

ROADS AND MARITIME SERVICES

**NSW ICAC
EXHIBIT****STATEMENT IN THE MATTER OF:****ICAC Inquiry into allegations concerning the conduct of heavy vehicle assessments****Name: Peter Wells****Address: 101 Miller Street North Sydney NSW 2060****Position: Director, Safety and Compliance Division****Telephone: 8588 5500****Date: 11 October 2013****Introduction**

1. I am the Director of the Safety and Compliance Division (which was previously called the Customer and Compliance Division) in Roads and Maritime Services New South Wales (RMS). I have held this position since 2011.
2. Exhibited to this statement and shown to me at the time of making this statement is a bundle of documents marked "PW1" (**Exhibit PW1**). In this statement I refer to those documents by reference to their divider number within Exhibit PW1.
3. This statement made by me accurately sets out the evidence which I would be prepared, if necessary, to give in court as a witness. The statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything which I know to be false or do not believe to be true.
4. I am authorised to make this statement for and on behalf of RMS.

Professional Experience

5. I have worked in the regulatory and law enforcement environment for 18 years and have the following relevant experience:
 - (a) For 6 years from 1995, I worked for the Environmental Protection Authority and my roles were focussed on the regulation and enforcement of environmental laws and the investigation of fraud and non-compliance;
 - (b) For 6 years from 2002, I worked for the Department of Natural Resources and was involved in the regulation of natural resources such as water and forests;
 - (c) I joined what was then the Roads and Traffic Authority New South Wales in 2008 and was appointed as the General Manager, Camera Enforcement

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Peter Wells

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Branch. This Branch managed the use of Fixed Digital Speed Cameras, Red Light/Speed Cameras, the Safe-T-Cam network and over length and over height heavy vehicle detection;

- (d) In 2010, that role became known as General Manager, Compliance and Enforcement Branch and in my time as General Manager in the period 2008 to 2010, the staff in that branch grew from approximately 50 to 160 officers;
 - (e) In early 2010, I was appointed as the Acting Director, Customer and Regulatory Services. I later applied for and was successful and in April 2010 was appointed to the newly created role of Director of Regulatory Services permanently; and
 - (f) In 2011, I was appointed as the Acting Director, Customer and Compliance and applied for and was successful and appointed to that role permanently in September 2012.
6. A copy of my Curriculum Vitae is included at divider 1 of Exhibit PW1.

Current Organisational Structure Within RMS

7. At divider 2 of Exhibit PW1 is a copy of an Internal RMS document which shows the organisational structure of RMS as at today (**Organisational Structure**).
8. There are 7 divisions within RMS which are shown in the Organisational Structure as follows:
- (a) Safety and Compliance;
 - (b) Infrastructure Development;
 - (c) Journey Management;
 - (d) NSW Maritime;
 - (e) Asset Maintenance;
 - (f) Corporate Services; and
 - (g) Strategy and Engagement.
9. I lead the Safety and Compliance Division and each of these divisions (including the Safety and Compliance Division) report to and are managed by the Chief Executive Officer of RMS, Mr Peter Duncan (CE).

Signature

Peter Wells

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The Safety and Compliance Division

10. At present, the Safety and Compliance Division is made up of 7 branches as follows:
- (a) Heavy Vehicles;
 - (b) Tolling;
 - (c) Customer and Support Services (being the retail business of 128 motor registries spread across NSW);
 - (d) Prosecution Services;
 - (e) Compliance Operations;
 - (f) School Crossing Program; and
 - (g) Accreditation.
11. At divider 3 of Exhibit PW1 is a copy of a further document which shows the structure of the Safety and Compliance Division.
12. The Heavy Vehicle Competency Based Assessment (HVCBA) scheme is currently managed by the Customer and Support Services Branch. Mr Paul Bimson reports directly to me and is the General Manager responsible for that Branch.
13. The Compliance and Assurance Unit and the Customer Education Unit sit within the Accreditation Branch at RMS which is headed by Ms Joanne Treacy who is a General Manager. There are 30 schemes relating to various aspects of the road worthiness of vehicles, the licensing of drivers and the accreditation of transport entities, of which the HVCBA scheme is one, which are managed by RMS within my Division and which will be overseen by Joanne Treacy as General Manager, Accreditation when the new structure reaches determination and takes effect.
14. The Compliance & Assurance Unit has the operational responsibility for the management and monitoring of the HVCBA scheme.
15. The Customer Education Section is responsible for reviewing and implementing policy around the administration of the HVCBA scheme.

Internal Audit

16. The Audit and Risk Committee of RMS is established pursuant to terms of reference. At divider 4 of Exhibit PW1 is a copy of the terms of reference for the Audit and Risk Committee (Terms of Reference).

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Peter Wells

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17. As set out in paragraph 1 of the Terms of Reference, the functions of the Audit and Risk Committee are:
 - (a) Approve internal audit programs and reports;
 - (b) Review performance of internal and external audit functions;
 - (c) Review internal control frameworks;
 - (d) Review external reporting of financial information; and
 - (e) Review compliance with audit and finance related policies, procedures, central agency requirements and applicable laws and regulations.
18. As set out in paragraphs 8 to 10 of the Terms of Reference, the membership of the Audit and Risk Committee is that it must have no more than 5 members and 3 of those must be independent, its membership cannot include the CE, Director of Finance, CFO or General Manager, Governance and it must have a broad range of skills and relevant experience.
19. As set out in paragraphs 21 to 24 of the Terms of Reference, the Audit and Risk Committee reports directly to the Chief Executive.
20. From 2011 to about September 2013, I was a member of this Committee. I no longer sit on this Committee.
21. The Governance Branch, which is in turn part of the Corporate Services Division, is the internal audit arm of RMS and consists of Assurance (non-engineering), Engineering Assurance, Corruption and Fraud Investigation and Governance and Risk and Business Continuity. Reports prepared by the Governance Branch are considered by the Audit and Risk Committee and recommendations arising from such reports are implemented within the appropriate Division. The Audit and Risk Committee has general oversight of the implementation of audit recommendations.

Steps taken regarding the NSW Police Force and ICAC between 12 September 2012 and 11 April 2013 with respect to Christopher Binos

22. I have made enquiries in relation to the steps taken between RMS, the NSW Police Force and ICAC upon RMS receiving a complaint about Christopher Binos. Staff under my supervision have set out these steps in a document entitled "Chronology of Events" which is at divider 8 at Exhibit PW1.

Steps taken by RMS in response to the allegations about Christopher Binos

23. On 22 March 2013, a restriction was placed on DRIVES (RMS's extensive database containing all relevant information concerning licenced drivers and registered vehicles) in relation to 3 licence holders who had been assessed by Mr

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Binos but who had not presented to an RMS Registry to upgrade their driver licence.

24. On 24 April 2013, Mr Binos was suspended by RMS from conducting HVCBA assessments for failing to notify RMS of the intention to conduct a Final Competency Assessment (FCA) by telephone or facsimile as required of Mr Binos at that time. From 1 January 2013 to 24 April 2013, Mr Binos operated under the old FCA reporting process and not the Heavy Vehicle Competency Online Reporting System ("HVCOR system") as he was not granted user access privileges to that system.
25. On 24 April 2013, a Notice of Suspension was sent to Forklift Training and Licensing Pty Limited, Mr Binos' employer, advising that Mr Binos' Driving Instructors Licence had been suspended under the Driving Instructors Act 1992 pending RMS making further enquiries.
26. As at 30 April 2013, it was determined by RMS that a total of 99 customers had a heavy vehicle driver licence issued to them between June 2012 to April 2013 as a result of a HVCBA Learner's Log Book having been produced to a motor registry and signed off by Mr Binos.
27. On 6 May 2013, an interview list was prepared for clients of Mr Binos whose driver licences were upgraded without the FCA being reported by Mr Binos. A total of 20 clients were selected to be interviewed by the Compliance and Assurance Unit. These clients were selected by reference to their postcodes. An additional 10 clients were placed on a standby list if any of those original 20 could not be reached.
28. From 9 May 2013 to 11 May 2013, telephone calls or calling cards were made/delivered to the first 20 clients of Mr Binos who were selected for interviews.
29. On 17 May 2013 a Notice of Show Cause under the Driving Instructors Act 1992 was sent to Mr Binos giving him 21 days to respond. This notice stated that RMS had reason to believe that that Mr Binos may not be a fit and proper person to act as a driving instructor.
30. On 21 May 2013, an additional 10 clients of Mr Binos were contacted by the Compliance and Assurance Unit to arrange interviews.
31. On 28 May 2013, another 10 clients of Mr Binos were contacted by the Compliance and Assurance Unit to arrange interviews.
32. On 26 June 2013, having received an unsatisfactory response from Mr Binos dated 18 May 2013, RMS cancelled Mr Binos's Heavy Rigid HR (Heavy Rigid) Driving Instructors Licence.
33. On 8 October 2013, RMS issued a Notice to Show Cause to the 99 clients of Mr Binos (as referred to at paragraph 26 above) asking them to show cause as to

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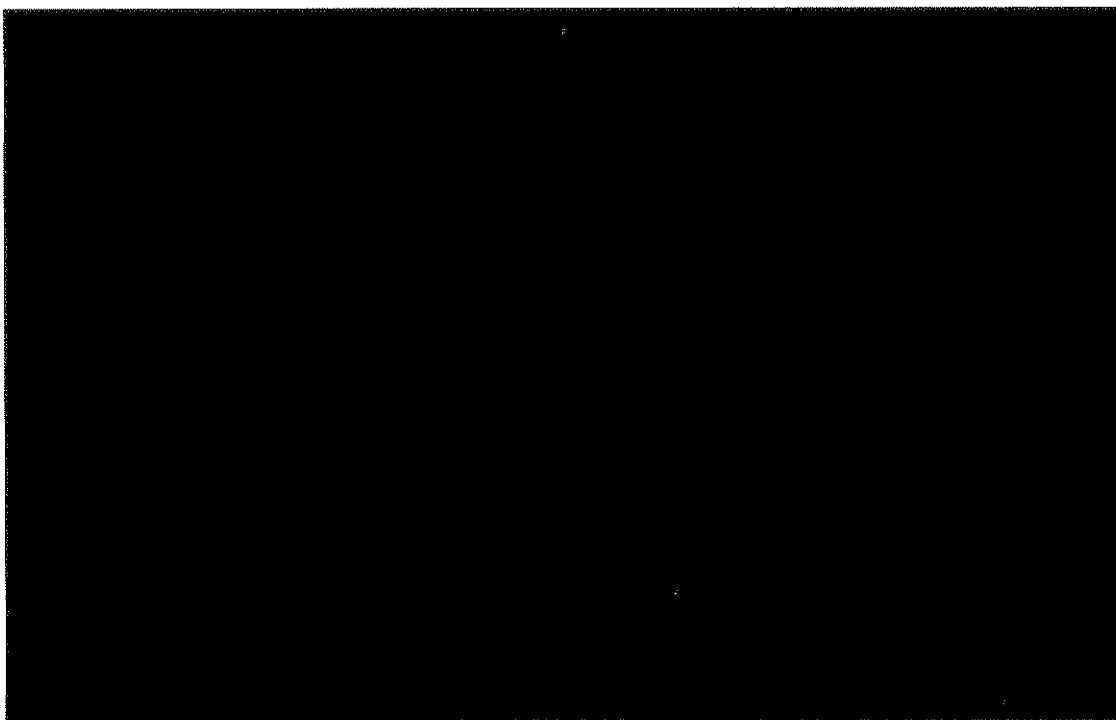
Peter Wells

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why their heavy vehicle licences should not be suspended on the basis that there had been either Learner's Log Book anomalies and/or non-compliance in their assessment by Mr Binos.

34. On 28 March 2013, I sent an email to Mr Robert McCarthy, the General Manager, Governance Branch, where I requested that he arrange an outsourced auditing firm to undertake an audit on the HVCBA scheme.
35. At divider 5 of Exhibit PW1 is a copy of that email which is contained in an email chain as follows (in date order):
- (a) Email sent by me to Robert McCarthy on 28 March 2013 at 5.38pm;
 - (b) Email received by me from Robert McCarthy on 15 April 2013 at 2.19pm;
 - (c) Email sent by me to Robert McCarthy and Sara Sivathasan, Senior Manager, Business Assurance, Intelligence & Risk on 16 April 2013 at 8.14am;
 - (d) Email received by me from Sara Sivathasan on 29 April 2013 at 8.03am; and
 - (e) Email sent by me to Sara Sivathasan on 29 April 2013 at 8.12am.



Signature

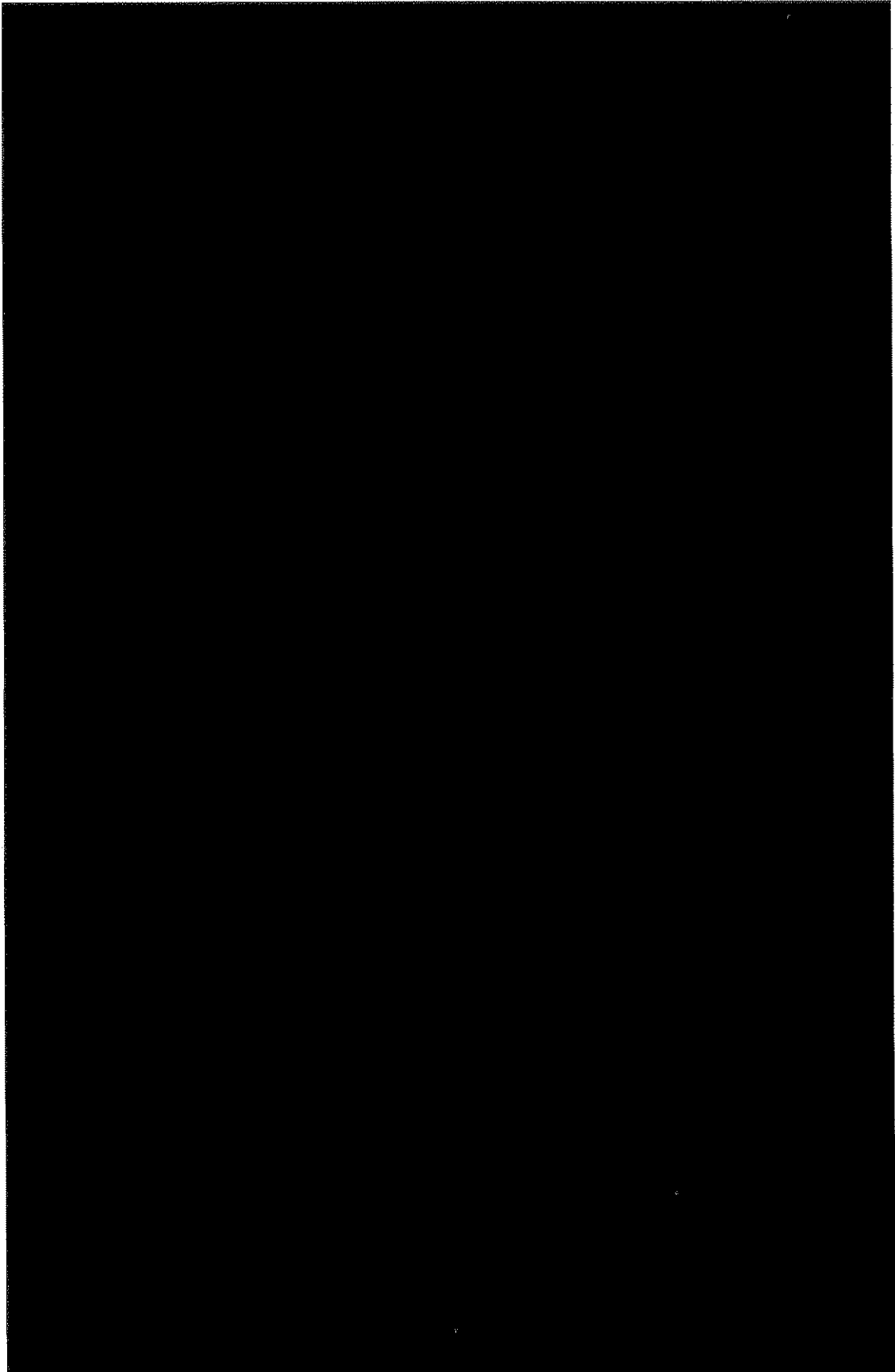
Peter Wells

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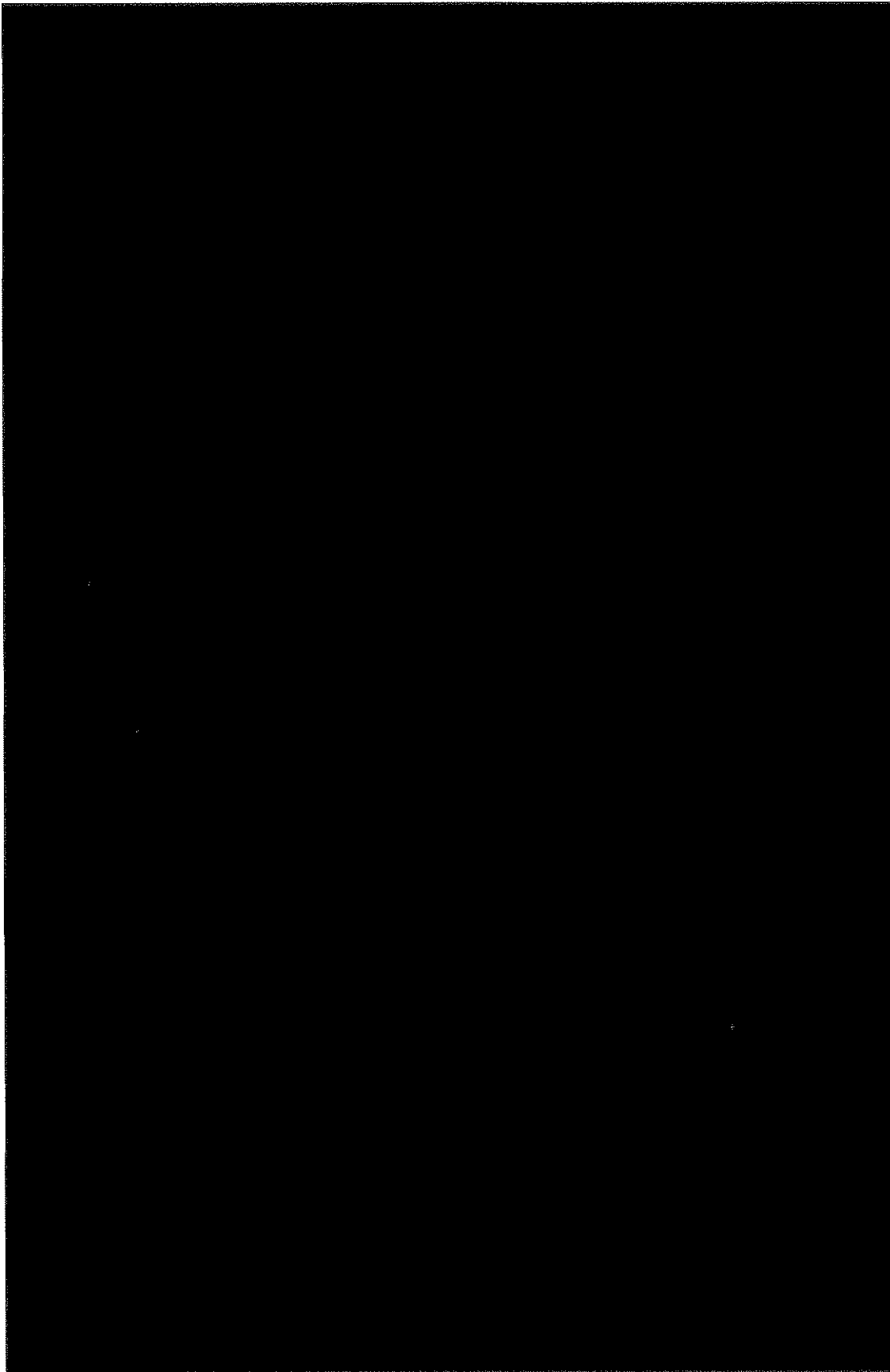
NSW ICAC EXHIBIT

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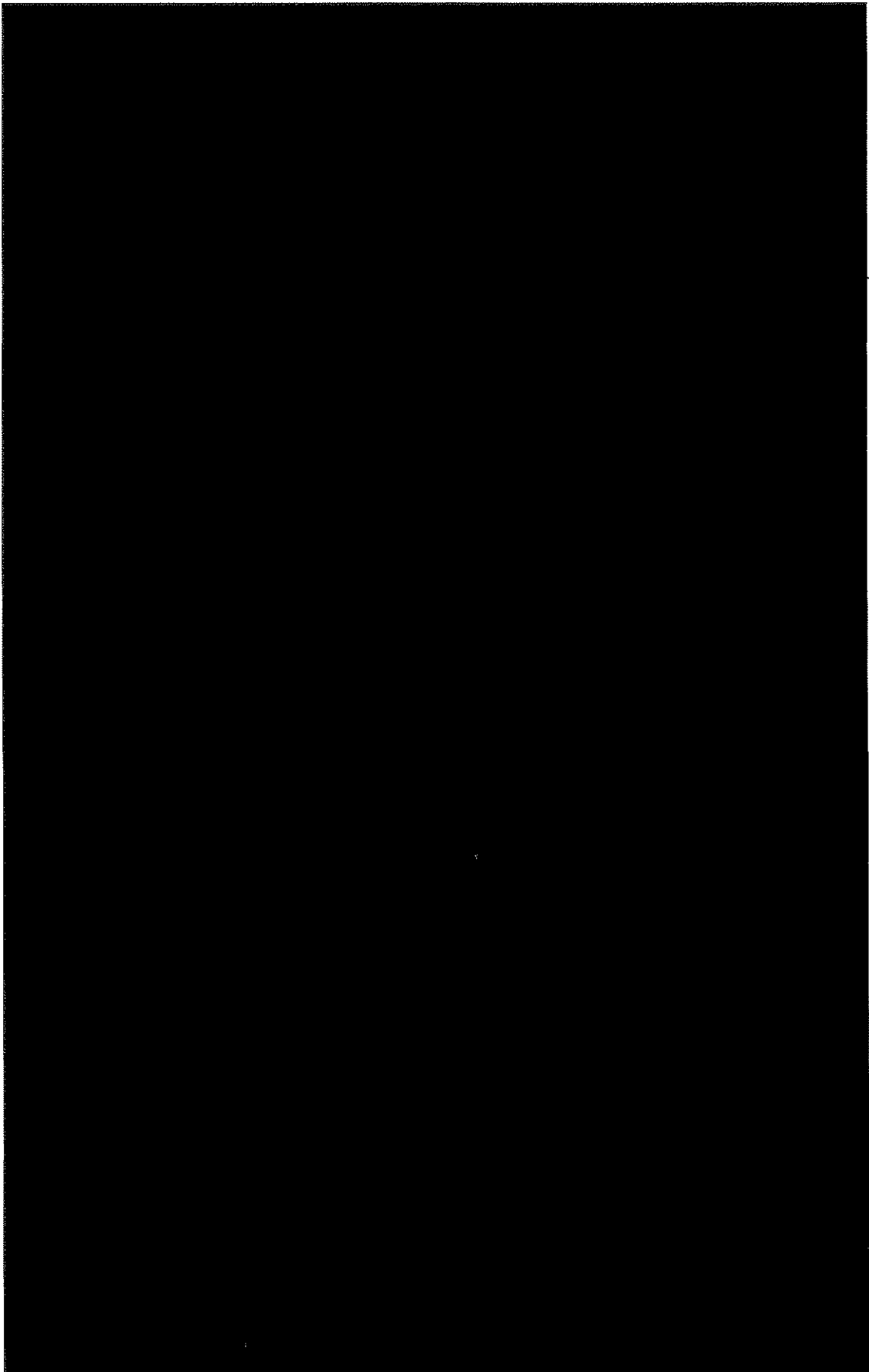
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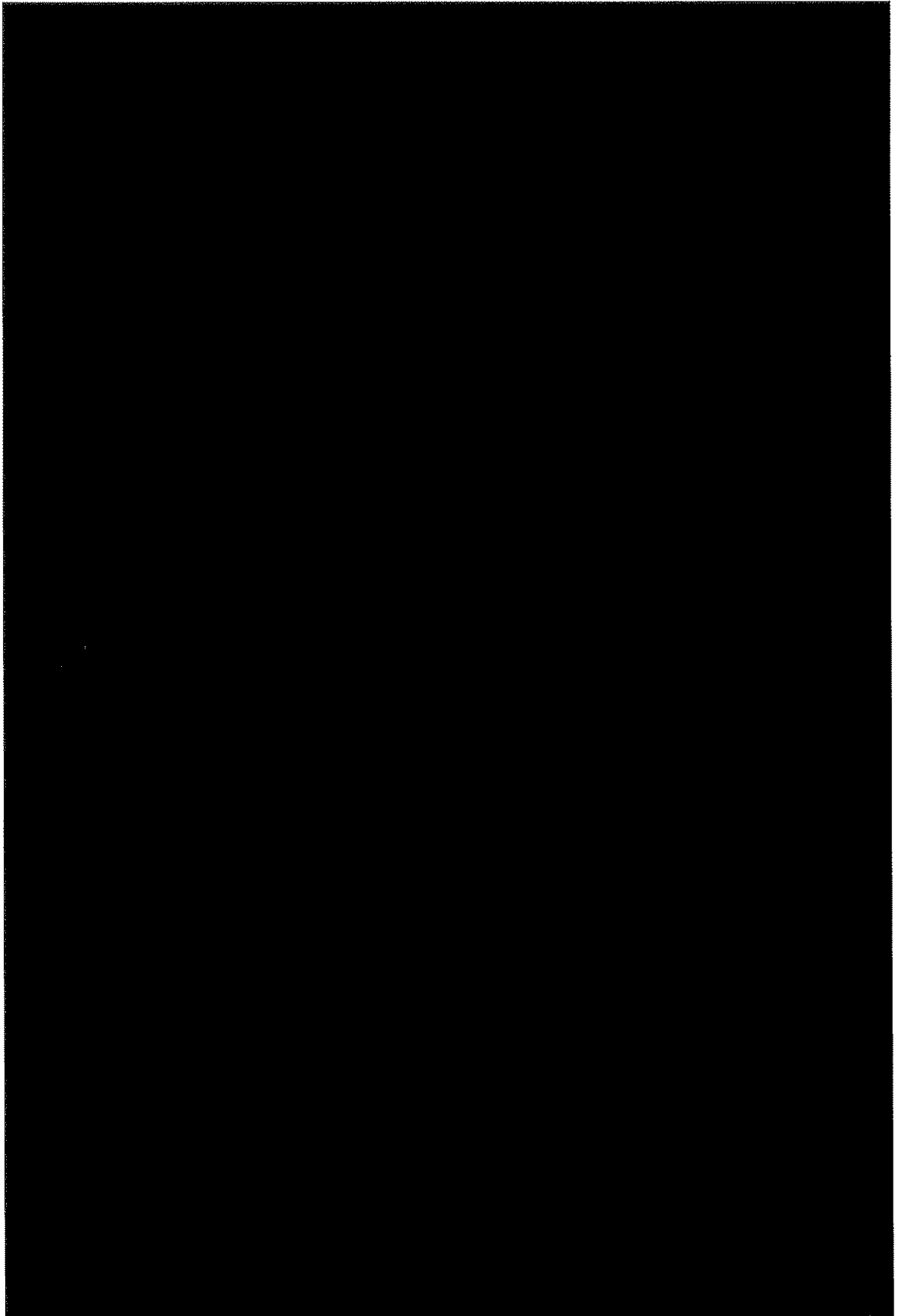
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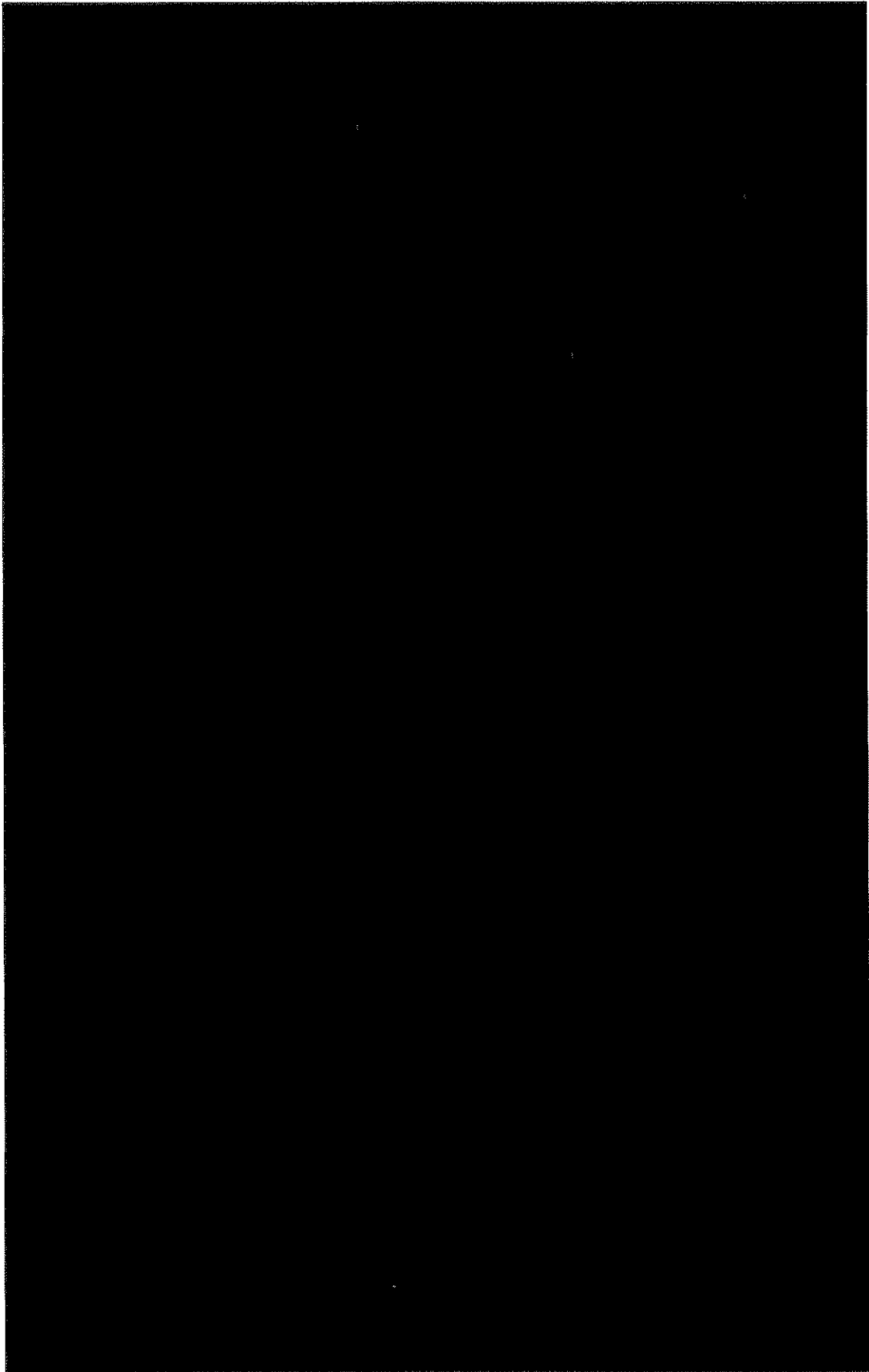
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assessments



STATEMENT IN THE MATTER OF: ICAC Inquiry into allegations concerning the conduct of heavy vehicle
assessments

**Cooperation with ICAC**

41. Work is currently underway to more tightly control the governance of the HVCBA scheme and make it more corruption-resistant. RMS would appreciate the input of ICAC as to the efficacy of the HVCBA Proposed Risk Management Framework (described in paragraphs 38 to 40 above) and, in particular, as to any improvements which may be considered to ensure its effectiveness. RMS is happy to work with ICAC in this regard on the monitoring and controls of the HVCBA scheme so it operates effectively and with strong governance in place.

Peter Wells

11 October 2013

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Peter WellsWitness.....



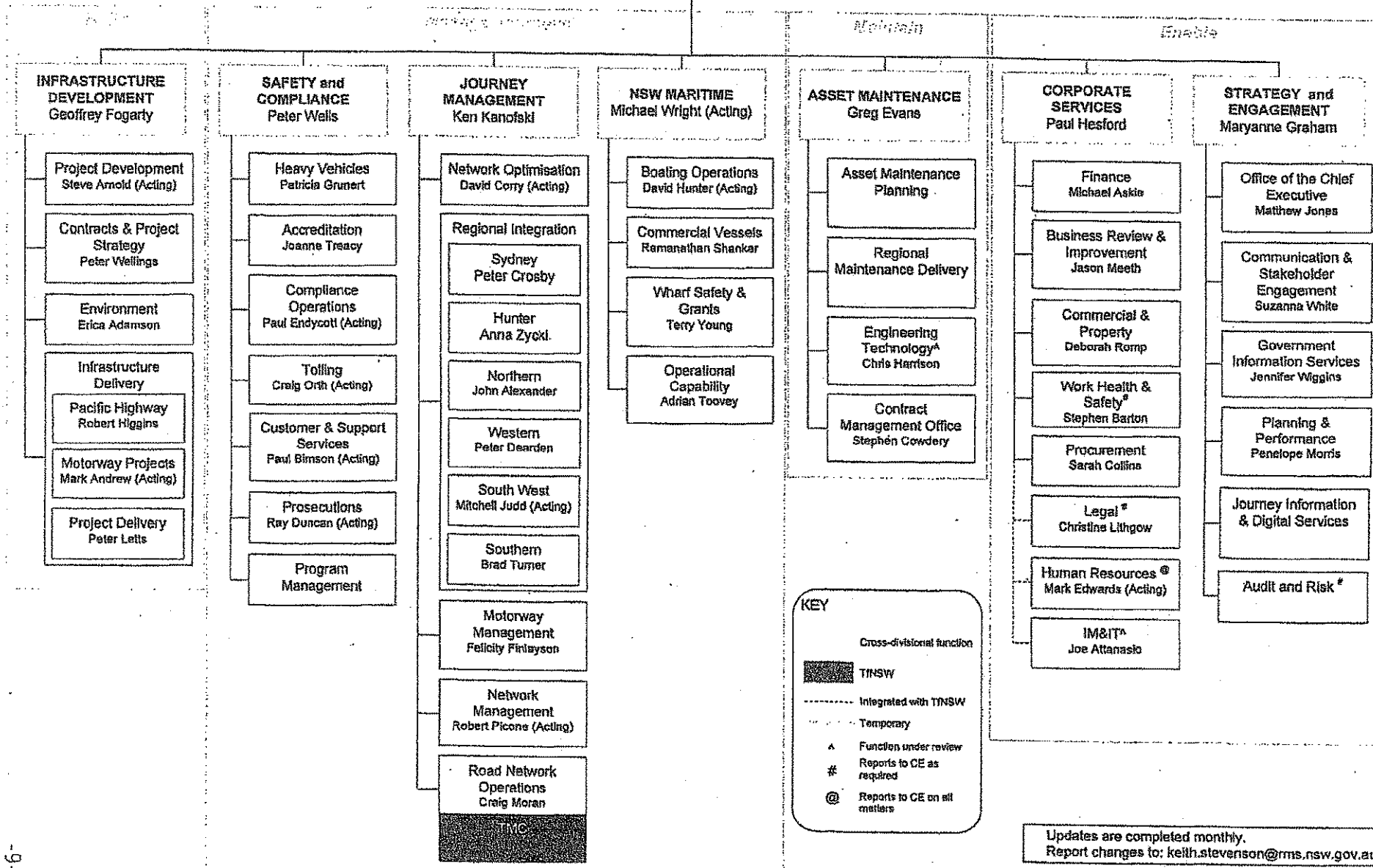
Organisation Structure

10 October 2013

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CHIEF EXECUTIVE
Peter Duncan

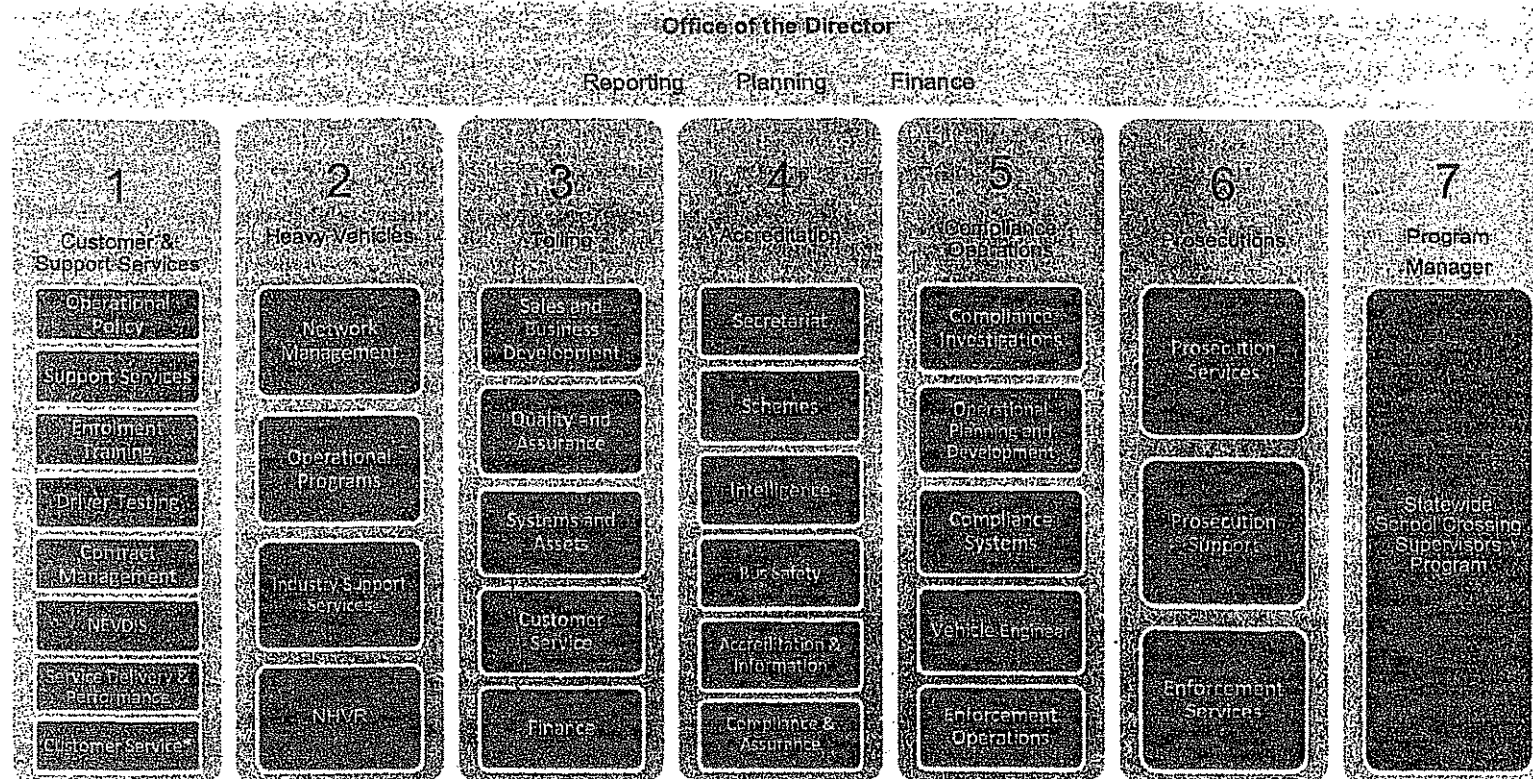
REFORM and
TRANSFORMATION
Jim Peachman (Acting)



Safety and Compliance Operating Model



**Transport
Roads & Maritime
Services**



*Impacted by Service NSW

every journey matters

NSW ICAC
EXHIBIT



Transport
Roads & Maritime
Services

RMS Audit & Risk Committee

Terms of Reference

This document is confidential to the Roads & Maritime Services and is intended for internal use only. This document may contain information of a commercially sensitive nature and should not be made available to any individual or organisation outside of Roads & Maritime Services without written authority.

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Audit and Risk Committee Terms of Reference

Objective

The objective of the Audit and Risk Committee (the Committee) is to provide independent assurance to the Chief Executive by overseeing and monitoring the Roads and Maritime Services (RMS) risk and control frameworks, and its external accountability requirements.

Scope

1. In terms of audit, the Committee shall:
 - Approve internal audit programs and reports;
 - Review performance of internal and external audit functions;
 - Review internal control frameworks;
 - Review external reporting of financial information; and
 - Review compliance with audit and finance related policies, procedures, central agency requirements and applicable laws and regulations.
2. In terms of risk management the Committee shall:
 - Review risk management practices;
 - Review RMS corporate risk profile; and
 - Review compliance with risk management standards, policies, central agency requirements, relevant legislation and regulations.

Authority

3. The Committee has no executive decision making authority. The Committee is an advisory body with the sole function of oversight unless this Terms of Reference expressly provides that the Committee may give approval to a management action.
4. To carry out this oversight function, the Chief Executive authorises the Committee within the scope of its role and responsibilities to:
 - Determine its own arrangements for the conduct of meetings and to call meetings when required;
 - Obtain any information it needs from any employee and/or external party (subject to their legal obligation to protect information);
 - Discuss any matters with the external auditor, or other external parties (subject to confidentiality considerations);

- Require attendance of the Chief Executive, relevant directors, general managers or any other employee at Committee meetings; and
- Obtain external legal or other professional advice, considered necessary to meet its responsibilities at the expense of RMS (subject to the Chief Executive's or their delegate's authorisation of the expenditure).

Composition and Tenure

5. The Chief Executive is responsible for all appointments to the Committee.
6. RMS Committee members hold their position at the pleasure of the Chief Executive and shall resign immediately on written notice from the Chief Executive.
7. Notwithstanding their agreed tenure independent members of the Committee shall resign immediately if they are removed from the NSW Treasury and NSW Department of Commerce prequalification scheme or their membership of the Committee has been terminated by the Chief Executive in accordance with the Scheme Conditions.
8. The Committee will consist of at least three members, and no more than five members, appointed by the Chief Executive. A majority of the Committee members must be independent members.
9. The members, taken collectively, will have a broad range of skills and experience relevant to the operations of the organisation. At least one member of the Committee must have accounting or related financial management experience with an understanding of accounting and auditing standards in a public sector environment.
10. The Chief Executive, Director Finance and Corporate Services, Chief Financial Controller and General Manager, Governance shall not be members of the Committee, but may attend meetings as observers as determined by the Chair.
11. Members not subject to rotation will be appointed for an initial period not exceeding four years after which they will be eligible for extension or re-appointment for a further maximum term of 4 years after formal review of their performance.
 - (i) Chair
12. The Chief Executive shall appoint the Chair. The Chair must be an independent member. The Chair must be appointed for a period of at least three years with a maximum term of four years.
 - (ii) Attendees
13. The RMS Senior Audit and Risk Managers from Governance Branch shall attend Committee meetings unless requested not to do so by the Chair of the Committee.
14. The Committee shall meet separately with both the internal and external auditors at least once a year.
 - (iii) Ex – officio
15. The Chief Executive shall not be a member of the Committee but shall be entitled to attend all meetings and receive all Committee papers by virtue of their office.

16. A representative of the Audit Office of New South Wales may attend Committee meetings, or part thereof, subject to the consent of the Chair.

(iv) Responsibilities of members

17. Members of the Committee are expected to understand and observe the legal requirements of Treasury Circular NSW TC 09/08 August 2009. Members are also expected to:

- Contribute the time needed to study and understand the papers provided;
- Apply good analytical skills, objectivity and good judgement; and
- Express opinions frankly, ask questions that go to the functional core of the issue and pursue independent lines of enquiry.

(v) Rotation of members

Role

18. The role of the Committee is to:

- Provide independent oversight of the functions of internal and external audit, and external financial reporting;
- Advise the Chief Executive on any significant issues regarding the organisation's accounting and external reporting practices;
- Undertake an independent review of risk management and internal control within the RMS and make recommendations to the Chief Executive on any improvements;
- Advise the Chief Executive on concerns regarding critical risks; and
- Facilitate the objectivity and independence of the General Manager, Governance Branch.

Responsibilities

19. The Committee is ultimately responsible and accountable to the Chief Executive for the exercise of its responsibilities. In carrying out its responsibilities the Committee must at all times recognise that primary responsibility for management of RMS rests with the Chief Executive.

20. The Committee's responsibilities are:

(i) Internal and external audit

- Act as a forum for communication between the Chief Executive, senior management and internal and external audit;
- Review and approve the Governance Branch Audit Charter to ensure it has appropriate organisational structures, authority, access and reporting arrangements in place;

- Review and oversee the coordination of the Governance Branch Audit Program and ensure the Program takes into account, where appropriate, the organisation's risk management plan, and recommend approval of the Program by the Chief Executive;
- Advise the Chief Executive on the adequacy of internal audit resources for Governance Branch to carry out its responsibilities, including completion of the approved Audit Program;
- Oversee the coordination of audit programs by external audit (e.g. AONSW);
- Periodically review the performance of internal audit;
- Monitor the outcomes of internal and external audits and management's implementation of audit recommendations;
- Provide advice to the Chief Executive on significant issues identified in audit reports and action taken on issues raised;
- Advise the Chief Executive on matters concerning the organisation's compliance with its financial statutory obligations;
- Consider the appropriateness of RMS accounting policies and principles along with any significant changes and methods of applying them;
- Provide input and feedback on the financial statements and performance audit coverage proposed by external audit (e.g. AONSW) and provide feedback on the audit services provided;
- Review external plans for audits and reports in respect of planned or completed external audits by the organisation and monitor management's implementation of audit recommendations; and
- Provide advice to the Chief Executive on the appointment or replacement of the General Manager, Governance.

(ii) External accountability

- Review the financial statements and provide advice to the Chief Executive (including whether appropriate action has been taken in response to audit recommendations and adjustments), and recommend their signing by the Chief Executive;
- Review the processes in place designed to ensure the financial information included in the RMS Annual Report is consistent with the signed financial statements;
- Satisfy itself that the financial statements are supported by appropriate management sign-off on the statements and on the adequacy of the systems of internal controls; and
- Satisfy itself that RMS has a performance management framework that is linked to organisational objectives and outcomes.

(iii) Risk management

- Review whether management has in place an appropriate organisation-wide risk management framework and associated procedures for effective identification, assessment and management of critical financial and business risks (including fraud

and corruption) to the organisation, including the monitoring and reporting of critical risk; This shall include reviewing:

- Strategic risk management plans for major projects or undertakings;
 - The impact of the organisation's risk management process on its control environment and insurance arrangements;
 - The organisation's business continuity planning arrangements, including whether disaster recovery plans have been tested periodically; and
 - The organisation's Fraud and Corruption Framework and satisfy itself that the organisation has appropriate processes and systems in place to capture and effectively investigate fraud related information.
- Determine and review whether management has appropriately considered legal and compliance risks as part of the organisation's risk assessment and management arrangements; and
 - Review the Corporate Risk Profile.

(iv) Control framework

- Review whether management's approach to maintaining an effective internal control framework, including over external parties such as contractors and advisors, is sound and effective;
- Review whether management has in place relevant policies and procedures, and that these are periodically reviewed and updated;
- Determine whether the appropriate processes are in place to assess, at least once a year, whether policies and procedures are complied with;
- Review whether appropriate policies and procedures are in place for the management and exercise of delegations;
- Consider how management identifies any required changes to the design or implementation of internal controls; and
- Review whether management has taken steps to embed a culture which is committed to ethical and lawful behaviour.

Reporting obligations

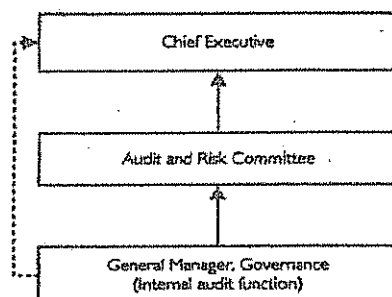
21. The Committee shall report to the Chief Executive on:

- Significant issues affecting RMS external financial reporting and audit; and
- Significant issues affecting the internal control and risk management frameworks.

22. The Committee on an annual basis shall provide a summary report to the Chief Executive. This shall include:

- An overview of the work the Committee performed to discharge its responsibilities during the preceding year, including significant deliberations of the Committee;

- An overview of progress in addressing the findings and recommendations made in internal, external and Parliamentary Committee reports;
 - An overall assessment of RMS risk, control and compliance framework, including details of any significant emerging risks impacting RMS;
 - Details of meetings, including the number of meetings held during the relevant period, and the number of meetings each member attended; and
 - A copy of any performance report prepared by Governance Branch in accordance with paragraph 38.
23. The Committee may, at any time, report to the Chief Executive any other matter it deems of sufficient importance. In addition, at any time an individual committee member may request a meeting with the Chief Executive.
24. The Committee must at all times ensure it maintains a direct reporting line to and from internal audit. The dual reporting line of the internal audit function must be consistent with the following reporting line structure where the dotted line represents the 'administrative' reporting line, and the bold line represents the 'functional' reporting line.



Secretariat

25. The Governance Branch shall provide secretariat support to the Committee and shall coordinate the services required for the Committee to carry out its duties.
26. A forward meeting plan, including meeting dates and agenda items, shall be developed by Governance Branch and agreed by the Committee each year. The forward meeting plan shall cover the Committee's responsibilities as detailed in this Terms of Reference.
27. In addition, Governance Branch Secretariat duties include:
- Co-ordinating the development of the meeting agenda;
 - Co-ordinating the preparation of meeting papers;
 - Taking, distributing and maintaining the minutes;
 - Monitoring actions arising from Committee meetings; and
 - Reporting on their progress at following meetings.
28. The meeting papers shall be circulated after approval from the Chair to members in the week prior to a meeting.

NSW ICAC EXHIBIT

29. The minutes must be circulated within 21 days of the meeting to the Chief Executive and signed as a true and correct record by the Chair at the following meeting.

Conflicts of interest

30. On appointment to the Committee and once a year Committee members shall provide written declarations to the Chief Executive stating they do not have any interests that would preclude them from being members of the Committee;
31. If a member (including the Chair) has, or it could be perceived that a member could have a conflict of interest, in respect of an agenda item or topic the member must declare the interest at the start of the relevant meeting;
32. Details of any interests should be minuted and the Chair has the right to require any member with a real or perceived conflict of interest to leave the meeting while the issue is being discussed;
33. If the Chair has a conflict of interest, the Committee shall appoint a temporary Chair while the issue is being addressed; and
34. In regard to such conflicts, executive members of the Committee will not necessarily be deemed to have a conflict of interest by reason of their executive responsibilities as an employee of RMS.

Meetings

35. Committee meetings shall be held on a quarterly basis. A special meeting may be held to review the RMS financial statements.
36. The Chair is required to call a meeting at the request of the Chief Executive, another Committee member or the General Manager, Governance.
37. Meetings may be held in person, by telephone or by video conference.

Quorum

38. A quorum shall consist of a majority of committee members and must include at least two independent members.

Performance review

39. The Chief Executive, in consultation with the Chair of the Committee, shall establish a mechanism to review and report on the performance of the Committee in meeting its objective. The review will include the performance of the Chair and each member, at least annually. The review will be conducted on a self assessment basis (unless otherwise determined by the Chief Executive) with appropriate input sought from the Chief Executive, the internal and external auditors, management and any other relevant stakeholders, as determined by the Chief Executive. The review shall be coordinated by

Governance Branch which will prepare a performance report to the Committee detailing the outcome of the review.

Induction

40. New members will receive relevant information and briefings on their appointment by Governance Branch to meet their committee responsibilities.

Review of Terms of Reference

41. At least once a year the Committee shall review this Terms of Reference. Any substantive changes to the Terms of Reference must be approved by the Chief Executive.

Dispute resolution

42. Members of the Committee and senior management should maintain an effective working relationship, and seek to resolve differences by way of open negotiation. However, in the event an issue cannot be resolved between the Committee and management, including the Chief Executive, the Chair may make a request to either the Secretary of NSW Treasury or the Director General of the Department of Premier and Cabinet to obtain the services of a central agency arbiter to resolve the dispute.

Approved by:

Date adopted:

Date:

File no: 10M1196