

# Competency assessment session record

## Session 1

Date: 04.12.12	Session times: Start 0700	Finish: 1005
Vehicle registration: [redacted]	State: NSW	Trailer registration: [redacted]
Vehicle body type: Boom-LIFT	Gearbox type: S	Trailer registration: [redacted]
Enter the appropriate type		

# ICAC

INDEPENDENT COMMISSION  
AGAINST CORRUPTION  
NEW SOUTH WALES

Competency assessment session record

Session 1

Date: 04.12.12

Session times: Start 0700

Finish: 1005

Vehicle registration: [redacted]

State: NSW

Trailer registration: [redacted]

Vehicle body type: Boom-LIFT

Gearbox type: S

Enter the appropriate type

Locations: SMITHFIELD, YENBORA, LIVERPOOL

Competency ranges

Enter successfully completed competencies below

Single competencies

01 07 09 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

Assessor's name: C. Binas

Assessor's no: 010559

Assessor's signature: [signature]

Competency assessment session record

Session 2

Date: 04.12.12

Session times: Start 1040

Finish: 1535

Vehicle registration: [redacted]

State: NSW

Trailer registration: [redacted]

Vehicle body type: Boom-LIFT

Gearbox type: S

Enter the appropriate type

Locations: SMITHFIELD, YENBORA, LIVERPOOL

Competency ranges

Enter successfully completed competencies below

Single competencies

01 07 09 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

Assessor's name: [redacted]

Assessor's no: [redacted]

Assessor's signature: [signature]

# Competency assessment session record

## INVESTIGATION INTO FALSE CERTIFICATIONS OF HEAVY VEHICLE COMPETENCY-BASED ASSESSMENTS BY A ROADS AND MARITIME SERVICES-ACCREDITED ASSESSOR

ICAC REPORT  
JANUARY 2014



INDEPENDENT COMMISSION  
AGAINST CORRUPTION  
NEW SOUTH WALES

**INVESTIGATION INTO FALSE  
CERTIFICATIONS OF HEAVY  
VEHICLE COMPETENCY-BASED  
ASSESSMENTS BY  
A ROADS AND MARITIME  
SERVICES-ACCREDITED  
ASSESSOR**

---

---

---

---

**ICAC REPORT  
JANUARY 2014**

---

A decorative bar at the bottom of the page, consisting of a solid purple rectangle on top of a light grey rectangle.

This publication is available on the Commission's website [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au) and is available in other formats for the vision-impaired upon request. Please advise of format needed, for example large print or as an ASCII file.

ISBN 978 1 921688 51 5

© January 2014 – Copyright in this work is held by the Independent Commission Against Corruption. Division 3 of the *Copyright Act 1968* (Cwlth) recognises that limited further use of this material can occur for the purposes of "fair dealing", for example study, research or criticism, etc. However if you wish to make use of this material other than as permitted by the Copyright Act, please write to the Commission at GPO Box 500 Sydney NSW 2001.



INDEPENDENT COMMISSION  
AGAINST CORRUPTION  
NEW SOUTH WALES

Level 21, 133 Castlereagh Street  
Sydney, NSW, Australia 2000

Postal Address: GPO Box 500,  
Sydney, NSW, Australia 2001

T: 02 8281 5999

1800 463 909 (toll free for callers outside metropolitan Sydney)

TTY: 02 8281 5773 (for hearing-impaired callers only)

F: 02 9264 5364

E: [icac@icac.nsw.gov.au](mailto:icac@icac.nsw.gov.au)

[www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)

Business Hours: 9.00 am - 5.00 pm Monday to Friday



INDEPENDENT COMMISSION  
AGAINST CORRUPTION  
NEW SOUTH WALES

The Hon Don Harwin MLC  
President  
Legislative Council  
Parliament House  
Sydney NSW 2000

The Hon Shelley Hancock MLA  
Speaker  
Legislative Assembly  
Parliament House  
Sydney NSW 2000

Mr President  
Madam Speaker

In accordance with section 74 of the *Independent Commission Against Corruption Act 1988* I am pleased to present the Commission's report on its investigation into false certifications of heavy vehicle competency-based assessments by a Roads and Maritime Services accredited assessor.

I presided at the public inquiry held in aid of this 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 section 78(2) of the *Independent Commission Against Corruption Act 1988*.

Yours faithfully

The Hon David Ipp AO QC  
Commissioner

# Contents

<b>Summary of investigation and results</b>	<b>5</b>
Results	5
Recommendation that this report be made public	6
<b>Chapter 1 : Background</b>	<b>7</b>
How the investigation came about	7
Why the Commission investigated	7
Conduct of the investigation	8
The public inquiry	8
Heavy vehicle competency-based assessment	9
<b>Chapter 2: What happened?</b>	<b>10</b>
Simon Hay's experience	10
Christopher Binos' evidence	10
Jacqueline Riley	11
Peter Friend-Ngui	12
Shane Florio	12
Mark McDonagh	13
Alexander Daubney	13
Corrupt conduct	14
Section 74A(2) statements	15

<b>Chapter 3: Corruption prevention</b>	<b>17</b>
Outsourcing of heavy vehicle licensing	17
The HVCBA scheme at the time of the corrupt conduct	17
The HVCBA system today	18
Residual weakness in the current system	20
<b>Appendix 1: The role of the Commission</b>	<b>22</b>
<b>Appendix 2: Making corrupt conduct findings</b>	<b>23</b>



## Summary of investigation and results

Each year in NSW there are road accidents involving heavy vehicles. Some of these result in fatalities. Lack of appropriate heavy vehicle driver skills has the potential to jeopardise public safety on our roads. It is important, therefore, that there are systems in place which ensure that those in charge of heavy vehicles are fully competent to operate such vehicles and that those public officials responsible for assessing driver competence act honestly when discharging their duties.

This investigation by the NSW Independent Commission Against Corruption (“the Commission”) concerned allegations that Christopher Binos, a heavy vehicle competency assessor accredited by Roads and Maritime Services (RMS), had solicited and received money from applicants for heavy vehicle driver licences in return for falsely certifying that they had successfully completed heavy vehicle competency-based assessments (or HVCBA), when they had not in fact undertaken such assessments, and whether those applicants had then relied on the false certification to obtain heavy vehicle driver licences from the RMS.

The Commission also examined whether the RMS’ management systems and internal controls were adequate to expose this type of conduct.

### Results

Findings are made that, between June 2012 and April 2013, Mr Binos engaged in corrupt conduct by soliciting and receiving money from applicants for heavy vehicle driver licences in return for exercising his public official functions as an RMS-accredited heavy vehicle competency assessor to make false entries in their learner’s log books to the effect that he had assessed them as competent to drive heavy vehicles, in accordance with RMS requirements, in order for them to apply to the RMS for heavy vehicle driver licences. The payments received by Mr Binos on each occasion varied but were in the region of \$1,500.

Findings are also made that each of Alexander Daubney, Mark McDonagh, Peter Friend-Ngui, Shane Florio and Jacqueline Riley engaged in corrupt conduct by paying money to Mr Binos as an inducement or reward on account of him exercising his public official functions as an RMS-accredited heavy vehicle competency assessor to make false entries in their learner’s log books to the effect that he had assessed them as competent, in accordance with RMS requirements, in order for them to apply to the RMS for heavy vehicle driver licences.

Statements are made that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of Mr Binos for offences under s 249B(1) of the *Crimes Act 1900* (“the Crimes Act”) of corruptly soliciting or receiving a benefit and to the prosecution of Mr Daubney, Mr McDonagh, Mr Florio, Mr Friend-Ngui and Ms Riley for offences under s 249B(2) of the Crimes Act of corruptly giving a benefit to Mr Binos.

Mr Binos identified 95 applicants for whom he believed he had, in return for payment, made false entries in their learner’s log books to the effect that he had assessed them as competent to drive a heavy vehicle. This evidence has been brought to the attention of the RMS so that it can take action to cancel all driver licences that were issued as the result of corruption. Apart from Mr Daubney, Mr McDonagh, Mr Florio, Mr Friend-Ngui and Ms Riley, who are dealt with in this report, these applicants have been referred to the NSW Police Force to consider whether any criminal charges should be laid.

The investigation identified a number of weaknesses in the administration of the HVCBA process. The process, however, has changed since the Commission’s investigation. The changes are discussed in detail in chapter 3 of this report. The Commission has made one

recommendation designed to address what it considers to be a weakness in the new system.

### Recommendation

That the RMS requires registered training organisations (RTOs) to implement in-cabin video camera and GPS technology solutions to record and monitor HVCBA final competency assessments completed by assessors for the issue of heavy vehicle driver licences, and that the RMS implements systems, processes and business rules to own, collect, review and archive the recordings, including utilising the recordings to enhance the auditing of the HVCBA scheme.

This recommendation is made pursuant to s 13(3)(b) of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) and, as required by s 111E of the ICAC Act, will be furnished to the RMS and the minister responsible for the RMS.

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

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

The Commission will publish the responses to its recommendation, any plan of action and progress reports on the implementation of the plan on the Commission’s website, [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au), for public viewing.

### Recommendation that this report be made public

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





# Chapter 1: Background

This chapter sets out some background information about the investigation and heavy vehicle competency-based assessment (HVCBA).

## How the investigation came about

This matter first came to the Commission's attention in November 2012 when the Commission received a report from the RMS pursuant to s 11 of the ICAC Act. That section imposes a duty on the principal officer of a public authority to report to the Commission any matter the person suspects on reasonable grounds concerns, or may concern, corrupt conduct.

The report concerned an allegation made by Simon Hay that Mr Binos, a heavy vehicle competency assessor, had misused his position to solicit money from Mr Hay to certify falsely that Mr Hay had passed his assessment for a heavy vehicle driver licence without Mr Hay having to undertake the required assessment tasks.

## Why the Commission investigated

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

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

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

The allegation involved the solicitation of money by a person in return for that person improperly exercising his public official functions as an RMS heavy vehicle competency assessor. The Commission considered it was important to establish not only whether money had been solicited by Mr Binos in the circumstances alleged by Mr Hay but whether Mr Binos had sought and received money from other persons in return for falsely certifying them as competent to drive heavy vehicles.

If Mr Binos sought or received payment to exercise his official functions to certify falsely any person as competent to drive a heavy vehicle, his conduct would amount to corrupt conduct within the meaning of the ICAC Act. This is because such conduct on his part could constitute or involve the dishonest or partial exercise of his official functions within the meaning of s 8(1)(b) of the ICAC Act. Such conduct could also adversely affect the exercise of his official functions and could involve bribery and obtaining secret commissions within the meaning of s 8(2)(b) and s 8(2)(d) of the ICAC Act. It could also constitute or involve a criminal offence of corruptly soliciting or receiving a reward contrary to s 249B(1) of the Crimes Act for the purpose of s 9(1)(a) of the ICAC Act.

If any person requiring HVCBA offered to pay or paid Mr Binos in return for him falsely certifying them as competent to drive a heavy vehicle, then that person's conduct would also amount to corrupt conduct. This is because such conduct could adversely affect, either directly or indirectly, the honest or impartial exercise of the official functions of Mr Binos and therefore come within s 8(1)(a) of the ICAC Act. It is also conduct that could adversely affect the exercise of his official functions and that could involve bribery or the offer of secret commissions within the meaning of s 8(2)(b) and s 8(2)(d) of the ICAC Act. For the purpose of s 9 of the ICAC Act, such conduct could also constitute or involve a criminal offence of corruptly



offering or giving a reward contrary to s 249B(2) of the Crimes Act.

In deciding to investigate this matter, the Commission also took into account the fact that, if established, such conduct could seriously affect the safety of heavy vehicles on NSW roads by permitting unqualified and inexperienced drivers to operate such vehicles.

In these circumstances, the Commission decided that it was in the public interest to conduct an investigation to establish whether corrupt conduct had occurred and to ascertain whether there were any corruption prevention issues that needed to be addressed.

## Conduct of the investigation

During the course of the investigation, the Commission:

- obtained documents from various sources by issuing 17 notices under s 22 of the ICAC Act requiring production of documents
- interviewed and/or took statements from a number of persons
- conducted seven compulsory examinations.

The Commission also conducted a review of log books obtained from the RMS in relation to competency-based assessments conducted by Mr Binos between 1 June and 31 December 2012. The Commission's analyses of vehicles listed in the log books identified numerous vehicles listed for sale on the internet. Statements were obtained from a number of vehicle owners confirming that the vehicles in question were not used for heavy vehicle driver testing on the days specified in the log books.

Mr Binos was required to give evidence to the Commission at a compulsory examination. He admitted that, during the time that he was a heavy vehicle competency assessor, he made false certification entries in the log books of a number of people seeking heavy vehicle driver licences. The vast majority of those people went on to present their log books to the RMS and received their heavy vehicle licences.

The Commission also conducted compulsory examinations with five randomly-selected applicants who had used Mr Binos for their assessment. They were all questioned about their contact with Mr Binos and the process that they went through to obtain their heavy vehicle driver licences. Only two of the applicants admitted that they were declared competent by Mr Binos without having completed any training or assessment.

The evidence obtained by the Commission from Mr Binos and other sources suggested that Mr Binos had falsely

certified at least 95 people as competent to drive heavy vehicles.

## The public inquiry

The Commission reviewed the information that had been gathered during the investigation and the evidence given at the compulsory examinations. Although Mr Binos had made admissions, three of the applicants he claimed to have improperly assessed, and who gave evidence in compulsory examinations, denied any impropriety in their assessment process. Another applicant who gave evidence in a compulsory examination said that he had undertaken about one hour of assessment with Mr Binos but claimed he had not believed, at the time, that there was anything improper in Mr Binos assessing him as competent without requiring him to undertake a longer period of assessment. It was therefore necessary to test their evidence to establish the truth. After taking into account the matters set out in s 31(2) of the ICAC Act, the Commission determined that it was in the public interest to hold a public inquiry.

The Commission also had regard to the following considerations in determining that it was in the public interest to hold a public inquiry:

- the allegations were serious
- there was cogent evidence that supported the allegations
- the public interest in exposing the relevant conduct was not outweighed by any public interest in preserving the privacy of the persons concerned.

The Commission decided that it was not in the public interest to call to the public inquiry all the persons who, it appeared, had been falsely certified as competent by Mr Binos. To do so would only have unnecessarily extended the duration and added to the expense of the public inquiry. Apart from Mr Binos, the Commission determined it was appropriate to call evidence from a limited selection of applicants, including those who in their compulsory examination had denied any involvement in or knowledge of impropriety. The balance of persons identified as likely to have been falsely certified by Mr Binos will be referred to the NSW Police Force to consider whether any criminal charges should be laid. The RMS has advised the Commission that it has formed the view that the relevant class of heavy vehicle driver licence issued to these persons was issued in error and has issued a notice to them downgrading their heavy vehicle driver licence to the class of licence held by them prior to their assessment by Mr Binos.

The public inquiry was conducted over two days, commencing on 16 October 2013. The Hon David Ipp AO QC, Commissioner, presided at the inquiry. David McLure acted as Counsel Assisting the Commission. Evidence was taken from seven witnesses.

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

## Heavy vehicle competency-based assessment

The RMS is responsible for issuing driver licences in NSW. The RMS was formerly known as the Roads and Traffic Authority (RTA).

Regulation 5 of the Road Transport (Driver Licensing) Regulation 2008 ("the Regulation") provides for various classes of driver licences. In addition to ordinary car and motorcycle licences, there are five classes of heavy vehicle licences, namely: light rigid, medium rigid, heavy rigid, heavy combination and multi-combination.

The Regulation provides that the RMS may require an applicant for a driver licence to undergo tests or assessments or provide other evidence of the applicant's knowledge of road law, driving ability, training, experience or suitability to hold a driver licence. It provides that the RMS may approve a competency-based assessment scheme under which a person's competency to hold a particular driver licence may be assessed.

Historically, the only method of obtaining a heavy vehicle driver licence in NSW was by completing and passing a driving test at an RTA registry. In 1995, a second method was introduced, known as HVCBA. Under this system, an applicant for a heavy vehicle driver licence must first pass a knowledge and eyesight test administered by the RMS. If successful, the applicant is then required to undertake an assessment with an RMS-accredited heavy vehicle assessor. Each assessor enters into a service provider agreement with the RMS in which they agree to comply with the relevant assessment procedures and the RMS guide to heavy vehicle competency-based assessment. They carry out the assessment function for, or on behalf of, the RMS and are, therefore, public officials for the purposes of the ICAC Act.

Assessors are required to hold a current driver licence for the class of licence for which they conduct assessment

and a current driving instructor licence for the class of licence for which they conduct an assessment.

Up until 1 January 2013, the assessors were required to assess applicants for heavy vehicle driver licences against up to 45 different competencies. Since 1 January 2013, there are now 15 criteria required to be met. These competencies/criteria include the sort of road safety skills the public would reasonably be entitled to expect before someone is allowed to drive a heavy vehicle unsupervised; for example, speed, managing curves and bends, maintaining safe gaps between vehicles, braking and driving on open highways. These competencies are required to be assessed over a minimum period of five hours for automatic vehicles and six hours for manual vehicles. It is stressed in the RMS assessment procedures that these are minimum times and must be in addition to any time an assessor may spend providing training.

To assist with the assessment process, the RMS provides each applicant with a guide to HVCBA and a learner's log book. The guide contains information about the driving competencies an applicant needs to achieve in order to be assessed as competent to drive a heavy vehicle. The applicant is meant to be tested against these competencies to demonstrate the ability to perform each competency under specified conditions. The learner's log book is used to record assessment sessions. It requires details of session dates and times, the vehicle used and competencies successfully completed. Details for each session are signed off by the assessor and the applicant. The assessor is also required to record all completed competencies in the assessor's log book.

When the applicant has been successfully assessed as competent in each of the competencies, he/she must undergo a final competency assessment. This consists of a 30-minute on-road drive. If the final assessment is successfully completed, the assessor reports this to the RMS and returns the learner's log book to the applicant. The applicant can take the log book to an RMS registry and, on payment of the appropriate driver licence fee, the RMS will issue the applicant with a heavy vehicle driver licence.

## Chapter 2: What happened?

On 8 November 2004, the RTA entered into a service provider agreement with Mr Binos for HVCBA. He was, at that time, an RTA-accredited assessor. A number of subsequent agreements were entered into taking the term of the service provider agreement and Mr Binos' accreditation up to 31 December 2012.

In April 2013, following consideration of the information it received from Mr Hay, the RMS suspended Mr Binos from conducting HVCBAs. On 26 June 2013, his driving instructor licence was cancelled by the RMS.

### Simon Hay's experience

In about August 2012, Mr Hay decided to obtain a heavy vehicle driver licence. After successfully completing his knowledge test at an RMS registry, he needed to find an accredited assessor to conduct his competency assessment. A work colleague gave him Mr Binos' telephone number and he subsequently contacted and arranged to meet Mr Binos.

Mr Hay told the Commission that, at their meeting, Mr Binos told him there were a couple of ways he could achieve the requisite competency assessment. The first involved hiring a heavy vehicle and being tested. Mr Hay was told this would cost him \$1,200. If Mr Hay did not pass, he would need to repeat the process and that would cost him extra money. The second method did not involve Mr Hay doing any driving or undergoing any testing. In return for Mr Hay paying him \$2,000, Mr Binos would complete Mr Hay's log book and falsely assess Mr Hay as fully competent to drive a heavy vehicle.

It is commendable that Mr Hay not only rejected the dishonest alternative offered to him by Mr Binos but that he took the further step of reporting the matter to the RMS. It was as a direct result of that action that the

conduct of Mr Binos came to be investigated, which, in turn, led to the Commission identifying those who had obtained heavy vehicle driver licences as a result of improper conduct on their part and the part of Mr Binos. This, subsequently, allowed the RMS to take action to cancel the relevant heavy vehicle driver licences.

Mr Binos admitted that he asked Mr Hay for \$2,000 to make entries in Mr Hay's learner's log book to falsely represent that Mr Hay had undertaken the required competency assessment.

The Commission is satisfied that in about August 2012 Mr Binos solicited \$2,000 from Mr Hay as an inducement to exercise his public official functions as an RMS-accredited heavy vehicle competency assessor to certify falsely that Mr Hay had successfully undertaken a heavy vehicle competency-based assessment and was, therefore, competent to drive a heavy vehicle.

### Christopher Binos' evidence

At all relevant times Mr Binos was aware of the RMS requirements for assessors certifying driver competencies. These included the minimum number of hours required for assessment and that an assessor should not sign-off on a competency unless the assessor had assessed the candidate using the correct procedures.

Mr Binos admitted to the Commission that, on a number of occasions, he accepted money from applicants for heavy vehicle driver licences to make false entries in the learners' log books to the effect that he had properly assessed them as competent in accordance with the relevant RMS requirements. He said that the first time he did this was about April 2012. In each case, he understood that the applicant would submit the log book to the RMS in order to obtain a heavy vehicle driver licence. He agreed that his conduct was dishonest.



By checking through his assessor log books, Mr Binos identified 95 people whom he believed he had failed to properly assess between June 2012 and April 2013. His identification process was based on the registration number of the vehicle he recorded as being used for the assessment. Most of the registration numbers were obtained from sale advertisements on a website. On some occasions, he used the registration number of a vehicle that had been used for a properly-conducted assessment. Altogether, Mr Binos used the registration numbers of 15 vehicles when making false entries. The Commission obtained statements from the owners of 13 of these vehicles confirming the vehicles had not been used for assessment purposes. The Commission was unable to obtain records relating to the remaining two registration numbers. These registration numbers appear to be fictitious.

The people identified by Mr Binos included Mr Daubney, Mr McDonagh, Mr Friend-Ngui, Mr Florio and Ms Riley, each of whom gave evidence to the Commission that they paid Mr Binos to falsify entries in their learner's log books. Their evidence is dealt with below. As the other 90 people identified by Mr Binos were not called to give evidence, publication of their names has been suppressed.

Mr Binos told the Commission that his usual fee for making the false entries was \$1,500. Sometimes he charged less and sometimes, as in the offer he made to Mr Hay, he charged more.

He explained that sometimes he offered to make the false entries but, on most occasions, it was the applicant who asked him to make the false entries and not undertake a proper assessment. He agreed that one way he sought to persuade people to pay him more in return for falsifying entries in their learner's log book was to point out to them that doing a proper assessment would take longer and could end up costing them more.

The Commission is satisfied that, between June 2012 and April 2013, Mr Binos solicited and received money from applicants for heavy vehicle driver licences in return for him exercising his public official functions as an RMS-accredited heavy vehicle competency assessor to make false entries in their learner's log books to the effect that he had assessed them as competent to drive heavy vehicles, in accordance with RMS requirements, and in order for them to apply to the RMS for heavy vehicle driver licences. The payments received by Mr Binos on each occasion varied but were in the region of \$1,500.

## Jacqueline Riley

Ms Riley operates a flower stall at Flemington markets. In about May 2012, she decided to obtain a licence to drive a Mitsubishi pantechnicon so that, if her husband were sick, she could drive the vehicle to deliver flowers to the market. After successfully completing a knowledge test, she was issued with a learner's log book and a guide to heavy vehicle competency-based assessment. She understood from these documents that she needed to be assessed by a qualified, accredited assessor on various competencies, over a number of hours.

Ms Riley told the Commission that sometime in December 2012 she overheard a conversation at the Flemington flower markets during which Mr Binos was identified as an assessor who, for extra payment, would complete the assessment without requiring the applicant to undertake any testing. She was unable to identify the people involved in this conversation.

As a result of what she had heard, Ms Riley found Mr Binos' telephone number on the internet and called him. She told him she had heard that if she paid extra she could get a favourable assessment without undergoing any testing. She then arranged to meet him. At the meeting, she handed him her learner's log book and either \$1,500

or \$1,600 in cash. He told her he would complete the log book and return it to her. Two to three days later, he returned the log book to her. It contained a number of false entries representing that Mr Binos had assessed her in various driving tasks. Ms Riley then took the log book to an RMS registry and received a licence to drive a medium rigid vehicle.

Ms Riley admitted to the Commission that she knew that paying Mr Binos to falsely represent that he had assessed her driving competency and, then, using the log book he had completed to falsely represent to the RMS that she had been assessed in accordance with RMS requirements, was dishonest.

The Commission is satisfied that Ms Riley paid Mr Binos \$1,500 or \$1,600 as an inducement or reward on account of him exercising his public official functions as an RMS-accredited heavy vehicle competency assessor to make false entries in Ms Riley's learner's log book to the effect that he had assessed her as competent to drive heavy vehicles in accordance with RMS requirements. Ms Riley submitted the log book to the RMS knowing that it contained false entries and that those entries would be relied on by the RMS in deciding to grant her a heavy vehicle driver licence.

## Peter Friend-Ngui

Mr Friend-Ngui gave evidence in a compulsory examination that Mr Binos had completed his log book without him having to undertake any driving tests. At the time of his compulsory examination, however, he told the Commission that he had not thought there was anything improper about this. When he gave evidence at the public inquiry, he admitted that he knew at the time of the relevant actions that it was dishonest to pay Mr Binos to certify falsely that he (Mr Binos) had assessed him as competent to drive a heavy rigid vehicle and for him (Mr Friend-Ngui) to represent falsely to the RMS that he had actually been assessed by Mr Binos as competent to drive a heavy rigid vehicle.

Mr Friend-Ngui told the Commission that, when he was looking for an assessor, a colleague gave him Mr Binos' telephone number. He said that only when he met Mr Binos, in July 2012, did he learn that Mr Binos could falsely complete the assessment process without Mr Friend-Ngui having to undertake any actual testing.

Mr Friend-Ngui told the Commission that, at their meeting, Mr Binos told him he would have to hire a truck to undertake the assessment and that, if he failed the assessment, he would have to undertake it again. Mr Friend-Ngui understood from what he was told by Mr Binos that he would need to pay Mr Binos \$1,700 for

the assessment and that he would need to spend extra for driver training and the hire of a truck. Mr Binos then suggested an alternative; if Mr Friend-Ngui paid him \$1,700 and left his learner's log book with Mr Binos, then Mr Binos would complete it without Mr Friend-Ngui having to do any testing. The offer was attractive to Mr Friend-Ngui as it would, among other things, save him the expense of paying for driver training and the hire of a vehicle. He agreed to the offer.

A few days later, Mr Friend-Ngui received a telephone call from Mr Binos who told him that the log book was ready. He collected it from Mr Binos. It contained a number of false entries representing that Mr Friend-Ngui had undertaken a number of assessment sessions with Mr Binos using a vehicle with the registration number of MJP 694. The entries were signed by Mr Binos and Mr Friend-Ngui. Mr Friend-Ngui did not, of course, undertake any of these sessions. He did not own or know anything about such a vehicle. Although he knew the information contained in the log book was false, he submitted it to the RMS and used it as the basis for receiving a licence to drive a heavy rigid vehicle.

The Commission is satisfied that Mr Friend-Ngui paid Mr Binos \$1,700 as an inducement or reward on account of him exercising his public official functions as an RMS-accredited heavy vehicle competency assessor to make false entries in Mr Friend-Ngui's learner's log book to the effect that he had assessed Mr Friend-Ngui as competent to drive heavy vehicles in accordance with RMS requirements. Mr Friend-Ngui submitted the log book to the RMS knowing that it contained false entries and that those entries would be relied on by the RMS in deciding to grant him a heavy vehicle driver licence.

## Shane Florio

Mr Florio owns a number of heavy vehicles and wanted a heavy vehicle driver licence so that he could fill in for his drivers, if any of them became sick and were unable to drive. He was issued with an RMS heavy vehicle learner's log book in October 2012.

Mr Florio knew he needed to be assessed over a number of hours on a number of competencies in order to demonstrate his driving competency before he could get his heavy vehicle driver licence. He asked a cousin whether he knew of any authorised assessors. The cousin suggested he contact Mr Binos. According to Mr Florio, his cousin did not tell him that Mr Binos could falsely certify the assessment.

When Mr Florio gave evidence to the Commission at a compulsory examination, he claimed that he had completed his competency assessment with Mr Binos.



At the public inquiry, he admitted that that evidence was false.

At the public inquiry, Mr Florio told the Commission that, either during his telephone conversation with Mr Binos to arrange a meeting or at the actual meeting, Mr Binos told him that, in return for payment of \$1,500, he could falsify entries in Mr Florio's learner's log book so that Mr Florio could apply for his heavy vehicle driver licence without having to undertake any actual testing. Mr Florio accepted the offer and gave the money and his log book to Mr Binos.

A few days later, Mr Binos returned the log book to Mr Florio. It had been completed to represent falsely that Mr Florio had undertaken a number of assessment sessions with Mr Binos. Mr Florio then presented the log book to the RMS in order to obtain his heavy vehicle driver licence. He admitted that he knew at the time he did this that he was falsely representing to the RMS that he had been properly assessed and that this was dishonest.

The Commission is satisfied that Mr Florio paid Mr Binos \$1,500 as an inducement or reward on account of him exercising his public official functions as an RMS-accredited heavy vehicle competency assessor to make false entries in Mr Florio's learner's log book to the effect that he had assessed Mr Florio as competent to drive heavy vehicles in accordance with RMS requirements. Mr Florio submitted the log book to the RMS knowing that it contained false entries and that those entries would be relied on by the RMS in deciding to grant him a heavy vehicle driver licence.

## Mark McDonagh

Mr McDonagh was another applicant for a heavy vehicle driver licence who paid Mr Binos to falsify entries in his learner's log book.

Mr McDonagh had previously obtained a licence to drive a medium rigid vehicle and, therefore, knew that in order to obtain a heavy vehicle driver licence he needed to undertake training and assessment with an accredited competency assessor. During a conversation at a pub, he mentioned he needed to find an assessor and someone gave him Mr Binos' telephone number.

When Mr McDonagh gave evidence to the Commission at a compulsory examination, he claimed that he had completed his competency assessment with Mr Binos. At the public inquiry, he admitted that that evidence was false.

At the public inquiry, Mr McDonagh told the Commission that he telephoned Mr Binos sometime prior to Christmas

2012 and asked him what was involved in getting a heavy vehicle driver licence. Mr Binos told him he could undertake the normal assessment process, which would cost \$1,200, or he could skip the assessment process and pay Mr Binos \$1,800. Mr McDonagh agreed to the latter arrangement and gave his log book and \$1,800 to Mr Binos.

A few days later, Mr Binos returned the log book, which now contained a number of false entries that Mr McDonagh had undertaken a number of assessment sessions with Mr Binos. These entries were signed by Mr Binos and Mr McDonagh. Mr McDonagh then submitted the log book to the RMS and obtained a heavy vehicle driver licence. He admitted that he knew at the time he submitted the log book to the RMS that he was falsely representing to the RMS that he had been properly assessed and that this was dishonest.

The Commission is satisfied that Mr McDonagh paid Mr Binos \$1,800 as an inducement or reward on account of him exercising his public official functions as an RMS-accredited heavy vehicle competency assessor to make false entries in Mr McDonagh's learner's log book to the effect that he had assessed Mr McDonagh as competent to drive heavy vehicles in accordance with RMS requirements. Mr McDonagh submitted the log book to the RMS knowing that it contained false entries and that those entries would be relied on by the RMS in deciding to grant him a heavy vehicle driver licence.

## Alexander Daubney

In December 2012, after successfully passing his knowledge test for a heavy vehicle driver licence, Mr Daubney searched for an accredited competency assessor. He told the Commission he thought he obtained Mr Binos' details from the internet.

When Mr Daubney gave evidence at a compulsory examination he claimed that he had completed his competency assessment with Mr Binos after driving for about one hour. At the public inquiry he admitted that his evidence that he had completed the assessment was false and he knew it was false at the time of the compulsory examination.

At the public inquiry Mr Daubney told the Commission that he telephoned Mr Binos. During the course of their telephone conversation Mr Binos told him that there were two ways Mr Daubney could go about getting a licence. One way was to undertake the normal assessment process. The other way involved Mr Binos completing the log book entries without Mr Daubney having to undertake any testing. Mr Daubney decided on the latter course and

agreed to meet with Mr Binos. At their meeting he gave Mr Binos his log book and \$1,000 to \$1,500 in cash. He knew at that time that Mr Binos would make entries in the log book to falsely represent that Mr Daubney had undertaken competency assessment sessions with Mr Binos.

A few days later, Mr Daubney collected the log book from Mr Binos. It contained false entries of assessment sessions with Mr Binos. Mr Daubney submitted the log book to the RMS in order to obtain a heavy vehicle driver licence. He admitted that he knew at the time he submitted the log book to the RMS that he was falsely representing to the RMS that he had been properly assessed and that this was dishonest.

The Commission is satisfied that Mr Daubney paid Mr Binos from \$1,000 to \$1,500 as an inducement or reward on account of him exercising his public official functions as an RMS-accredited heavy vehicle competency assessor to make false entries in Mr Daubney's learner's log book to the effect that he had assessed Mr Daubney as competent to drive heavy vehicles in accordance with RMS requirements. Mr Daubney submitted the log book to the RMS knowing that it contained false entries and that those entries would be relied on by the RMS in deciding to grant him a heavy vehicle driver licence.

## Corrupt conduct

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

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of s 8(1) or s 8(2) of the ICAC Act. If they do, the Commission then considers s 9 and the jurisdictional requirements of s 13(3A) of the ICAC Act.

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

### Mr Binos

Mr Binos' conduct in soliciting and receiving money from applicants for heavy vehicle driver licences, in return for him exercising his public official functions as an RMS-accredited heavy vehicle competency assessor to make false entries in their learner's log books to the effect that he had assessed them as competent to drive heavy vehicles, in accordance with RMS requirements, in order for them to apply to the RMS for a heavy vehicle driver licence is corrupt conduct.

This is because his conduct is conduct that adversely affected or could have adversely affected, directly or indirectly, his honest or impartial exercise of his official functions within the meaning of s 8(1)(b) of the ICAC Act. His conduct could also constitute or involve a breach of public trust and therefore could come under s 8(1)(c) of the ICAC Act. Such conduct could also adversely affect the exercise of his official functions and the exercise of official functions of other RMS public officials responsible for issuing heavy vehicle driver licences on the basis of the false entries in the learners' log books and could involve bribery and obtaining secret commissions within the meaning of s 8(2)(b) and s 8(2)(d) of the ICAC Act.

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

If any agent corruptly receives or solicits (or corruptly agrees to receive or solicit) from another person for the agent or for anyone else any benefit:

(a) *as an inducement or reward for or otherwise on account of:*

(i) *doing or not doing something, or having done or not having done something, or*

(ii) *showing or not showing, or having shown or not having shown, favour or disfavour to any person,*

*in relation to the affairs or business of the agent's principal, or*

(b) *the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,*

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

For the purpose of this section, Mr Binos was the agent of the RMS.

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

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



## Ms Riley, Mr Friend-Ngui, Mr Florio, Mr McDonagh and Mr Daubney

The conduct of each of Ms Riley and Messrs Friend-Ngui, Florio, McDonagh and Daubney in paying money to Mr Binos as an inducement or reward on account of him exercising his public official functions as an RMS-accredited heavy vehicle competency assessor to make false entries in their learner's log books to the effect that he had assessed them as competent to drive heavy vehicles in accordance with RMS requirements so that they could apply to the RMS for a heavy vehicle driver licence is corrupt conduct.

This is because their conduct is conduct that adversely affected or could have adversely affected, directly or indirectly, the honest or impartial exercise of official functions by Mr Binos as a public official and therefore comes within s 8(1)(a) of the ICAC Act. It is also conduct which could adversely affect the exercise of the official functions of Mr Binos and the exercise of official functions of other RMS public officials responsible for issuing heavy vehicle driver licences on the basis of the false entries in the learners' log books and could involve bribery and obtaining secret commissions within the meaning of s 8(2)(b) and (d) of the ICAC Act.

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

If any person corruptly gives or offers to give to any agent, or to any other person with the consent or at the request of any agent, any benefit:

- (a) *as an inducement or reward for or otherwise on account of the agent's:*
    - (i) *doing or not doing something, or having done or not having done something, or*
    - (ii) *showing or not showing, or having shown or not having shown, favour or disfavour to any person,**in relation to the affairs or business of the agent's principal, or*
  - (b) *the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,*
- the first mentioned person is liable to imprisonment for 7 years.*

Mr Binos was the agent of the RMS for the purpose of this section.

The Commission is satisfied for the purposes of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Ms Riley, Mr Friend-Ngui, Mr Florio, Mr McDonagh and Mr Daubney each committed a criminal offence of corruptly giving a benefit under s 249(2) of the Crimes Act.

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

## Section 74A(2) statements

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

- (a) obtaining the advice of the 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 Binos, Ms Riley, Mr Friend-Ngui, Mr Florio, Mr McDonagh and Mr Daubney are "affected" persons.

## Mr Binos

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

There is, however, other admissible evidence that would be available. This includes documentary evidence and the evidence of Mr Hay, Ms Riley, Mr Friend-Ngui, Mr Florio, Mr McDonagh and Mr Daubney. There is also evidence from the owners of the vehicles that Mr Binos recorded as being used for various assessments that their vehicles were not used for those assessments.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Binos for criminal offences of corruptly soliciting and receiving a benefit to make false entries in the learners' log books contrary to s 249B(1) of the Crimes Act.

### **Ms Riley, Mr Friend-Ngui, Mr Florio, Mr McDonagh and Mr Daubney**

Each of Ms Riley, Mr Friend-Ngui, Mr Florio, Mr McDonagh and Mr Daubney also gave evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of these declarations is that their evidence cannot be used against them in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

There is, however, other admissible evidence that would be available. This potentially includes the evidence of Mr Binos. In addition, in the case of each of Mr Friend-Ngui, Mr Florio, Mr McDonagh and Mr Daubney, there is evidence from the owners of the vehicles that were recorded as being used to conduct their assessments that the vehicles were not used for that purpose.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of each of Ms Riley, Mr Friend-Ngui, Mr Florio, Mr McDonagh and Mr Daubney for a criminal offence of corruptly giving a benefit to Mr Binos to make false entries in their learner's log books contrary to s 249B(2) of the Crimes Act.

Each of Mr Florio, Mr McDonagh and Mr Daubney admitted to knowingly giving false evidence at their compulsory examinations. It is an offence under s 87 of the ICAC Act for a person to give false evidence to the Commission.

With respect to Mr Florio and Mr McDonagh, Counsel Assisting submitted that the Commission should not state it is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to their prosecution for an offence under s 87 of the ICAC Act. The bases of that submission are that both resolved to correct their evidence before entering the witness box at the public inquiry, that they gave candid evidence at the public inquiry, that they admitted their corrupt arrangement with Mr Binos and that they had previously given false evidence at their compulsory examinations, and that both had offered to provide a statement that could be used in the prosecution of Mr Binos. The Commission has accepted this submission.

Counsel Assisting submitted that it would be open to the Commission to form the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Daubney for an offence under s 87 of the ICAC Act. Counsel Assisting noted that when considering this matter the Commission should take into account that Mr Daubney admitted his wrongdoing at the public inquiry, although the Commission should note that he did not admit his wrongdoing at the earliest opportunity (his compulsory examination) and he had not, at the time the submissions were made, offered to provide a statement that could be used in the prosecution of Mr Binos. Mr Daubney has since offered to provide a statement that could be used in the prosecution of Mr Binos.

In conformity with the approach adopted in the cases of Mr Florio and Mr McDonagh, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Daubney for an offence under s 87 of the ICAC Act.



## Chapter 3: Corruption prevention

The primary goal of the RMS' heavy vehicle competency-based assessment (HVCBA) scheme is to promote road safety by ensuring that drivers of heavy vehicles have the competency to operate those vehicles in accordance with the road rules and the particular features of the class of vehicle.

As the assessment process was increasingly outsourced from 1995, private assessors found themselves in the position where they conducted both the training and the assessment for profit, with little effective oversight of their operations. For an outsourced heavy vehicle trainer/assessor, these arrangements provided incentives to maximise profit by using, for example, a cheaper vehicle than the class being assessed, by eliciting additional payments to pass the assessment, by minimising actual training or by failing applicants on some competency tests in order to re-test them for additional fees.

The RMS review of the HVCBA scheme, which was conducted in early 2013, identified solutions for most of the control gaps, and these solutions appear appropriate. The review, however, did not identify a solution for the key vulnerability of the system; namely, that the person training an applicant was also assessing the applicant, performing both roles for profit, with little effective oversight.

### Outsourcing of heavy vehicle licensing

As discussed in chapter 1 of this report, in 1995, the RTA moved to outsource assessment for heavy vehicle driver licensing to a new HVCBA scheme, which provided applicants with an option to obtain a heavy vehicle driver licence via an assessment provided either by RMS-accredited driving instructor-assessors or via an assessment administered by RMS staff.

Over time, the HVCBA scheme progressively phased out RMS-administered driving tests, in favour of an entirely outsourced assessment model. As well as meeting the RMS' own strategic objective to outsource registry-based functions, where possible, the decision to outsource fit with a broader government strategy of greater externalisation and contracting of non-essential government functions.

According to statements provided by Matthew Cafe, RMS' acting manager of customer education, the HVCBA scheme was also introduced to improve driver testing because RMS registries were "not suitable for heavy vehicles and testing could only be delivered by those that drove heavy vehicles and had heavy vehicle driving experience". Furthermore, the HVCBA scheme also helped to "relieve pressure on motor registries and introduce further educational requirements such as load restraint and related competencies" while "expanding business opportunities for the heavy vehicle industry".

### The HVCBA scheme at the time of the corrupt conduct

The HVCBA scheme, as outlined in chapter 1, provides an outsourced system for training and assessing heavy vehicle driver licence applicants on a comprehensive range of driving and road safety competencies. Prior to January 2013, the RMS entered into contractual service provider agreements with individuals, who were accredited by the RMS to conduct HVCBAs and held driving instructor licences for the class of heavy vehicle licence for which they were accredited.

Once applicants for heavy vehicle driver licences in NSW pass an eyesight test and a written RMS knowledge test, they are issued with an HVCBA learner's log book and select their own training provider to train them in heavy vehicle competencies on which applicants will later be tested. The learner's log book is the official record of the

learner's training progress and must be kept up-to-date by the applicant. As with learning to drive a motor vehicle, an applicant can learn to drive a heavy vehicle with several different trainers, as long as those individuals hold a relevant licence for the vehicle being driven.

Once the applicant completes the training component, they must contact an RMS-accredited assessor to arrange for an initial competency assessment on training criteria, before moving to the final competency assessment (FCA). The applicant brings their learner's log book to the assessor to record the results of the applicant's assessment, and both assessor and applicant are required to sign off on each competency assessment result. When the applicant has completed assessments in all criteria for the licence class applicable, including the FCA, it is the responsibility of the assessor to ensure that the learner's log book has been completed correctly and, if the applicant passes the FCA, to sign the assessor certification in the learner's log book.

In many cases, as in that of Mr Binos, the same person provides both training and assessment services. If the applicant is successful in both the initial assessment and the FCA, the assessor reports this to the RMS and returns the learner's log book to the applicant. The applicant can then take the certified learner's log book to an RMS registry and, on payment of the appropriate driver licence fee, the RMS issues the applicant with an upgraded heavy vehicle driver licence. These provisions remain unchanged today.

### The FCA audit regime

At the time of the corrupt conduct identified in this investigation, the RMS relied heavily on field audits of FCAs as a key means of controlling this system. The decision to audit an assessor is based on the volume of FCAs conducted by each assessor, the time lapse since an audit was last performed on an assessor, the result of the last audit, and any other data received about the assessor via customer complaints, ministerial requests or other intelligence-gathering undertaken by the Compliance and Assurance unit of the RMS. If an auditor attends an FCA of a two-seat vehicle, the auditor conducts the FCA themselves. If the auditor attends an FCA of a vehicle with three or more seats, the assessor conducts the FCA with the auditor observing inside the vehicle.

Prior to recent changes to the HVCBA scheme, assessors were required to report the scheduling and location of FCAs to the RMS by fax or by telephone at least 48 hours before an assessment was undertaken. This was to give RMS auditors sufficient time to decide whether to attend the driving assessment to conduct an audit.

While audits may detect anomalies in relation to the vehicle used or mistakes by the assessor, they provide little assurance against corrupt behaviour. As Peter Wells,

director of the RMS Safety and Compliance Division notes, the existing audit system "is unlikely to detect serious anomalies in the assessment process because the presence of the auditor is likely to cause modification in the behaviour of the assessor and/or applicant to meet applicable standards". From November 2004 to March 2012 (prior to the corrupt conduct identified in this investigation), Mr Binos was audited at least 35 times by RMS officers. In 2005, he came under adverse notice for three unsatisfactory audit reports. His explanations submitted in response to the adverse notices were, however, all accepted by the RMS.

For a corrupt assessor, avoiding audits altogether would be desirable. During the public inquiry, Mr Binos stated that he believed he was able to avoid audits by simply failing to notify the RMS of his assessment schedule. The RMS did not perform checks to confirm that the assessor's FCA notification to the RMS had occurred before heavy vehicle driver licences were ultimately issued to applicants. By the RMS' account, Mr Binos failed to notify it of upcoming FCAs, as required, approximately 100 times between 1 June 2012 and 19 April 2013.

## The HVCBA system today

### Registered training organisations

In January 2013, the RMS moved away from accreditation of single-operator assessors in favour of registered training organisations (RTOs), which hire and appoint trainers and assessors.

The RMS enters into an accreditation agreement with each RTO. Under this accreditation agreement, RTOs are to conduct the HVCBA process in accordance with the *HVCBA Business Procedures Manual*, the *Austroads National Heavy Vehicle Assessment Guide*, and the *Austroads Heavy Vehicle Assessment Route Development Guide*. All FCAs conducted in NSW must meet the assessment standards set out in these documents. All HVCBA assessors must now be appointed with an RTO to perform assessments under the new HVCBA system. Individual assessors are no longer able to contract directly with the RMS.

By July 2013, national standards for heavy vehicle competency assessment were also implemented in NSW, mandating a national approach to heavy vehicle driver licence assessment, but also raising questions of how effective oversight of this system will be implemented.

Statements provided to the Commission by Mr Cafe outline how applicants for a heavy vehicle driver licence are now assessed against the national heavy vehicle driver competency standard that is overseen by the Australian Skills Quality Association (ASQA), which is aligned to



the national Vocational Education and Training system. To be recognised under this system, all heavy vehicle training and assessment providers must now be either employed by an RTO or contracted by an RTO in order to perform assessments. Individual assessors are no longer able to contract directly with the RMS. Under accreditation agreements, RTOs are to conduct the HVCBA scheme in accordance with a number of mandated procedures and guidelines.

The RMS believes that RTOs act as “another layer of governance” in the outsourced HVCBA scheme, and that reputation and financial incentives will ensure RTOs are rigorous in their oversight and review of the conduct and quality of the work of assessors. New business rules relating to RTO administration of the training and assessment of applicants were implemented. To provide an increased level of assurance in the new regime, RTOs are charged with:

- maintaining records and registers of competency certificates along with both learner’s log books and assessor’s log books
- upholding tight obligations for monitoring, supervising and evaluating registered assessors within the organisation
- preserving strengthened requirements for assessor qualifications
- maintaining the validity of all FCA routes and associated documentation pursuant to the *National Heavy Vehicle Assessment Route Development Guide*
- facilitating RMS audits of criteria and FCAs
- ensuring that assessors give proper notification to the RMS of scheduled FCAs via the Heavy Vehicle Competency Online Reporting System (HVCORS).

Like assessors, RTOs carry out a government function for profit and, therefore, require some form of government control. The newly implemented national standards involve a commonwealth body (that is, ASQA) overseeing privately-run RTOs, which, in turn, oversee assessors, who provide heavy vehicle driver licence training and assessment on behalf of the state RMS.

It is particularly difficult to comment on the effectiveness of this multi-layered approach to oversight given the complex and evolving regulatory relationship between the commonwealth, state and RTOs. While the involvement of RTOs and tighter obligations for reporting and auditing placed on them may provide an added layer of assurance relative to previous systems, the Commission notes that there is presently limited evidence on which to assess

the effectiveness of this new regime. The layers and complexity of accountability and control in the current model indicate that this approach to assurance and oversight may be of limited benefit.

## Heavy Vehicle Competency Online Reporting System

In January 2013, the RMS began implementing HVCORS, a heavy vehicle electronic reporting system that the RMS believes will “use information available through the DRIVES Vehicle Registration and Driver Licensing System and the HVCORS systems to identify particular risks or anomalies as the basis for determining the nature of the risks and to adapt the audit program to focus on identifying and controlling those risks”. According to Mr Cafe, HVCORS “enables real time validation of all licence and vehicle registration details related to training and assessment”. Implementation of this system was completed in May 2013.

RMS-accredited assessors must now log on to the HVCORS website to provide an electronic notification of scheduled FCAs at least 48 hours prior to the assessment taking place. The new system adds a mechanism to match scheduled assessments with the subsequent issuance of a heavy vehicle driver licence, and gives the RMS a higher level of assurance that it is being informed when and where FCAs are taking place for audit purposes.

HVCORS has also improved data accessibility for auditing and assurance purposes. The system acts as a real-time database that draws data and information for the RMS’ Vehicle Registration and Driver Licensing System (DRIVES) so that an applicant’s licence, the assessor’s licence and the vehicle used for the training and assessment are all electronically verified by the system. This also provides an electronic record of an applicant’s progression towards a heavy vehicle driver licence. Any use of non-compliant or ineligible licence registration details is prevented. Licence and registration details entered by the assessor are checked by the system against live records held by the RMS in DRIVES. If a licence or registration is ineligible for the class of heavy vehicle being sought, the system will prevent the HVCBA assessor from booking the FCA.

HVCBA applications tracked through HVCORS cannot proceed if there is any non-compliance by the applicant or assessor with any system requirement, such as the completion of an eyesight or knowledge test. HVCORS alerts the compliance team by email if an assessor attempts to make late changes to an FCA booking. This new notification alert now enables the compliance team to monitor trends and the behaviour of assessors that might be fraudulent or corrupt.

If an assessor does not provide proper notification of FCA scheduling 48 hours prior to an assessment, and assessment results 24 hours after an assessment, the system will lock that applicant out and a driver licence will not be issued when the applicant presents to an RMS registry with their signed assessment. Changes to assessment patterns and assessor workloads will also be flagged.

HVCORS will be able to provide a range of reports for RMS officers to facilitate the delivery of a targeted audit program and ensure that no driver licences are issued without an auditable FCA taking place. Given this capacity to ensure compliance with notification requirements and to provide data analysis, the Commission supports the introduction of HVCORS as a key control in the outsourced HVCBA scheme.

## Residual weakness in the current system

Four months after the addition of the RTO structure and HVCORS, the RMS conducted a risk assessment on the HVCBA scheme. The RMS identified and prioritised 31 weaknesses in the HVCBA scheme, targeting the causes of these weaknesses and presenting an action plan for mitigation strategies. Amongst other risks, the assessment highlighted the structure of the HVCBA scheme, weak reporting lines, lack of clarity in policies and procedures, the possibility of collusion between trainer/assessors and applicants, lack of effectiveness of the audit system, and lack of assurance by RTOs.

By October 2013, immediately prior to the public inquiry, the RMS submitted a comprehensive risk management framework in response to the HVCBA risk assessment. Among a number of proposed changes in the framework, the RMS suggested new audit methodologies to be based on:

- targeted attendance at FCAs based on risk analysis
- desktop audits of log books held by RTOs
- telephone surveys of successful FCA applicants
- a retesting applicants program (percentage of new heavy vehicle driver licence holders retested)
- installation of cameras in trucks to record all HVCBA FCAs for auditing.

This strategy addresses a number of weaknesses in the system, including weaknesses in end-to-end control of the HVCBA scheme and in the detection provided by the audit regime.

One solution may be to separate the assessment from the training, requiring the two parts to be delivered by different companies. The RMS has indicated, however, that splitting the assessment from the training is not practicable, and would place onerous demands on the industry and applicants in regional areas. The use of physical audit is also limited in its effectiveness.

Another approach identified in the risk management framework is to audit electronic recordings of FCAs. This system, which was trialled and has since been adopted by VicRoads for the Victorian HVCBA scheme, uses video, audio and global positioning system (GPS) monitoring to record FCAs. The technology uses voice data, and external and in-cabin images to verify the proper conduct of the FCA, including verification of the identity of the applicant and assessor. Portable audio/video systems could record a variety of mandated information during an FCA, including:

- information to introduce the assessor and applicant and relevant licence numbers, assessment record reference numbers, and starting time and location of the assessment
- in-cabin audio/video recording of the activity of applicant and assessor
- outward-facing video recording of the driver front-road view
- video recording of competency assessment of outside the cabin procedures, such as pre-operational checks, load-securing, and coupling and uncoupling of trailers
- capture of audio that can be verified against the mandated assessment script
- vehicle speed and direction
- GPS tracking of the vehicle location throughout the assessment to monitor against the assigned assessment route.

The VicRoads business procedures manual, which each RTO must agree to as part of its accreditation agreement, mandates that these records be kept on file for auditing purposes. Business rules implemented by VicRoads require Victorian RTOs to store and maintain all heavy vehicle driver licence tests in a database, which can be audited at any time by VicRoads under their accreditation agreement. Each Victorian RTO stores this data on a 2-terabyte portable hard drive, which is owned by VicRoads and can be recalled at any time under the RTO licensing agreement.

RTOs are also required to perform targeted self-audits across a percentage of the assessments, across locations,

and across licence categories and/or assessors. This data can be used for both compliance and assessor-training purposes. If for any reason the RTO discovers that there is a malfunction of the technology, the RTO must advise VicRoads at the end of the same business day.

VicRoads can use the data at any time for audit and compliance purposes, and to investigate customer complaints. Failure to produce the recording of any requested test results in instant termination of accreditation to conduct the assessments. Thus, the incentive for Victorian RTOs to comply with auditable video recordings of assessments is very strong. Deterrence of corrupt behaviour under this system is greatly enhanced.

This requirement was initially met with some resistance from Victorian RTOs. Many RTOs have since, however, found this system to be an effective tool in dealing with customer complaints and they can also use it for training purposes. The cost of adopting this system, which is estimated at \$650 to \$1,000 per unit, is marginal for the RTOs relative to their overall costs. There is also potential for the technology to develop to a point of being able to provide real time “tap-in” monitoring of an FCA by auditors.

With regard to NSW, this technology has the potential to significantly improve the control that the RMS exerts over FCAs and provides a strong level of assurance that FCAs are properly performed. Potentially, this system could provide a means of 100 per cent audit across HVCBA FCAs. Video records of FCAs also reduce the time required for each audit, increase auditor productivity compared to standard field audits, and provide a strong deterrence to corruption by increasing the perceived risk of detection.

## Recommendation

**That the RMS requires RTOs to implement in-cabin video camera and GPS technology solutions to record and monitor HVCBA final competency assessments completed by assessors for the issue of heavy vehicle driver licences, and that the RMS implements systems, processes and business rules to own, collect, review and archive the recordings, including utilising the recordings to enhance the auditing of the HVCBA scheme.**

This recommendation is made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E of the ICAC Act, will be furnished to the RMS and the minister responsible for the RMS.

As required by s 111E(2) of the ICAC Act, the RMS must inform the Commission in writing within three months

(or such longer period as the Commission may agree to in writing) after receiving the recommendation whether it proposes to implement any plan of action in response to the recommendation affecting it and, if so, the plan of action.

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

The Commission will publish the responses to its recommendation, any plan of action and progress reports on the implementation of the plan on the Commission's website, [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au), for public viewing.



## Appendix 1: The role of the Commission

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

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

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

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

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

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

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



## Appendix 2: Making corrupt conduct findings

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

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

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

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

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

- a. *a criminal offence, or*
- b. *a disciplinary offence, or*

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

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

Section 9(4) of the ICAC Act provides that, subject to subsection 9(5), the conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in s 8 is not excluded by s 9 from being corrupt if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

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

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

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of s 8(1) or s 8(2) of the ICAC Act. If they do, the Commission then considers s 9 and the jurisdictional requirements of s 13(3A) and, in the case of a Minister of the Crown or a member of a House of Parliament, the

jurisdictional requirements of s 9(5). In the case of s 9(1)(a) and s 9(5) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence. In the case of s 9(1)(b), s 9(1)(c) and s 9(1)(d) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

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

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

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

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

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

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

See also *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.



---

INDEPENDENT COMMISSION  
AGAINST CORRUPTION  
NEW SOUTH WALES

Level 21, 133 Castlereagh Street  
Sydney, NSW, Australia 2000

Postal Address: GPO Box 500,  
Sydney, NSW, Australia 2001

T: 02 8281 5999

1800 463 909 (toll free for callers outside metropolitan Sydney)

TTY: 02 8281 5773 (for hearing-impaired callers only)

F: 02 9264 5364

E: [icac@icac.nsw.gov.au](mailto:icac@icac.nsw.gov.au)

**[www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)**

Business Hours: 9 am - 5 pm Monday to Friday