

ICAC

INDEPENDENT COMMISSION
AGAINST CORRUPTION

**INVESTIGATION
INTO THE CORRUPT
CONDUCT OF A
WILLOUGHBY CITY
COUNCIL OFFICER**

**ICAC REPORT
JUNE 2011**





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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 the conduct of an officer of Willoughby City Council.

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

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Summary of investigation and results

This investigation by the Independent Commission Against Corruption (“the Commission”) illustrates how corruption can arise when a public official is given wide discretionary powers but when little, if any, effective supervision is imposed on the exercise of those powers. The investigation examined a wide range of allegations that Edward Karkowski, a building surveyor with Willoughby City Council (“the Council”), corruptly exercised his official functions to favour various business owners in the Chatswood area in return for benefits, such as cash, gifts, free meals and free massages and sexual services.

An important part of the investigation was to examine the management system in place at the Council, with a view to identifying the extent to which this system contributed to the conduct uncovered by the Commission and a view to identifying what improvements are needed to ensure such conduct does not recur.

Although this investigation focused on the conduct of one Council officer, the corruption prevention recommendations concerning the supervision and oversight of staff are pertinent to all public sector organisations.

Results

Findings are made in the report that Mr Karkowski engaged in corrupt conduct by:

- failing to report to the Council that the Oriana Bath House was illegally operating as a brothel because he was receiving free sexual services at the brothel (chapter 2)
- dishonestly submitting a false claim for overtime on 6 July 2010 and accepting payment for that claim (chapter 2) when he was not at Council premises but was at the Oriana Bath House, where he received free sexual services
- writing an Alternative Solution Report relating to shop P8 at Chatswood Central, placing the report on the Council file, and relying on the report to consider the issue of an occupation certificate, all in return for receiving two gift vouchers totalling \$750 (chapter 3)
- writing an Alternative Solution Report for Chatswood’s Red Chilli Sichuan Restaurant, and relying on the report to issue an occupation certificate, in appreciation for having received free hospitality and a Montblanc pen from persons associated with the restaurant (chapter 4)
- issuing an occupation certificate for Chatswood’s Red Chilli Sichuan Restaurant without having received at least two outstanding certificates required from the builder, in appreciation for having received free hospitality and a Montblanc pen from persons associated with the restaurant (chapter 4)
- failing to report to the Council that Chatswood’s Red Chilli Sichuan Restaurant was trading in public without an occupation certificate in return for free hospitality and a Montblanc pen from persons associated with the restaurant (chapter 4)
- dishonestly submitting claims for overtime and accepting payment for those claims for hours worked after 4 pm on 2 June 2010 and 16 June 2010 (chapter 4)
- providing a developer, Sam Koura, with an engineering report and a confidential draft assessment report; divulging to Mr Koura details of an objection lodged with the Council (including details of the objector’s identity); and providing a copy of the complaint lodged with the Council against a private certifier engaged by Mr Koura, all in return for benefits received from Mr Koura (chapter 5)
- advising three people to submit false construction cost estimates in development applications so that fees payable to the Council would be reduced in return for free hospitality (chapter 6)
- accepting five bottles of wine in return for having issued an occupation certificate before all



outstanding requirements identified during the building inspection were satisfied (chapter 6)

- dishonestly submitting claims for overtime and accepting payment for those claims for hours worked after 4 pm on 28 April 2009 and 2 August 2010 (chapter 6).

Statements are made pursuant to section 74A(2) of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) 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 Karkowski for the following offences:

- offences under section 249B of the *Crimes Act 1900* (“the Crimes Act”) in relation to soliciting or receiving corrupt benefits in return for not reporting to the Council that the Oriana Bath House was operating as a brothel
- an offence under section 192E of the Crimes Act in relation to dishonestly submitting a claim for overtime and accepting payment for that claim for hours worked between 5.15 pm and 6.50 pm on 6 July 2010
- offences under section 249B of the Crimes Act in relation to soliciting or receiving corrupt benefits in return for writing an Alternative Solution Report in respect of shop P8 at Chatswood Central
- offences under section 249B of the Crimes Act in relation to receiving corrupt benefits in return for exercising his official functions to favour the interests of the Red Chilli Sichuan Restaurant
- common law offences of misconduct in public office for providing Council information for private purposes in return for receipt of benefits in the form of free meals, wines, gifts and visits to massage parlours and brothels where he received massage and sexual services.

As a result of the Commission investigation, the Council has dismissed Mr Karkowski, so it is not necessary to make

any recommendation in relation to disciplinary action.

A number of business people gave evidence at the public inquiry and assisted the Commission by giving honest and forthright evidence. Given their assistance, findings of corrupt conduct have not been made against them.

During the investigation, the Commission found that there were several factors that allowed Mr Karkowski to engage in corrupt conduct. These factors include problems with management and supervision, lack of information concerning the Council’s approval process, lack of information to Council staff enabling them to accurately estimate the cost of construction work and the practice at the Council for staff to accept gifts, benefits and hospitality.

Chapter 7 of the report sets out the Commission’s corruption prevention response to the conduct disclosed during the investigation. It contains the following recommendations:

Recommendation 1

That Willoughby City Council improves the supervision and monitoring of its staff in the Environmental Services Division with powers and/or responsibilities under the *Environmental Planning and Assessment Act 1979* in order to help reduce opportunities for corrupt behaviour to occur. Specific measures to achieve this should include the need to:

- a. review the current organisational structure to ensure managers are able effectively to supervise the work of staff reporting to them and are involved in the reviewing and auditing of work completed by staff
- b. assess and implement strategies to manage corruption risks associated with specialisation amongst regulatory staff, such as:

- i. introducing staff rotation duties and limiting the role of specialist staff to providing advice on specialist issues to building surveyors, planners and other staff
 - ii. establishing a periodic auditing by directors and internal auditors of determinations of development applications and construction certificates
 - iii. introducing or improving existing systems to track the out-of-office movements of Council staff during work hours
- c. establish systems to reduce end-to-end control of regulatory approvals by a single Council officer, such as Council officers assessing an application under delegated authority and determining and approving the same application. This may include changing Fast Track Approval System procedures to require the assessing officer to complete a report and a different officer to make the determination.

Recommendation 2

That Willoughby City Council reviews its current practices and develops policies for the awarding of overtime, including:

- a. establishing a formal process for managers to determine and approve in advance the need for staff working overtime
- b. retaining a formal process for the claiming of overtime actually worked.

Recommendation 3

That, as an interim measure, Willoughby City Council:

- a. produces and makes publicly available a clear list of what activities and work associated with a development are to be included in calculating the estimated costs of works
- b. requires any person submitting an application for development or a construction certificate to submit a quote from a builder or suitably qualified and licensed person of the estimated cost of work for the development proposal
- c. reinforces to staff who assess development applications that, under clause 255 of the Environmental Planning and Assessment Regulation 2000, there is a need to be satisfied

that the estimated cost associated with the construction of the building is genuine and accurate.

Recommendation 4

That the NSW Department of Planning and Infrastructure prepares and makes public guidelines that specify which activities and what work associated with a development are to be used by planning authorities when calculating the estimated costs of works.

Recommendation 5

That Willoughby City Council implements changes to its Gifts and Benefits Policy and section 5 of its Code of Conduct that establish, as a minimum, a prohibition on Council staff and officials who exercise regulatory functions from accepting any gift, benefit or hospitality irrespective of its value.

Recommendation 6

That Willoughby City Council formalises its practices around the Fast Track Approval System, and publishes these documents as an information pack that is publicly available for use by developers, builders and others in the business community. This should include the following:

- a. information required to be submitted by applicants in relation to the development proposal and the estimated cost of works
- b. fees payable by applicants
- c. level of information to be provided by Council officers assessing and determining the application in their worksheet or report with regard to the matters considered and the reasons for their determination
- d. circumstances in which applications should be referred to the Council's Development Assessment Review Committee or the Peer Review Group.

Recommendation 7

That Willoughby City Council:

- a. further enhances its campaign to educate the local community, including non-English speaking members, that gifts, hospitality and other benefits are not appropriate and that Council officers cannot accept them

- b. develops a program to engage and actively involve the local business community, with a view to establishing a dialogue that communicates the above message
- c. establishes an education program on cross-cultural matters for all frontline and regulatory staff.

These recommendations are made pursuant to section 13(3)(b) of the ICAC Act and, as required by section 111E of the ICAC Act, will be furnished to Willoughby City Council and the Minister for Planning and Infrastructure. They will also be provided to the Department of Planning and Infrastructure.

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

In the event a plan of action is prepared, Willoughby City Council 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 response to its recommendations, any plan of action and progress reports on its implementation on the Commission's website, www.icac.nsw.gov.au, for public viewing.

Recommendation that this report be made public

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

Chapter 1: Background

This chapter sets out background information concerning the Commission's investigation.

How the investigation came about

On 18 March 2010, the Commission received information from a complainant that Edward Karkowski had accepted gifts, free meals and free visits to massage parlours in return for fast tracking development applications. It was also alleged he had delayed the processing of development applications lodged by the business competitors of the people from whom he received these benefits.

Why the Commission investigated

One of the Commission's principal functions, as specified in section 13(1)(a) of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act"), is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

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

The role of the Commission is explained in more detail in Appendix 1, while Appendix 2 sets out the definition of corrupt conduct under the ICAC Act.

The matters brought to the Commission's attention were serious and could constitute corrupt conduct within the meaning of the ICAC Act.

In these circumstances, the Commission decided that it was in the public interest to conduct an investigation to establish whether corrupt conduct had occurred, the nature and extent of that conduct, 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 54 notices under section 22 of the ICAC Act (requiring production of documents)
- lawfully executed three search warrants to obtain information relevant to the investigation
- undertook physical surveillance of persons suspected of being involved in corrupt conduct
- interviewed and/or took statements from a number of persons
- obtained three warrants under the relevant legislation to enable the interception of telecommunications
- conducted one compulsory examination.

The evidence obtained in the course of the investigation supported the allegations that Mr Karkowski had exercised his official functions favourably towards some people in circumstances where he had received benefits from those people, including free sexual services and hospitality.

The public inquiry

The Commission reviewed the information that had been gathered during the investigation and the evidence given at the compulsory examination. After taking into account this material and each of the matters set out in section 31(2) of the ICAC Act, the Commission determined that it was in the public interest to hold a public inquiry. In making this determination, the Commission had regard to the following considerations:

- the subject matter of the investigation related to serious allegations, including the receipt of rewards



- 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
- it was desirable to expose publicly inadequate systems and processes in relation to Willoughby City Council in order to encourage reform.

The public inquiry took place over four days between 7 March and 10 March 2011. The Hon David Ipp AO QC, Commissioner, presided at the inquiry and Kate Williams acted as Counsel Assisting the Commission. Evidence was taken from 11 witnesses.

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

Willoughby City Council

Willoughby City Council (“the Council”) is located in Sydney’s northern suburbs, about nine kilometres from the city of Sydney. It has a population of approximately 70,000. The Council area is predominantly residential but also includes the Chatswood central business district (CBD).

Mr Karkowski’s role

Mr Karkowski was a building inspector and development officer employed by the Council. As such, he was a public official for the purposes of the ICAC Act.

Under delegated authority from the Council’s general manager, Mr Karkowski was responsible for assessing

and determining applications for development consent and construction certificates, carrying out building inspections, and issuing building certificates and occupation certificates. His delegated authority included the exercise of discretionary power available to the Council under applicable planning instruments.

Mr Karkowski’s work related to developments within the geographical area known as Area 4, which is the core of the Chatswood CBD and is made up almost entirely of commercial office and retail premises.

Mr Karkowski’s work in assessing development applications and the issuing of construction certificates was done primarily under the Council’s Fast Track Approval System. This system allowed applicants to apply for development consent and a construction certificate at the same time. The process was as follows:

- A “pre-lodgement” meeting was held with applicants, where the details of the proposed development, the applicant’s estimate of the construction costs and the Council’s application fees were discussed. The application fees charged by the Council were based on the estimated cost of construction.
- Once the application was lodged, it was assessed against the requirements of the relevant planning instruments, including the Willoughby City Council Development Control Plan and the Building Code of Australia. The assessment process included a site visit and consultation with other Council officers as to any conditions that should be attached to the development consent or the construction certificate, if the application was approved.
- A worksheet recording the assessment was then completed. No detailed report was prepared for the Council or for Mr Karkowski’s superiors. No other Council officer was involved in the decision as to whether to approve the application.

- If the application was approved, Mr Karkowski issued the development consent and construction certificate under his delegated authority.

Once the building work was completed, Mr Karkowski was then responsible for inspecting the work. If he was satisfied that the work complied with all relevant requirements, he would issue an occupation certificate. In the case of requirements under the Building Code of Australia, this involved Mr Karkowski determining whether the development complied with the strict requirements of this code or whether an “alternative solution” was appropriate. Where such a solution was required or proposed in relation to a development, the applicant needed to submit an Alternative Solution Report.

Council and Mr Karkowski’s supervisors reposed a great deal of trust in Mr Karkowski. He was able to exercise wide discretionary powers in relation to the assessment and approval of applications with little or no effective supervision. This is an issue that is dealt with in more detail in the corruption prevention chapter (chapter 7).

Relevant policies

The *Local Government Act 1993* requires every council to adopt a code of conduct that incorporates the provisions of the Model Code of Conduct for Local Councils in NSW.

The Council has a staff Code of Conduct (“the Code”), which was last updated in February 2009. It contains provisions relating to matters including the use of Council information, protection of personal information and acceptance of gifts and benefits. Certain provisions of the Code are relevant to any assessment of Mr Karkowski’s conduct, as a breach of relevant provisions constitutes grounds for taking disciplinary action.

Section 3.1 of the Code specifically provides that, in carrying out their official functions, Council officers must not conduct themselves in a manner that is likely to bring the Council or holders of civic office into disrepute. Specifically, they must not act in a way that is improper or unethical or is an abuse of power or otherwise amounts to misconduct.

Section 3.4 of the Code provides:

You must ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the development assessment process.

In determining development applications, you must ensure that no action, statement or communication between yourself and applicants or objectors conveys any suggestion of willingness to provide improper concessions or preferential treatment.

Section 4 of the Code relates to conflicts of interest. It provides, relevantly, as follows:

A conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.

...

Private interests can be of two types: pecuniary or non-pecuniary.

...

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.

Section 5 of the Code relates to gifts and benefits and provides, relevantly, as follows:

You must not:

- seek or accept a bribe or other improper inducement*
- seek gifts or benefits of any kind*
- accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty*
- accept any gift or benefit of more than token value*
- accept an offer of money, regardless of the amount. You must not take advantage (or seek to take advantage) of your status or position with or of functions you perform for council in order to obtain a benefit for yourself or for any other person or body.*

Section 5 of the Code also requires Council officers who accept a gift or benefit of more than token value to disclose the receipt to their supervisor, the mayor or the general manager, and to avoid situations that give rise to the appearance that a person who is providing gifts or benefits, including hospitality, is attempting to secure favourable treatment.

Section 7 of the Code relates to access to Council information and resources. It provides, relevantly:

In regard to information obtained in your capacity as a council official, you must:

- a. *only access council information needed for council business*
- b. *not use that council information for private purposes*
- c. *not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have by virtue of your office or position with council*
- d. *only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.*

The Council's Gifts and Benefits Policy required any Council officers who had received a gift or benefit to disclose that fact to their supervisor.

In giving evidence at the public inquiry, Mr Karkowski acknowledged that at all times during his employment with the Council he had been familiar with the substance of the requirements of the Code, including the provisions set out above. He also acknowledged that he knew the requirements of the Gifts and Benefits Policy. He said that he had never made a declaration to the Council in relation to any gift or benefit he received.

Chapter 2: Oriana Bath House

This chapter examines allegations that Mr Karkowski received free sexual services on a regular basis at the Oriana Bath House in return for assisting the proprietor with a development application and not reporting to the Council that the Oriana Bath House was illegally operating as a brothel. The chapter also examines an allegation that Mr Karkowski submitted a false claim for overtime on 6 July 2010 for which he received payment.

If Mr Karkowski improperly assisted the proprietor of the Oriana Bath House in relation to the development application or failed to report it was operating as a brothel in return for receiving free sexual services, his conduct would amount to corrupt conduct. This is because it could involve a dishonest or partial exercise of his official functions and constitute or involve a breach of public trust under sections 8(1)(b) and 8(1)(c) of the ICAC Act. For the purposes of section 9 of the ICAC Act such conduct could also involve a criminal offence of corruptly receiving a benefit contrary to section 249B(1) of the *Crimes Act 1900* (“the Crimes Act”) and could involve a disciplinary offence of misconduct and reasonable grounds for dismissal on the basis of such misconduct.

Providing free sexual services in order to influence Mr Karkowski’s exercise of his official functions could also be corrupt conduct. Such conduct could adversely affect the exercise of official functions by Mr Karkowski and involve bribery for the purposes of section 8(2) of the ICAC Act. For the purposes of section 9 of the ICAC Act, it could constitute or involve the criminal offence of corruptly offering a reward to an agent (Mr Karkowski) contrary to section 249B(2) of the Crimes Act.

Falsely claiming overtime could amount to corrupt conduct as it could involve a dishonest exercise of Mr Karkowski’s official functions under section 8(1)(b) of the ICAC Act and a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct could also, for the purposes of section 9 of the ICAC Act, constitute or involve a criminal offence under section 192E of the Crimes Act (dishonestly obtaining a financial advantage by deception) as well as a

disciplinary offence and grounds for dismissal on the basis of misconduct.

Background

The Oriana Bath House is located in Zone 3(c2) under the Sydney Regional Environmental Plan No 5 – Chatswood Town Centre (SREP5). Clause 71 of SREP5 prohibits the Oriana Bath House from operating as a brothel within that zone without development consent from the Council. Clause 36B of SREP5 provides that brothel means “premises used habitually for the purposes of prostitution, that is, the engaging in a sexual activity by persons for payment”. The Oriana Bath House was never given development consent by the Council to operate as a brothel. It had consent to operate as a health and relaxation centre offering massage services. The original development consent contained a condition that staff remain dressed, and skin and body massage could be offered to females only. No sex was to be offered. Under section 122ZR of the *Environmental Planning and Assessment Act 1979* (“the EP&A Act”), each council is responsible for ensuring compliance with its development consent.

The development application

On about 9 October 2007, a Fast Track application was submitted to the Council on behalf of Mi Sook Kang, the proprietor of the Oriana Bath House. The Fast Track application related to proposed internal renovations to the premises. It did not propose any material change in the use of the premises. A Statement of Environmental Effects was submitted in support of the application.

Under the heading “Nature of Business”, it stated:

Health & relaxation centre including sauna & spa, body massage, approved previously by the Council will be going on as it is and hair cut & nail care are newly proposed on top of existing business.



Under the heading “Staff & Dress Code”, it stated:

Staff are to remain dressed at all times & [sic] there being no body to body massage or sex offered at this facility.

On 7 January 2008, Mr Karkowski assessed and approved the Fast Track application and issued the development consent and construction certificate. On 29 January 2008, an application under section 96 of the EP&A Act was submitted to the Council to allow for further alteration to the premises. On 19 May 2008, Mr Karkowski conducted a final inspection of this construction work and issued an interim occupation certificate so that business could commence as a beauty and massage centre for women. On 22 December 2008, a final occupation certificate was issued to the Oriana Bath House.

Mr Karkowski told the Commission that he assisted Ms Kang during the development application by providing her with general advice regarding the application and inspection processes.

Hyuk Il Kwon, manager of the Oriana Bath House, said he was aware that Mr Karkowski helped Ms Kang during the renovation of the Oriana Bath House by providing advice relating to obtaining approval from the Council.

The issue of assistance to Ms Kang by Mr Karkowski in relation to the development application was not explored in detail at the public inquiry. Apart from the general nature of the assistance in respect of development processes, there is no evidence to indicate that Mr Karkowski provided Ms Kang with any preferential treatment.

Mr Karkowski’s failure to report

There is no dispute that Mr Karkowski knew at all times that the Oriana Bath House was not permitted to operate as a brothel. Mr Karkowski admitted as much when he gave evidence at the public inquiry. Mr Karkowski told the Commission that when he originally approved the Fast Track application in 2008 he understood it was operating

within the terms of its development consent. He said when he first heard from someone in his circle of friends that massage services were offered to both males and females he was surprised. Although he could not recall exactly when, he also became aware that a complaint had been made to the Council that the Oriana Bath House was operating as a brothel.

It is also not in dispute that Mr Karkowski became aware that the Oriana Bath House operated as a brothel. Mr Karkowski initially claimed that he had a sexual relationship with one of the employees of the Oriana Bath House but was unaware the bath house offered sexual services to others. After further questioning, however, Mr Karkowski admitted to receiving sexual services from several of the women working at the Oriana Bath House on a regular basis during 2010 and possibly earlier. He admitted that he received free sexual services as often as he liked, ranging from several times a week to a couple of times a month. He acknowledged that he knew that sexual services were provided to his friends and to others for payment. He was aware that the services included oral sex and sexual intercourse.

Mr Karkowski was never asked to pay for the sexual services he received. He told the Commission that he thought that this was a “gesture of thank you”, because he had been helpful to the Oriana Bath House’s proprietor and/or manager during the development application process.

In his statement to the Commission, Mr Kwon said that Mr Karkowski had been attending the Oriana Bath House since September 2009 when Mr Karkowski sought to have a shower followed by a massage. Mr Kwon said that Ms Kang told the receptionist not to charge Mr Karkowski as he was a government official and an important person. It does not appear that Mr Karkowski received any sexual services at this time. Mr Kwon said that Mr Karkowski subsequently attended on a number of occasions and received the full service package free of charge, which

included normal massage followed by a naked massage with hand relief (masturbation).

According to Mr Kwon, a one-hour service of naked massage with hand relief normally costs \$128. A 70-minute service of naked massage with hand relief costs \$158. The longest service the Oriana Bath House offers is 100 minutes, for which the cost is \$198.

Ms Kang was neither interviewed nor did she give evidence at the public inquiry, as she was overseas during the relevant period.

The Commission is satisfied that, from at least early 2010, Mr Karkowski knew the Oriana Bath House was offering sexual services to the public and that he availed himself of those services, free of charge, on a regular basis.

Mr Karkowski did not report to the Council that the Oriana Bath House was operating contrary to its development consent. At the public inquiry, he acknowledged that by accepting free sexual services he put himself in a position where he could not report its illegal operation as a brothel to the Council without compromising himself, and that he therefore, in effect, helped the Oriana Bath House to operate illegally. He agreed that the appropriate thing for him to do would have been to report the breach to the Council Compliance Unit, even though he had no role in monitoring or enforcing the breach. He acknowledged that his conduct was wrong and was capable of giving rise to a reasonable apprehension that he would be influenced by the proprietor of the Oriana Bath House in the performance of his official functions.

Mr Karkowski clearly understood that he was being provided free sexual services because he was in a position where he could get the Oriana Bath House into serious trouble by reporting its breach of its development consent. He could not offer any other explanation for getting free sexual services.

Peter Rowan, Mr Karkowski's immediate supervisor, provided a statement to the Commission. In his statement, he expressed his belief that it was inappropriate for any Council employee not to report the fact that a business was operating outside the original consent approved by the Council. Although he could not think of any formal policy that required such reporting, he believed common sense and professional responsibility would dictate reporting of the breach of development consent. The Commission agrees with this proposition. Mr Rowan also noted that, as Mr Karkowski was a building surveyor, he would have been fully aware that it was an offence under the EP&A Act to operate a business outside its original consent.

Mr Karkowski's duties were of a public nature, being carried out for the purpose of the Council discharging its

statutory functions in relation to planning and development. His conduct in accepting free sexual services had the effect of placing him under an obligation to help or protect the Oriana Bath House, and consequently influenced him in the performance of his official functions by influencing him not to report the breach of the terms of the relevant development consent. The Commission is satisfied that his failure to report the breach to the Council amounted to a partial exercise of his official functions.

Claim for overtime

The core working hours of Council staff in 2010 were between 7.30 am and 4 pm, with a one-hour lunch break. Generally, overtime was not a regular occurrence at the Council. No overtime was to be worked without prior approval. In order to receive payments for overtime, staff had to submit an overtime claim form indicating which hours were completed in the office and which hours were completed at home.

Mr Karkowski claimed six hours of overtime between 4 pm and 10 pm for working on 6 July 2010. Greg Woodhams, the Council's Director of the Environmental Services Division, signed the claim form authorising payment of overtime for that day. Council records show that Mr Karkowski was paid for this overtime claim.

One of Mr Karkowski's visits to the Oriana Bath House occurred on 6 July 2010. In a lawfully intercepted telephone conversation between Mr Karkowski and a friend at 6.46 pm on that day, Mr Karkowski referred to having just walked out of the Oriana Bath House after having had sex. The Council's access records indicate he was away from Council premises between 5.15 pm and 6.50 pm.

At the public inquiry, Mr Karkowski was questioned about the appropriateness of claiming and receiving overtime for the period he spent receiving sexual services. He acknowledged that, in making the claim for overtime, he had represented to the Council that he had been working on Council business during those hours. He admitted that 6 July 2010 was not the only occasion where he claimed overtime when he was engaged in private business but said he had no recollection of the exact time spent on private business during work hours.

Mr Karkowski claimed that there were numerous times when he took files home to work on and did not claim overtime. He contended that the hours for which he did not claim overtime offset the payments received by him for periods he was away from work. His contention was specious and ultimately irrelevant. It was specious because there were no records at the Council or records maintained by Mr Karkowski to support his claim, nor did he have any accurate recollection about the hours spent on private

business during work hours. His claim was irrelevant because any such offsetting of hours was neither sanctioned by Council policy nor checked and authorised by his managers. The Commission rejects Mr Karkowski's assertion that any extra hours allegedly worked by him justified making false overtime claims.

Principal findings of fact

Based on the evidence set out in this report, the Commission is satisfied that the following principal facts have been established to the requisite standard of proof:

1. From at least 2010, Mr Karkowski knew that the Oriana Bath House operated as a brothel and offered sexual services to members of the public for payment, contrary to the relevant development consent.
2. Mr Karkowski failed to report to Willoughby City Council that the Oriana Bath House was illegally operating as a brothel because he was receiving free sexual services at the brothel.
3. Mr Karkowski submitted a false claim for overtime and accepted payment in respect of that claim, which included the time between 5.15 pm and 6.50 pm on 6 July 2010, when he was not at Council premises but was at the Oriana Bath House, where he received free sexual services.

Corrupt conduct

Three steps are involved in determining whether or not corrupt conduct has occurred in a particular matter. The first step is to make findings of relevant facts. In making findings of fact, the Commission applies the civil standard of proof of reasonable satisfaction, taking into account the decisions in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362 and *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171.

The second step is to determine whether the conduct, which has been found as a matter of fact, comes within the terms of sections 8(1) and 8(2) of the ICAC Act. The third step is to determine whether the conduct also satisfies the requirements of section 9 of the ICAC Act.

Corrupt conduct is defined in sections 8 and 9 of the ICAC Act. These sections are set out in Appendix 2.

Mr Karkowski

Mr Karkowski's conduct in not reporting to the Council that the Oriana Bath House was operating as a brothel because he was receiving free sexual services is corrupt conduct. This is because it involves the dishonest or partial exercise of his official functions and constitutes or

involves a breach of public trust and therefore comes within sections 8(1)(b) and 8(1)(c) of the ICAC Act. His conduct also comes within section 8(2) of the ICAC Act, as it is conduct that adversely affects or that could adversely affect the exercise of official functions of other public officials and could involve official misconduct. For the purposes of section 9 of the ICAC Act, Mr Karkowski's conduct falls within section 9(1)(b), on the basis that his conduct could constitute or involve a disciplinary offence involving misconduct, including misconduct for breaching section 3.1 of the Council's Code of Conduct, relating to conduct likely to bring the Council into disrepute.

Mr Karkowski's conduct in dishonestly submitting a claim for overtime on 6 July 2010 and accepting payment for that claim is also corrupt conduct. This is because such conduct involved the dishonest exercise of official functions and therefore comes within section 8(1)(b) of the ICAC Act. Such conduct could also constitute or involve a disciplinary offence involving misconduct and therefore comes within section 9(1)(b) of the ICAC Act.

Hyuk Il Kwon

Mr Kwon assisted the Commission by providing a statement making full admissions of his dealings with Mr Karkowski, even though his statement implicated him in wrongdoing. It is in the interest of both the Commission and the public that persons who have information about corruption, even when it involves themselves, be encouraged to provide evidence to the Commission. The Commission has therefore decided to exercise its discretion not to make a corrupt conduct finding against Mr Kwon.

Section 74A(2) statements

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

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

For the purpose of this chapter, Mr Karkowski and Mr Kwon are “affected” persons.

Mr Karkowski

During the course of his evidence to the Commission, Mr Karkowski made a number of admissions. These admissions were made subject to a declaration pursuant to section 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used in evidence against him in any subsequent criminal prosecution, except a prosecution for an offence under the ICAC Act. Other evidence, however, including telephone interception evidence, documentary evidence and the evidence of Council officers and Mr Kwon would be available to a prosecuting authority.

In these circumstances, 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 Karkowski for offences of soliciting or receiving corrupt benefits contrary to section 249B of the Crimes Act in relation to the free sexual services he received at the Oriana Bath House in return for not reporting to the Council that the Oriana Bath House was operating as a brothel.

The Commission is also of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Karkowski for an offence of obtaining a financial advantage by deception under section 192E of the Crimes Act in relation to dishonestly submitting a claim for overtime and accepting payment for that claim for hours supposedly worked between 5.15 pm and 6.50 pm on 6 July 2010.

At the public inquiry, Mr Karkowski gave his evidence candidly, except for instances expressly identified in this

report. In the circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Karkowski for offences under section 87 of the ICAC Act concerning the giving of false evidence to the Commission.

As a result of the investigation, the Council dismissed Mr Karkowski as an employee. It is therefore not necessary to make any statement in relation to any of the matters referred to in sections 74A(2)(b) or 74A(2)(c) of the ICAC Act.

Mr Kwon

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP in relation to the prosecution of Mr Kwon for any criminal offence. In making this determination, the Commission takes into account the assistance Mr Kwon provided to the Commission in relation to this matter.

Chapter 3: Chatswood Central

This chapter examines allegations that Mr Karkowski received benefits, in the form of gift vouchers, from David Tasker, Project Manager for Bennelong Property Funds Management (BPFM) Pty Ltd, in return for advantaging BPFM by backdating a determination to modify a development consent and an amended construction certificate in order to conceal the fact that the relevant construction had been undertaken and completed prior to the approvals. The chapter also examines an allegation that Mr Karkowski authored an Alternative Solution Report on behalf of Mr Tasker, which Mr Karkowski subsequently relied on to issue an occupation certificate.

If Mr Karkowski backdated Council documents to conceal the fact that the relevant construction had been undertaken and completed prior to the approval of the applications in return for receiving gift vouchers, his conduct could amount to corrupt conduct on the basis that it involved a dishonest or partial exercise of official functions under section 8(1)(b) or a breach of public trust under section 8(1)(c) of the ICAC Act. For the purposes of section 9 of the ICAC Act, it could also involve a criminal offence of corruptly receiving a benefit contrary to section 249B of the Crimes Act and a disciplinary offence involving misconduct.

Similarly, if Mr Karkowski authored an Alternative Solution Report in return for receiving a benefit and then assessed the report to issue an occupation certificate, his conduct could amount to corrupt conduct on the basis that it involved a dishonest or partial exercise of official functions under section 8(1)(b) or a breach of public trust under section 8(1)(c) of the ICAC Act. For the purposes of section 9 of the ICAC Act, it could also involve a disciplinary offence involving misconduct.

Mr Karkowski's role

Mr Karkowski was responsible for assessing and determining numerous Fast Track development applications relating to a property known as Chatswood Central, located at 1–5 Railway Street, Chatswood. In 2010, this property was being developed by BPFM. Mr Tasker is BPFM's Project Manager for Chatswood Central.

Mr Tasker was introduced to Mr Karkowski in Mr Karkowski's role as a building inspector. As a consequence of Mr Karkowski being responsible for checking the refurbishment of various office spaces in Chatswood Central, they developed a cooperative relationship. Mr Tasker took Mr Karkowski out to lunch on several occasions to further cement that relationship.

A question of backdating documents

On 11 May 2010, BPFM submitted an application to the Council under section 96 of the EP&A Act to modify the development consent for Chatswood Central. The application mainly related to alterations of several shops within Chatswood Central, with a view to reducing the overall number of shops.

In addition to the application for the modification of the development consent, BPFM also simultaneously applied for an amended construction certificate to carry out the work referred to in the section 96 application.

Leonie de Carvalho, the Council's Senior Town Planner, was responsible for determining the section 96 application. Mr Karkowski assisted Ms de Carvalho in this task. He was responsible for issuing the amended construction certificate under his delegated authority from the Council's general manager.

The notice of determination to modify the development consent and the notice of determination of the amended construction certificate were issued by the Council on 2 July 2010. Both documents, however, were dated 21 June 2010. The documents were signed by Ms de Carvalho and Mr Karkowski, respectively.

Under section 109F(1A) of the EP&A Act, a construction certificate is of no effect if it is issued after the work to which it relates has physically commenced. BPFM would ordinarily have had to apply for a building certificate with respect to that work, which would have necessarily involved delay and additional cost.

Mr Karkowski became aware that BPFM had commenced part of the building work before the construction certificate was issued. In a lawfully intercepted telephone conversation between Mr Karkowski and Mr Tasker on 22 June 2010, Mr Karkowski said, "I think I might backdate that section 96 to the date not long after it came in, otherwise it will look funny". Later in the conversation, Mr Tasker replied, "The whole structure is finished".

At the public inquiry, Mr Karkowski admitted to offering to backdate the section 96 determination. He denied, however, that he backdated either the section 96 determination or the amended construction certificate. He claimed that the documents were issued bearing the 21 June date due to an administrative oversight.

Mr Karkowski admitted that he was concerned about the possibility that some of the construction work may have been completed before the issuing of the amended construction certificate. He conceded that had he made Mr Tasker lodge a fresh application for a building certificate it would have slowed down the construction project. He said that he formed the view that what had been constructed was so minor that it was not worth delaying the project.

Ms de Carvalho attributed the failure to re-date both the documents before their issue on 2 July 2010 to administrative oversight caused by excessive workload at the time.

Prior to the public inquiry, Mr Tasker provided a statement to the Commission in which he claimed that he had no recollection of Mr Karkowski offering to backdate documents relating to the section 96 application. At the public inquiry, however, he recalled that the issue of backdating came up in a telephone conversation he had had with Mr Karkowski. He said that at the time of the conversation he did not know that Mr Karkowski was going to backdate documents. He said he told Mr Karkowski not to do anything that would get Mr Karkowski into trouble.

Mr Tasker was aware that the work that was the subject of the amended construction certificate had commenced

before the amended construction certificate was issued. He said he now understood that one of the implications of commencing work prior to the issue of a construction certificate was that BPFM would have needed to obtain a building certificate. The likely delay in getting a building certificate would have resulted in BPFM losing its tenant, having to find a new tenant and bearing the costs associated with finding a new tenant.

It is not in dispute that Mr Karkowski offered to backdate the section 96 determination. Backdating the determination to modify the development consent, however, would not have made any material difference to the development consent itself. Once a modification is approved, it becomes part of the original development consent. Whether or not BPFM needed to lodge an application for a building certificate depended on whether the construction certificate was issued before or after the work commenced. There is no cogent evidence to suggest that Mr Karkowski offered to backdate the construction certificate.

While the Commission has doubts about the veracity of Mr Karkowski's account, particularly with regard to the conversation about backdating the determination on 22 June 2010, there is no reason to doubt the credibility of Ms de Carvalho's evidence. In these circumstances, the Commission is not satisfied to the requisite degree that Mr Karkowski backdated either of the documents.

The Alternative Solution Report

As a consequence of renovation work, the ceiling height in shop P8 at Chatswood Central was reduced to the extent that it no longer complied with Building Code of Australia requirements. In these circumstances, a construction certificate could be issued only if an "alternative solution" was appropriate. Where such a solution is proposed in relation to a development, the applicant is required to submit an Alternative Solution Report. The report needed to be written and approved before the occupation certificate could be issued.

Mr Karkowski told the Commission that he advised Mr Tasker that BPFM would need an Alternative Solution Report from a consultant. According to Mr Karkowski, Mr Tasker then enquired whether Mr Karkowski could write the report instead of BPFM engaging a consultant. He said that although he initially declined to write the report himself, he eventually acceded to Mr Tasker's request.

Mr Karkowski subsequently wrote the report and placed it on the Council's file. He inserted the words "Prepared by David Tasker" on the cover page of the report.

Mr Karkowski knew that it was wrong for him to write the report. This was because he was required to assess and use the report to determine whether to issue an

occupation certificate. He knew that he was obliged as part of his duties to assess the report impartially. He could not effectively meet these obligations in circumstances where he had been the author of the report.

Mr Tasker offered to pay Mr Karkowski for his efforts in preparing the report. Mr Karkowski suggested an amount of between \$600 and \$800 and requested cash payment. Mr Karkowski admitted that Mr Tasker gave him a Woolworths voucher to the value of \$500 about two days after the completion of the report. A couple of weeks later, Mr Tasker gave him another voucher in the form of a Concept gift voucher to the value of \$250. Mr Karkowski did not disclose to the Council any of the gifts received by him from Mr Tasker.

Mr Tasker admitted that the two gift vouchers were given to Mr Karkowski, partly as a reward for preparing the Alternative Solutions Report. He said he gave the second gift voucher to Mr Karkowski when he found out the cost associated with obtaining a report from a consultant. He considered that BPFM saved around \$3,000 and considerable time and effort by having Mr Karkowski prepare the report rather than having it done by a consultant.

Mr Tasker's submission

Mr Tasker submitted that the gift vouchers were given to Mr Karkowski only after he had offered to pay the Council in a formal manner for the significant time that he understood Mr Karkowski had worked on the Chatswood Central project. It was further submitted that the vouchers were not intended as payment specifically for the preparation of the Alternative Solution Report but as a much broader expression of gratitude for all the work undertaken and assistance provided by Mr Karkowski. The Commission rejects this submission. Mr Tasker's assertion as to the purpose of the gift vouchers is contrary to what is set out in his statement and the evidence he gave at the public inquiry. At the public inquiry, he admitted that he specifically told Mr Karkowski that he would be paid for writing the report. The Commission also notes that the first gift voucher was given to Mr Karkowski within a couple of days of him agreeing to write the report.

The Commission is satisfied that Mr Karkowski wrote the Alternative Solution Report on behalf of BPFM and that in the report he falsely represented that Mr Tasker was the author. Mr Karkowski arranged for the report to be placed on the Council file to form part of its record. At the time of writing the report, Mr Karkowski knew that he would be required to assess it in order to determine whether or not to issue an occupation certificate and he did in fact assess it for that purpose. In return for writing the report, Mr Karkowski accepted two gift vouchers to the total value of \$750 from Mr Tasker.

Corrupt conduct

Mr Karkowski's conduct in writing the Alternative Solution Report relating to shop P8 at Chatswood Central, placing it on the file for it to form part of the Council record and relying on it to consider the issue of the occupation certificate, in return for receiving two gift vouchers totalling \$750, is corrupt conduct. This is because it involved the dishonest or partial exercise of his official functions and constitutes or involves a breach of public trust and therefore comes within sections 8(1)(b) and 8(1)(c) of the ICAC Act. For the purposes of section 9 of the ICAC Act, Mr Karkowski's conduct falls within section 9(1)(b), on the basis that his conduct could constitute or involve a disciplinary offence involving misconduct.

Mr Tasker assisted the Commission by providing a statement and making full admissions of his dealings with Mr Karkowski, even though his statement implicated him in wrongdoing. He also subsequently commissioned an independent Alternative Solutions Report, which he submitted to the Council to replace the report written by Mr Karkowski. The Commission has therefore decided to exercise its discretion not to make a corrupt conduct finding against Mr Tasker.

Section 74A(2) statements

For the purpose of this chapter, Mr Karkowski and Mr Tasker are "affected" persons.

Mr Karkowski's admissions were made subject to a declaration pursuant to section 38 of the ICAC Act. Other evidence, however, including telephone intercept evidence, documentary evidence and the evidence of Council officers and Mr Tasker could be available to be used against Mr Karkowski.

In these circumstances, 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 Karkowski for offences of soliciting or receiving corrupt payments contrary to section 249B of the Crimes Act in relation to writing the Alternative Solution Report in respect of shop P8.

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP in relation to the prosecution of Mr Tasker for any criminal offence. In making this determination, the Commission takes into account the assistance Mr Tasker provided to the Commission in relation to this matter.

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Chapter 4: Red Chilli Sichuan Restaurant

This chapter examines allegations that Mr Karkowski received free meals and gifts from persons associated with Chatswood's Red Chilli Sichuan Restaurant in return for authoring an Alternative Solution Report, which he then relied on to issue a final occupation certificate, even though he had not received all of the certificates required from the builder. Allegations that Mr Karkowski failed to report to the Council that the restaurant was trading prior to the issuing of the occupation certificate and that he submitted claims for overtime on 2 June 2010 and 16 June 2010 when he did not work the required core hours are also examined.

If, in return for receiving benefits, Mr Karkowski authored an Alternative Solution Report, which he then relied on to issue a final occupation certificate, issued the final occupation certificate without having received all of the certificates required from the builder, and failed to report to the Council that the restaurant was open to the public before an occupation certificate had been issued, his conduct could, in each case, amount to corrupt conduct. This is because it could involve a dishonest or partial exercise of official functions under section 8(1)(b) of the ICAC Act or a breach of public trust under section 8(1)(c) of the ICAC Act. For the purposes of section 9 of the ICAC Act, his conduct in each case could also involve a criminal offence of corruptly receiving a benefit contrary to section 249B of the Crimes Act and disciplinary offences involving misconduct.

Dishonestly claiming overtime on occasions when Mr Karkowski did not work the core hours could amount to corrupt conduct as it could involve a dishonest exercise of his official functions under section 8(1)(b) of the ICAC Act and a breach of public trust under section 8(1)(c) of the ICAC Act. For the purposes of section 9 of the ICAC Act, it could constitute or involve a criminal offence under section 192E of the Crimes Act (dishonestly obtaining a financial advantage by deception) as well as a disciplinary offence involving misconduct.

Background

Theresa Dai and Xiao Jun Guo are shareholders and directors of a number of companies that operate five restaurants in Sydney. Each restaurant is run by a different company but trades under the business name Red Chilli Restaurant Group. One of the restaurants is located at Level 1, 272 Victoria Avenue, Chatswood. This restaurant was managed by Feng Xiao.

On 3 December 2009, Ms Dai submitted a Fast Track development application to the Council for extensive renovations to the Red Chilli Sichuan Restaurant. The application was dealt with by Mr Karkowski. He issued the development consent and a construction certificate on 8 December 2009. This allowed the renovations to commence. Once the renovations were satisfactorily completed, it was necessary to issue an occupation certificate before the restaurant could open to the public. Mr Karkowski issued a final occupation certificate on 9 July 2010.

Developing a relationship with Mr Karkowski

Ms Dai first met Mr Karkowski through a person by the name of "Tommy" who worked for a real estate agency. She asked Tommy for the contact details of someone working at the Council, as she needed some assistance with the development application.

There was evidence before the Commission that Ms Dai, Ms Guo and Mr Xiao established a relationship with Mr Karkowski.

Ms Dai told the Commission that she came to consider Mr Karkowski a friend. She said she dined with him on a number of occasions; on each of which she paid for his food and wine. She said she paid because he was her guest. One occasion she recalled was a dinner with Ms Guo, Mr Karkowski and two others at the Astral restaurant at Star City in April 2010. She believed Ms Guo's husband paid for the dinner on that occasion.



On another occasion, around June 2010, Ms Dai, Ms Guo and Mr Karkowski dined at the Red Chilli Sichuan Restaurant at Haymarket. Ms Dai took two or three bottles of wine costing about \$400 to the restaurant. The wine included a bottle of Grange Hermitage, which she gave to Mr Karkowski as a gift.

Ms Dai also told the Commission that she, Ms Guo and Mr Xiao attended a lunch with Mr Karkowski at the Prime Restaurant on 25 June 2010. Ms Guo told the Commission she paid \$1,060 for the meal.

Mr Xiao told the Commission that on 16 June 2010 he took Mr Karkowski to lunch at Kingsley's Steakhouse. He paid \$525 for the lunch. The purpose of the lunch was to catch up and talk about the progress of the renovations. Mr Xiao said he also attended a meal with Mr Karkowski, Ms Dai and another person at the Red Chilli Sichuan Restaurant in Chinatown on 2 June 2010. The meal cost around \$50 per person. They also had a bottle of wine worth just over \$100. Mr Xiao could not recall who paid the bill on this occasion.

Mr Karkowski admitted that he attended several lunches and dinners with Ms Dai, Ms Guo and Mr Xiao, including a dinner at Astral Restaurant and lunches at the Red Chilli Sichuan Restaurant, Kingsley Steakhouse and Prime Restaurant. He agreed that he did not pay for these meals. He said that at the lunches on 2 June and 16 June 2010, the progress of the renovations to the Red Chilli Sichuan Restaurant and preparations for its re-opening were discussed. Although he knew that the Council's Code of Conduct required him to declare his receipt of this hospitality to the Council, he did not do so.

Mr Xiao also gave Mr Karkowski a Montblanc pen as a gift in April 2010. According to Mr Xiao, he gave Mr Karkowski the pen partly as a birthday present and partly because he wanted to thank Mr Karkowski for the help Mr Karkowski had given with regard to the Red Chilli Sichuan Restaurant development application. Mr Xiao recalled Mr Karkowski said words to the effect, "I am not supposed to

accept this gift". Mr Xiao said he told Mr Karkowski that it was a personal gift and insisted that Mr Karkowski keep it.

Mr Karkowski claimed he was not told why Mr Xiao gave him the Montblanc pen but assumed that it was given to him in return for his having made suggestions regarding a suitable wine menu for the series of Red Chilli Sichuan Restaurants. He did not declare the receipt of the Montblanc pen to the Council. He knew that he was not supposed to accept the gift because it would give the perception to others that he was obliged to favour Red Chilli.

It is clear that between the issue of the construction certificate in December 2009 and the issue of the final occupation certificate in July 2010, Mr Karkowski was treated by the directors and manager of the Red Chilli Sichuan Restaurant to several expensive meals and given a Montblanc pen. It is not in dispute that at least during some of these meals the progress of the restaurant's renovations was discussed. There is no evidence that there was any express discussion between Mr Karkowski, Ms Dai, Ms Guo or Mr Xiao about how Mr Karkowski could favour them in relation to his exercise of his official duties. Having regard to the timing of the hospitality and the gift, the Commission is, however, satisfied that the meals and the gift were provided to Mr Karkowski in the expectation that he would exercise his official functions as a Council officer in favour of the Red Chilli development. This is in fact what occurred.

The Alternative Solution Report

Mr Karkowski told the Commission that towards the end of May 2010 he identified a problem with the corridor leading to the rear car park entrance of the restaurant. He said that at the fit-out stage of the renovation it became clear that the cabinets installed for storage had reduced the width of the corridor so that it no longer satisfied the requirement of the Building Code of Australia. Following the identification of this problem, Mr Karkowski advised Mr Xiao of the need to modify the installation or to provide the Council with an Alternative Solution Report.

Mr Karkowski could not recall whether it was Mr Xiao who requested him to write the report or whether he offered to write it for Mr Xiao. In any event, Mr Karkowski wrote the report.

Mr Xiao told the Commission that, after Mr Karkowski identified the problem with the corridor width, he compiled a draft report and showed it to Mr Karkowski. He said Mr Karkowski informed him that the report did not meet the Council's requirements. Mr Xiao then asked Mr Karkowski whether Mr Karkowski would help to improve the report. Mr Karkowski subsequently showed Mr Xiao a report prepared by Mr Karkowski, which was materially different in content to the draft report initially prepared by Mr Xiao.

The Council file contains the Alternative Solution Report. It is dated 15 June 2010 and falsely purports to have been prepared by Mr Xiao. There is no indication in the report that it was prepared by Mr Karkowski.

Mr Karkowski knew that it was wrong for him to write the Alternative Solutions Report because he was required as part of his job to assess the report for the purpose of deciding whether to issue the occupation certificate. He knew that his action in writing the report gave rise to a conflict of interest, as his duties required him to assess impartially whether or not to issue the occupation certificate.

The Commission is satisfied that Mr Karkowski prepared the Alternative Solution Report partly in appreciation for the free hospitality and the Mountblanc pen he had previously received and partly in the expectation of future free hospitality.

Issue of final occupation certificate

It was part of Mr Karkowski's official duties to inspect construction work and decide whether or not to issue an occupation certificate.

The Red Chilli Sichuan Restaurant could not legally operate as a restaurant open to the public until such time as Mr Karkowski issued an occupation certificate. Under section 109H(2)(b) of the EP&A Act, before issuing a final occupation certificate, the issuing authority must be satisfied that the building is suitable for occupation or use in accordance with its Building Code of Australia classification. A final occupation certificate cannot be issued until all outstanding work is completed. If minor construction tasks remain outstanding, it is possible to issue an interim occupation certificate pending completion of construction, at which time a final occupation certificate would be issued. The issue of an interim certificate would permit a business to open to the public.

Mr Karkowski issued a final occupation certificate on 9 July 2010. No interim occupation certificate had been issued.

On 4 June 2010, following an inspection of the Red Chilli Sichuan Restaurant, Mr Karkowski identified the certificates necessary to satisfy that the building was suitable for occupation and use before an occupation certificate could be issued. Mr Karkowski's inspection sheet identified seven certificates that would have to be provided in order to obtain an occupation certificate. These certificates relate to structural glazing, mechanical ventilation, mechanical exhaust ventilation, hydraulic certification for connection to grease trap, waterproofing, slip test and business registration with the NSW Food Authority.

In a lawfully intercepted telephone conversation on 8 July 2010 between Mr Karkowski and Mr Xiao, Mr Karkowski referred to four certificates from the builder being outstanding and expressed doubts as to whether the builder did in fact have the certificates. He did not identify the relevant certificates during the conversation.

Mr Karkowski told the Commission that it was very hard to recall how many certificates were pending as at 8 July, as he carried out many inspections, but at least two of them were outstanding. One of the two related to waterproofing. Mr Karkowski had seen some waterproofing applied but was waiting on the certificate confirming its appropriateness. He said he did not want to prevent the business from opening on account of the outstanding certificates, as he felt that no-one's health or safety was at risk. It was not, however, up to Mr Karkowski to waive the requirements for the outstanding certificates.

Mr Karkowski denied that the free hospitality provided by Ms Guo, Ms Dai and Mr Xiao influenced him in his decision to issue the final inspection certificate, notwithstanding that some of the required certificates from the builder were outstanding. The Commission rejects his evidence on this point. Mr Karkowski acknowledged that, given the hospitality extended by Mr Xiao, Ms Dai and Ms Guo, it probably would have been awkward if he had required them to comply strictly with all the requirements for the issue of the occupation certificate. The Commission is satisfied that, in issuing the final occupation certificate without waiting for all the required certificates, Mr Karkowski was influenced by the free hospitality provided by Ms Guo, Ms Dai and Mr Xiao.

Commencement of trading

There was some evidence before the Commission that Mr Karkowski was aware that the restaurant had opened to the public prior to him issuing the occupation certificate on 9 July and that he took no action to report the breach to the Council.

In a lawfully intercepted telephone conversation between Mr Karkowski and Mr Xiao on 24 June 2010, Mr Xiao told Mr Karkowski that the Red Chilli Sichuan Restaurant was intending to open to the public on 2 July 2010. The following excerpt of the conversation is relevant:

Karkowski: What's the first day you're gonna open for business? The ninth – ninth of July is the – is the invite only opening night?

Xiao: Yeah.

Karkowski: But which days are you looking to open for the public?

Xiao: We want to open the 1 July but we can't get a menu on the 1 July. We can only get it on 2 July.

The day after the telephone conversation, Mr Karkowski was treated to lunch at Prime Restaurant by Ms Guo.

Mr Karkowski was asked at the public inquiry about this telephone conversation. He agreed that at that stage he understood that it was planned to open the restaurant to the public on or about 2 July 2010.

In another lawfully intercepted telephone conversation between Mr Karkowski and Mr Xiao on 8 July 2010, Mr Karkowski asked Mr Xiao to chase up the Red Chilli Sichuan Restaurant's builder in order to provide four certificates that were required before Mr Karkowski could issue the occupation certificate. In the course of that conversation, Mr Karkowski asked Mr Xiao whether the restaurant was "doing well" and Mr Xiao told him that it was.

Mr Karkowski told the Commission that at the time of this conversation, he did not believe it would have been possible to have the kitchen operating by 8 July 2010. It was, however, operating the following night when, on the evidence, he attended the "Grand Opening".

The restaurant held a "Grand Opening" in July 2010. There is some dispute as to the day on which this occurred. Mr Xiao said it was held on either 8 or 9 July 2010. He claimed that he did not know that an occupation certificate was required before the restaurant could be opened. Ms Dai believed the grand opening was held on 1 July 2010. She

said it was a closed function, open only to invited guests. A table seating for 8-10 people was reserved for Mr Karkowski and his guests. Mr Karkowski agreed that he attended the grand opening, which he said occurred on 9 July 2010, the day on which he issued the final occupation certificate.

Mr Xiao was uncertain as to the exact date that the restaurant opened but the lawfully intercepted telephone conversation of 8 July indicates that the restaurant was trading at least by that date. Mr Karkowski was unable to offer any plausible explanation as to why on 8 July he asked Mr Xiao whether the restaurant was doing well if he was not aware it was operating at that time. The Commission also takes into account the fact Mr Karkowski had, by this time, received free meals and a pen and had otherwise favoured the restaurant by authoring the Alternative Solution Report. Mr Karkowski acknowledged that the reason Mr Xiao took him out to lunch on 16 June 2010 was to get the business operating as early as possible. In the circumstances, the Commission is satisfied that the restaurant was opened for business sometime prior to 9 July, and that Mr Karkowski was aware of this fact.

Mr Karkowski told the Commission that if he had known that the business was open to the public before an occupation certificate was issued, the appropriate thing for him to do was to report the matter to the Council. Under section 121B of the EP&A Act, the Council could issue a number of orders relating to non-complying work, including orders to cease a particular activity or to cease the use of the building.

The Commission is satisfied that Mr Karkowski's conduct in accepting free hospitality from Ms Guo and Mr Xiao had the effect of placing him under an obligation to turn a blind eye to the Red Chilli Sichuan Restaurant trading prior to the issue of the occupation certificate, and consequently influenced him in the performance of his official functions through his not reporting that the restaurant was trading without an occupation certificate.

Overtime claim

Mr Karkowski claimed six hours of overtime for working between 4 pm and 10 pm on 2 June 2010, and four hours of overtime for working between 4 pm and 8 pm on 16 June 2010. Peter Rowan, his immediate supervisor, signed the claim forms on both occasions, authorising payment of overtime. Council records show that Mr Karkowski was paid for these overtime claims.

The Council's car park access records indicate that on 2 June 2010, Mr Karkowski was away from Council premises between 10.53 am and 4.49 pm. These records also

indicate that on 16 June 2010, he was away from Council premises between 10.59 am and 3.25 pm. The core working hours at Council in 2010 were between 7.30 am and 4 pm, with a one-hour lunch break.

Mr Karkowski claimed that the Council's car park records were not conclusive on the question of whether or not he engaged in legitimate Council business during the time interval reflected in the records. He contended that it was possible that he may have entered the building immediately after someone else without using his access cards. He also argued that he may have gone to a job site on the way back from lunch.

On 2 June 2010, shortly after 3 pm, Mr Karkowski was photographed by Commission officers leaving the Red Chilli Sichuan Restaurant at Chinatown in the company of Ms Dai and Mr Xiao.

Mr Karkowski admitted that on 2 June 2010 he went out to lunch with Mr Xiao and Ms Dai. Mr Karkowski did not keep a record of how long he was out of the office on that day. He agreed that the duration of the lunch could have been from 12.30 pm to 3 pm.

He said that on 16 June 2010, he again went out to lunch with Mr Xiao to Woolloomooloo. Although he did not keep track of how long he spent at the restaurant on this occasion, he conceded the possibility that the duration of the lunch may have been between two and three hours. He agreed that he worked overtime on that day without appropriately spending his core hours.

Mr Karkowski did not disclose to Mr Rowan the lunches he had during core hours on days in relation to which he claimed overtime. Mr Karkowski knew that Mr Rowan approved the overtime payments based on the assumption that Mr Karkowski was engaged in legitimate Council business during his core working hours.

Mr Karkowski's justification for claiming overtime was that the extra hours of work he performed on other occasions for which he did not claim overtime offset the payments received by him for periods he was away from work. This justification is the same as the justification he provided for the overtime claim on 6 July 2010, which is dealt with in the previous chapter. For the same reasons set out in the previous chapter, the Commission does not accept Mr Karkowski's justification for the overtime claims on 2 June and 16 June 2010.

The Commission is satisfied that Mr Karkowski was not engaged in legitimate Council business for the periods of 2 June and 16 June when he was attending lunches.

Principal findings of fact

Based on the evidence set out in this report, the Commission is satisfied that the following principal facts have been established to the requisite standard of proof:

1. Mr Karkowski wrote an Alternative Solution Report for Chatswood's Red Chilli Sichuan Restaurant and falsely represented in the report that it had been prepared by Mr Xiao. Mr Karkowski then relied on the report when deciding whether to issue an occupation certificate. At the time of writing the report, Mr Karkowski knew that he would be required to assess it in order to determine whether or not to issue an occupation certificate and did in fact assess it for that purpose.
2. Mr Karkowski issued a final occupation certificate for Chatswood's Red Chilli Sichuan Restaurant despite knowing that he was not entitled to do so as at least two certificates from the builder, including the certificate relating to waterproofing, had not been received.
3. Mr Karkowski failed to report to the Council that Chatswood's Red Chilli Sichuan Restaurant was trading prior to the issuing of the occupation certificate.
4. Mr Karkowski engaged in the conduct outlined in findings of fact 1–3 in appreciation for the free hospitality he had received and the gift of a Montblanc pen from persons associated with the Red Chilli Sichuan Restaurant and in the expectation of future free hospitality.
5. Mr Karkowski claimed overtime on 2 June and 16 June 2010, and accepted payment in respect of those claims, when he did not work the required core hours.

Corrupt conduct

The Commission is satisfied to the requisite degree that Mr Karkowski's conduct in writing the Alternative Solution Report for Chatswood's Red Chilli Restaurant and relying on it to issue the occupation certificate, in appreciation for having received free hospitality from Ms Guo, Ms Dai and Mr Xiao and a Montblanc pen from Mr Xiao, is corrupt conduct. This is because his conduct involved the dishonest or partial exercise of his official functions and constituted or involved a breach of public trust and as such comes within section 8(1)(b) and 8(1)(c) of the ICAC Act. For the purposes of section 9 of the ICAC Act, his conduct falls within section 9(1)(b), as it could constitute or involve a disciplinary offence of misconduct.

Mr Karkowski issued an occupation certificate for Chatswood's Red Chilli Sichuan Restaurant without having received at least two outstanding certificates required from the builder, in appreciation for having received free hospitality from Ms Guo, Ms Dai and Mr Xiao and Mr Xiao's gift of a Montblanc pen and in expectation of future free hospitality. This conduct is corrupt conduct because it involved the dishonest or partial exercise of Mr Karkowski's official functions and constituted or involved a breach of public trust. Mr Karkowski's conduct therefore comes within sections 8(1)(b) and 8(1)(c) of the ICAC Act. Furthermore, Mr Karkowski's conduct falls within section 9(1)(b) of the ICAC Act, on the basis that his conduct could constitute or involve a disciplinary offence of misconduct.

Mr Karkowski's conduct in failing to report to the Council that Chatswood's Red Chilli Sichuan Restaurant was trading to the public without an occupation certificate, in return for having received free hospitality from Ms Guo, Ms Dai and Mr Xiao and Mr Xiao's gift of a Montblanc pen, is also corrupt conduct. This is because it involved the dishonest or partial exercise of his official functions and constitutes or involves a breach of public trust and therefore comes within sections 8(1)(b) and 8(1)(c) of the ICAC Act. For the purposes of section 9 of the ICAC Act, his conduct falls within section 9(1)(b), on the basis that his conduct could constitute or involve a disciplinary offence of misconduct.

Mr Karkowski dishonestly submitted claims for overtime and accepted payment for those claims for hours worked after 4 pm on 2 June and 16 June 2010, in circumstances where he was not engaged in legitimate Council work during core hours. That conduct was corrupt conduct as it involved a dishonest exercise of Mr Karkowski's official functions and constituted a breach of public trust. The conduct in question therefore comes within sections 8(1)(b) and 8(1)(c) of the ICAC Act. Such conduct could also constitute or involve disciplinary offences of misconduct within section 9(1)(b) of the ICAC Act.

There was no express discussion between Mr Karkowski and Ms Guo, Ms Dai or Mr Xiao about how Mr Karkowski could favour or assist the Red Chilli Sichuan Restaurant in relation to its development. There is, however, a compelling inference, from the timing of the hospitality and the fact that the progress of the Red Chilli Sichuan Restaurant's renovation was discussed on numerous occasions when Mr Karkowski and representatives from the Red Chilli Sichuan Restaurant met, that the latter persons extended these gifts and hospitality to obtain Mr Karkowski's favour in return.

Ms Guo, Ms Dai and Mr Xiao assisted the Commission by providing statements making admissions of their dealings with Mr Karkowski, even though their statements

implicated them in wrongdoing. The Commission has therefore decided to exercise its discretion not to make corrupt conduct findings against Ms Guo, Ms Dai or Mr Xiao.

Section 74A(2) statements

For the purpose of this chapter, Mr Karkowski, Ms Guo, Ms Dai and Mr Xiao are "affected" persons.

Mr Karkowski's admissions were made subject to a declaration pursuant to section 38 of the ICAC Act. Other evidence, however, including telephone intercept evidence, documentary evidence, the evidence of Council officers and the evidence of Ms Guo, Ms Dai and Mr Xiao, could be available to be used against Mr Karkowski.

In these circumstances, 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 Karkowski for offences of receiving corrupt benefits contrary to section 249B of the Crimes Act on the basis that he exercised his official functions to favour the interests of Chatswood's Red Chilli Sichuan Restaurant in appreciation for having received free hospitality and a pen.

Given the relatively short duration of time spent by Mr Karkowski on matters unrelated to work during his core hours and the possibility that he may have carried out some work outside the core hours on other occasions, 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 Karkowski for offences relating to claiming overtime when he had not worked the core hours.

Ms Guo, Ms Dai and Mr Xiao

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP in relation to the prosecution of Ms Guo, Ms Dai and Mr Xiao for any criminal offence. In making this determination, the Commission takes into account the assistance they provided to the Commission in relation to this matter.

Chapter 5: Dealings with Sam Koura

This chapter examines an allegation that Mr Karkowski secretly accessed confidential and other Council information unrelated to his work and released it to Sam Koura, a developer, in return for benefits in the form of free meals, wines, massage services and other gifts.

Releasing confidential information could amount to a breach of section 7 of the Council's Code of Conduct. Releasing confidential and other Council information in return for benefits could amount to corrupt conduct as it could involve a breach of public trust and misuse of information that the public official had acquired in the course of his official functions and thus could fall under sections 8(1)(c) and 8(1)(d) of the ICAC Act. For the purposes of section 9 of the ICAC Act, this conduct could also involve a disciplinary offence of misconduct.

Mr Karkowski's relationship with Mr Koura

Mr Koura is a property developer who first met Mr Karkowski in 2008. In 2010, the relationship between them developed into a strong friendship involving meeting each other at least a couple of times a week.

At the public inquiry, Mr Koura acknowledged that the overall nature of the arrangement between him and Mr Karkowski was that Mr Karkowski was his eyes and ears within the Council and in return Mr Koura looked after Mr Karkowski by providing him with various benefits.

When interviewed by the Commission in January 2010, Mr Koura admitted: taking Mr Karkowski out to lunch on a few occasions and providing him with a Manly Sea Eagles football club jersey for auctioning to raise funds for the school attended by Mr Karkowski's daughter; giving Mr Karkowski a tie and tickets to the corporate box at Brookvale Oval to watch football matches; and visiting two massage parlours at Chatswood and Canterbury with Mr Karkowski, although he could not recall who paid for the services.

At the public inquiry, Mr Koura confirmed his previous admissions and also admitted that he had paid for Mr Karkowski's visits to massage parlours at Chatswood, Canterbury and Petersham.

Mr Karkowski admitted to having lunches and coffees with Mr Koura frequently and that the expenses relating to these occasions were met by Mr Koura.

There was conflicting evidence as to whether Mr Koura ever gave Mr Karkowski any bottles of wine. Mr Koura claimed that on one occasion a mutual friend bought three or four dozen bottles of wine to be shared between the mutual friend, Mr Karkowski and Mr Koura. Mr Koura believed that Mr Karkowski paid for six of the bottles, which was his share of the wine. Mr Karkowski said that he received six bottles of wine from Mr Koura but when he offered money for them Mr Koura refused to accept. The Commission accepts Mr Karkowski's evidence that he received six bottles of wine free of charge, as it was an admission against his interest.

What Mr Karkowski did

Provision of information relating to the Castle Cove development

Mr Karkowski told the Commission that in 2010 he provided Mr Koura with Council information in relation to one of Mr Koura's property developments at 32 Emerstan Drive, Castle Cove. The development application involved the demolition of the existing building and construction of a new building at the site. Mr Karkowski's duties at the Council did not involve him in any official role with respect to this application and there was no reason associated with his duties at the Council that he should gain access to information relating to the matter.

On 31 May 2010, Mr Karkowski obtained a copy of an engineering report relating to the development from the



desk of Annie Leung, the Council's Development Planner, and gave a copy to Mr Koura. He did this so that Mr Koura could start the work identified in the report without waiting for the Council to send him the report. This had the potential to save Mr Koura time by starting the necessary work earlier than would otherwise have been the case. Mr Karkowski did not ask for Ms Leung's permission to gain access to the report or provide it to Mr Koura nor did he advise Ms Leung that he had given Mr Koura a copy. He knew what he did was inappropriate.

Mr Koura agreed that Mr Karkowski provided him with the report. He said he wanted to find out quickly the reason for the delay in processing his application and what needed to be done, as he had already sold his previous residence and was anxious to move into the new property.

In relation to the public availability of the information provided by Mr Karkowski, the Council submitted that, consistent with Council practice, the engineering report would have been available on the Council's website and a copy would have been on the file that any member of the public, including Mr Koura, could ask to see upon attending the offices of the Council. As the information provided to Mr Koura by Mr Karkowski was available to any member of the public, it is not confidential information. Nevertheless, his provision of a copy of the engineering report to Mr Koura was inappropriate because Mr Karkowski had no official role in the matter and the information was provided to Mr Koura in return for the various benefits Mr Karkowski had received from Mr Koura.

Ms Leung was responsible for assessing the development application and recommending whether or not to approve the development application and any conditions that should be attached to the development consent. Ms Leung's assessment of the application included taking into account any public objections to the application.

On 27 July 2010, Mr Karkowski provided Mr Koura with a copy of Ms Leung's draft assessment report. He obtained

it from the desk of Ian Arnott, Ms Leung's supervisor. It was with Mr Arnott for review before submission to the relevant Ward Inspection Committee for determination. Mr Karkowski did not tell Mr Arnott that he had taken a copy of the draft report from Mr Arnott's desk. Mr Karkowski knew at the time that it was highly inappropriate to provide the draft report to Mr Koura. He told the Commission he did so partly because Mr Koura was supplying him with benefits including Cialis, a drug used for treatment of impotence. He told the Commission that the day after he gave Mr Koura a copy of the report, Mr Koura took him out to lunch to a Petersham massage parlour and paid for the lunch as well as the massage services he received. A few days later, Mr Karkowski advised Mr Koura that Mr Arnott supported Ms Leung's draft report and her recommendations were likely to be adopted by the Council.

Mr Koura said he knew that the draft report was something that Mr Karkowski could not have properly provided to him. He admitted taking Mr Karkowski out to the Petersham massage parlour the day after he received the draft report from Mr Karkowski.

The Council submitted that, while Ms Leung's draft report was not publicly available, her final report would have been available to the public both on the Council's website and on its file.

At the time Mr Karkowski secretly accessed Ms Leung's draft report, it was clearly confidential as it was not at that time publicly available and had not even been approved by Mr Arnott. Providing a draft report that contained confidential information in return for benefits, including the supply of Cialis and free massage services paid for by Mr Koura, was clearly inappropriate and was acknowledged as such by Mr Karkowski.

Mr Karkowski also checked Council records to ascertain whether any objections had been lodged against the development of the property. In a lawfully intercepted telephone conversation on 2 June 2010 between Mr Karkowski and Mr Koura, Mr Karkowski told Mr Koura

the contents of a letter of objection, including details of the identity of the person who had made a complaint relating to the proposed development. Mr Karkowski acknowledged that he gave the name and address of the objector without checking to find out whether Mr Koura was entitled to receive such information. He said he believed Mr Koura could have obtained the relevant information by attending the Council office.

Mr Koura agreed that Mr Karkowski telephoned him to inform him of any new objections lodged by third parties and kept him up to date with the developments relating to his applications. Mr Koura recalled that on one occasion Mr Karkowski read out the contents of the objection letter, including the name and address of the objector.

The Council submitted that objections to development applications are not available on the Council's website due to privacy concerns. Objections may, however, be viewed by any member of the public, including the applicant for development consent, upon attending the offices and requesting to see the file. The names and addresses of objectors are apparent from the file.

As the information provided to Mr Koura by Mr Karkowski was available to any member of the public, it is not confidential information. Nevertheless, the dissemination of this information was inappropriate given Mr Karkowski had no official role in the matter and the information was provided to Mr Koura in return for the various benefits Mr Karkowski received from Mr Koura.

Provision of information relating to the Willoughby Road development

In a lawfully intercepted telephone conversation between Mr Karkowski and Mr Koura on 25 June 2010, Mr Karkowski advised Mr Koura of a complaint that had been made to the Council about a private certifier engaged by Mr Koura in relation to his development at 500–502 Willoughby Road, Willoughby. The complaint concerned the non-compliance with Council requirements by the private certifier relating to matters such as a landscape report, structural engineering certificates and an arboriculture method statement.

Mr Karkowski told the Commission that, following this conversation, he made a copy of the complaint and left it with the proprietor of a coffee shop at Chatswood for Mr Koura to collect. Mr Karkowski claimed that the complaint was something Mr Koura would have eventually found out about.

Mr Koura recalled Mr Karkowski telephoning him one day to advise him of a complaint concerning a private certifier engaged by his architect. Mr Koura requested Mr Karkowski to provide his architect with a copy of the complaint so that his architect could check whether the

private certifier was doing anything wrong. Mr Koura believed that the complaint was something about which the Council would have notified him in due course.

There is no evidence before the Commission to suggest that this information was confidential. However, for the reasons given in relation to provision of similar information concerning the Castle Cover development, Mr Karkowski's conduct was inappropriate.

Provision of plans

The Commission lawfully intercepted a telephone conversation between Mr Karkowski and Mr Koura on Saturday, 28 August 2010. At the time of the conversation, Mr Karkowski was on Council premises. During the conversation, Mr Karkowski advised Mr Koura that he had some software and Mr Koura's plans. He did not provide any details as to the nature of the plans. During the conversation, he said he was relieved to have narrowly avoided being seen by Nicholas Tobin, the Council's general manager.

Mr Karkowski told the Commission that the plans and software he collected from Council offices on that Saturday had been given to him by Mr Koura's architect for the purpose of passing them on to Mr Koura. He said the plans were not the property of the Council.

Mr Karkowski explained that his reason for being at Council offices on a Saturday was to pick up the Manly Sea Eagles football club jersey that Mr Koura had given him for the fundraising at his daughter's school and to collect the plans. Mr Karkowski said he did not want to tell Mr Tobin that he had come to collect a jersey given to him by Mr Koura and was relieved to get out of the office before Mr Tobin saw him.

Mr Koura remembered Mr Karkowski giving him some plans on the morning in question, but could not remember to which property they related. He acknowledged that, if Mr Karkowski had given him any plans, Mr Karkowski must have obtained them from the Council.

Mr Karkowski's evidence on this issue lacked credibility. If Mr Koura's architect had plans to give to Mr Koura, he could have given them to him directly as they shared office space. Further, it is clear from the telephone conversation between Mr Karkowski and Mr Koura that Mr Karkowski was relieved to have narrowly avoided being seen by the Council's general manager when collecting the plans and the software from the Council's office. The inference is that Mr Karkowski collected something from the Council that was Council property and should not have been provided to Mr Koura.

Disbelieving Mr Karkowski is, however, not a sufficient basis to make a finding that he passed on any Council

information to Mr Koura that was confidential or inappropriate. Apart from the inference available from the telephone intercept evidence, there is no other cogent evidence indicating that the plans Mr Karkowski collected from the Council office were indeed plans that were the property of the Council and that should not have been provided to Mr Koura. The telephone intercept evidence does not expressly indicate the nature of the plans. In the circumstances, the Commission is not satisfied to the requisite standard that the plans provided to Mr Koura by Mr Karkowski related to Council information.

Principal findings of fact

Based on the evidence set out in this report, the Commission is satisfied that the following principal facts have been established to the requisite degree:

1. In respect of Mr Koura's proposed development at 32 Emmerstan Drive, Castle Cove, Mr Karkowski provided Mr Koura with the following Council information:
 - a. an engineering report
 - b. Ms Leung's confidential draft assessment report for the development
 - c. details of an objection lodged with Council against the proposed development, including details of the objector's identity.
2. Mr Karkowski gave Mr Koura a copy of the complaint lodged with the Council against the private certifier engaged by Mr Koura in respect of Mr Koura's proposed development at 500–502 Willoughby Road, Willoughby.
3. Mr Karkowski provided the information set out in findings of fact 1 and 2 in return for personal benefits in the form of free meals, wine, massage services and gifts from Mr Koura.

Corrupt conduct

The Commission is satisfied to the requisite degree that Mr Karkowski's conduct in providing an engineering report to Mr Koura; providing Ms Leung's confidential draft assessment report to Mr Koura; divulging details of an objection lodged with the Council (including details of the objector's identity to Mr Koura); and providing a copy of the complaint lodged with Council against a private certifier engaged by Mr Koura, in return for benefits that Mr Karkowski had received from Mr Koura, is corrupt conduct. This is because such conduct involves a breach of public trust and misuse of information acquired in the course of Mr Karkowski's official functions and therefore

comes within sections 8(1)(c) and 8(1)(d) of the ICAC Act. For the purposes of section 9 of the ICAC Act, Mr Karkowski's conduct falls within section 9(1)(b), on the basis that his conduct could constitute or involve a disciplinary offence of misconduct.

Mr Koura assisted the Commission by making admissions about his dealings with Mr Karkowski. The Commission has therefore decided to exercise its discretion not to make a corrupt conduct finding against Mr Koura.

Section 74A(2) statements

For the purpose of this chapter, Mr Karkowski and Mr Koura are "affected" persons.

Mr Karkowski's admissions were made subject to a declaration pursuant to section 38 of the ICAC Act. Other evidence, however, including telephone intercept evidence, documentary evidence and the evidence of Council officers and Mr Koura could be available to be used against Mr Karkowski.

In these circumstances, 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 Karkowski for the common law offence of misconduct in public office for providing Council information for private purposes in return for receipt of benefits in the form of free meals, wine, massage services and gifts.

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP in relation to the prosecution of Mr Koura for any criminal offence. In making this determination, the Commission takes into account the assistance Mr Koura provided to the Commission in relation to this matter.

DATE	WORKED	
16/8/10		THE REC OF

Chapter 6: Dealings with other business owners

This chapter examines allegations that Mr Karkowski received free hospitality from the proprietors of the Izakaya Arigato Restaurant, New Shanghai Restaurant and Mango Restaurant in return for improperly providing assistance with their development applications. Allegations are also examined that he received free hospitality from XStream Car Wash, by allowing them to believe he could assist them with Council matters, and claims he made for overtime on 28 April 2009 and 2 August 2010 when he did not work the required core hours.

If Mr Karkowski provided assistance to restaurant proprietors in relation to their development applications in return for free hospitality, his conduct could in each case amount to corrupt conduct. This is because such conduct could involve a breach of public trust under section 8(1)(c) of the ICAC Act and, for the purposes of section 9 of the ICAC Act, could involve disciplinary offences of misconduct.

Mr Karkowski's conduct in accepting free hospitality, in circumstances where he allowed those providing the hospitality to believe he could assist them with matters they had before Council, could involve a breach of public trust on his part under section 8(1)(c) of the ICAC Act. For the purposes of section 9 of the ICAC Act, it could also involve disciplinary offences involving misconduct.

Dishonestly claiming overtime on occasions when Mr Karkowski did not work the required core hours could amount to corrupt conduct, as it could involve a breach of public trust under section 8(1)(c) of the ICAC Act. For the purposes of section 9 of the ICAC Act, it could constitute or involve disciplinary offences involving misconduct.

Izakaya Arigato Restaurant

In July 2010, a development application was submitted to the Council for the fit-out of the Izakaya Arigato Restaurant. Mr Karkowski assessed and approved the development application. The Commission investigated

whether Mr Karkowski advised the proprietor of the restaurant, Sanha Jee, to underestimate the projected construction costs so as to reduce the fees that Mr Jee would have to pay to the Council.

Local councils in NSW are permitted under the Environmental Planning and Assessment Regulation 2000 to set and charge fees associated with the issuing of occupation and construction certificates. Under Clause 255 of the Regulation, the consent authority, in determining the fee for development involving the carrying out of work, must make its determination by reference to a genuine estimate of the construction costs of the work. The consent authority may rely on the estimated cost indicated in the development application unless satisfied the estimate is "neither genuine nor accurate".

The Izakaya Arigato Restaurant development application was submitted by Mr Jee's architect, Peter Melchiorson. Before submitting the development application, Mr Melchiorson obtained two quotes for the work. One quote was for \$168,000 and the other was for \$205,262. The estimated cost of work stated in the development application, however, was \$100,000.

In a lawfully intercepted telephone conversation on 24 June 2010 between Mr Melchiorson and Mr Karkowski, Mr Melchiorson told Mr Karkowski that the cost of the works would be at least \$200,000. Mr Karkowski told Mr Melchiorson to put \$100,000 as the estimated cost on the development application form.

Mr Melchiorson told the Commission that he estimated the cost of the work to be around \$200,000. At the pre-development application lodgement meeting, Mr Karkowski wrote down the figure of \$100,000 on the application form. Mr Melchiorson told the Commission he did not think the estimate was reasonable.

Mr Karkowski told the Commission that he told Mr Melchiorson and Mr Jee to estimate the cost of work as being \$100,000. He told the Commission that this estimate



Table 1

	Estimated cost of construction work – \$100,000	Estimated cost of construction work – \$205,262	Difference
Development application	\$593	\$1,045.84	\$452.84
Construction certificate	\$637.50	\$816.45	\$178.95
Building inspection	\$55	\$220	\$165
Occupation certificate	\$308	\$308	
Total	\$1,593.50	\$2,390.29	\$796.79

was based on previous applications for similar fit-outs. He admitted, however, that he had no idea as to the true cost of the proposed work for the restaurant when he suggested the amount of \$100,000.

Table 1 shows the difference between the Council fees payable when the estimated construction cost is reduced from \$205,262 to \$100,000.

The Commission is satisfied that Mr Karkowski advised Mr Melchiorson to reduce his estimate of the construction work with the intention that the fees payable on application would be reduced. The Commission investigated why Mr Karkowski did this.

Mr Jee told the Commission that Mr Karkowski was introduced to him by a mutual friend in 2010. Mr Jee considered Mr Karkowski a friend and had meals with him several times a month.

Mr Jee said that on 2 August 2010, after the development application had been lodged, he took Mr Karkowski to lunch at Zilver Restaurant and paid for the meal. Mr Jee viewed paying for the meal as a reward for Mr Karkowski's assistance in reducing the fees payable to the Council and for his help with the liquor licence application for the restaurant. Mr Jee also treated Mr Karkowski to dinner at Blue Angel Restaurant on 12 August 2010. Mr Jee said he would not let Mr Karkowski pay for the meals, in gratitude

for Mr Karkowski's assistance. Mr Jee had also been to massage parlours with Mr Karkowski. He recalled that at least on one occasion he paid for the massage services received by Mr Karkowski.

Mr Karkowski admitted that he frequently had lunches and dinners with Mr Jee. Mr Karkowski acknowledged that the free dinner at the Blue Angel Restaurant was partly a reward for him arranging for the cost estimates of the work to be reduced, thereby reducing the Council fees Mr Jee had to pay.

In the circumstances, the Commission is satisfied that Mr Karkowski advised Mr Jee to underestimate the projected construction costs because of the free hospitality he had previously received from Mr Jee and the free hospitality he expected to receive in the future.

In a lawfully intercepted telephone conversation between Mr Karkowski and Mr Jee on 25 June 2010, Mr Karkowski told Mr Jee that he would not have to pay the inspection fee or the occupation certificate fee because Mr Karkowski would simply stamp the forms "Paid". They discussed spending the money saved at Romeo's, which is a massage parlour in Petersham.

Mr Karkowski recalled the conversation on 25 June 2010 and admitted that he told Mr Jee that by allowing a reduced construction cost estimate to be submitted and

waiving the inspection and occupation certificate fee, they could use the money saved at Romeo's. Mr Karkowski told the Commission that it was not his practice to charge a fee for building inspections.

Based on the telephone conversation and Mr Karkowski's evidence, it appears that Mr Karkowski said that he did not intend to charge an inspection fee in relation to the development application submitted by Mr Jee. There is no evidence, however, that the fees were in fact waived or that Mr Karkowski received any services at Romeo's as a consequence of agreeing to waive the fees.

New Shanghai Restaurant

Zhong Yuan Chen is the sole director of NSH Restaurant Pty Ltd. The company owns and manages New Shanghai Restaurant. A Fast Track development application for its renovation was submitted to the Council in August 2009. Mr Karkowski was responsible for assessing and determining the application. The Commission investigated whether Mr Karkowski advised Mr Chen to underestimate the projected costs of the work so as to reduce the fees payable to the Council.

Mr Chen told the Commission that he initially estimated the cost of the work would be between \$250,000 and \$300,000, based on discussions he had had with the restaurant designer. Mr Chen said that Mr Karkowski told him to submit a lower estimate to reduce the fees payable to the Council and that \$100,000 was a figure commonly estimated by development applicants. Mr Chen followed Mr Karkowski's advice and nominated \$100,000 as the estimated cost of the work on the development application. Mr Chen admitted that \$100,000 was a false estimate and bore no relationship to the real cost of the work.

Mr Karkowski denied advising Mr Chen to reduce the estimated construction costs. He said that he would have had no reason to do this because the fees saved would have been insignificant.

Mr Karkowski's evidence on this issue is rejected. Table I clearly shows that the savings from submitting a lower estimate is not an insignificant amount. The Commission accepts Mr Chen's evidence that \$100,000 was suggested by Mr Karkowski, and that it was a false estimate that bore no relationship to the real cost of the work. This evidence was given contrary to Mr Chen's own interests insofar as it involved an admission of his own role in depriving the Council of fees to which it was entitled. Given the timing of the hospitality and Mr Karkowski's willingness to accept free hospitality in return for improper advice to Mr Jee, referred to earlier, the Commission is satisfied that Mr Karkowski told Mr Chen to reduce the estimated cost of work on the development application so as to reduce the fees Mr Chen had to pay the Council.

The Commission's investigation established that Mr Karkowski did this in return for free hospitality provided by Mr Chen.

Mr Chen regarded Mr Karkowski as a friend. He said they had things in common such as enjoying good food and red wine.

Mr Chen told the Commission that between April and September 2009, he took Mr Karkowski to several expensive restaurants, including the Rockpool Bar and Grill, Prime and Machiavelli's. Mr Chen paid for all these meals. In September 2009, shortly after the development application was submitted, Mr Chen again took Mr Karkowski out to lunch at L'Incontro Restaurant to discuss the progress of his application. Again, Mr Chen paid for the lunch and Mr Karkowski made no offer to pay. Mr Chen said that, since the New Shanghai Restaurant was opened in November 2009, Mr Karkowski had enjoyed free meals there on about six occasions.

Mr Chen said that, by wining and dining Mr Karkowski before submitting his development application for his restaurant, he hoped he would develop a friendship with Mr Karkowski that would assist him in making things run more smoothly with the Council.

Mr Karkowski admitted to having meals with Mr Chen at expensive restaurants although he could not recall dining at L'Incontro Restaurant. Mr Karkowski said he did not think he was expected to pay for his meals. He knew at least one of the reasons for Mr Chen's generous hospitality was that Mr Chen wanted to get information out of him in relation to Council processes.

In addition to Mr Karkowski's advice to underestimate the construction costs, Mr Chen told the Commission that Mr Karkowski assisted him with a number of other matters, including providing information about the proposal by the Council to upgrade the footpath area outside a potential site for a proposed restaurant, referral of tradespeople and giving advice on an application for a liquor licence for Mr Chen's restaurant.

Mango Restaurant

On 26 May 2010, Mr Karkowski carried out a building inspection of the Mango Restaurant. A development application had been lodged by the proprietor, Shu Xian Huang, for the proposed renovation of the restaurant. The restaurant commenced trading in June 2010. There is no record on the Council file as to when the occupation certificate was granted. The Commission investigated whether Mr Karkowski issued the occupation certificate for the restaurant before all outstanding matters identified from his building inspection had been completed.

Ms Huang told the Commission that Mr Karkowski had, in fact, issued the occupation certificate for Mango Restaurant before all of the outstanding matters had been completed.

Ms Huang recalled Mr Karkowski visiting the restaurant on 26 May 2010 and again around 28 May 2010 to inspect the building. She said that on his first visit, Mr Karkowski wrote down a whole page of items required to be completed before the issue of the occupation certificate. According to Ms Huang, a couple of things that appeared on the building inspection sheet were actually completed after the occupation certificate was issued. These items included the requirement to provide a larger stainless steel basin within the kitchen and a single use paper towel and liquid soap dispenser units near both hand wash basins. Ms Huang was also required to ensure the supply of both hot and cold water and register with the NSW Food Authority.

Mr Karkowski said that he could not recall whether he had issued an occupation certificate before all building requirements were satisfied but there may have been some minor things outstanding. Mr Karkowski also gave evidence that he had given development applicants “a bit of slack” by issuing occupation certificates without all outstanding requirements having been satisfied on about 10% of the Fast Track developments for which he had been responsible. In light of Ms Huang’s undisputed evidence, and Mr Karkowski’s general willingness to overlook matters that he regarded as minor, the Commission is satisfied that Mr Karkowski issued the occupation certificate for Mango Restaurant without all outstanding requirements being satisfied.

Ms Huang denied that she provided any benefits to Mr Karkowski in return for obtaining the occupation certificate before all items had been completed. She said, however, that she regarded Mr Karkowski, whom she first met in 2005, a friend and as such always provided him with a discount of either 10% or a free drink with his meals whenever Mr Karkowski dined at the restaurant. Ms Huang said that she gave Mr Karkowski five bottles of Penfolds RWT wine as a gift for his birthday. She said the wine normally retailed for around \$180 a bottle but she purchased it for around \$90 a bottle when it was on sale. She had never given him a gift prior to this occasion.

Mr Karkowski agreed that Ms Huang gave him some very expensive wine in 2010. He said Ms Huang initially told him that she would buy him a bottle of Grange. As he felt the bottle of Grange was too expensive, he suggested to her that she buy Penfold RWT instead. His evidence in this respect is supported by a lawfully intercepted telephone conversation between Mr Karkowski and Ms Huang on 28 May 2010. During the conversation, Mr Karkowski asked Ms Huang whether she would be able to exchange the

bottle of Grange she had already ordered for five bottles of Penfolds RWT wine. He told the Commission that he assumed that the wine was to thank him for his assistance with the development. He accepted the wine, even though he knew at the time that he should not have done so.

The Commission rejects Ms Huang’s evidence that the wine was a birthday gift. Mr Karkowski stipulated the type of wine that he would prefer from Ms Huang. It would be unusual for Mr Karkowski to do this if he was truly being offered a birthday gift. The timing of the gift further strengthens the inference that the wine was a reward for Mr Karkowski’s assistance with Ms Huang’s development application. The wine was provided to Mr Karkowski a few days after he carried out the inspection of the restaurant construction work. In these circumstances, the Commission is satisfied that the wine was provided to Mr Karkowski in return for Mr Karkowski exercising his official functions in favour of Ms Huang in relation to the issue of the occupation certificate.

XStream Car Wash

Car Parking Contribution Requirement

XStream Car Wash operates in the car park of Chatswood Chase shopping centre. The proprietor of the business is Il Soung Won and the manager is Chuong Yun.

Between late 2009 and the first half of 2010, Mr Won sought approval from Chatswood Chase shopping centre management and the Council to operate his business from two different locations within the Chatswood Chase car park rather than from a single location. The proposal faced a significant hurdle, in that allocation of any additional car parking spaces to the XStream Car Wash business would result in fewer spaces being available for customers and visitors to Chatswood Chase. The Council would therefore require Xstream Car Wash to pay a car parking contribution charge of approximately \$26,000 per additional car park space allocated to XStream Car Wash.

At the suggestion of Mr Won’s architect, Byung Moon Lim, Mr Won and Mr Yun consulted Mr Karkowski about this problem. As it was a town planning issue rather than a building issue, Mr Karkowski took advice from Ms de Carvalho, the Council’s Senior Town Planner, who advised him that there was no way of avoiding the \$26,000 charge payable for each extra car space.

Mr Karkowski and Ms de Carvalho, who was responsible for planning issues, subsequently met with Mr Lim to discuss the question of extra car park spaces. Mr Lim was advised by Ms de Carvalho that if he needed extra car park space he had to pay additional fees. Mr Lim was told that it was entirely up to him to decide what option he chose.

Mr Yun told the Commission that, in the hope of obtaining some useful information about the extra car spaces, Mr Won took Mr Karkowski out to dinner at Blue Angel Restaurant on 18 June 2010. It was Mr Karkowski who chose the restaurant. Mr Yun saw Mr Karkowski also hand-pick the four bottles of wine to be taken to the restaurant. The total cost of the wine, for which Mr Won paid, was approximately \$680. Mr Won paid for them. According to Mr Yun, Mr Karkowski did not provide any useful information about Mr Won's business proposal, although he initially offered to get information for Mr Yun. After the dinner, Mr Yun accompanied Mr Karkowski to a massage parlour. Mr Yun waited for Mr Karkowski until Mr Karkowski had finished and then gave him some money to go home.

In his statement to the Commission, Mr Won said:

Since first meeting Edward [Karkowski], I have formed the opinion that Edward did not object to this kind of treatment (an evening out at someone else's expense). I needed some information and realised that Edward was comfortable with this kind of treatment...I thought Australia was clean and did not think this kind of behaviour occurred here before meeting Edward. Mr Lim and I were kind of disappointed.

Mr Karkowski said he was not in a position to offer any assistance or information about the contribution fee for extra car park spaces. Mr Karkowski confirmed Mr Yun's evidence that on 18 June 2010, Mr Won took him out to dinner at Blue Angel Restaurant in Darlinghurst and that he visited a massage parlour at Newtown. He acknowledged Mr Yun paid for the massage services received by him and gave him \$100 for his taxi home.

Mr Yun also remembered that Mr Karkowski brought his wife's car to the XStream Car Wash to be detailed. He recalled Mr Karkowski making a token offer to pay for the services, which he declined. Mr Yun also recalled that, at Mr Karkowski's suggestion, he took Mr Karkowski out to dinner at Steerson's Steakhouse on 27 August 2010. Again, according to Mr Yun, Mr Karkowski was unable to give any information that would assist Xstream Car Wash in its business. After dinner, Mr Karkowski wanted to go for a massage. Mr Yun paid for the massage services received by Mr Karkowski. Mr Karkowski did not even offer to pay.

Mr Karkowski agreed that he took his wife's four-wheel drive to Xstream Car Wash for a full detail and did not offer to pay for the services. He also agreed that on 27 August 2010 Mr Yun took him out to dinner at Steerson's Steakhouse.

Mr Karkowski admitted that he was in a position of power in his dealings with Mr Won and Mr Yun and he abused that power by accepting free hospitality at the Blue Angel

Restaurant, including wine, and by accepting the massage services. He did this even though he was in fact in no position to help in relation to the charge for additional parking spaces.

There is no dispute that Mr Karkowski enjoyed the free hospitality of Mr Won and Mr Yun. He held himself out to Mr Won and Mr Yun as being able to help them with their proposed development. In one respect, Mr Karkowski's conduct in this matter was more morally reprehensible than the relevant actions relating to other matters dealt with in this chapter. Nevertheless, as there is no evidence that Mr Karkowski acted improperly in the discharge of any public official duties or that his conduct adversely affected the exercise of the public official functions of others, the Commission does not propose to make a finding of corrupt conduct in regard to the issues raised in connection with XStream Car Wash.

Overtime claim 28 April 2009

Mr Karkowski claimed six hours of overtime for working between 4 pm and 10 pm on 28 April 2009. Peter Rowan, his immediate supervisor, signed the claim form authorising the payment of overtime. Council records show that Mr Karkowski was paid for this overtime claim.

The Council's car park access records indicate that on 28 April 2009 Mr Karkowski was away from the Council premises between 11:09 am and 4:08 pm. At the time, his core working hours were between 7.30 am and 4 pm with a one-hour lunch break.

Mr Karkowski admitted that on 28 April 2009 he went out to lunch with Mr Chen to Rockpool Restaurant. He agreed that the duration of the lunch would have been about two and a half hours. The restaurant invoice indicates that they were at the restaurant from 12.08 pm to 2.44 pm.

Mr Karkowski did not tell Mr Rowan that he was going out to lunch with Mr Chen. He acknowledged that the lunch was not an appropriate way to spend his working hours. Mr Karkowski knew that Mr Rowan approved the overtime payment based on the assumption that Mr Karkowski was engaged in legitimate Council business during his core working hours.

Mr Karkowski admitted that the appropriate thing to do would have been to limit the overtime claimed to the actual number of hours worked on that day after making up the time spent at lunch with Mr Chen. Mr Karkowski acknowledged that he had abused Mr Rowan's trust.

The Commission is satisfied that Mr Karkowski was not engaged in proper Council business on 28 April 2009 when he attended the lunch.

Overtime claim 2 August 2010

Mr Karkowski claimed six hours of overtime for working between 4 pm and 6.30 pm on 2 August 2010. Mr Rowan signed the claim form, authorising the payment of overtime. Council records show that Mr Karkowski was paid for this overtime claim.

The Council's car park access records indicate that on 2 August 2010, Mr Karkowski was away from Council premises between 10.20 am and 1.49 pm. Mr Karkowski admitted that on 2 August 2010 he went out to lunch with Mr Chen at Zilver Restaurant. He agreed that the duration of the lunch would have been about three-and-a-half hours.

Mr Karkowski did not tell Mr Rowan that he was going out to lunch with Mr Chen. Mr Karkowski knew that Mr Rowan approved the overtime payment based on the assumption that Mr Karkowski was engaged in legitimate Council business during his core working hours.

The Commission is satisfied that Mr Karkowski was not engaged in proper Council business on 2 August 2010 when he attended the lunch.

Principal findings of fact

Based on the evidence set out in this chapter, the Commission is satisfied that the following principal findings of facts have been established to the requisite standard of proof:

1. Mr Karkowski advised Mr Jee and Mr Melchiorson to underestimate the construction cost estimate in the development application for the Izakaya Arigato Restaurant by nominating \$100,000 as the estimate so that the fees payable to Council by Mr Jee would be reduced. Mr Karkowski did so because of the free hospitality he had previously received from Mr Jee and in expectation of the receipt of future free hospitality.
2. Mr Karkowski advised Mr Chen to underestimate the construction cost estimate in the development application for the New Shanghai Restaurant by nominating \$100,000 as the estimate so that the fees payable to the Council by Mr Chen would be reduced. Mr Karkowski did so because of the free hospitality he had previously received from Mr Chen and in expectation of the receipt of future free hospitality.
3. Mr Karkowski issued a final occupation certificate in respect of the Mango Restaurant, despite knowing that at least some work was outstanding. The outstanding work included the provision of a stainless steel basin within the kitchen and hot and cold water supply and registration with the NSW Food Authority. In return, Mr Karkowski accepted five bottles of Penfolds RWT wine from Ms Huang.

4. Mr Karkowski claimed overtime and accepted payment from the Council in respect of those claims on 28 April 2009 and 2 August 2010 when he did not work the required core hours.

Corrupt conduct

Mr Karkowski advised Mr Jee, Mr Melchiorson and Mr Chen to submit false construction cost estimates in their development applications so that the fees payable to the Council would be reduced. He did this in return for having received free hospitality and the expectation of future free hospitality. His conduct in this regard was corrupt. This is because it involved the dishonest or partial exercise of his official functions and constituted or involved a breach of public trust and therefore comes within sections 8(1)(b) and 8(1)(c) of the ICAC Act. For the purposes of section 9 of the ICAC Act, Mr Karkowski's conduct falls within section 9(1)(b), on the basis that his conduct could constitute or involve a disciplinary offence of misconduct.

Mr Karkowski accepted five bottle of wine from Ms Huang in return for having issued an occupation certificate before all outstanding requirements identified during the building inspection were satisfied. This conduct was corrupt conduct because it constituted or involved a breach of public trust and therefore comes within section 8(1)(c) of the ICAC Act. For the purposes of section 9 of the ICAC Act, Mr Karkowski's conduct falls within section 9(1)(b) on the basis that his conduct could constitute or involve a disciplinary offence of misconduct arising.

Mr Karkowski dishonestly submitted claims for overtime, and accepted payment for those claims, for hours worked after 4 pm on 28 April 2009 and 2 August 2010, in circumstances where he was not engaged in proper Council work during core hours. This conduct was corrupt because it involved a breach of public trust and therefore comes within section 8(1)(c) of the ICAC Act. Such conduct could also constitute or involve disciplinary offences of misconduct within section 9(1)(b) of the ICAC Act.

Mr Jee, Mr Chen, Ms Huang and Mr Won

Mr Jee, Mr Chen, Ms Huang and Mr Won assisted the Commission by providing statements in which they made admissions of their dealings with Mr Karkowski, even though their statements implicated them in wrongdoing. The Commission has therefore decided to exercise its discretion not to make a corrupt conduct finding against these persons.

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Section 74A(2) statements

For the purpose of this chapter, Mr Karkowski, Mr Jee, Mr Chen, Ms Huang and Mr Won are “affected” persons.

Given evidence of the lack of any clear understanding among Council officers about their role in estimating the construction costs, and the relatively minor nature of the infringement relating to the issue of the occupation certificate prior to some of the matters identified in the building report being completed, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP in relation to the prosecution of Mr Karkowski for any criminal offences in respect of his conduct in relation to these matters.

Also, given the relatively short duration of time spent by Mr Karkowski on matters unrelated to work during his core hours, and the possibility that he may have carried out some Council work outside the core hours on other occasions, 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 Karkowski for offences relating to falsely claiming overtime.

Mr Jee, Mr Chen, Ms Huang and Mr Won

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP in relation to the prosecution of Mr Jee, Mr Chen, Ms Huang and Mr Won for any criminal offence. In making this determination, the Commission takes into account the assistance they provided to the Commission in relation to this matter.

Chapter 7: Corruption prevention issues

Overview

The investigation found that the Council's Fast Track Approval System, which involved the assessment of development applications and construction certificates, was created to expedite approvals within a 5-to 10-day timeframe. The design and management of the Fast Track Approval System created an opportunity for corruption to occur. This opportunity was assisted by the internal Council culture of accepting gifts and benefits and the lack of communication by Council with its diverse community.

The Council's reason for establishing the Fast Track Approval System was, in part, to allow it to better compete with the private sector in the issuing of construction and occupation certificates under the EP&A Act. These certificates are critical in allowing developers to proceed with construction work approved by a development application and for the premises to be occupied and, in the case of businesses, to publicly trade. Delivering on this timeframe led to the Council conferring delegated powers on a single officer to issue approvals for development applications, construction certificates and occupation certificates. In so doing, they gave a single officer the power to affect the outcome at every stage of the development process for single premises; from lodgement to construction and to occupation.

Mr Karkowski was a Council officer who had these delegated powers in relation to development within the Chatswood CBD. The investigation found that Mr Karkowski used this power corruptly to secure gifts, benefits and hospitality. Mr Karkowski was assisted in acting corruptly by the relaxed approach within the Council with regard to managing gifts, benefits and hospitality. He was also assisted by the fact that the Council had not provided information about the Fast Track Approval System to the local, diverse community in the Chatswood CBD or across the Council generally. In some cases, this allowed Mr Karkowski to sell something that members of the community could have obtained for free.

The Commission makes seven corruption prevention recommendations to address these matters, which are outlined below.

Structure, process & management

The Commission is of the view that the delegated powers conferred on Mr Karkowski and other building surveyors at the Council fundamentally undermined practices observed by other planning authorities in NSW that help reduce opportunities for corrupt conduct. These practices involve separating key milestones in the development assessment process, providing a role for managers within the assessment and decision process, and avoiding circumstances where a single person can make a decision in isolation.

The organisational chart of the Council's Environmental Services Division alludes to this normal practice by showing the lines of reporting by staff to their managers. The delegations conferred on Mr Karkowski and other building surveyors in the Building Services Branch redesigned the process, however, and undermined the controls inherent in this structure. The consequence was that Peter Rowan, the Manager of the Building Services Branch, was unable to establish effective supervision of Mr Karkowski and the building surveyors who reported to him. At the public inquiry, Mr Rowan described his management of staff in terms of reacting to external information, namely complaints or computer printouts that showed whether applications were more than 100 days old. When asked to look at the information Mr Karkowski had inputted on a Fast Track Approval System worksheet, Mr Rowan could not be certain that the information Mr Karkowski used to come to his decision was reasonable or that the considerations were genuine, proper or realistic.

Both Mr Rowan and Greg Woodhams, the Council's Director of the Environmental Services Division, claimed that they relied on trust in managing Mr Karkowski, with Mr Woodhams asserting that trust is a legitimate

management tool. As a management tool, trust relies on knowing that staff both have the abilities required for the position and that, in any given situation, they share the same motivation as management to act with honesty, integrity and in accordance with the Code of Conduct. These conditions were not fulfilled when using trust to manage Mr Karkowski and, as a result, there was a general failure to manage. First, Mr Karkowski admitted that he did not have the ability to confirm the accuracy of the estimated construction costs of work, at which Mr Woodhams expressed surprise during the public inquiry. Secondly, Mr Karkowski's position placed him in situations that created opportunities for him to act contrary to the Council's interests and his actions show he was motivated to take advantage of them. Examples of these actions include attending and accepting free sexual services at an illegal brothel (as occurred in relation to the Oriana Bath House), allowing businesses to trade without having all necessary documents (as occurred with the Red Chilli Sichuan Restaurant's occupation certificate), reducing fees for the assessment of applications under the Fast Track Approval System (as occurred with the Izakaya Arigato Restaurant), and waiving building inspection fees.

The responsibility for introducing delegations that led to a general failure in effective management and of normal management practices rests with Mr Woodhams, as the director of the division. According to evidence provided at the inquiry by David Perry, the Council's Human Resources Manager, the director is responsible for determining the staff positions that are to be conferred with delegations from the general manager. Removing these delegations and re-establishing effective management practices would reduce opportunities for corrupt conduct to occur again.

Recommendation 1

That Willoughby City Council improves the supervision and monitoring of its staff in the Environmental Services Division with powers and/or responsibilities under the *Environmental Planning and Assessment Act 1979* in order to help reduce opportunities for corrupt behaviour to occur. Specific measures to achieve this should include the need to:

- a. review the current organisational structure to ensure managers are able effectively to supervise the work of staff reporting to them and are involved in the reviewing and auditing of work completed by staff
- b. assess and implement strategies to manage corruption risks associated with specialisation amongst regulatory staff, such as:
 - i. introducing staff rotation duties and limiting the role of specialist staff to providing advice on specialist issues to building surveyors, planners and other staff
 - ii. establishing a periodic auditing by directors and internal auditors of determinations of development applications and construction certificates
 - iii. introducing or improving existing systems to track the out-of-office movements of Council staff during work hours
- c. establish systems to reduce end-to-end control of regulatory approvals by a single Council officer, such as Council officers assessing an application under delegated authority and determining and approving the same application. This may include changing Fast Track Approval System procedures to require the assessing officer to complete a report and a different officer to make the determination.

At the public inquiry, Mr Rowan and Mr Woodhams said that an effective supervisory and monitoring process would need additional resourcing and that such resourcing is scarce. The problem, however, would have been resolved if the allocation of work was better managed; for example, by allocating money to training rather than overtime. Allocating resources to overtime ultimately failed at the Council because there was an absence of guidelines or procedures and a lack of guidance and monitoring of Mr Karkowski's overtime claims.

Recommendation 2

That Willoughby City Council reviews its current practices and develops policies for the awarding of overtime, including:

- a. establishing a formal process for managers to determine and approve in advance the need for staff working overtime
- b. retaining a formal process for the claiming of overtime actually worked.

Estimated cost of construction works

Neither the Council nor the NSW Department of Planning and Infrastructure have guidelines that assist to interpret clause 255 of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”) about what might comprise a genuine estimate of direct and associated construction costs. Underestimating the cost of construction works provides an opportunity to potentially defraud planning authorities.

At the public inquiry, and in a supplementary statement to the Commission, Mr Woodhams expressed concern that guidelines prepared by the Council might lead to legal action. It was Mr Woodhams’ view that clarification on the issue of estimated costs of construction works is solely a matter for the NSW Department of Planning and Infrastructure to address. The Commission agrees that the NSW Department of Planning and Infrastructure should examine ways to limit opportunities for planning authorities to be defrauded through estimated costs of construction works.

In the interim, the Council has a financial interest in preparing its own interpretation of clause 255 of the Regulation. This interest arises from the fact that the Council uses the same terminology to determine fees for construction certificate applications and uses the money so levied to recover part of the costs involved in assessing construction certificates.

Recommendation 3

That, as an interim measure, Willoughby City Council:

- a. **produces and makes publicly available a clear list of what activities and work associated with a development are to be included in calculating the estimated costs of works**
- b. **requires any person submitting an application for development or a construction certificate to submit a quote from a builder or suitably qualified and licensed person of the estimated cost of work for the development proposal**
- c. **reinforces to staff who assess development applications that, under clause 255 of the Environmental Planning and Assessment Regulation 2000, there is a need to be satisfied that the estimated cost associated with the construction of the building is genuine and accurate.**

Recommendation 4

That the NSW Department of Planning and Infrastructure prepares and makes public guidelines that specify which activities and what work associated with a development are to be used by planning authorities when calculating the estimated costs of works.

Gifts, benefits & hospitality

There was evidence before the Commission that there was a practice at the Council of staff accepting gifts, benefits and hospitality. This practice at the Council demonstrates a misunderstanding about gift-giving, particularly to those in the public sector. Gift-giving is often done in anticipation of a reciprocal benefit. This reciprocal benefit is usually an advantage at some future critical point to the giver. The evidence suggests that the Council did not recognise this. This lack of recognition appears to have reduced the importance given to compliance with the Gift and Benefit Policy and the Gift and Benefit Register.

The investigation found “cultural reasons” to be a common justification provided by staff to retain gifts, benefits and hospitality. Evidence shows this justification was used or accepted by Mr Woodhams, Nicholas Tobin, the Council’s General Manager, and Jeffrey Knight, the manager responsible for the Gift and Benefit Policy and the Gift and Benefit Register. Indeed, Mr Knight confirmed in a supplementary statement to the Commission that the Council accepted “Christmas” as a sufficient reason for accepting gifts. This suggests that there was a preference to accept the face value reason a gift giver offered for providing the gift.

When gifts to council officers are seen in their proper context, it becomes clear that a justification based on cultural reasons cannot be sustained. The gifts, benefits and hospitality that Mr Karkowski received were not gifts of appreciation, as he claimed, or gifts given for “cultural reasons”. The gifts to Mr Karkowski were provided to facilitate an approval under the Fast Track Approval System or, as with the Oriana Bath House, for not reporting that premises’ illegal operations to the Council’s compliance unit. At the inquiry, developer Sam Koura agreed to providing gifts to another senior council officer. A lawfully intercepted conversation suggests that Mr Koura saw this as a means to facilitate a reciprocal “gift” in the form of approvals for his development proposals at the Council.

In evidence, Mr Knight said that the Council had re-adopted its Gift and Benefit Policy without material change two weeks prior to the public inquiry. This decision strongly suggested to the Commission that the Council did not consider the Gift and Benefit Policy and the Gift and Benefit Register to be of sufficient importance. This is

because Mr Knight, in his statements to the Commission, was of the view that the Gift and Benefit Policy and the Gift and Benefit Register required more information, such as the circumstances in which the gift was given, the relationship between the gift giver and receiver, and what the receiver did with the gift. Mr Knight also believed there was a need to address loopholes in the policy, such as where it permits staff involved in purchasing to accept gifts, benefits and hospitality of up to \$50 from contractors, potential contractors, tenderers or their associates.

Recommendation 5

That Willoughby City Council implements changes to its Gifts and Benefits Policy and section 5 of its Code of Conduct that establish, as a minimum, a prohibition on Council staff and officials who exercise regulatory functions from accepting any gift, benefit or hospitality irrespective of its value.

Communication

Mr Karkowski appears to have taken advantage of the lack of information concerning the Council's Fast Track Approval System to solicit gifts, benefits and hospitality. Making information available to the local community about the Fast Track Approval System, including in languages other than English, may have assisted in reducing opportunities for corrupt conduct to occur.

While the Council used the Fast Track Approval System to compete with the private sector and presumably seek an associated financial return, the Council had not told its clients that such an approval system existed. The investigation found that public information concerning the Fast Track Approval System was not available in a written form. Instead, information about the Fast Track Approval System was provided as part of a face-to-face pre-lodgement meeting.

The reliance on verbal advice at a pre-lodgement meeting to inform prospective applicants was a significant flaw and created an opportunity for corrupt conduct. The lack of written information meant that, other than through Mr Karkowski, a prospective applicant had nothing upon which to verify that the Fast Track Approval System was a genuine Council process.

The Commission is of the view that a lack of information about the Council's approval processes would have provided an opportunity for Mr Karkowski to solicit gifts, benefits and hospitality, particularly among non-English speaking business operators in the Chatswood CBD who were recent migrants to Australia. These migrant business operators would, in the absence of independent

information, have been reliant on Mr Karkowski to explain and interpret the Council's approval processes and what they needed to do to operate their businesses. Mr Karkowski was aware of this and he used his power as a Council officer and his offer of additional services to secure gifts, benefits and hospitality. Mr Karkowski's success in this regard was assisted by his knowledge that migrant business owners in the Chatswood CBD were more susceptible to giving gifts to public officials.

The Commission recognises that, prior to this investigation, the Council had taken steps to address the issue of communicating in languages other than English. In this regard, the Commission notes the recent publication of the Council's brochure, *Information for People doing Business with Council*, in a variety of community languages. Council should continue this communication process by providing public information about the Fast Track Approval System in English and community languages.

Recommendation 6

That Willoughby City Council formalises its practices around the Fast Track Approval System, and publishes these documents as an information pack that is publicly available for use by developers, builders and others in the business community. This should include the following:

- a. information required to be submitted by applicants in relation to the development proposal and the estimated cost of works
- b. fees payable by applicants
- c. level of information to be provided by Council officers assessing and determining the application in their worksheet or report with regard to the matters considered and the reasons for their determination
- d. circumstances in which applications should be referred to the Council's Development Assessment Review Committee or the Peer Review Group.

Recommendation 7

That Willoughby City Council:

- a. further enhances its campaign to educate the local community, including non-English speaking members, that gifts, hospitality and other benefits are not appropriate and that Council officers cannot accept them

- b. develops a program to engage and actively involve the local business community, with a view to establishing a dialogue that communicates the above message**
- c. establishes an education program on cross-cultural matters for all frontline and regulatory staff.**

These recommendations are made pursuant to section 13(3)(b) of the ICAC Act and, as required by section 111E of the ICAC Act, will be furnished to Willoughby City Council and the Minister for Planning and Infrastructure. They will also be provided to the Department of Planning and Infrastructure.

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

In the event a plan of action is prepared, Willoughby City Council 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 response to its recommendations, any plan of action and progress reports on its implementation on the Commission's website, www.icac.nsw.gov.au, for public viewing.

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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 New South Wales, 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 section 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 section 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: Sections 8 and 9 of the ICAC Act

Sections 8 and 9 of the ICAC Act provide as follows:

8 General nature of corrupt conduct

(1) 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.

(2) Corrupt conduct is also any 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 could involve any of the following matters:

- (a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),
- (b) bribery,
- (c) blackmail,
- (d) obtaining or offering secret commissions,
- (e) fraud,

- (f) theft,
- (g) perverting the course of justice,
- (h) embezzlement,
- (i) election bribery,
- (j) election funding offences,
- (k) election fraud,
- (l) treating,
- (m) tax evasion,
- (n) revenue evasion,
- (o) currency violations,
- (p) illegal drug dealings,
- (q) illegal gambling,
- (r) obtaining financial benefit by vice engaged in by others,
- (s) bankruptcy and company violations,
- (t) harbouring criminals,
- (u) forgery,
- (v) treason or other offences against the Sovereign,
- (w) homicide or violence,
- (x) matters of the same or a similar nature to any listed above,
- (y) any conspiracy or attempt in relation to any of the above.

(3) Conduct may amount to corrupt conduct under this section even though it occurred before the commencement of this subsection, and it does not matter that some or all of the effects or other ingredients necessary to establish such corrupt conduct occurred before that commencement and that any person or persons involved are no longer public officials.

(4) Conduct committed by or in relation to a person who was not or is not a public official may amount to corrupt conduct under this section with respect to the

exercise of his or her official functions after becoming a public official.

- (5) Conduct may amount to corrupt conduct under this section even though it occurred outside the State or outside Australia, and matters listed in subsection (2) refer to:
- (a) matters arising in the State or matters arising under the law of the State, or
 - (b) matters arising outside the State or outside Australia or matters arising under the law of the Commonwealth or under any other law.
- (6) The specific mention of a kind of conduct in a provision of this section shall not be regarded as limiting the scope of any other provision of this section.

9 Limitation on nature of corrupt conduct

- (1) Despite section 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.
- (2) It does not matter that proceedings or action for such an offence can no longer be brought or continued, or that action for such dismissal, dispensing or other termination can no longer be taken.
- (3) For the purposes of this section:

applicable code of conduct means, in relation to:

- (a) a Minister of the Crown—a ministerial code of conduct prescribed or adopted for the purposes of this section by the regulations, or
- (b) a member of the Legislative Council or of the Legislative Assembly (including a Minister of the Crown)—a code of conduct adopted for the purposes of this section by resolution of the House concerned.

criminal offence means a criminal offence under the law of the State or under any other law relevant to the conduct in question.

disciplinary offence includes any misconduct, irregularity, neglect of duty, breach of discipline or other matter that

constitutes or may constitute grounds for disciplinary action under any law.

- (4) Subject to subsection (5), conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in section 8 is not excluded by this section 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.
- (5) Without otherwise limiting the matters that it can under section 74A (1) include in a report under section 74, the Commission is not authorised to include a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection (4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from this Act) and the Commission identifies that law in the report.
- (6) A reference to a disciplinary offence in this section and sections 74A and 74B includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440 (5) of the *Local Government Act 1993*, but does not include a reference to any other breach of such a requirement.



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