



I.C.A.C

INDEPENDENT COMMISSION
AGAINST CORRUPTION

INVESTIGATION INTO THE SOLICITATION OF A CORRUPT PAYMENT BY A STRATHFIELD MUNICIPAL COUNCIL OFFICER

ICAC REPORT
MAY 2011



INDEPENDENT COMMISSION
AGAINST CORRUPTION

INVESTIGATION INTO THE SOLICITATION OF A CORRUPT PAYMENT BY A STRATHFIELD MUNICIPAL COUNCIL OFFICER

ICAC REPORT
MAY 2011



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

ISBN 978 1 921688 19 5

© May 2011 – Copyright in this work is held by the Independent Commission Against Corruption. Division 3 of the *Copyright Act 1968* (Cwlth) recognises that limited further use of this material can occur for the purposes of “fair dealing”, for example study, research or criticism, etc. However if you wish to make use of this material other than as permitted by the Copyright Act, please write to the Commission at GPO Box 500 Sydney NSW 2001.



INDEPENDENT COMMISSION
AGAINST CORRUPTION

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

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

T: 02 8281 5999
1800 463 909 (toll free for callers outside metropolitan Sydney)
TTY: 02 8281 5773 (for hearing-impaired callers only)
F: 02 9264 5364
E: icac@icac.nsw.gov.au
www.icac.nsw.gov.au

Business Hours: 9.00 am - 5.00 pm Monday to Friday

I·C·A·C

INDEPENDENT COMMISSION
AGAINST CORRUPTION

The President
Legislative Council
Parliament House
Sydney NSW 2000

The Speaker
Legislative Assembly
Parliament House
Sydney NSW 2000

Dear Presiding Officers

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 solicitation of a corrupt payment by an officer of Strathfield Municipal Council.

Assistant Commissioner Theresa Hamilton presided at the public inquiry held in aid of this investigation.

The Commission's findings and recommendations are contained in the report.

I draw your attention to the recommendation that the report be made public forthwith pursuant to section 78(2) of the *Independent Commission Against Corruption Act 1988*.

Yours faithfully



The Hon David Ipp AO QC
Commissioner

Contents

Summary of investigation and results	5
Results	5
Recommendation that this report be made public	6
Chapter 1: Background	7
How the investigation came about	7
Why the Commission investigated	7
Conduct of the investigation	7
The public inquiry	7
Mr Chau	8
Tenix Solutions and VMS	8
Chapter 2: Mr Chau and Mr Armstrong	9
The meeting on 18 August 2010	9
The meeting on 27 August 2010	10
The meeting on 3 September 2010	12
The credibility of Mr Chau	13
The credibility of Mr Armstrong	13
Mr Chau's draft report	14
Conclusion	14

Principal findings of fact	15
Corrupt conduct	15
Section 74A(2) statement	15

Appendix 1: The role of the Commission	17
---	-----------

Appendix 2: Sections 8 and 9 of the ICAC Act	18
---	-----------

Summary of investigation and results

This report concerns an investigation by the Independent Commission Against Corruption (“the Commission”) into an allegation that Michael Chau, Manager of Community Services at Strathfield Municipal Council (“the Council”), solicited a payment of \$10,000 from Phillip Armstrong, NSW Business Development Manager of Tenix Solutions, at a time when Tenix Solutions was negotiating with the Council in respect of a business proposal.

Tenix Solutions, a parking compliance management services company, was involved in a joint venture with Vehicle Monitoring Services Pty Ltd (VMS), a company that also provides parking enforcement technologies. On 18 August 2010, Mr Armstrong and Saxon Hill, Managing Director of VMS, gave a presentation to David Backhouse, General Manager of the Council, Mr Chau and other Council officers relating to a parking compliance management system known as the Parking Infringement Camera System (PICS). Mr Armstrong and Mr Hill hoped that the Council would enter into an arrangement with the joint venture companies to install the PICS technology in areas around Strathfield where the Council had experienced parking enforcement problems. Under the proposed arrangement, the joint venture companies would receive a percentage of the revenue generated by the issuing of parking tickets in the Council area.

On 27 August and 3 September 2010, Mr Chau attended meetings with Mr Armstrong and Mr Hill, without the knowledge of Mr Backhouse, to discuss their business proposal.

At the meeting on 3 September 2010, Mr Armstrong alleged that Mr Chau asked him for a payment of \$10,000 to cover the campaign costs of an unnamed Liberal Party of Australia (“Liberal Party”) candidate standing at the upcoming Council by-election. According to Mr Armstrong, Mr Chau said that Mr Armstrong could make the payment in cash and that the payment could be given directly to Mr Chau. Mr Chau did not agree with this version of the conversation, although he agreed that a donation to a candidate was discussed.

Results

The Commission is satisfied that:

- between 27 August 2010 and 3 September 2010, Mr Chau falsely represented to Mr Armstrong that he (Mr Chau) had been authorised by the Council to act on its behalf for the purpose of promoting the adoption of the PICS technology by the Council, when he had not been so authorised
- during the same period, Mr Chau made various statements to Mr Armstrong with the intention of causing him to believe that Mr Chau was acting in a way that was favourable to Mr Armstrong, Tenix Solutions and VMS in relation to the Council’s consideration of their business proposal
- Mr Chau engaged in this conduct with the intention of soliciting a payment of money from Mr Armstrong on account of such favourable action
- on 3 September 2010, Mr Chau solicited a payment of \$10,000 from Mr Armstrong, which Mr Chau intended to use for his own benefit.

A finding that Mr Chau engaged in corrupt conduct by soliciting a payment of \$10,000 from Mr Armstrong in these circumstances is set out in chapter 2 of the report.

Chapter 2 of the report also contains a statement 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 Chau for an offence of soliciting a corrupt payment under section 249B(1) of the *Crimes Act 1900* (“the Crimes Act”)
- taking action against Mr Chau as a public official with a view to dismissing, dispensing with or otherwise terminating his services.

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

The Commission's investigation arose out of a report to the Commission on 7 September 2010 by Mr Backhouse, General Manager of the Council. Mr Backhouse said that he had been notified of an allegation that Mr Chau, Manager of Community Services at the Council, had sought a payment of \$10,000 from Mr Armstrong, NSW Business Development Manager of Tenix Solutions, during the course of a business meeting on 3 September 2010.

Why the Commission investigated

The matter reported to the Commission was serious and could, if established, constitute corrupt conduct within the meaning of the ICAC Act. It was therefore necessary to establish whether Mr Chau had, with the intention of securing a benefit for himself, sought a payment of \$10,000 from a person who was negotiating with the Council about a business proposal.

The Commission decided that it was in the public interest to conduct an investigation.

The Commission's role is set out in more detail in Appendix I.

Conduct of the investigation

The Commission's investigation involved obtaining information and documents from the Council by issuing notices under section 22 of the ICAC Act as well as interviewing and obtaining statements from a number of witnesses.

Evidence was taken at a compulsory examination from Mr Chau and from Frank Ianni, another Council employee who attended the meeting on 3 September 2010. Mr Chau denied the allegation and said that, during the

meeting on 3 September 2010, Mr Armstrong raised the issue of making a donation to a candidate standing for election at the Council's upcoming by-election. Mr Chau said that he told Mr Armstrong that he could give any money he wished to donate to Scott Farlow, a lobbyist for Tenix Solutions who had arranged Mr Armstrong's presentation to the Council on 18 August 2010, or, in his absence, to Mr Chau. Mr Ianni said he was not a party to and had no knowledge of the conversation between Mr Chau and Mr Armstrong concerning a payment of \$10,000.

The public inquiry

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

- the seriousness of the alleged conduct
- the risk of undue prejudice to the reputations of Mr Chau and Mr Armstrong.

The Commission concluded that the public interest in exposing the matter outweighed the public interest in preserving the privacy of the persons concerned.

Theresa Hamilton, Assistant Commissioner, presided at the inquiry and Jason Downing acted as Counsel Assisting the Commission. The public inquiry was conducted over two days, commencing on 1 February 2011. Mr Chau, Mr Armstrong and four other witnesses gave evidence. Statements obtained from various witnesses, including Mr Armstrong, Mr Backhouse and Mr Farlow, were tendered in evidence.

At the conclusion of the public inquiry, Counsel Assisting the Commission prepared submissions setting out the evidence and what findings and recommendations the

Commission could make based on that evidence. These submissions were provided to Mr Chau and submissions were invited in response. The responses received by the Commission have been taken into account in preparing this report.

Mr Chau

Around 2000, Mr Chau obtained legal qualifications and commenced work as a legal officer at the Department of Community Services. On 17 December 2001, Mr Chau commenced employment with the Council as a multicultural worker. He set up a legal practice as a sole practitioner in 2002 and practised, to a limited extent, while continuing his employment with the Council.

As at 3 September 2010, Mr Chau was employed as the Council's Manager of Community Services. This section plans and organises projects relating to aged services, youth services, children's services, multicultural services, community safety and crime prevention, and access and equity. Mr Chau's primary role was to ensure that the section provided efficient and dependable community services to ratepayers.

Tenix Solutions and VMS

On 19 July 2010, Mr Armstrong commenced employment as the NSW Business Development Manager of Tenix Solutions. Tenix Solutions is a parking compliance management services company that specialises in providing technological services to local government authorities for the purpose of enforcing parking compliance. Mr Armstrong reported directly to Simon Taylor, Director of Business Development for Tenix Solutions.

Tenix Solutions was involved in a joint venture with VMS, a company that also provides parking enforcement technologies. The purpose of the joint venture was to distribute and sell a number of parking compliance management systems, including the PICS technology – a pole-mounted camera system that monitors parking areas and provides photographic evidence of parking offences.

This evidence can then be relied on to issue a parking infringement notice.

Mr Farlow is a lobbyist and a former councillor and mayor of Strathfield who had been engaged by Tenix Solutions to find and promote business opportunities for the joint venture.

Chapter 2: Mr Chau and Mr Armstrong

This chapter examines the evidence obtained by the Commission in relation to the allegation that on 3 September 2010 Mr Chau solicited a payment of \$10,000 for his own benefit from a person who was negotiating a business proposal with the Council.

Such 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) of the ICAC Act and, for the purposes of section 9 of the ICAC Act, could involve a criminal offence of soliciting a corrupt benefit under section 249(B)(1) of the Crimes Act or reasonable grounds for dismissing, dispensing with the services of or otherwise terminating Mr Chau's services.

This chapter also sets out the Commission's findings and contains a statement required to be made under section 74A(2) of the ICAC Act.

The meeting on 18 August 2010

On 18 August 2010, Mr Armstrong and Mr Hill met with the Council's General Manager, Mr Backhouse, the Council's Director of Technical Services, Patrick Wong, the Council's Director of Operations, Rob Bourke, and Mr Chau. The purpose of the meeting was to allow Mr Armstrong and Mr Hill to give a presentation to the Council about the PICS technology offered by Tenix Solutions and VMS.

Mr Farlow had earlier contacted Mr Backhouse by email to request the meeting. In his email, Mr Farlow noted newspaper reports that the Council had experienced parking enforcement problems around Strathfield town centre and suggested that Tenix Solutions possessed technologies that would improve safety in the area.

Mr Backhouse said that he arranged for Mr Chau to attend the meeting because he anticipated that the issue of community safety was to be discussed. He said that Mr Wong and Mr Bourke were not originally invited to the meeting, but were requested to attend once it became apparent that the matters being discussed included issues of a technical nature.

During the course of the meeting, Mr Armstrong and Mr Hill:

- made reference to the successful implementation of the PICS technology by the Maribyrnong Council in Victoria
- raised the possibility of Tenix Solutions and VMS conducting a trial of a single pole-mounted camera around the problem area in Strathfield in order to determine the extent of parking non-compliance
- proposed various business models for Council's consideration, including a proposal that their companies and the Council would share the revenue generated from the issuing of infringement notices through the use of the PICS technology.

Mr Armstrong provided Council officers, including Mr Chau, with copies of the PICS product's information brochure.

It was not disputed that, by the end of the meeting, no decision had been made by Mr Backhouse about the adoption of the PICS technology by the Council or whether the Council should approve a trial of the PICS technology. Mr Backhouse told the Commission that before any decisions could be made about the PICS technology the Council would have needed to undertake an assessment of the effectiveness of the technology and the impact of the use of the technology on Council revenues. In addition, Mr Backhouse said that the use of the PICS technology to issue infringement notices had, at least potentially, political ramifications for the Council. In these circumstances, he said that once the matter had been the subject of consideration by himself and his executive team (that did not include Mr Chau), it would have been appropriate for elected members of the Council to determine whether the PICS technology should be adopted by the Council or not.

On 20 August 2010, Mr Armstrong sent an email to Mr Backhouse thanking him for the opportunity to meet his senior team. In the email, copies of which were sent to Mr Chau, Mr Wong and Mr Bourke, Mr Armstrong

asked Mr Backhouse to consider taking the “next step” of formally engaging Tenix Solutions and VMS to conduct a parking study and traffic assessment and a PICS survey of dangerous and illegal parking in three separate locations.

On or about 23 August 2010, Mr Armstrong and Mr Chau arranged to meet on 27 August 2010 to discuss the PICS proposal and inspect potential sites for the installation of the PICS cameras.

There is a dispute between Mr Chau and Mr Armstrong as to who initiated contact to arrange the meeting on 27 August 2010. According to Mr Armstrong, three or four days after the meeting on 18 August 2010 he received a phone call from Mr Chau, who said words to the following effect, “I am calling on behalf of David Backhouse. Can we meet to further discuss the potential installation of the cameras?”. Mr Armstrong said that, in the absence of any response from Mr Backhouse to his email of 20 August 2010 and on the basis of the statement made by Mr Chau during their telephone conversation, he assumed that Mr Chau had been authorised to act on behalf of the Council in relation to the Council’s consideration of the PICS technology. Mr Armstrong said that he arranged to meet with Mr Chau on 27 August 2010 at a Gloria Jean’s coffee shop at Strathfield town centre to discuss the Council’s interest in the PICS proposal.

It was not disputed by Mr Chau that Mr Backhouse did not provide him with any instructions to contact Mr Armstrong on behalf of the Council in order to deal with the issues raised in Mr Armstrong’s email. Mr Chau denied that he had initiated the contact with Mr Armstrong and said that he had telephoned Mr Armstrong in response to a message Mr Armstrong had left. According to Mr Chau, Mr Armstrong asked him how he felt about the PICS technology and he replied, “Well, the best way is to go and have a look at the sites”. Mr Chau said he arranged to conduct a site inspection of Strathfield town centre with Mr Armstrong and Mr Hill on 27 August 2010.

In the Commission’s view, there are persuasive reasons for accepting Mr Armstrong’s evidence that it was Mr Chau who first contacted him following the meeting on 18 August 2010. Mr Armstrong said that he had no intention of making any further contact with the Council until he had received a response from Mr Backhouse to his email of 20 August 2010, as it would have been discourteous to do otherwise. There was no evidence that anything had taken place at the meeting on 18 August 2010 that would have suggested to Mr Armstrong that Mr Chau, and not Mr Backhouse, was an appropriate person with whom he could discuss Council’s response to his email. Further, Mr Hill said that he had a conversation with Mr Armstrong soon after the meeting of 18 August 2010, during which Mr Armstrong told him that he had received a telephone call from Mr Chau who wanted to meet to discuss the PICS trial.

In the circumstances, the Commission considers that it is likely that it was Mr Chau who initiated the contact with Mr Armstrong.

The meeting on 27 August 2010

On 27 August 2010, Mr Armstrong, Mr Hill and Mr Chau met at a Gloria Jean’s coffee shop at Strathfield town centre. Mr Chau also asked Damian Koytz, a Council parking officer, to attend the meeting to identify problem parking areas around the Strathfield town centre. Mr Chau did not invite Mr Wong or Mr Bourke to the meeting.

According to Mr Armstrong, Mr Chau said words to the following effect during the meeting:

I am acting on behalf of the General Manager of Strathfield Council, Mr David Backhouse. I am the “go to” manager to make things happen. David wants the project to proceed and I am here to make it happen.

When cross-examined by Mr Chau’s legal representative, Mr Armstrong said he was confident his recollection of this part of the conversation was accurate. In an email sent to Mr Farlow on 6 September 2010, he also made a written note about this part of his conversation with Mr Chau in terms that are consistent with the evidence he gave before the Commission.

At the public inquiry, Mr Chau initially denied uttering the words attributed to him by Mr Armstrong. During his earlier evidence at the compulsory examination, Mr Chau said that he could have used such words. When his attention was drawn to his earlier evidence, Mr Chau said that he may have said the words attributed to him by Mr Armstrong but thought it was unlikely that he had done so.

Mr Hill said that, during the meeting on 27 August 2010, Mr Chau told him that Mr Backhouse wanted the PICS technology to be installed at Strathfield town centre and that he (Mr Chau) had responsibility for this project.

In the circumstances, the Commission is satisfied that the accounts given by Mr Armstrong and Mr Hill concerning the representation made by Mr Chau are truthful and accurate.

It was not disputed by Mr Chau that Mr Backhouse did not authorise him to act on his behalf or on behalf of the Council in connection with any dealings he had with Mr Armstrong and Mr Hill concerning the PICS technology.

The Commission is also satisfied that Mr Chau made other statements during and after the meeting on 27 August 2010 evidencing an intention on his part to cause Mr Armstrong to form the (false) view that Mr Chau was authorised to represent the Council

in connection with discussions concerning the PICS technology.

Mr Armstrong said that during the meeting on 27 August 2010, Mr Chau told him that, "he was prepared to be generous with us in the revenue sharing model", and suggested that Tenix Solutions and VMS could receive 35% of the revenue generated from the issuing of each infringement notice. Mr Chau did not dispute that he suggested that Tenix Solutions and VMS could enjoy a share of 35% of the revenue. He denied, however, that he told Mr Armstrong that he was prepared to be generous.

Mr Armstrong said that the figure of 35% suggested by Mr Chau was "extremely generous". He said that a 20% share of the revenue generated from each infringement notice would have been acceptable to Tenix Solutions and VMS. He was surprised that Mr Chau had made such an offer in the absence of any information about the number of PICS cameras that were required in Strathfield town centre and the potential revenue that could be generated from their use.

Mr Chau did not dispute that Mr Backhouse had not authorised him to enter into discussions about revenue sharing. He said, however, that the discussion he undertook with Mr Armstrong was of an informal nature and any views expressed by him would have been considered during any future formal negotiations about revenue-sharing arrangements.

Mr Chau, nevertheless, agreed that he raised no objection when Mr Armstrong confirmed in an email sent to Mr Chau on 30 August 2010 that the business model being developed by Tenix Solutions and VMS included a revenue-sharing arrangement that provided Tenix Solutions and VMS with 35% of the revenue generated from each infringement notice. Mr Armstrong said that this figure was based on the offer made by Mr Chau at the meeting on 27 August 2010. There was no suggestion by Mr Chau that, upon receipt of this email, he made it clear to Mr Armstrong that he had no authority to engage in any discussion concerning revenue sharing and that his earlier reference to Tenix Solutions enjoying a 35% share of the revenue should be seen in this light.

Mr Chau also said that the discussion concerning revenue sharing had "nothing to do with the Council". The Commission rejects this evidence. On 1 September 2010, Mr Chau prepared a draft report to the Council recommending that it approve the installation of the PICS technology. Mr Chau promoted Mr Armstrong's position in the report by confirming that Tenix Solutions and VMS would consider, as a part of a revenue-sharing arrangement with the Council, 25% to 30% of the revenue generated from the issue of an infringement notice. In the Commission's view, it is likely that Mr Chau based these

figures on the discussion he initiated with Mr Armstrong about revenue sharing on 27 August 2010.

Mr Chau's conduct subsequent to the meeting is also noteworthy. In an email on 30 August 2010, Mr Armstrong sought approval from Mr Chau to undertake a camera survey around Strathfield town centre to assist with the development of his business proposal. Mr Chau approved the camera survey in an email to Mr Armstrong on the same day.

Mr Chau said that he asked Robyn Druce, the Council's Compliance Manager, whether Tenix Solutions could conduct the survey. Ms Druce did not give evidence at the public inquiry. Mr Chau agreed, however, that he did not discuss Mr Armstrong's request with Mr Backhouse before approving the survey on 30 August 2010, even though he had read Mr Armstrong's email of 20 August 2010 in which Mr Armstrong had sought Mr Backhouse's approval to undertake the camera survey.

In the Commission's view, Mr Chau's failure to consult with Mr Backhouse about this matter is consistent with an intention on his part to represent (falsely) to Mr Armstrong that he had authority to act on behalf of the Council for the purpose of promoting the adoption of the PICS technology by the Council and to ensure that executive officers at the Council did not become aware of the nature and content of the false representations he was making to Mr Armstrong and Mr Hill. In the Commission's view, Mr Chau's failure to invite any senior Council officers, including Mr Wong and Mr Bourke, to the meeting on 27 August 2010 should be seen in the same light.

By engaging in the conduct described above, the Commission is satisfied that Mr Chau intended to cause Mr Armstrong to believe that:

- the Council had formed a favourable view about the PICS technology (when it had not)
- he had been authorised by the Council to act on its behalf for the purpose of promoting the adoption of the PICS technology by the Council (when he had not)
- he was acting in a way that was favourable to Mr Armstrong, Tenix Solutions and VMS in relation to the Council's consideration of their business proposal (that is, by suggesting to Mr Armstrong that Tenix Solutions and VMS could enjoy a 35% share of the revenue)
- an agreement entered into by the Council concerning the PICS technology would financially benefit Tenix Solutions and VMS.

The meeting on 3 September 2010

On 3 September 2010, Mr Armstrong and Mr Chau met again at the Gloria Jean's coffee shop at Strathfield town centre. Mr Chau attended the meeting with Mr Ianni, a Council employee who was responsible for the supervision of Council workers involved in footpath and road maintenance. Mr Armstrong attended with Mr Taylor, his immediate supervisor from Tenix Solutions. Mr Hill arrived after the other attendees.

The meeting was held for the purposes of discussing the proposal by Tenix Solutions and VMS to enter into an arrangement with the Council to install the PICS cameras around Strathfield town centre and to conduct an inspection of the area.

Mr Armstrong said that, prior to Mr Hill's arrival at the meeting and while Mr Taylor was at the counter buying coffee and Mr Ianni was outside Gloria Jean's, Mr Chau said the following to him:

Phillip, I have a favour to ask of you. As you know there have been difficulties with the smooth operation of Strathfield Council and Scott [Mr Farlow] knows there will be a by-election in the next 2 to 3 weeks and we want to see a Liberal party councillor elected to Council. I am assisting with that process and I need your assistance to make available \$10,000 to assist the Liberal candidate, with printing of political brochures and pamphlets and other general expenses. Could you make the \$10,000 available as soon as possible, as the Council by-election is looming fast and there is an urgent need for the funds.

Mr Armstrong said that he was surprised by Mr Chau's request. He said that Mr Chau made no further mention of the matter when Mr Taylor returned to the table with the coffee and this increased his sense of unease about Mr Chau's request. Mr Armstrong said that he was unsure whether he had misunderstood Mr Chau and waited for another opportunity to speak with him alone. He said that, after they left Gloria Jean's, he spoke with Mr Chau and asked him whether he wanted Tenix Solutions to pay for the printing directly. According to Mr Armstrong, Mr Chau replied that he would prefer to have the cash given to him directly so that he could finalise arrangements. Mr Armstrong said that at that point he realised that "there was something wrong in what had been asked". He said he immediately told Mr Taylor about Mr Chau's request.

In his evidence before the Commission, Mr Taylor said that Mr Armstrong reported to him that, while he (Mr Taylor) was buying coffee, Mr Chau had sought a payment of \$10,000 from Tenix Solutions to cover the campaign costs of a Liberal Party candidate standing for election as

a councillor. He said his conversation with Mr Armstrong took place outside Gloria Jean's and within 15 minutes of his purchasing the coffee. Mr Taylor said he told Mr Armstrong that Tenix Solutions could not accede to this request.

Mr Chau denied that he had sought a payment of \$10,000 from Mr Armstrong.

Mr Chau said that during the meeting of 3 September 2010, Mr Armstrong told him that he had been told by Mr Farlow that there was a problem at the Council. Mr Chau said he replied that the Council was having a by-election and Mr Armstrong asked him how much "does it cost?". Mr Chau said that he told Mr Armstrong that the cost of advertisements, posters, volunteers and transport was around \$10,000 and that he (Mr Armstrong) could make a contribution or donation if he liked. He said he plucked the figure of \$10,000 out of the air.

Mr Chau said that Mr Armstrong asked him how he would go about "that" (making a donation). He replied that Mr Armstrong could give the money to Mr Farlow or he could give it to him. According to Mr Chau, Mr Armstrong said, "that would be alright". Mr Chau said that if Mr Armstrong had given the money to him he would have provided it to Mr Farlow. He said, however, that he did not tell Mr Armstrong this.

Mr Chau said that as Mr Armstrong knew Mr Farlow he assumed that he knew about Mr Farlow's political connections with the Liberal Party. He said that this was the reason he suggested to Mr Armstrong that he could give the money to Mr Farlow. Mr Chau said that the reason he suggested that Mr Armstrong could give the money to him was that he thought that Mr Armstrong, who worked for a company situated in Melbourne, would have had some difficulty in meeting with Mr Farlow. Mr Chau said that he was not a member of the Liberal Party, nor did he have any involvement with campaigning or fundraising for the Liberal Party.

Mr Armstrong denied Mr Chau's version of the conversation.

Mr Ianni said, and the Commission accepts, that he was not a party to or had any knowledge of the conversation between Mr Chau and Mr Armstrong concerning any payment.

As no other person was a party to the relevant conversation between Mr Chau and Mr Armstrong, the crucial issue for the Commission is whether Mr Armstrong's account of his conversation with Mr Chau on 3 September 2010 about a payment being made should be accepted and, if so, whether Mr Chau sought any such payment for his own benefit.

The determination of these issues required the Commission to give careful attention to the evidence of Mr Armstrong and Mr Chau, and to assess their credibility in the light of their evidence, and any other relevant credible documentary or other evidence. These issues are considered below.

The credibility of Mr Chau

In the Commission's view, Mr Chau's evidence should generally be approached with considerable caution. He did not present as a reliable witness and was often unresponsive, evaded answering difficult questions and at various times gave evidence that was implausible and contradictory.

The Commission is not satisfied that Mr Chau's version of the conversation with Mr Armstrong on 3 September 2010 is plausible. Mr Chau's explanation for telling Mr Armstrong that he could pay him (Mr Chau) is unconvincing. Mr Armstrong had attended meetings on 18 August, 27 August and 3 September 2010 with Mr Chau at the Council Chambers and Strathfield town centre, the latter of which was the proposed site for the installation of the PICS cameras. In the Commission's view, Mr Chau would have had reasonable grounds to believe that further meetings with Mr Armstrong would be held at Strathfield as the matter progressed. In these circumstances, Mr Chau had no reasonable basis upon which to conclude that Mr Armstrong would have experienced difficulties in meeting with Mr Farlow, who worked in Sydney as a lobbyist for Tenix Solutions.

The credibility of Mr Armstrong

Mr Armstrong presented as a witness of truth and the Commission is satisfied that his version of the conversation with Mr Chau on 3 September 2010 is consistent with other relevant evidence.

Mr Armstrong immediately reported his conversation with Mr Chau to Mr Taylor and made a written note of his conversation with Mr Chau in an email he sent to Mr Farlow on 6 September 2010. The terms of his report to Mr Taylor and his email to Mr Farlow were entirely consistent with the evidence he gave about the critical parts of his conversation with Mr Chau on 3 September 2010.

Mr Armstrong had no personal interest in the outcome of the Strathfield Council by-election. He was not a member of the Liberal Party and did not reside in the Strathfield area. It was not disputed that Mr Armstrong had not sought or received any authority from Tenix Solutions to make a \$10,000 political donation on its behalf. Mr Armstrong said, and the Commission accepts, that he had no intention of funding such a donation out of his own

pocket. In the Commission's view, there was no evidence before the Commission to suggest that Mr Armstrong had any personal or professional reason to propose that he would donate \$10,000 to a candidate standing for election at the Council's by-election.

Mr Ianni's attendance at the 3 September meeting

Mr Chau invited Mr Ianni to the meeting on 3 September 2010. Mr Chau said he did so because Mr Ianni could provide advice to Mr Armstrong and Mr Hill about the suitability of potential locations for PICS camera poles around the Strathfield town centre area.

During the meeting, Mr Armstrong suggested that a Council representative could attend Maribyrnong Council, which had successfully installed the PICS technology, to carry out an inspection on behalf of the Council. Mr Chau did not dispute that he nominated Mr Ianni as the Council officer who could attend Maribyrnong Council. He said, however, that he understood that the purpose of Mr Ianni's visit to Maribyrnong Council was to examine the camera poles in situ and to assess whether it was appropriate to place the PICS cameras on their own poles or on telegraph poles. Mr Chau said that Mr Ianni knew the hazards associated with pole installation and could examine the means by which the camera poles had been installed in the ground by the Maribyrnong Council without causing damage to any underground wiring.

Mr Chau said that Mr Armstrong had not made it clear to him at the meeting on 3 September 2010 that the purpose of the trip to Maribyrnong Council was for a Council representative to consider the technical and operational aspects of the PICS technology. The Commission rejects Mr Chau's evidence about this matter.

Mr Ianni had no doubt that the proposed visit to Maribyrnong Council involved a consideration of matters beyond his technical skills and abilities. He said that as far as he was concerned the assessment of the PICS technology had nothing to do with him and that he had no intention of travelling to Maribyrnong Council for the purpose of conducting any assessment. Mr Armstrong said that he was surprised that Mr Chau had nominated Mr Ianni as the person to attend Maribyrnong Council, as he expected that the Council would send someone with the ability to assess the technical and financial aspects of the PICS technology.

In the Commission's view, there was no proper basis upon which Mr Chau could form the view that it was appropriate to send a Council representative to Maribyrnong Council for the sole purpose of examining PICS camera pole locations. It was not disputed by Mr Chau that this was the extent of the role that Mr Ianni

could have undertaken, and that any fuller review of the range of issues concerning the PICS technology, including legal, financial and technical issues, was beyond Mr Ianni's knowledge and experience.

The Commission is satisfied that Mr Chau knew that Mr Ianni was not an appropriate person to send to Maribyrnong Council, but nominated him to bolster the view that he had been authorised by the Council to act on its behalf and was promoting the adoption of the PICS technology by the Council.

Mr Chau's draft report

On 1 September 2010, Mr Chau drafted a report to the Council about the PICS technology and he emailed the report to Mr Backhouse after the meeting on 3 September 2010.

Under the heading "Purpose of Report" Mr Chau wrote:

To request approval from Council for the installation of a fixed parking safety system in the Strathfield Local Government Area for the promotion of safety.

The report is no more than two-and-a-half pages long and contains assertions by Mr Chau about the escalating danger to pedestrians created by illegally parked vehicles around Strathfield town centre and the need to reduce such dangers by installing a fixed parking safety camera system to manage the traffic in the area. In the report, Mr Chau provides a brief description of the PICS, makes reference to the revenue-sharing arrangement under consideration by Tenix Solutions (previously discussed in this report) and, by adopting verbatim the words used in the PICS product information brochure (copies of which were distributed to Mr Chau at the meeting of 18 August 2010), sets out the advantages and benefits of the PICS technology. Finally, Mr Chau identifies three locations in Strathfield town centre suitable for the installation of the PICS cameras.

Mr Chau agreed that:

- he had failed to conduct any enquiries into the merits of the PICS technology before drafting the report
- he failed to mention his personal reservations about the PICS technology in the report, including concerns about community acceptance of the PICS technology
- he had not sought the input of any Council officer before drafting his report, despite conceding in his evidence that he would need the input of senior Council officers before recommending the installation of the PICS technology to Council.

Mr Chau said that he had failed to attend to these matters in the preparation of the report because it was only a draft and that its purpose was to remind Council officers about the PICS technology and stimulate discussion within the Council about its merits.

The Commission does not accept this evidence. It was not disputed by Mr Chau that during the meeting on 3 September 2010 he told those present that he had completed his report to the Council. He was unable to explain why he had mentioned the report at the meeting. Mr Armstrong and Mr Hill said that Mr Chau told those present at the meeting that he had recommended in the report that the Council should install the PICS technology. Mr Chau denied this. The Commission, however, accepts the evidence of Mr Armstrong and Mr Hill about this issue, which is supported to some extent by the fact that Mr Chau's draft report did, in fact, recommend the use of the PICS technology by Council.

In the absence of any proper consideration or assessment by Mr Chau of the merits of the PICS technology, the Commission is satisfied that his draft report did not represent a genuine attempt on his part to persuade the Council to adopt the PICS technology. The Commission is also satisfied that Mr Chau prepared the report so that he could tell Mr Armstrong at the meeting of 3 September 2010 that he had recommended to the Council that it should adopt the PICS technology and, in so doing, further promote the belief in the mind of Mr Armstrong that he (Mr Chau) was acting in a way that was favourable to Mr Armstrong, Tenix Solutions and VMS.

Conclusion

In the Commission's view, Mr Chau intended that the favour he purported to show Mr Armstrong between 27 August 2010 and 3 September 2010 in connection with the Council's consideration of the PICS technology would provide a basis upon which he could solicit a payment from him. As outlined above, the Commission is satisfied that Mr Armstrong gave truthful and accurate evidence about the critical part of his conversation with Mr Chau on 3 September 2010 concerning the solicitation of a payment by him.

While Mr Chau suggested to Mr Armstrong that the money was intended to be used to fund a Liberal Party candidate standing for election at the upcoming Council by-election, the Commission is satisfied that Mr Chau sought to secure a benefit to himself, without the knowledge of the Council.

As at 3 September 2010, Mr Chau had no affiliation with the Liberal Party and no Liberal Party candidate

had yet been selected to stand. The inference arises therefore that Mr Chau solicited the payment of \$10,000 intending to use it for his own benefit.

Around this time, Mr Chau had argued for leniency in a document he provided to a professional disciplinary tribunal on the basis that, between August and October 2010, he had debts of approximately \$10,000, made up of credit card debt and legal expenses. In the Commission's view, this evidence also supports a conclusion that Mr Chau sought a payment in this amount from Mr Armstrong for his personal use.

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. On 27 August 2010, Mr Chau falsely represented to Mr Armstrong that he had been authorised by Mr Backhouse to discuss the installation of the PICS technology with Mr Armstrong (when he had not).
2. Between 27 August and 3 September 2010, Mr Chau discussed revenue-sharing arrangements with Mr Armstrong, granted approval to Mr Armstrong to undertake a PICS camera survey of Strathfield town centre and nominated Mr Ianni as the Council's representative for a visit to Maribyrnong Council with the intention of falsely representing to Mr Armstrong that he had been authorised by the Council to act on its behalf for the purpose of promoting the adoption of the PICS technology by the Council (when he had not).
3. On 27 August 2010, Mr Chau suggested to Mr Armstrong that Tenix Solutions and VMS could enjoy a 35% share of the revenue generated from issuing infringement notices through the use of the PICS technology. On 3 September 2010, Mr Chau told Mr Armstrong that he had recommended in his report to the Council that it should adopt the PICS technology. Mr Chau engaged in this conduct with the intention of causing Mr Armstrong to believe that he was acting in a way that was favourable to Mr Armstrong, Tenix Solutions and VMS in relation to the Council's consideration of their business proposal.
4. Mr Chau engaged in the conduct described in findings of fact (1), (2) and (3) with the intention of soliciting a payment of money from Mr Armstrong on account of the favour he purported to show him in connection with Council's consideration of the PICS technology.
5. On 3 September 2010, Mr Chau solicited a payment of \$10,000 from Mr Armstrong for his own benefit.

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) or 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.

The Commission finds that Mr Chau engaged in corrupt conduct by soliciting a payment of \$10,000 from Mr Armstrong for his own benefit.

This is because his conduct:

- constituted or involved a dishonest or partial exercise of his official functions and therefore comes within 8(1)(b) of the ICAC Act.

This conduct also falls within:

- section 9(1)(a) of the ICAC Act, on the basis that it could constitute or involve the offence of soliciting a corrupt payment pursuant to section 249B(1) of the Crimes Act
- section 9 (1)(c) of the ICAC Act, on the basis that it could constitute or involve reasonable grounds for dismissing, dispensing with or otherwise terminating Mr Chau's services.

Section 74A(2) statement

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 specific grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

An “affected” person is defined in 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.

The Commission is satisfied that Mr Chau is an “affected” person.

Mr Chau denied soliciting a payment of \$10,000 from Mr Armstrong. While some of his evidence may be relevant to a consideration of his conduct, Mr Chau gave his evidence subject to a declaration under section 38 of the ICAC Act and accordingly his evidence is not available to be used against him in any criminal prosecution.

There is evidence available from Mr Armstrong concerning Mr Chau’s request for the payment of \$10,000, the evidence of Mr Armstrong and Mr Hill concerning the false representations made by Mr Chau at the meeting on 27 August 2010, the evidence of Mr Ianni concerning Mr Chau’s role in nominating him as the Council representative to attend Maribyrnong Council, and the evidence of Mr Armstrong and Mr Hill concerning Mr Chau’s assurances at the meeting of 3 September 2010 that he had recommended to the Council in his report that the PICS technology should be adopted. The Commission is therefore of the opinion that there is sufficient admissible evidence to justify seeking the advice of the DPP with respect to the prosecution of Mr Chau for an offence of soliciting a corrupt payment pursuant to section 249B(1) of the Crimes Act.

The Commission is also of the opinion that consideration should be given to the taking of action against Mr Chau with a view to dismissing, dispensing with the services of or otherwise terminating his services on the grounds that he engaged in the misconduct described in this report.

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.



INDEPENDENT COMMISSION
AGAINST CORRUPTION

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

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

T: 02 8281 5999
1800 463 909 (toll free for callers outside metropolitan Sydney)
TTY: 02 8281 5773 (for hearing-impaired callers only)
F: 02 9264 5364
E: icac@icac.nsw.gov.au
www.icac.nsw.gov.au

Business Hours: 9 am - 5 pm Monday to Friday