ltd enter into a deed of company arrangement that would involve, among other things, selling the hotel so that the mortgage could be discharged and a \$225,000 loan from the UNE Union be repaid. UNE Union Ltd could be placed into liquidation with any surplus funds distributed to the UNE Union.

Although Mr Hall's report is not marked confidential, the Commission is satisfied that it was a confidential document and would have been understood as such by those UNE officers who saw it. This is because, apart from including Mr Quinlan's valuation report, it set out detailed financial information concerning the UNE Union and UNE Union Ltd, including a projected budget forecast summary.

Mr Cassidy told the Commission that he had seen Mr Hall's report and Mr Quinlan's valuation and was aware that Mr Quinlan had valued the hotel at \$2.35 million.



Mr Cassidy did not consider that this figure reflected the hotel's full value. He told the Commission, however, that he did not read Mr Hall's report in any detail and had reviewed Mr Quinlan's report only in general terms. The Commission does not accept that Mr Cassidy did not fully read and consider both reports.

There is evidence that Mr Cassidy was closely involved in matters affecting UNE.

Mr Dennehy told the Commission that Mr Cassidy was "always very interested in the university affairs and operations, was always getting, obtaining information about how things were operating, whether it'd be in terms of the resources we had, people and finances and infrastructure, those sorts of things". He described Mr Cassidy as "very involved" in comparison to other chancellors with whom he had worked.

James Harris was deputy chancellor in 2005 and 2006. He described Mr Cassidy's level of engagement with issues concerning UNE as "full on" and considered Mr Cassidy was "an activist" chancellor.

Professor Robin Pollard was, at the relevant time, pro vice-chancellor international at UNE. He described Mr Cassidy as "quite hands-on".

Given Mr Cassidy's known high-level of involvement with UNE business and the significance of the issue concerning the financial position of the UNE Union and UNE Union Ltd, it is inconceivable that he did not carefully review Mr Hall's report and Mr Quinlan's valuation report, including information as to the basis of the valuation, so as to inform himself as far as possible on a significant issue affecting UNE.

Transfer of ownership to Services UNE Ltd

A working group was set up to consider the restructure proposal and the sale of the hotel. The working group, consisting of Mr Cassidy, Mr Dennehy, Mr Hall, Anthony

Fox (UNE's lawyer) and Susanne Pains, CEO of the UNE Union, met on 20 July 2005. They discussed the timing of the sale of the hotel in relation to the transfer of assets from UNE Union Ltd and the UNE Union to a controlled entity of UNE, which was to be called Services UNE Ltd. Helen Arthurson, UNE Council secretary, was also present and took the meeting's notes. These notes record that Mr Cassidy informed those present that he had spoken with Richard Torbay, then member for the Northern Tablelands, about the possibility of obtaining an exemption from stamp duty in relation to the transfer of the hotel to a new company. The avoidance of stamp duty was one of the issues Mr Hall had raised in his report of 2 June 2005. Mr Cassidy's involvement in this aspect of the matter is further evidence that Mr Cassidy had given close attention to Mr Hall's report. The working group agreed that, subject to a favourable response on the stamp duty exemption, it would recommend that the hotel be transferred with the other assets of the UNE Union to Services UNE Ltd.

On 4 August 2005, Mr Cassidy, who was in favour of this course of action, reported the outcome of the meeting to the UNE Council Standing Committee. This committee then resolved to approve the constitution and the deed of company arrangement of Services UNE Ltd.

Services UNE Ltd decides to sell the hotel

Services UNE Ltd held its first board meeting on 27 September 2005. The directors of Services UNE Ltd were Ann Maurer, a local accountant, Andrew Murray, a local businessman, and Rob Watt, a solicitor with the Armidale firm of Watson McNamara and Watt. At the meeting, the directors resolved to authorise Ms Pains to commence negotiations for the sale of the hotel for \$3 million or more.

An offer had already been made to purchase the hotel. In July 2005, Camtrad Pty Ltd made an offer to Mr Hall to purchase the hotel for \$3 million, subject to completing a due diligence study and reviewing the hotel's accounts.

Between the first board meeting of Services UNE Ltd on 27 September 2005 and the third board meeting on 27 October 2005, Mr Hall received a further unconditional offer for the hotel from the director of Nutters Hotels Pty Ltd of \$2.65 million and a revised offer from Camtrad Pty Ltd of \$2.5 million. Mr Murray also received a telephone call from a person representing a potential purchaser who was prepared to pay up to \$3 million for the hotel, subject to inspection and review of the accounts.

Mr Cassidy told the Commission that he was aware of the Camtrad Pty Ltd offer of July 2005 but was unable to recall when he first became aware of the offer.

Mr Dennehy was aware of the Camtrad Pty Ltd offer to purchase the hotel for \$3 million. He knew that Mr Hall had recommended discussing the offer with Camtrad Pty Ltd, given that it was considerably higher than Mr Quinlan's valuation. Mr Dennehy was supportive of this approach and, therefore, discussed the Camtrad Pty Ltd offer with the working party, which included Mr Cassidy. This occurred prior to the hotel being advertised for sale.

Mr Dennehy considered that this discussion was confidential and that members of the working group understood this to be the case. The offer was not discussed with people external to the working group. The Commission is satisfied that the discussion about an offer for the purchase of the hotel was indeed of a confidential nature and that those who were present would have appreciated this fact.

Mr Dennehy also recorded, by way of a file note, a conversation he had with Mr Cassidy on 8 February 2006, in which Mr Dennehy raised his concerns about Mr Cassidy's involvement in the purchase of the hotel. Although the file note was made the following day, the Commission is satisfied it is an accurate account of the conversation. The file note records that, in response to Mr Cassidy's statement that he had obtained legal advice and was preparing a report for the UNE Audit and Compliance Committee, Mr Dennehy suggested to Mr Cassidy that he ensure that the legal advice cover two further points. One of those points

was that Mr Cassidy had not allowed the receiver/manager to consider the previous offer of \$3 million for the property. The file note records that Mr Cassidy's answer to this point was not to deny knowledge of that offer at the time it was made, but to state, presumably as the basis for his actions, that the offer needed to go through the approval process.

The Commission is satisfied that Mr Cassidy was aware of the Camtrad Pty Ltd offer of 22 July 2005 some time prior to tenders being called for the sale of the hotel.

There is also evidence that Mr Cassidy was aware of the revised Camtrad Pty Ltd offer of \$2.5 million. In his evidence at the public inquiry, Mr Cassidy said that, sometime before the media release announcing the sale of the hotel, he became aware that an offer of \$2.5 million had been made. As the media release is dated 31 October 2005, the Commission is satisfied that Mr Cassidy became aware of the revised Camtrad Pty Ltd offer some time prior to 31 October 2005.

At the Services UNE Ltd board meeting on 27 October 2005, the directors resolved that the hotel be marketed by a closed tender process over a three-week period. The board made this decision after discussions with Mr Quinlan on his valuation and potential changes in value over recent months and with Mr Hall, who advised on how the board might achieve best value for the hotel.

Mr Hall was instructed by the Services UNE Ltd board to administer the tender process.

On 31 October 2005, Services UNE Ltd announced the sale by tender of the hotel in a media release. The sale was also advertised in the *Sydney Morning Herald* and the *Armidale Express*.

Potential tenderers received a document setting out the conditions of tender, a tender form, a draft contract of sale, and an information memorandum. None of these documents contained any information about Mr Quinlan's valuation or the other offers received for the hotel.

Chapter 3: Mr Cassidy interests Mr Hendry in buying the hotel

There is evidence that Mr Hendry first became aware that the hotel was for sale as a result of a telephone conversation he had with Mr Cassidy, and that Mr Cassidy encouraged him to consider buying the hotel.

This chapter examines whether, in his contact with Mr Hendry, Mr Cassidy misused confidential information acquired in the exercise of his official functions. This chapter also examines whether Mr Cassidy failed to disclose any potential conflict of interest arising from his relationship with Mr Hendry and whether he sought to provide misleading information concerning that relationship.

The first contact between Mr Cassidy and Mr Hendry

Mr Hendry told the Commission that he first became aware that the hotel was for sale some time in November 2005, as a result of a telephone call he received from Mr Cassidy. Mr Hendry recalled that, during their conversation, Mr Cassidy said words to the effect of, “You should, you should have a look at that pub – meaning I should have a look at the pub ... because he thought it was a good investment, and that’s the thrust of what I recall about the original contact”. Mr Hendry also recalled that Mr Cassidy told him that the hotel was owned by UNE and was advertised for sale in the Saturday edition of the *Sydney Morning Herald*.

Mr Hendry understood from what Mr Cassidy had said to him that he should consider buying the hotel. He said that he inferred this from Mr Cassidy’s comment that the hotel looked like a good investment; that Mr Hendry could draw that inference was consistent with the closeness of their working relationship, fostered during their long time at Abignano Ltd and Abigroup Ltd.

Call charge records lawfully obtained by the Commission show a call placed from Mr Cassidy’s mobile telephone

to Mr Hendry’s mobile telephone on 11 November 2005, lasting 16:30 minutes. In evidence, Mr Hendry agreed that it was more likely than not that Mr Cassidy told him about the hotel in that conversation. Mr Hendry recalled that before this conversation with Mr Cassidy he had probably not spoken to Mr Cassidy for three or four months. His evidence is consistent with the call charge records, which show that before 9 November 2005 (a call which lasted 30 seconds), Mr Cassidy had last placed a call from his mobile telephone to Mr Hendry’s mobile telephone on 22 August 2005.

Initially, Mr Cassidy told the Commission that he did not recall telephoning Mr Hendry around 11 November 2005 but that he believed he sent Mr Hendry a facsimile around that time. During this part of his evidence, Mr Cassidy did not identify the subject matter of the facsimile. Later in his evidence, he denied that he had a conversation with Mr Hendry about the hotel in November 2005. He said that he spoke with Mr Hendry about “Vercot business probably, if I did speak with him around that time”. In the end, Mr Cassidy told the Commission that he recalled sending Mr Hendry a facsimile “with the advertisement in the *Armidale Express* saying, ‘Here’s your country pub,’ or words to that effect because he often joked about a country pub”. This was, on his evidence, the only communication he recalled having with Mr Hendry about the hotel before 11 or 12 January 2006.

The Commission does not accept Mr Cassidy’s evidence on this issue.

Mr Hendry gave his evidence prior to Mr Cassidy being asked about the telephone conversation. Mr Cassidy’s senior counsel did not put to Mr Hendry that he did not have the telephone conversation with Mr Cassidy in the terms that Mr Hendry described. Nor was it put to Mr Hendry that Mr Cassidy had sent him a facsimile about the hotel. The failure to put these propositions at the time that Mr Hendry gave evidence suggests the recent invention of an explanation by Mr Cassidy after he had heard Mr Hendry’s evidence.

An additional consideration to be taken into account is that it is improbable that Mr Hendry would have taken the steps he did to purchase the hotel simply on the basis of receiving a facsimile of the sale advertisement from Mr Cassidy. This is because Mr Hendry had not previously been involved in hotels or regional businesses, was an infrequent visitor to Armidale, and did not even know where the hotel was situated. On the other hand, Mr Cassidy had held property in the Armidale area since 1982, which included a vineyard and winery, was familiar with the town, and knew about the hotel.

The Commission also takes into account that Mr Hendry presented as a witness of truth, who did his best to assist the Commission with his recollection of events.

The Commission is satisfied that, on 11 November 2005, Mr Cassidy telephoned Mr Hendry about the sale of the hotel and told him that it was a good investment and that he should consider buying the hotel. This was a significant conversation. There is no evidence that Mr Hendry had any interest in acquiring any hotel, let alone a hotel in Armidale, until this conversation. He had no experience in owning or running hotels. The suggestion that the hotel was a good investment is particularly significant in that it came from someone Mr Hendry knew and respected and someone with whom he had worked fairly closely over a number of years. They had a continuing business relationship through their interests in Vercot Pty Ltd, and clearly trusted one another's judgment. Mr Hendry took seriously the suggestion that he should consider buying the hotel because that suggestion came from Mr Cassidy. The Commission is satisfied that it was Mr Cassidy's intention to encourage Mr Cassidy to consider purchasing the hotel.

There was nothing wrong with Mr Cassidy telling Mr Hendry that the hotel was for sale. This fact had been publically advertised. What is of concern, however, is that Mr Cassidy went further and informed Mr Hendry that the purchase of the hotel would be a good investment and one which Mr Hendry should consider. The Commission is satisfied that the basis for Mr Cassidy's opinion that the hotel was a good investment was the information he acquired in his capacity as UNE chancellor, which included Mr Hall's report and Mr Quinlan's valuation report. This was an improper use of confidential information that he had acquired during the course of his exercise of official functions as UNE chancellor. The information was used by Mr Cassidy to advantage Mr Hendry.

Mr Hendry seeks a business partner

Mr Hendry told the Commission that, after the first conversation with Mr Cassidy, he looked at the advertisement and then did a preliminary review of hotels in Armidale and the Northern Tablelands region.

After a few days, he rang Mr Cassidy back and told him that he would submit a tender to purchase the hotel but that he needed partners.

When asked if he recalled Mr Cassidy's response to his desire for partners, Mr Hendry said that the strongest he could say was that Mr Cassidy did not disagree with the proposal. Mr Hendry told the Commission that he did not approach anyone other than Mr Cassidy to become a partner. He assumed that, because Mr Cassidy had telephoned him about investing in the hotel and because of their previous working relationship, if he wanted a partner, Mr Cassidy would be interested in being a partner. Mr Hendry agreed that it had crystallised in his mind after their second telephone conversation that Mr Cassidy would be investing in the hotel.

Mr Cassidy denied that he had any such telephone conversation with Mr Hendry.

Mr Hendry presented as a truthful witness and one who had no reason to lie about his discussions with Mr Cassidy. The Commission accepts Mr Hendry's evidence concerning this conversation. The Commission is also satisfied that Mr Hendry would not have submitted a tender for the hotel without believing that Mr Cassidy would ultimately become his partner in the hotel. This conclusion is supported by Mr Hendry's evidence that he was not prepared to take on the risk of investing in the hotel all on his own and it was "very important" that another person, such as Mr Cassidy, was also involved in the purchase. This is consistent with his description of himself as being highly conservative in his approach to risk generally. He was making an offer for a hotel in circumstances where he did not live in the area, had no local knowledge, and no experience in running a hotel.

The Commission is satisfied that, as a result of a discussion Mr Cassidy had with Mr Hendry a few days after 11 November 2005, Mr Cassidy understood that Mr Hendry would be submitting a tender to purchase the hotel and that Mr Hendry wanted him as a partner to invest with him in the hotel.

Mr Hendry's first offer

On 16 November 2005, Mr Hendry telephoned Mr Hall to enquire about the tender for the sale of the hotel. After signing a deed of confidentiality, Mr Hendry was sent relevant tender documentation.

Mr Hall told the Commission that, some time before the close of tenders on 25 November 2005, Mr Hendry telephoned him and requested an extension of time in which to submit his tender. Mr Hall refused to grant any extension.

By the close of tenders on 25 November 2005, three formal tenders had been received for the purchase of the

hotel. These were in the amounts of \$2.2 million, \$2.375 million and \$2.5 million. The last bid was submitted by Camtrad Pty Ltd.

An offer of \$3.5 million was also received from Mr Hendry after the close of tenders. This offer, dated 27 November 2005, was expressed to be conditional upon completion of satisfactory legal due diligence, satisfactory inspection by a registered building inspector, satisfactory financial due diligence, satisfactory meetings with council officers, satisfactory inspection for termites and pests, satisfactory search of liquor licence and transfer to the purchaser, and consent of the vendor to sell the property to “a special purpose company related to the tenderer”. In the document setting out the offer, Mr Hendry requested an extension of the tender process for a further three weeks. In support of his request, Mr Hendry wrote that he had not received some of the tender documentation until 25 November 2005. He also took issue with what he considered to be a lack of sufficient detail in the information provided to enable him to make an informed bid.

Did Mr Cassidy fail to disclose a “material interest”?

In November 2005, an issue arose about the lawfulness of the proposed sale of the hotel. This concerned whether UNE Council approval was required to sell the hotel.

A meeting of the UNE Council Standing Committee was held on 21 November 2005 to discuss this issue. The minutes of the meeting record that Mr Cassidy informed the Standing Committee that he had called the meeting because of the urgent need for the UNE Council to consider and, if appropriate, approve the sale of the hotel by Services UNE Ltd. The minutes record that, after a brief discussion, the Standing Committee resolved to approve the sale and also proposed that the close of tenders be extended a further two weeks until 9 December 2005.

There is no record in the minutes of Mr Cassidy disclosing to the other members of the Standing Committee any conflict of interest he might have arising from his relationship with Mr Hendry. Mr Cassidy told the Commission that he did not consider that he needed to make any disclosure because he did not have any material interest in the hotel at the time of the meeting.

By mid-November 2005, Mr Cassidy had spoken with Mr Hendry twice about the sale of the hotel. On the first occasion, Mr Cassidy suggested that Mr Hendry should look at the hotel because it was a good investment. On the second occasion, Mr Hendry informed Mr Cassidy that he would submit a tender to purchase the hotel but needed partners. Mr Cassidy had given Mr Hendry to understand that he would be such a partner.

As set out in chapter 1 of this report, one of the duties imposed on the chancellor by Schedule 2A to the UNE Act is to declare a material interest in a matter that is being considered at a meeting of the UNE Council if the interest appears to raise a conflict with the proper performance of the member’s duties in relation to the consideration of the matter and “the interest appears to raise a conflict with the proper performance of the member’s duties in relation to the consideration of the matter”.

Schedule 2A to the UNE Act provides that a UNE Council member has a material interest in a matter “if a determination of the Council in the matter may result in a detriment being suffered by or a benefit accruing to the member or an associate of the member”. The term “associate” is defined to include a business partner or friend of the member and “any other person who is known to the member for reasons other than that person’s connection with the University or that person’s public reputation”. Once a disclosure is made, the member must not be present during relevant Council deliberations or take part in the Council’s decision, unless the Council determines otherwise.

It was submitted on behalf of Mr Cassidy that any knowledge on his part of Mr Hendry’s interest in acquiring the hotel was not “material” and any disclosure on his part would not have made the slightest difference to anyone. The Commission rejects this submission.

The Commission is satisfied that Mr Cassidy had a material interest in the sale of the hotel because he knew at the time of the meeting that the Standing Committee’s decision would affect the sale of the hotel, which was a matter that could result in a benefit to his “associate”, Mr Hendry. At the very least, that material interest appeared to raise a conflict with the proper performance of Mr Cassidy’s duties in relation to consideration of the matter. It was an interest that he should have declared in accordance with the requirements of the UNE Act. Instead, he chaired the meeting and participated in discussion at the meeting. The public purpose behind the obligation to disclose a material interest is to ensure that governance procedures of public authorities are open and transparent; thereby, fostering public confidence in those authorities. By not identifying his material interest, he subverted this purpose and prevented other members of the committee from considering whether he should participate in any discussion concerning the hotel.

The meeting of 28 November 2005

On 28 November 2005, the directors of Services UNE Ltd met at the offices of solicitors Watson McNamara and Watt to review and consider the tenders received. Mr Hall recalled that he tabled the three tenders that he had received, as well as Mr Hendry’s late offer dated 27 November 2005.

Mr Watt, Ms Maurer, Mr Hall and Ms Paine gave evidence about attending the meeting.

Ms Maurer said that Mr Cassidy came towards the very end of the meeting for a brief period to see if tenders had been received. She was sure he would have been told how many tenders were received.

Mr Watt also recalled that Mr Cassidy attended the meeting for a short period after the tenders had been opened to see whether any tenders had been received. He too was confident that Mr Cassidy was informed of the number of tenders received.

Ms Paine recalled that Mr Cassidy “certainly turned up” to the meeting for a period of time.

Mr Hall recalled that Mr Cassidy was present for part of the meeting.

Mr Cassidy recalled going to the Watson McNamara and Watt office on 28 November 2005. He said that his purpose in doing so, however, was to see Mr Watt about a private matter concerning Mr Cassidy’s son. He told the Commission that, at the end of this meeting, Mr Watt suggested that they should go and see the result of the tender.

Mr Cassidy’s account is inconsistent with Mr Watt’s evidence that he (Mr Watt) was present throughout the meeting that considered the tenders. Mr Watt was one of the directors of Services UNE Ltd. It was necessary for him, together with the other directors, to consider the tenders. The Commission is satisfied that Mr Watt was present throughout the meeting.

In any event, Mr Cassidy agreed that he had attended at the end of the meeting, at which time he was advised how many tenders had been received and that they were above the minimum valuation amount. He denied being told the amounts of the tenders.

The Commission is satisfied that, at the meeting of 28 November 2005, Mr Cassidy acquired information about the number of tenders received and that the tenders were above the minimum valuation amount.

The further discussion between Mr Hendry and Mr Cassidy on 1 December 2005

Although Mr Hendry had requested an extension of three weeks for the tender process, he was only granted until 2 December 2005 to submit a formal tender. During the additional period granted to him, he visited Armidale to inspect the hotel and also spoke with the hotel manager.

Call charge records lawfully obtained by the Commission show that, on 1 December 2005, Mr Cassidy made a

telephone call to Mr Hendry’s mobile telephone, lasting 31:30 minutes. Although Mr Hendry told the Commission that he could not recall the conversation, the following evidence indicates his acceptance that the conversation was about the bid for the hotel:

[Commissioner]: ... You, you need to take into account that the inference is very strongly available that the half an hour conversation on 1 December was in fact about the level of the bid and what should be tendered as it were having regard to your inspection of the hotel and that that discussion took place with the expectation that Mr Cassidy was going to be a partner in the purchase so all I’m saying is that that’s the inference that’s available from the circumstances?

[Mr Hendry]: Yes.

[Commissioner]: Do you want to comment in relation to that or not?

[Mr Hendry]: I, I think that’s a fair enough inference.

Mr Hendry could not recall any other reason for speaking to Mr Cassidy for that length of time on that day.

Mr Hendry also agreed that it was more likely than not that he told Mr Cassidy that he was proposing to offer \$2.65 million for the hotel; however, he could not recall if Mr Cassidy commented on the level of the bid. Mr Hendry was clear that it was he, not Mr Cassidy, who came up with the amount of \$2.65 million. He was also clear that Mr Cassidy had not told him how many other bids had been submitted or the amounts of those bids.

Mr Cassidy denied that he spoke with Mr Hendry on 1 December 2005 about the proposed tender. He told the Commission that the discussion concerned the affairs of Vercot Pty Ltd. The Commission does not accept Mr Cassidy’s evidence on this issue.

Mr Hendry wanted a partner to invest in the hotel and anticipated that Mr Cassidy would be that partner. It is logical that he would have wanted to communicate to his potential partner the final amount he was proposing to offer for the hotel. Mr Hendry told the Commission that he wanted to be “totally comfortable” with the price he was submitting. Mr Hendry knew he was potentially committing to a significant financial outlay; both to purchase the hotel and to undertake its refurbishment. He needed to know that Mr Cassidy was comfortable with the proposed offer.

The Commission is satisfied that the telephone conversation between Mr Cassidy and Mr Hendry on

1 December 2005 concerned Mr Hendry's bid for the hotel and that Mr Hendry told Mr Cassidy that he was going to submit a bid for \$2.65 million. The Commission is satisfied that Mr Cassidy did not raise any objection to the submission of a bid for that amount. The Commission is not satisfied, however, that Mr Cassidy told Mr Hendry how many bids had been submitted by that date or the amounts of any bids that had been submitted.

Did Mr Cassidy fail to disclose to Mr Watt the full nature of his relationship with Mr Hendry?

On 2 December 2005, Mr Hendry submitted a revised tender to purchase the hotel for \$2.65 million. On 5 December 2005, the directors of Services UNE Ltd met and resolved to accept Mr Hendry's revised tender; it being the highest tender received.

The minutes of the meeting of 5 December 2005 record that Mr Watt told those present that Mr Cassidy had informed him that "the highest tender was from the former accountant with [Abigroup Ltd] who had no ongoing connection with him". Mr Watt told the Commission that he may well have said that; although, he also recalled reporting that Mr Cassidy had told him that Mr Hendry was his accountant. When questioned further, he accepted that his recollection of his conversation with Mr Cassidy would have been better on 5 December 2005. He said that he reviewed minutes of meetings when they were circulated to ensure they accorded with his recollection of what occurred. His evidence was that the fact that he had not requested any amendments to the minutes indicated that he had no issue at the time they were circulated with the accuracy of what he was recorded to have reported.

Mr Cassidy gave evidence that he told Mr Watt that Mr Hendry was well known to him. Even if the Commission were to accept this evidence, such a statement is misleading, as it fails to accurately reflect the extent of their business relationship, including their communications concerning the hotel.

The Commission is satisfied that the minutes of the meeting of 5 December 2005 accurately record the content of the conversation between Mr Watt and Mr Cassidy.

Mr Cassidy's assertion to Mr Watt that he had no ongoing relationship with Mr Hendry was misleading. Even a statement to the effect that Mr Hendry was well known to him would have been misleading, as such a statement would not adequately describe the extent of their relationship. Mr Cassidy and Mr Hendry were fellow directors and shareholders of Vercot Pty Ltd, which, on any view, constituted an ongoing business connection. Further, on Mr Hendry's evidence, which the Commission accepts, he had already had discussions with Mr Cassidy

about purchasing the hotel, during which he had come to understand that Mr Cassidy was interested in becoming his partner in the hotel.

It was submitted on behalf of Mr Cassidy that, once Mr Cassidy had identified that he knew Mr Hendry, his business connection with Mr Hendry could have easily been demonstrated by undertaking relevant searches with the Australian Securities and Investments Commission. Such a search would have shown that they were directors and shareholders of Vercot Pty Ltd. This submission misses the point. The obligation of disclosure was on Mr Cassidy. That obligation is not met by making a partial disclosure and leaving it to others to initiate further enquiries as to whether the nature of the relationship is more extensive than that disclosed.

Mr Cassidy's failure to disclose the full nature of his relationship with Mr Hendry was inconsistent with the standard of conduct to be reasonably expected of someone holding such a senior position as chancellor of UNE. Persons holding such an office should not only be, but also be seen to be, absolutely transparent as to matters where the potential for conflict of interest arises between their public functions and their private interests.

Did Mr Cassidy fail to disclose a potential conflict of interest to the UNE Council?

The UNE Council met on 8 December 2005. Mr Cassidy is recorded in the minutes of the meeting as being present. The minutes record that the UNE Council noted the confidential minutes of the UNE Council Standing Committee meeting of 21 November 2005, which recorded the approval for the sale of the hotel.

The minutes of the 8 December 2005 UNE Council meeting do not record any disclosure by Mr Cassidy of a material interest in relation to the sale of the hotel.

Ms Arthurson, the UNE Council secretary responsible for taking the minutes, told the Commission that she would ordinarily include all references to material interest if one was disclosed, unless the UNE Council was of the view that the potential conflict of interest would not impact on the discussion.

Mr Cassidy said that the first time he recalled disclosing a potential conflict of interest arising from his relationship with Mr Hendry was in February 2006. He agreed that any earlier declaration would have been recorded in the minutes of the relevant meeting.

The Commission is satisfied that, at the meeting of the UNE Council of 8 December 2005, Mr Cassidy had an opportunity to disclose to the UNE Council that he had a material interest in any consideration of the sale of the

hotel because of his relationship with Mr Hendry. Instead, he chose to say nothing.

The Commission is satisfied that Mr Cassidy had a material interest in a matter being considered at the meeting of the UNE Council of 8 December 2005. That matter was the noting of the unconfirmed UNE Council Standing Committee minutes of 21 November 2005, which recorded the approval of the sale of the hotel by Services UNE Ltd. Mr Cassidy knew that an associate, Mr Hendry, was interested in purchasing the hotel that could result in Mr Hendry obtaining a benefit. It was a material interest that appeared to raise a conflict of interest with the proper performance of Mr Cassidy's duties as a member of the UNE Council and was one that he should have declared.

Corrupt conduct – John Cassidy

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)(c) of the ICAC Act, the Commission considers whether, if the facts as found were to be proved on admissible evidence to the appropriate civil standard of on the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such tribunal would find that there are reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of the public official.

Misuse of confidential information

Mr Cassidy told Mr Hendry that the purchase of the hotel would be a good investment and one that Mr Hendry should consider. The basis for Mr Cassidy's opinion that the hotel was a good investment was the information, which included Mr Hall's report and Mr Quinlan's valuation report, that he acquired in his capacity as UNE chancellor.

Mr Cassidy's conduct on or about 11 November 2005 in misusing confidential information, which he acquired by reason of his position as chancellor of UNE, to gain advantage for Mr Hendry, by informing him that the purchase of the Tattersalls Hotel would be a good investment that Mr Hendry should consider making, is corrupt conduct.

This is because it is conduct of a public official that constitutes or involves the misuse of information that he acquired in the course of his official functions, whether or not for his benefit or for the benefit of any other person,

and therefore comes within s 8(1)(d) of the ICAC Act.

Mr Cassidy was a member of the UNE Council. Section 21G(1) of the UNE Act provides that the UNE Council may remove a member of the UNE Council from office for breach of a duty set out in Schedule 2A to the UNE Act.

Clause 4 of Schedule 2A requires that a member of the UNE Council must not make improper use of information acquired because of his or her position to gain, directly or indirectly, an advantage for the member or another person, or to cause detriment to UNE.

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 civil 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 Mr Cassidy breached clause 4 of Schedule 2A to the UNE Act and his conduct therefore constitutes a disciplinary offence of misconduct and/or a breach of duty giving rise to reasonable grounds under s 21G(1) of the UNE Act for removing him from office.

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

Failure to disclose a material interest to the UNE Council Standing Committee

Mr Cassidy's conduct in failing to disclose, at a meeting of the UNE Council Standing Committee on 21 November 2005, that he had a "material interest" in discussions concerning the sale of the hotel, that appeared to raise a conflict of interest in the proper performance of his duties because he knew that Mr Hendry, his business partner and friend, was interested in purchasing the hotel, is corrupt conduct.

This is because it is conduct of a public official that constitutes or involves a breach of public trust and therefore comes within s 8(1)(c) of the ICAC Act.

Clause 5 of Schedule 2A to the UNE Act requires a member of the UNE Council to disclose any material interest that that person has in a matter being considered, or about to be considered, at a meeting of the UNE Council if the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter.

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 civil 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 Mr Cassidy breached clause 5(1) of Schedule 2A to the UNE Act and his conduct therefore constitutes a disciplinary offence

of misconduct and/or a breach of duty giving rise to reasonable grounds under s 21G(1) of the UNE Act for removing him from office.

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

Failure to make a full disclosure to Mr Watt

Mr Cassidy's failure to disclose to Mr Watt, a director of Services UNE Ltd, which was considering Mr Hendry's tender for the purchase of the hotel, the full nature of his relationship with Mr Hendry, is corrupt conduct.

This is because it is conduct of a public official that constitutes or involves a breach of public trust and therefore comes within s 8(1)(c) of the ICAC Act.

Clause 2 of Schedule 2A to the UNE Act requires that a member of the UNE Council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions.

The Commission is satisfied for the purpose of s 9(1)(b) of the ICAC that, if the facts it has found were to be proved on admissible evidence to the civil 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 Mr Cassidy breached clause 2 of Schedule 2A to the UNE Act and his conduct therefore constitutes a disciplinary offence of misconduct and/or a breach of duty giving rise to reasonable grounds under s 21G(1) of the UNE Act for removing him from office.

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

Failure to disclose a material interest to the UNE Council

It was submitted on behalf of Mr Cassidy that his conduct could not amount to a breach of public trust because he had previously informed Mr Watt of his association with Mr Hendry. The Commission has found, however, that his disclosure to Mr Watt was misleading. In any event, that disclosure related to a meeting of the directors of Services UNE Ltd. Mr Cassidy was under a separate obligation to make a disclosure to the UNE Council on 8 December 2005.

Mr Cassidy's conduct in failing to disclose, at a meeting of the UNE Council on 8 December 2005, that he had a material interest in matters relating to the sale of the hotel, that appeared to raise a conflict of interest with the proper performance of his duties, because he knew that Mr Hendry, his business partner and friend, was interested in

purchasing the hotel, is corrupt conduct.

This is because it is conduct of a public official 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)(b) of the ICAC that, if the facts it has found were to be proved on admissible evidence to the civil 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 Mr Cassidy breached clause 5(1) of Schedule 2A to the UNE Act and his conduct therefore constitutes a disciplinary offence of misconduct and/or a breach of duty giving rise to reasonable grounds under s 21G(1) of the UNE Act for removing him from office.

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

Section 74A(2) statement

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

- (a) obtaining the advice of the DPP with respect to the prosecution of the person for a specified criminal offence
- (b) the taking of action against the person for a specified disciplinary offence
- (c) the taking of action against the person as a public official on 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.

In respect of the matters canvassed in this chapter, the Commission is satisfied that Mr Cassidy is an "affected" person.

As Mr Cassidy's conduct involved disciplinary matters rather than criminal offences, it is not necessary for the Commission to consider obtaining the advice of the DPP with respect to his prosecution for any criminal offence. As Mr Cassidy is no longer chancellor of UNE, it is not necessary for the Commission to consider whether any disciplinary action should be taken against him or any other action should be taken with a view to his dismissal.

Chapter 4: Mr Cassidy becomes an investor in the hotel

Around 6 December 2005, Mr Hall advised Mr Hendry by telephone that his tender to purchase the hotel for \$2.65 million had been accepted. Contracts were exchanged on 6 December 2005. The contract included a special condition allowing the purchaser to establish a special purpose trust or company for the purposes of purchasing the hotel.

Mr Cassidy told the Commission that the first time Mr Hendry raised the prospect of Mr Cassidy investing in the hotel was about 11 or 12 January 2006, and that he decided to do so only on 19 January 2006. For reasons set out in chapter 3, the Commission is satisfied that Mr Cassidy was aware in November 2005 that Mr Hendry wanted him to invest in the hotel. There is evidence that Mr Cassidy had decided to invest in the hotel before 19 January 2006.

The proposed ownership structure

On 9 December 2005, Mr Hendry met with Geoffrey Walker, a chartered accountant. Mr Walker's notes of the meeting show that Mr Hendry was to take a one-third interest in the hotel, with Mr Cassidy holding a two-third interest. Mr Hendry told the Commission that by this date it was not a secret in his mind that Mr Cassidy had agreed to invest in the hotel.

Following that meeting, Mr Hendry continued to communicate with Mr Walker and lawyers from Brown Wright Stein Lawyers ("BWS Lawyers") to progress the structure for the venture that identified Mr Hendry, Mr Cassidy and, later, Vercot Pty Ltd as investors in the hotel.

On 19 December 2005, Mr Walker sent an email to Mr Hendry attaching a proposed structure for the venture that involved dividing the property of the hotel and its operations. Under the proposal, Mr Hendry would have a one-third interest in the property and Mr Cassidy a two-third interest. Mr Hendry and Mr Cassidy would have the same proportional interest in the operations.

Armpub No 1 Pty Ltd and Armpub No 2 Pty Ltd were incorporated on 23 December 2005. These companies were to be responsible for the hotel property and operations respectively. At the time of the incorporation of those companies, Mr Hendry and his wife were the sole directors and shareholders. Mr Hendry held one of the three shares in each company and his wife the other two shares in each company.

Mr Hendry told the Commission that he included his wife as a director and shareholder of both companies for reasons of convenience, given the time of the year and urgency to get the companies incorporated so as to progress the liquor licence application. He understood that Mr Cassidy would eventually replace his wife as a director and shareholder in each company. This is, in fact, what largely occurred. Mr Cassidy replaced Mrs Hendry as a director of each company on 30 January 2006. Mr Cassidy's company, Vercot Pty Ltd, became the majority shareholder in each company.

On 10 January 2006, Mr Hendry sent a facsimile to Michael Malanos of BWS Lawyers attaching two diagrams that made changes to the ownership structure. As regards the hotel's property structure (of which Armpub No 1 Pty Ltd was the corporate trustee), the Tattersalls Unit Trust No 1 (the trust with which Mr Hendry was associated) would now hold only a one-tenth interest, whereas Tattersalls Unit Trust No 2 (the trust with which Mr Cassidy was associated) would hold the remaining nine-tenths. Mr Hendry explained to the Commission that these changes reflected his concern about the cost of refurbishing the hotel and his desire not to have to contribute additional funds for the refurbishment. He agreed that he would have discussed the changes with Mr Cassidy before he gave instructions to Mr Malanos. He thought it was more likely than not that Mr Cassidy got a copy of the diagrams with the new ownership structure around 10 January 2006.

Mr Malanos subsequently sent an email to Mr Hendry attaching a first draft of the Tattersalls Unit Trust No 2 (the

trust with which Mr Cassidy was associated). Mr Hendry replied to Mr Malanos by email, stating, "John and I are happy with the terms of the trust deed". Mr Hendry told the Commission that his reference to "John and I" in this context meant that he would have given a copy of the trust deed to Mr Cassidy.

On 16 January 2006, Mr Hendry sent a facsimile to Simon Griesz of BWS Lawyers, attaching forms required to progress the liquor licence application for the hotel. This included the identification of Vercot Pty Ltd as a company that held a direct or indirect financial interest in the business or the profits of the business of the licensed premises, and as a company that would own the freehold. Mr Hendry also identified Mr Cassidy and Mrs Cassidy as shareholders of Vercot Pty Ltd and identified Mr Cassidy as a director of Vercot Pty Ltd. Mr Hendry told the Commission that he knew from discussions with Mr Cassidy that Vercot Pty Ltd would be Mr Cassidy's investment vehicle for the hotel. The following evidence is relevant to this issue:

[Counsel Assisting]: *So, as at 16 January you've put in the liquor licencing information to your instructing solicitors and that included Vercot?*

[Mr Hendry]: *Vercot. Ah hmm.*

[Counsel Assisting]: *And certainly at that point you had, had sufficient discussions with Mr Cassidy to understand that it would be Vercot funding his side of the transaction?*

[Mr Hendry]: *Yes.*

[Counsel Assisting]: *And what I'm putting to you is that even earlier than that, so going back to 10 January when you provided the last structural document to your solicitors, that also had Vercot in that,*

in Mr Cassidy's side and I'm saying at that point - - -?

[Mr Hendry]: *Yes.*

[Counsel Assisting]: *I'm suggesting to you at that point similarly you had the instructions from Mr Cassidy?*

[Mr Hendry]: *I would have, I would have - - -*

[Counsel Assisting]: *That it would be Vercot?*

[Mr Hendry]: *I would have had to have had, yes.*

Mr Cassidy's evidence

Mr Cassidy told the Commission that he received a facsimile from Mr Hendry on about 11 or 12 January 2006, which set out a structure for ownership of the hotel. He said that this was the first time Mr Hendry had communicated to him the possibility of him investing in the hotel. He agreed that he had never seen anything like the document before, which in effect named him as the majority purchaser of the hotel. When asked whether it occurred to him to pick up the telephone and make sure that Mr Hendry had not committed him to purchasing the hotel, Mr Cassidy could only say that he could not recall doing that.

He told the Commission that the bulk of his discussions with Mr Hendry about the hotel took place on 19 January 2006, and that he made the decision to invest in the hotel on that date without reviewing any of the documents.

Mr Cassidy also referred to the minutes of a meeting of Vercot Pty Ltd on 19 January 2006 to support his claim that a decision to invest in the hotel was made at that meeting. Those minutes record that a decision was made at that meeting to invest in the hotel but they are not conclusive proof that the decision to invest was arrived at only on that date. There are a number of entries in the minutes, which

were prepared by Mr Cassidy, that refer to action to be taken that had, in fact, already been taken. The minutes refer to submitting a liquor licence application. This had already been done by Mr Hendry on 16 January 2006. The minutes also refer to employing “suitable personnel previously interviewed by Mr Hendry”. The key employee, the hotel manager, had already been employed and had, by 10 January 2006, submitted the necessary material for the liquor licence transfer application.

In his letter of 5 February 2006 to the UNE Audit and Compliance Committee, Mr Cassidy maintained his position that he had decided to invest in the hotel only on 19 January 2006. In that letter, he stated, “My decision to invest was taken on 19 January, following the inspection of the premises and advice from a Sydney consultant”.

The Sydney consultant to whom Mr Cassidy referred was Bahram Gusheh, a civil engineer employed by Abigroup Ltd from around 1985 to 2010. In his role at Abigroup Ltd, he came to know both Mr Cassidy and Mr Hendry very well.

Mr Hendry told the Commission that it was Mr Cassidy’s idea to get Mr Gusheh involved, as he could be relied on to give a straight opinion in relation to what needed to be done to the hotel. He believed that his conversation with Mr Cassidy about Mr Gusheh occurred on or about 19 December 2005.

Mr Gusheh recalled travelling to Armidale on two occasions to inspect the hotel. He recalled that Mr Cassidy was present on the first occasion and probably also on the second occasion. He recalled that Mr Cassidy wanted his opinion on the structural soundness of the hotel. Mr Gusheh was uncertain as to the dates he travelled to Armidale but thought it may have been in 2006. There is other evidence to indicate, however, that he was approached in 2005, even if he did not travel to Armidale until 2006.

A file note dated 19 December 2005, prepared by Mr Greisz, the lawyer acting for Mr Hendry in relation to the purchase of the hotel, includes Mr Gusheh’s name. It is reasonable to infer from this that, by 19 December 2005, Mr Cassidy had discussed with Mr Hendry the desirability of engaging Mr Gusheh.

This shows that Mr Cassidy was involved in matters pertaining to the purchase of the hotel well before he received documents from Mr Hendry about the ownership structure of the hotel in January 2006. That involvement is consistent with Mr Cassidy having decided to invest in the hotel prior to 19 January 2006.

Mr Cassidy’s evidence is also at odds with the evidence relating to his involvement in the recruitment of the hotel manager.

Phillip Franklin, who was ultimately employed as manager of the hotel, told the Commission that early one morning

he got a phone call from his friend, Shaun Cassidy, who told him that Mr Hendry had bought a hotel and wanted him to participate in an interview for the position of manager. Shaun Cassidy is Mr Cassidy’s nephew.

Mr Franklin said that he attended a meeting the same day at a cafe across the road from the hotel. Mr Hendry, Mr Cassidy and Shaun Cassidy were present at the meeting. Mr Franklin described the meeting as a general job interview, with Mr Hendry doing most of the talking and Mr Cassidy also asking questions. Mr Franklin estimated that the meeting occurred one or two weeks before he swore a liquor licence application on 9 January 2006. This would place the meeting as having occurred in either early January 2006 or late December 2005.

Mr Hendry told the Commission that he recalled the meeting with Mr Franklin. He thought that Mr Cassidy was at the meeting as well but could not recall Shaun Cassidy being there.

Shaun Cassidy gave evidence that he could not recall speaking with Mr Franklin about managing the hotel or attending the meeting at the cafe. The Commission does not accept the evidence of Shaun Cassidy on this issue. Shaun Cassidy presented as a witness determined to be as unhelpful as possible.

Mr Cassidy told the Commission that he did not recall asking his nephew whether he knew anyone who could manage the hotel or attending the meeting with Mr Franklin but conceded that it was possible these events had occurred.

The Commission is satisfied that Mr Cassidy, Mr Hendry and Shaun Cassidy met with Mr Franklin in late December 2005 or early January 2006 for the purpose of interviewing Mr Franklin for the position of manager of the hotel. Mr Cassidy’s involvement in selecting someone suitable to undertake the role of hotel manager is consistent with him having agreed to invest in the hotel prior to 19 January 2006.

When did Mr Cassidy decide to invest in the hotel?

The Commission does not consider it plausible that Mr Hendry, who Mr Cassidy described as “very conservative” in business matters, would have undertaken the series of activities referred to above, which involved a relatively complex set of arrangements, on a mere assumption that Mr Cassidy might, at some future time, consider investing in the hotel.

The Commission rejects Mr Cassidy’s evidence that he had no discussions with Mr Hendry or received any information or documentation from him in December 2005 in relation to the purchase of the hotel. Mr Cassidy’s evidence on

this issue leaves unexplained, as he conceded, why Mr Hendry, an experienced and conservative business person, would spend considerable time in December 2005 on the establishment of a relatively complex commercial structure to purchase the hotel unless he was sure that the person he was relying on to be his partner had committed himself to the investment. By 19 January 2006 (the date on which Mr Cassidy says he first agreed to invest), there were only 11 days to settle the sale. It is inconceivable that Mr Hendry would have run the risk that, if Mr Cassidy did not agree to invest, he would have such a short period of time to find another investor and make all the necessary changes to the trust and liquor licensing documentation.

The evidence set out in this chapter is consistent with Mr Cassidy having decided to invest in the hotel prior to 19 January 2006. The Commission is satisfied that, by the time Mr Hendry met with Mr Walker on 9 December 2005 to provide instructions that Mr Cassidy was to take a two-third interest in the hotel, Mr Cassidy had agreed to invest in the hotel.

Chapter 5: Did Mr Cassidy mislead the UNE Audit and Compliance Committee?

On 9 February 2006, Mr Dennehy made handwritten notes of a telephone conversation he had with Mr Cassidy the day before. The notes record that Mr Cassidy said he had bought the hotel. Mr Dennehy was concerned that Mr Cassidy, as UNE chancellor, could be perceived as gaining an advantage in the purchase of the hotel due to his involvement in its sale. Mr Cassidy told him that he had gained no advantage in the purchase of the hotel because Services UNE Ltd had made the decision to sell the hotel. He also said that he had obtained legal advice (presumably about his decision to invest) and was preparing a report for the UNE Audit and Compliance Committee.

The UNE Audit and Compliance Committee

The role of the UNE Audit and Compliance Committee is to “consider, review and advise Council on the compliance of UNE and its related entities to various laws and regulations, including those relating to audit, the environment, employment practice and anti-discrimination”. The UNE chancellor is an ex-officio member of the committee and the committee reports to the UNE Council.

Mr Cassidy’s letter to the UNE Audit and Compliance Committee

Mr Cassidy prepared a letter dated 5 February 2006 addressed to the chair of the UNE Audit and Compliance Committee, which was submitted to that committee’s meeting of 10 February 2006.

In the letter, Mr Cassidy advised that he had “recently acquired a share holding in the Tattersall’s Hotel” and requested that the letter be tendered at the committee’s meeting. The letter goes on to set out the process by which Mr Cassidy had come to invest in the hotel. This process is

set out in paragraphs numbered from (a) to (l) in the letter. Some of these paragraphs contain statements that are incorrect and misleading. The relevant paragraphs are set out below.

In paragraph (e), Mr Cassidy stated that “I did not take part in the decision to sell the Tattersalls Hotel...”. Although Mr Cassidy was not involved in the decision of Services UNE Ltd to sell the hotel, he participated in the decision of the UNE Union Standing Committee (at its meeting on 21 November 2005) to approve Services UNE Ltd selling the hotel. The statement in paragraph (e) is, therefore, misleading.

In paragraph (f), Mr Cassidy stated that “[o]n learning that Mr Darrell Hendry had submitted a tender to purchase the hotel, I advised Services UNE Ltd’s solicitors of a potential conflict as Mr Hendry was well known to me, and that potential conflict was noted”. This statement is misleading, as it suggests that Mr Cassidy did not become aware of Mr Hendry’s interest in the hotel until Mr Hendry had submitted a tender. Mr Cassidy knew that Mr Hendry was submitting a tender by the end of their second conversation in November 2005 and certainly before the close of tenders on 25 November 2005. It is also misleading in that Mr Cassidy again understated the nature of his relationship with Mr Hendry; in particular, he failed to disclose that they were business partners in Vercot Pty Ltd or that they had communicated about the sale of the hotel.

In paragraph (h), Mr Cassidy stated that “[i]n January 2006, Mr Hendry proposed that I invest in the hotel as he had seriously underestimated the run down nature of the hotel and the high cost of renovation”. This statement is misleading in a number of respects. Mr Cassidy knew in November 2005 that Mr Hendry wanted him as a partner in the hotel. By 9 December 2005, Mr Cassidy had decided to invest in the hotel and Mr Hendry had had discussions with Mr Walker about the agreed respective share of their investment.



In paragraph (j), Mr Cassidy stated that “[m]y decision to invest in Tattersall’s was taken on 19 January 2006, following an inspection of the premises and advice from a Sydney consultant”. This statement is misleading because Mr Cassidy’s decision to invest in the hotel was made at least by 9 December 2005.

Mr Cassidy had an obligation to carry out his functions as chancellor in good faith in the best interests of UNE. This obliged him to act honestly and to exercise a reasonable degree of care and diligence in carrying out his functions. It was incumbent upon him to accurately disclose to the UNE Audit and Compliance Committee his role in the decision to sell the hotel, the true nature of his relationship with Mr Hendry, when Mr Hendry invited him to become a partner, and when he decided to become a partner in the hotel. The Commission is satisfied that Mr Cassidy intended, by the above statements, to mislead the UNE Audit and Compliance Committee as to these matters.

Corrupt conduct

Mr Cassidy’s conduct in providing misleading information to the UNE Audit and Compliance Committee in his letter of 5 February 2006 (as set out above) is corrupt conduct. This is because it is 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)(b) and s 9(1)(c) of the ICAC that, if the facts it has found were to be proved on admissible evidence to the civil 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 Mr Cassidy breached clause 2 of Schedule 2A to the UNE Act and his conduct therefore constitutes a disciplinary offence of misconduct and/or a breach of duty giving rise to reasonable grounds under s 21G(1) of the UNE Act for removing him from office.

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

Section 74A(2) statement

In respect of the matters canvassed in this chapter, the Commission is satisfied that Mr Cassidy is an “affected” person.

As Mr Cassidy’s conduct involved disciplinary matters rather than criminal offences, it is not necessary for the Commission to consider obtaining the advice of the DPP with respect to his prosecution for any criminal offence. As Mr Cassidy is no longer chancellor of UNE, it is not necessary for the Commission to consider whether any disciplinary action should be taken against him or any other action should be taken with a view to his dismissal.

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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