

ICAC

INDEPENDENT COMMISSION
AGAINST CORRUPTION



**INVESTIGATION INTO THE
SUBMISSION OF FALSE
CLAIMS FOR SITTING DAY
RELIEF ENTITLEMENT BY
ANGELA D'AMORE MP
AND SOME MEMBERS OF
HER STAFF**

**ICAC REPORT
DECEMBER 2010**

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ISBN 978 1 921688 14 0

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I·C·A·C

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The logo for the Independent Commission Against Corruption (ICAC), featuring the letters 'I·C·A·C' in a bold, serif font with dots between the letters.

INDEPENDENT COMMISSION
AGAINST CORRUPTION

The Hon Amanda Fazio MLC
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Legislative Council
Parliament House
Sydney NSW 2000

The Hon Richard Torbay MP
Speaker
Legislative Assembly
Parliament House
Sydney NSW 2000

Madam President
Mr Speaker

In accordance with section 74 of the *Independent Commission Against Corruption Act 1988* I am pleased to present the Commission's report on its investigation into the submission of false claims for entitlement payments by Angela D'Amore MP and her relief officers.

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

A handwritten signature in black ink, appearing to read 'D Ipp'.

The Hon David Ipp AO QC
Commissioner

Contents

Summary of investigation and results	5	Chapter 4: Ms D'Amore and Ms La Manna	29
Results	5	Allegations and issues for consideration	29
Recommendation that this report be made public	6	Principal findings of fact relating to Ms D'Amore and Ms La Manna	33
Chapter 1: The investigation	7	Section 74A(2) statement	35
How the investigation came about	7	Chapter 5: David Nicoletti	36
Why the Commission investigated	7	Mr Nicoletti's telephone conversation with Ms Zai on 26 October 2006	36
The people	9	Appendix 1: The role of the Commission	38
Sitting day relief entitlement	9	Appendix 2: Sections 8 and 9 of the ICAC Act	39
Chapter 2: The allegations and sitting day relief entitlements	9		
Code of Conduct for Members	10		
Allegations in detail and their relationship to corrupt conduct	10		
Chapter 3: Ms D'Amore and Ms Harbilas	12		
Overview	12		
The respective versions of Ms Harbilas and Ms D'Amore	14		
The credibility of Ms D'Amore	16		
The credibility of Ms Harbilas	23		
Principal findings of fact	26		
Corrupt conduct	27		
Section 74A(2) statement	28		

Summary of investigation and results

This investigation by the Independent Commission Against Corruption (“the Commission”) concerned allegations that Angela D’Amore, New South Wales Member of Parliament for Drummoyne, and temporary staff engaged by her, namely Karen Harbilas and Agatha La Manna, made false claims for sitting day relief payments.

It was alleged that Ms Harbilas and Ms La Manna worked at Parliament House as sitting day relief officers for Ms D’Amore in October and November 2006, and May and June 2007 respectively, and were instructed or authorised by Ms D’Amore to falsely represent on sitting day relief claim forms that David Nicoletti, Senior Electorate Officer to Ms D’Amore, had worked at Parliament House and that Ms Harbilas and Ms La Manna had worked at Ms D’Amore’s electorate office in Five Dock. It was alleged that Ms Harbilas and Ms La Manna had, in fact, made such false representations on the claim forms. It was also alleged that Ms D’Amore had signed these claim forms knowing that they contained the false representations made by Ms Harbilas and Ms La Manna. In the case of Mr Nicoletti, it was alleged that he had falsely confirmed in a conversation with an officer from Parliament that he had worked at Parliament House when he knew that he had not.

The sitting day relief entitlement was introduced by the Parliamentary Remuneration Tribunal in July 2006, and made funding for Members of Parliament available so that they could engage temporary staff at their electorate office on occasions when they attended Parliament House with one of their permanent electorate officers on parliamentary sitting days.

Results

In October 2006, Ms D’Amore engaged Ms Harbilas to work at Parliament House on sitting days as a sitting day relief officer. The Commission found that Ms D’Amore, knowing that Ms Harbilas was not entitled to receive payment from the sitting day relief allowance unless she worked at the electorate office when Ms D’Amore’s electorate officer worked at Parliament House, instructed Ms Harbilas to complete a claim form to falsely indicate

that Mr Nicoletti had worked at Parliament House on the relevant days. Ms Harbilas completed two claim forms in this false manner, which related to six sitting days during the period from 24 October 2006 to 26 October 2006, and from 14 November 2006 to 16 November 2006, and received payments from Parliament of around \$1,500, to which she was not entitled.

In May 2007, Ms D’Amore engaged Ms La Manna to work as a sitting day relief officer at her electorate office. The Commission found that on or prior to 1 June 2007 Ms D’Amore decided that Ms La Manna would work at Parliament House for the last 12 sitting days of the parliamentary session, knowing that this arrangement did not entitle Ms La Manna to receive sitting day relief payments. Ms D’Amore instructed or authorised Ms La Manna to complete three claim forms to falsely indicate that Mr Nicoletti had worked at Parliament House on the 11 sitting days that the evidence shows Ms La Manna had worked at Parliament House. Ms La Manna completed three claim forms in this manner and received payments of around \$3,000 from Parliament to which she was not entitled.

Findings about the false declarations

Findings that Ms D’Amore and Ms La Manna engaged in corrupt conduct in relation to their involvement in obtaining sitting day relief payments are set out in chapters 3 and 4 of this report. Chapter 3 also sets out the assistance provided to the Commission by Ms Harbilas, and contains a statement setting out the basis upon which the Commission exercised its discretion not to make a corrupt conduct finding against Ms Harbilas.

The Commission determined that there was insufficient evidence to support the allegation made against Mr Nicoletti.

Chapters 3 and 4 of this report also contain a statement pursuant to section 74A(2) of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”), in which the Commission is of the opinion that consideration should be given to:

- 
-
- obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of Ms D'Amore for the common law offence of misconduct in public office
 - taking action against Ms La Manna as a public official with a view to dismissing, dispensing with the services of or otherwise terminating her 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: The investigation

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

How the investigation came about

The Commission's investigation began in May 2010, under the name Operation Syracuse. It followed Operation Corinth, the Commission's investigation into the conduct of Karyn Paluzzano, former Member for Penrith. Evidence was given during the public inquiry concerning Ms Paluzzano that the practice of falsely claiming the sitting day relief entitlement may have been widespread. Other similar information was received by the Commission. In order to examine this possibility and determine whether there were any anomalies requiring further investigation, the Commission examined the use made of the allowance by all Members of the Legislative Assembly who claimed payments for five sitting days or more from 29 August 2006 to the end of June 2007.

Concurrently with this report, the Commission, acting under section 14 of the ICAC Act, is providing a report to the Speaker of the Legislative Assembly on the further investigations we so carried out. As is explained in that report, the Commission came to the conclusion that no further public inquiries should be held in relation to any sitting day relief payments (other than those referred to in this report).

In the case of Ms D'Amore, an analysis of relevant phone and bank records indicated that Ms Harbilas and Ms La Manna, the two people engaged by Ms D'Amore as sitting day relief officers, may have worked at Parliament House on some days, despite relevant claim forms indicating that they had worked at Ms D'Amore's electorate office. Each of the claim forms contained a declaration by Ms D'Amore that David Nicoletti, Senior Electorate Officer to Ms D'Amore, worked at Parliament House and that temporary staff (Ms Harbilas and Ms La Manna) had worked at the electorate office during the parliamentary sitting days for which the claims were made.

Why the Commission investigated

The possibility that the claim forms were completed in a deliberately false manner, and signed by Ms D'Amore knowing that they were false, was serious. Such conduct, if established, would constitute corrupt conduct within the meaning of the ICAC Act. Accordingly, it was important to establish whether false claim forms had been completed and submitted and, if so, whether Ms D'Amore knowingly made false declarations on the forms.

The role of a Member of Parliament is wide-ranging and demanding. Members are provided various allowances and entitlements to facilitate their activities in this role. However, they are held strictly accountable for their use of public resources and specific mention of a Member's responsibility to apply public funds in a manner consistent with applicable guidelines and rules is made in the Code of Conduct for Members. There is an overarching responsibility of Members of Parliament to maintain the public trust placed in them by performing their duties with honesty and integrity. In the view of the Commission, it is generally a matter of public interest to determine whether a Member of Parliament has dishonestly exercised their official functions and instructed or authorised others, especially employees, to do likewise. In these circumstances, the Commission decided that it was in the public interest for it to conduct an investigation for the purpose of establishing whether corrupt conduct had occurred.

The Commission's role is set out in more detail in Appendix 1.

Conduct of the investigation

The Commission's investigation involved obtaining information and documents from the Department of the Legislative Assembly by issuing notices under section 22 of the ICAC Act, and interviewing and obtaining statements from a number of witnesses.

Evidence was taken from six witnesses, including Ms Harbilas, Ms La Manna and Ms D'Amore, at compulsory

examinations. Ms Harbilas and Ms La Manna admitted that, contrary to the representations they had made on two and three claim forms respectively, they had worked at Parliament House and not Ms D'Amore's electorate office. Ms La Manna said that she had made a mistake when she completed the forms. Ms Harbilas said that Ms D'Amore instructed her to write Mr Nicoletti's name on the first form as the person who had attended Parliament House. Ms D'Amore denied any involvement in falsely claiming sitting day relief payments.

The public inquiry

The Commission reviewed the information that had been gathered during the investigation, and after taking into account the conflicting accounts of events provided by Ms Harbilas, Ms La Manna and Ms D'Amore 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 risk of undue prejudice to the reputations of Ms D'Amore, Ms Harbilas, Ms La Manna and Mr Nicoletti
- the seriousness of the alleged conduct.

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

The Hon David Ipp AO QC, Commissioner, presided at the inquiry, and Christine Adamson SC acted as Counsel Assisting the Commission. The public inquiry was conducted over four days, from 5 October 2010 to 8 October 2010. Ms D'Amore and seven other witnesses gave evidence at the inquiry.

At the conclusion of the public inquiry, Counsel Assisting the Commission prepared submissions setting out the evidence, and the findings and recommendations the Commission could make based on that evidence. These submissions were provided to Ms D'Amore and other

relevant persons, and submissions were invited in response. In preparing this report, all submissions received by the Commission were taken into account.

Chapter 2: The allegations and sitting day relief entitlements

The Commission's investigation concerned allegations that Ms D'Amore, Ms Harbilas, Ms La Manna and Mr Nicoletti dishonestly misrepresented to parliamentary officers that the conditions of the sitting day relief entitlement had been met for the purpose of causing those officers to approve claims for sitting day relief payments.

The people

In 2003 Ms D'Amore was elected as the NSW Member of the Legislative Assembly for Drummoyne, a metropolitan seat in Sydney. Prior to her election, Ms D'Amore had gained considerable experience of industrial affairs and awards.

During the period under investigation by the Commission, Ms D'Amore was entitled to the services of two full-time electorate officers. Mr Nicoletti was employed as Ms D'Amore's senior electorate officer on a full-time basis, and Karen Ford and Maree Turner job-shared the other electorate officer position.

Mr Nicoletti commenced work as Senior Electorate Officer in February 2006. He had performed the same role for another Member from 1995 to 2001. Mr Nicoletti performed a variety of duties for Ms D'Amore, including preparing media releases, drafting correspondence and answering constituent enquiries.

Ms Harbilas worked for Ms D'Amore as a sitting day relief officer for a total of six days in October and November 2006. In 2003 and 2005, she had also worked for Ms D'Amore as an electorate officer for a period of 12 months.

Ms La Manna, who was a friend of Ms D'Amore's, worked as a sitting day relief officer for Ms D'Amore in May and June 2007. In August 2007, she became Senior Electorate Officer, taking over the position from Mr Nicoletti, who had left to take up a position elsewhere.

Although Ms Ford, Ms Turner, Mr Nicoletti, Ms Harbilas and Ms La Manna worked for Ms D'Amore, they were formally employed by the Speaker of the Legislative Assembly.

Sitting day relief entitlement

The Parliamentary Remuneration Tribunal ("the Tribunal") was established by virtue of the *Parliamentary Remuneration Act 1989* (NSW) and is empowered to make annual determinations, including determinations on Members' entitlement to staffing. It is customary for the Tribunal to receive submissions from Members and the Presiding Officers prior to making its annual determination. The Tribunal's determinations are published in the *NSW Government Gazette*. The Tribunal also makes a report of its determination, which is laid before each House of Parliament.

In 2006, Government and Opposition Members, including Ms D'Amore, were entitled to the services of two full-time electorate officers. In preparation for its 2006 Determination ("the Determination"), the Tribunal undertook a comprehensive review of staffing levels available to Members. The Speaker and individual Members made submissions to the Tribunal, in which they argued for a third full-time staff member.

On 13 July 2006, the Tribunal determined that, instead of providing a third staff member, funds would be made available to Members to provide for a temporary officer in the electorate office on occasions when the Member would bring one of their electorate officers to Parliament House on sitting days only. The funds allocated for this purpose were to be the equivalent of the salary of a senior electorate officer for a period of 61 days per annum. The Tribunal determined that the funds were not to be used for any other purpose. This became known as the sitting day relief entitlement.

In the case of Ms D'Amore, the effect of the Determination was that she could claim the sitting day relief entitlement in order to pay temporary staff who worked at the electorate office on occasions when she attended Parliament House on sitting days with one of her electorate officers, namely Mr Nicoletti, Ms Turner or Ms Ford.

To assist in the implementation of the Tribunal's determinations, the Speaker and Clerk of the Legislative Assembly issue guidelines to Members. In August

2006, Elaine Schofield, then Manager of Employee and Corporate Services, prepared a draft of the Legislative Assembly's policy and administrative practices document relating to the sitting day relief entitlement. The draft arrangements provided that, in accordance with the Determination, the entitlement to claim sitting day relief payments depended on a sitting day relief officer working at the electorate office when the electorate officer worked at Parliament House on a sitting day. On 25 September 2006, the draft policy and administrative practices document was approved by the Speaker.

Code of Conduct for Members

On 29 April 2003, Ms D'Amore's first day in Parliament as the Member for Drummoyne, the Code of Conduct for Members ("the Code"), which was applicable to all Members including Ms D'Amore, was adopted as a Sessional Order in the Legislative Assembly. The preamble to the Code reminded Members of their responsibility to "maintain the public trust placed in them by performing their duties with honesty and integrity, respecting the law and the institution of Parliament, and using their influence to advance the common good of the people of New South Wales".

Clause 4 of the Code provides that Members must apply public resources granted to them in accordance with any guidelines or rules about the use of those resources. The guidelines and rules that govern the use of these public resources are found in the determinations of the Tribunal, parliamentary policies and procedures, and the *New South Wales Legislative Assembly Members' Handbook*. Members, therefore, have an obligation arising from Clause 4 of the Code to ensure that they apply funds made available to them through the sitting day relief entitlement in accordance with conditions set out in the Tribunal's Determination and the administrative practices approved by the Speaker.

Allegations in detail and their relationship to corrupt conduct

It was alleged that Ms Harbilas and Ms La Manna worked at Parliament House as sitting day relief officers for Ms D'Amore in October and November 2006, and June 2007 respectively, and falsely represented on sitting day relief claim forms that Mr Nicoletti had worked at Parliament House on days when they had worked at Ms D'Amore's electorate office. Ms Harbilas and Ms La Manna's entitlement to claim sitting day relief payments from Parliament depended on them working at the electorate office when Mr Nicoletti worked at Parliament House on a sitting day. It was alleged that they had deliberately made the misrepresentations on the forms in order to obtain payments from Parliament to which they knew they were not entitled.

It was alleged that Ms D'Amore:

- i. knew that the entitlement to sitting day relief payments depended on the sitting day relief officer working at the electorate office when the electorate officer worked at Parliament House on sitting days
- ii. possessed of that knowledge, instructed or authorised Ms Harbilas and Ms La Manna to falsely represent on the claim forms that Mr Nicoletti had worked at Parliament House
- iii. signed the Member's Declaration on the sitting day relief claim forms knowing that the forms contained false representations and, in doing so, falsely certified that the conditions of the sitting day relief entitlement had been met
- iv. engaged in the conduct described in (ii) and (iii) with the intention of causing parliamentary officers to approve the claims for payment under the false belief that the conditions of the entitlement had been met
- v. caused Parliament to make payments of sitting day relief on the strength of the misrepresentations contained in the forms.

Corrupt conduct is defined in sections 8 and 9 of the ICAC Act. These sections are set out in Appendix 2. For the purpose of section 8, the conduct alleged against Ms D'Amore, if established, could fall within section 8(1)(a),(b) and (c), and section 8(2)(a) and (e).

For the purpose of section 9, the conduct alleged against Ms D'Amore, if established, could fall within section 9(1)(a), on the basis that it could constitute or involve a criminal offence, namely misconduct in public office.

The conduct could also fall within section 9(1)(d), on the basis that it could constitute or involve a substantial breach of Clause 4 of the Code of Conduct for Members, and sections 9(4) and 9(5), on the basis that it would cause a reasonable person to believe that it would bring the integrity of the office of a Member of the Legislative Assembly into serious disrepute and constitutes a breach of the law, namely the common law offence of misconduct in public office.

In the case of Mr Nicoletti, it was alleged that he had falsely confirmed in a conversation with an officer from Parliament that Ms Harbilas had worked at Parliament House when he knew that she had not. The Commission determined that there was insufficient evidence to support this allegation; evidence relating to this allegation and reasons for coming to that conclusion are dealt with in chapter 5 of this report.

A copy of the blank form used by Ms D'Amore, Ms Harbilas and Ms La Manna to make the claims for sitting day relief (the subject of the allegations) is provided opposite.

Legislative Assembly of New South Wales
SITTING DAY RELIEF – Claim and Payment Form

ELECTORATE NAME: _____

SURNAME: _____ FIRST NAME: _____
(Details of relief officer working in the Electorate Office)

EMPLOYEE NO: _____ or DATE OF BIRTH: _____

This form will be used to administer the entitlement and as the authority to pay the relief staff. The form should be completed each sitting week that the Sitting Day Relief entitlement is utilised. The declaration that an electorate officer has worked at Parliament House on sitting days and that temporary staff was engaged at the electorate office will meet the substantiation requirements that the terms of the PRT determination have been complied with.

Rates indicated are effective from 14/7/06

Please tick **one** of the following to indicate the rate of pay for the relief officer:

Electorate Officer Grade 1		<u>Salary + Allow</u>
		Subst. Rate
<input type="checkbox"/>	Substantive rate of pay for Job Share EO1	
<input type="checkbox"/>	Appointee is under 21 years and does not meet criteria outlined below	Age 19 & under Age 20
		\$16.36 per hour \$19.34 per hour
<input type="checkbox"/>	Appointee is 21 years or over and does not meet the criteria below	\$20.68 per hour
<input type="checkbox"/>	Appointee is a university graduate with at least one years office experience or a person with four years or more office experience	\$22.86 per hour
<input type="checkbox"/>	Special Salary Scale: will perform under limited or no supervision and in an on-going manner the following duties for a majority of the time: research work, speech writing, interviewing constituents and preparing non-routine correspondence	\$28.34 per hour

Electorate Officer Grade 2		<u>Salary + Allow</u>
		Subst. Rate
<input type="checkbox"/>	Substantive rate of pay for Job Share EO2	
<input type="checkbox"/>	First year	\$32.34 per hour
<input type="checkbox"/>	Second year – must have at least 4 yrs clerical/admin experience or special skills (eg computer, tertiary quals etc)	\$33.23 per hour
<input type="checkbox"/>	Third year – must have at least 6 years clerical/admin experience	\$35.56 per hour

DATE of employment of relief staff in the electorate office	NAME of electorate officer working at Parliament House	Employee Services Office use only
		Relief Register Noted : By : Date to Payroll :
Mon		Payroll Office Processing only
Tues		
Wed		
Thurs		
Friday		

Member's Declaration: *The electorate officer nominated above worked at Parliament House and temporary staff worked at my electorate office on the sitting days the relief staff entitlement has been claimed.*

Name: _____

Signature: _____

Date: _____

Relief Electorate Officer: *I worked at the above electorate office on the days claimed for employment. I understand the rate of pay is an "all incidents" of employment rate in lieu of casual loading. A standard 7 hours per day will be worked and no overtime payment will be made.*

Name: _____

Signature: _____

Date: _____

Approved: _____

(Clerk of the Legislative Assembly or Delegate)

Date: _____

Chapter 3: Ms D'Amore and Ms Harbilas

This chapter examines the evidence obtained by the Commission in relation to the allegation that in 2006 Ms D'Amore and Ms Harbilas falsely claimed payments from the sitting day relief entitlement. It also sets out the Commission's findings and contains a statement required to be made under section 74A(2) of the ICAC Act.

Overview

Between 4 September 2006 and 26 June 2007, 12 sitting day relief claim forms relating to a total of 32 sitting days, signed by Ms D'Amore, were approved and paid by Parliament. Two of the 12 forms completed by Ms Harbilas claimed payment for relief work performed by her for a total of six sitting days during the period from 24 October 2006 to 26 October 2006, and from 14 November 2006 to 16 November 2006. In both of these forms, Ms Harbilas indicated that Mr Nicoletti had worked at Parliament House and she had worked at the electorate office on each of the six sitting days in question. It was not disputed at the public inquiry that these representations were false and that, in fact, Ms Harbilas had worked at Parliament House and Mr Nicoletti had worked at the electorate office on the sitting days (the subject of the claims).

According to Ms Harbilas, during a conversation held between her and Ms D'Amore at Ms D'Amore's office at Parliament House, Ms D'Amore told her to insert the name of Mr Nicoletti as the electorate officer working at Parliament House on the first form, even though both Ms Harbilas and Ms D'Amore knew that Mr Nicoletti had not worked at Parliament House during the relevant period but had worked at Ms D'Amore's electorate office. According to Ms Harbilas, when later completing the second form, she simply followed the procedure that Ms D'Amore had instructed her to apply when she completed the first form.

Ms D'Amore vigorously denied any such conversation and that she had given Ms Harbilas any such instruction. Ms D'Amore admitted signing the two forms but asserted that she signed them without reading them.

While Ms D'Amore's answers to the allegations raise several important issues, the crucial dispute is whether Ms

Harbilas is to be believed in regard to her evidence as to the instruction Ms D'Amore gave her when she completed the first claim form. Alexander Street SC, who appeared on behalf of Ms D'Amore (together with Greg O'Mahoney), submitted that Ms Harbilas was not a credible witness and drew attention to what he argued were several internal inconsistencies and other unsatisfactory aspects in Ms Harbilas' evidence. Counsel Assisting advanced submissions to the contrary, and criticised Ms D'Amore's demeanour and the content of her evidence.

The issues that arose required the Commission to give careful attention to the way in which the two opposing witnesses testified and to their demeanour, generally. The Commission weighed its impressions as to demeanour against the probable facts. It also examined whether the disputed evidence was consistent with the incontrovertible facts, the facts that were not in dispute, and other relevant evidence in the case. The probabilities, and overall consistency with other relevant evidence that was led, were taken into account.

Some of the criticisms of Ms Harbilas' testimony made by Mr Street are justified. Ms Harbilas, herself, conceded that she had no independent recollection of the words that were spoken during the conversation in question. In addition, Ms Harbilas' evidence as to precisely when she spoke to Ms D'Amore, whether she had the form with her when the conversation occurred, and what she did to bring the form to Ms D'Amore's attention, is uncertain and, for that reason, not reliable.

Nevertheless, the Commission accepts that the following parts of Ms Harbilas' evidence are true, namely that:

- a. Ms Harbilas asked Ms D'Amore whose name she should put in the box (in the form), relating to the name of the electorate officer working at Parliament House
- b. Ms D'Amore replied that Mr Nicoletti's name should be inserted in that box (even though, to Ms D'Amore's knowledge, he was not the person who had worked at Parliament House on the days claimed on the form)

- c. what is set out in (a) and (b) comprises the “gist” (as described by Ms Harbilas in her testimony) of the conversation
- d. Ms Harbilas has an independent and accurate recollection of the gist of the conversation so set out
- e. Ms Harbilas knew that by putting Mr Nicoletti’s name in that box she “was doing the wrong thing”.

In coming to this conclusion, the Commission has borne in mind Sir Owen Dixon’s statement in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361 to 362:

Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters ‘reasonable satisfaction’ should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

In the language of *Briginshaw v Briginshaw*, the Commission accepts that the seriousness of the finding and the gravity of the consequences flowing from it are such that it requires “clear or cogent or strict proof” in order to be made out on the balance of probabilities.

The Commission has also had due regard to *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170, where Mason CJ, Brennan, Deane and Gaudron JJ said at 171:

[T]he strength of the evidence necessary to establish a fact or facts on the balance of probabilities may vary according to the nature of what it is sought to

prove. Thus, authoritative statements have often been made to the effect that clear or cogent or strict proof is necessary ‘where so serious a matter as fraud is to be found’. Statements to that effect should not, however, be understood as directed to the standard of proof. Rather, they should be understood as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a Court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct.

The Commission has considered the following remarks of McLelland CJ in Eq in *Watson v Foxman* (1995) 49 NSWLR 315 (at 318–319):

*Where, in civil proceedings, a party alleges that the conduct of another was misleading or deceptive, or likely to mislead or deceive (which I will compendiously describe as ‘misleading’) within the meaning of s 52 of the Trade Practices Act 1974 (Cth) (or s 42 of the Fair Trading Act), it is ordinarily necessary for that party to prove to the reasonable satisfaction of the court: (1) what the alleged conduct was; and (2) circumstances which rendered the conduct misleading. **Where the conduct is the speaking of words in the course of a conversation, it is necessary that the words spoken be proved with a degree of precision sufficient to enable the court to be reasonably satisfied that they were in fact misleading in the proved circumstances. In many cases (but not all) the question whether spoken words were misleading may depend upon what, if examined at the time, may have been seen to be relatively subtle nuances flowing from the use of one word, phrase or grammatical construction rather than another, or the presence or absence of some qualifying word or phrase, or condition.** [emphasis added]*

Significantly, the “gist” of the conversation, as described by Ms Harbilas in her testimony (and set out in (a) and (b) in the list above) is relatively concise, simple and straightforward. It does not give rise to any question

involving, “relatively subtle nuances flowing from the use of one word, phrase or grammatical construction rather than another, or the presence or absence of some qualifying word or phrase, or condition”.

The Commission has carefully weighed the inconsistencies, uncertainties and other defects in parts of Ms Harbilas' evidence and has come to the conclusion that her evidence as a whole constitutes clear and cogent proof of the matters listed in (a) to (e) above. In addition, in regard to the overall probabilities and other relevant evidence in the case, the Commission has concluded that these matters are consistent with and, indeed, reinforce the conclusions set out in (a) to (e) above.

Other issues were raised on behalf of Ms D'Amore in written submissions provided to the Commission at the commencement of the public inquiry and following the completion of the evidence. In particular, it was submitted that the Tribunal's Determination as to staffing, when properly construed, did not restrict the sitting day relief officer from working at Parliament House on a sitting day. As a consequence, it was submitted that, as the claims for sitting day relief made in relation to Ms Harbilas and Ms La Manna did not breach the conditions of the entitlement, it was not open to the Commission to find that Ms D'Amore had engaged in corrupt conduct in respect of them.

The Commission does not accept this argument. Whatever the “proper” construction of the Determination, Ms D'Amore knew that Parliament believed that sitting day relief would be paid only if the sitting day relief officer worked in her electorate office and the permanent electorate officer worked at Parliament House. In this knowledge, Ms D'Amore instructed Ms Harbilas to state false information on the claim form in which sitting day relief was being claimed, namely that Mr Nicoletti had worked at Parliament House and Ms Harbilas had worked in the electorate office. Ms D'Amore gave this instruction as she knew that, whatever the “proper” construction of the Determination, Parliament would not pay sitting day relief if the sitting day relief officer worked at Parliament House and the permanent electorate officer worked at the electorate office. The instruction that Ms D'Amore gave to Ms Harbilas was intended to put Parliament under the false impression that the requirements for sitting day relief (as rightly or wrongly understood by Parliament) had been met. Ms D'Amore knowingly intended to induce (and did induce) Parliament to pay sitting day relief on a false premise. This conduct on the part of Ms D'Amore was corrupt, within the meaning of this term under the ICAC Act.

In any event, Parliament's understanding of the Determination was correct. The Commission's reasons for this conclusion are set out later in this chapter. It is convenient to deal, first, with the evidence concerning

the two claim forms completed by Ms Harbilas and the Commission's reasons for concluding that Ms D'Amore instructed Ms Harbilas to complete the first form falsely.

The respective versions of Ms Harbilas and Ms D'Amore

Ms Harbilas commenced work for Ms D'Amore as an electorate officer (grade one) in 2003. Within six months, she was promoted to the senior electorate officer position. She occupied that position for a further six months. She resigned in 2004, and continued to keep in contact with Ms D'Amore on an occasional basis. Ms Harbilas said that she did voluntary work for Ms D'Amore during the March 2007 election campaign.

Ms Harbilas said that she met with Ms D'Amore about one or two weeks prior to starting work in 2006 as a sitting day relief officer at Parliament House. She said that, at the meeting, Ms D'Amore told her that funds were available for an additional person to be able to work for her on parliamentary sitting days. She said that Ms D'Amore asked her if she would like to work on sitting days at Parliament House and she accepted the offer.

According to Ms D'Amore, she asked Ms Harbilas if she was interested in undertaking sitting day relief work on parliamentary sitting days, and Ms Harbilas said that she could work at Parliament House rather than the electorate office. The Commission does not find it necessary to resolve this conflict in the evidence as there was no dispute that Ms D'Amore and Ms Harbilas agreed that Ms Harbilas would work at Parliament House only, as Ms Harbilas in fact did.

Ms Harbilas worked at Parliament House as a sitting day relief officer from 24 to 26 October 2006. She said that in order to get paid for the work she had performed on these days she completed a claim form that she believed she had obtained from a filing cabinet in Ms D'Amore's parliamentary office. Ms Harbilas said that she understood from reading the form that an electorate officer was required to work at Parliament House and that her entitlement to be paid by Parliament as a sitting day relief officer depended upon her working at the electorate office. It is plain from the form that Ms Harbilas' understanding was correct.

Ms Harbilas gave the following evidence when first questioned about the completion of the forms during her evidence at a compulsory examination conducted before the public inquiry:

[The Commissioner] Q: And how did you know that you had to fill out a form?

[Ms Harbilas] A: *So I could get paid.*

[Q]: *But who told you?*

[A]: *Angela said to fill out the form. I mean I...*

[Q]: *Did she give you instructions [on] how to fill it out?*

[A]: *Well, the, the only instructions were about whose name I was to put.*

[Q]: *What did she say?*

[A]: *To write David Nicoletti's name.*

[Q]: *Did she tell you that once or more than once?*

[A]: *Probably just the once. I can't tell you for sure.*

According to Ms Harbilas, this was the “gist” of her conversation with Ms D’Amore. She did not resile from this evidence at the public inquiry. She said that at the time she wrote Mr Nicoletti’s name on the form she thought she “was doing the wrong thing”. In the view of the Commission, this evidence has the ring of truth.

Ms Harbilas said that the conversation took place in Ms D’Amore’s parliamentary office but that she could not recall whether the conversation took place prior to completing the form or at the time she completed the form. Ms Harbilas said she either left the form on Ms D’Amore’s desk for her to sign or gave it to her for her signature.

Ms Harbilas said that in relation to the sitting day relief claim form for the period 14 to 16 November 2006, she wrote Mr Nicoletti’s name on the form to falsely indicate that he had worked at Parliament House, in accordance with Ms D’Amore’s initial instruction. In effect, she repeated what Ms D’Amore had initially told her to do.

The evidence given by Ms Harbilas in relation to the conversation with Ms D’Amore has to be seen against the information she gave to Commission investigators both prior to the commencement of the public inquiry and to her compulsory examination. During an interview with Commission investigators, she denied that she had worked at Parliament House as a sitting day relief officer in 2006, and said that she worked at the electorate office when Ms D’Amore attended Parliament House with a permanent electorate officer.

In subsequent compulsory examinations held before the public inquiry, Ms Harbilas accepted that she had worked at Parliament House on the relevant days.

During her evidence at the public inquiry, Ms Harbilas, after some prevarication, said that when she was interviewed by Commission investigators she had told deliberate lies about where she had worked as a sitting day relief officer. She agreed that she had done so in order to protect Ms D’Amore and stop the investigation. Ms Harbilas said that, after her interview with Commission investigators and before she gave evidence at the first compulsory examination, she was made aware of the “legal implications” of what she had told Commission investigators. She then realised that it was better for her to tell the truth “all the time”. Ms Harbilas did not give evidence as to who made her aware of the legal implications. Whoever it was, it was not any person from the Commission.

Ms Harbilas testified that she telephoned Ms D’Amore immediately after her interview with Commission investigators and told her of the interview. Ms Harbilas told Ms D’Amore that she had informed the Commission investigators that she had worked at the electorate office and not at Parliament House. She said that she asked Ms D’Amore whether she had heard anything about the Commission’s investigation. Ms D’Amore told her not to worry, that “it was a mistake”, and reminded her “that there were people all over the place”. It is noteworthy that Ms D’Amore did not express surprise at the interest the Commission investigators had in where Ms Harbilas had worked, and in the fact that Ms Harbilas had lied to them.

It was put to Ms Harbilas by Mr Street that Ms D’Amore had told her to tell the truth to the Commission. However, Ms Harbilas said that she could not recall that part of the conversation. When questioned by Mr Street, Ms D’Amore, on the other hand, said that during their telephone conversation Ms Harbilas had asked Ms D’Amore, if she were questioned by the Commission, to be vague about where Ms Harbilas had worked on the sitting days. Ms D’Amore said that she told Ms Harbilas that she would not be vague and would tell the Commission what she recalled.

In effect, according to Ms D’Amore, Ms Harbilas telephoned her to ask her to be protective of her (Ms Harbilas), by being vague in her responses to the Commission. This was directly contrary to Ms Harbilas’ evidence that she phoned to enquire whether Ms D’Amore knew of the Commission’s investigation and that Ms D’Amore, in effect, attempted to calm her anxiety. The difference in the versions was so sharp that it would be expected that Ms Harbilas would have been questioned about Ms D’Amore’s version. That, however, did not occur. This omission, and the manner in which Ms D’Amore gave this evidence, lead the Commission to conclude that Ms D’Amore’s version of the telephone conversation was invention on her part.

Ms Harbilas was questioned extensively by Mr Street about her recollection of her conversation with Ms D'Amore. At one point, she agreed with the proposition that she had no independent recollection of any instruction by Ms D'Amore to write Mr Nicoletti's name on the first form.

Later she said that, while she could not recall the specific words used by Ms D'Amore, she could recall the gist of the conversation. She explained that the "gist" was that Ms D'Amore instructed her to write Mr Nicoletti's name on the form in the space where the name of the permanent electorate office attending Parliament House was to be written. On several occasions thereafter, Ms Harbilas testified to the effect that, while she could not recall precisely what was said during the conversation, she could recall the gist of the conversation well enough.

Ms Harbilas' insistence that she remembered the gist but not the specific words of the conversation was not a recent invention. At an earlier compulsory examination she had given evidence to the same effect.

It was submitted on behalf of Ms D'Amore that Ms Harbilas' contention that she had a recollection of the gist of the conversation should be rejected because she had initially said that she had no recollection of that conversation. In the Commission's view, however, when regard is had to her evidence as a whole, Ms Harbilas – in initially agreeing that she had no independent recollection of the instruction by Ms D'Amore – was conceding no more than that she could not recall the precise words used by Ms D'Amore.

In the course of questioning by Mr Street, Ms Harbilas, in effect, sought to justify her recollection of the conversation with Ms D'Amore by asserting that she did not know who Mr Nicoletti was when she filled out the form, and did not make the name up "out of thin air".

Earlier in her evidence, however, Ms Harbilas agreed that by the time she signed the first form she knew that Mr Nicoletti was the senior staff member at the electorate office. The Commission accepts Mr Street's criticism of Ms Harbilas that in saying that she did not know who Mr Nicoletti was when she signed the form she was attempting, by incorrect evidence, to bolster her position.

The Commission, however, is satisfied that she was not being dishonest in giving this evidence. The Commission is satisfied that Ms Harbilas put the proposition forward in an argumentative way, in response to questioning that was imputing dishonesty on her part. She was not intending to lie. In response to further questioning, Ms Harbilas immediately acknowledged that she did know who Mr Nicoletti was when she filled in the form.

Ms D'Amore denied instructing Ms Harbilas to write

Mr Nicoletti's name on the form. While Ms D'Amore did not dispute that she signed both claim forms after they had been signed by Ms Harbilas, she said that, as it was her practice to sign sitting day relief claim forms without paying them much attention, she did not appreciate that Ms Harbilas had written Mr Nicoletti's name on the forms to indicate that he had worked at Parliament House. Ms D'Amore told the Commission that at all times in 2006 and 2007 she was unaware that it was a condition of the sitting day relief entitlement that the sitting day relief officer was required to work at the electorate office when an electorate officer worked at Parliament House. She said that she understood that the sitting day relief officer could work at the electorate office or Parliament House. Ms D'Amore said that if she had properly understood the conditions of the sitting day relief entitlement she would not have agreed to engage Ms Harbilas at Parliament House.

She said she could not offer any explanation as to why Ms Harbilas placed incorrect information on the forms. Ms D'Amore said that Ms Harbilas was a good employee who possessed very good skills. She said that she regarded Ms Harbilas as a friend as at October 2006. Ms D'Amore agreed that she would have been outraged if she discovered that someone had presented her with a form to sign containing false information. She said that in circumstances such as these she would not have signed the form but sought an explanation from the person who had completed the form.

Ms D'Amore denied that she had any involvement in the falsity engaged in by Ms Harbilas.

The credibility of Ms D'Amore

In the Commission's view, there are some general characteristics about Ms D'Amore's evidence that detract from the weight that can be attached to it. She was often unwilling to answer difficult questions candidly, and inclined to evade questions by using carefully chosen words that were intended to place her version of events in a better light. At some points in her evidence, Ms D'Amore simply refused to provide responsive answers to questions, despite being repeatedly asked to do so. She did not impress as a reliable witness. The Commission prefers the evidence of Ms Harbilas, where it conflicts with Ms D'Amore's.

Ms D'Amore's knowledge of the requirements of the sitting day relief entitlement

A crucial aspect of Ms D'Amore's answer to the allegations was that she was unaware, at the time that she had signed the forms completed by Ms Harbilas, that the entitlement to be paid sitting day relief depended on

Ms Harbilas working at the electorate office when an electorate officer worked at Parliament House. If Ms D'Amore genuinely held the belief that the sitting day relief officer was permitted to work at either location, as she contended in her evidence, it followed that there was no reason for her to instruct Ms Harbilas to falsely complete the form. This aspect of Ms D'Amore's evidence would, if accepted, substantially undermine the credibility of Ms Harbilas' account.

Prior to the Tribunal's Determination of July 2006, the need for additional staff was a matter of general concern for Members of Parliament. Before handing down the Determination, the Tribunal received submissions from the major political parties, individual Members and Presiding Officers about staffing. The Speaker of the Legislative Assembly recommended that the Tribunal provide each member with a third staff member. It was submitted by members that this would accommodate the increase in workload in electorate offices resulting from the increase in constituent participation in electorate matters. Various members also made reference in their submissions to their practice of bringing one electorate officer into Parliament House on sitting days. This was said to create an undesirable occupational health and safety risk for the officer remaining in the electorate office.

Ms D'Amore shared the concern of other Members about staffing. Ms D'Amore said that securing additional staff was important to her. Mr Nicoletti told the Commission that Ms D'Amore wanted an additional staff member at the electorate office on sitting days and the possibility of obtaining such an officer through the sitting day relief entitlement was a matter of some significance for those officers who worked at Parliament House and Ms D'Amore.

At approximately 3:12 pm on 21 July 2006, Greg McGill, Financial Controller of the Legislative Assembly, emailed a copy of the Tribunal's 2006 Report and Determination to the parliamentary email address of all Members, including Ms D'Amore. The email sent to Ms D'Amore was opened at approximately 3:40 pm on the same day. A hard copy of the Tribunal's Report and Determination was also forwarded to Ms D'Amore.

It was not disputed that the email was received into Ms D'Amore's email account on 21 July 2006. Ms D'Amore said she may have opened it but had no recollection of doing so. Ms D'Amore did not contend, and there was no evidence before the Commission to suggest, that someone else opened the email. The Commission is satisfied that Ms D'Amore opened the email, and realised it contained a copy of the Tribunal's 2006 Report and Determination.

Ms D'Amore initially said that she had not read the Determination. She advanced a number of reasons by way of explanation for her failure to read it, including that she

was busy at the time she received the email, that she was not following the issue of additional staffing closely, that it may not have occurred to her at the time that she received the copy of the Determination in which the Tribunal had dealt with the submission for additional staffing, and that, although she regarded the Determination as an important document, she relied upon a ledger sent to her by Parliament at the start of each financial year that quantified her available allowances.

The Commission is not persuaded by the reasons advanced by Ms D'Amore.

Prior to her election to Parliament in 2003, Ms D'Amore had substantial training and experience in industrial relations and was familiar with industrial awards. Ms D'Amore had a Bachelor of Arts degree majoring in industrial relations.

She had also worked as a research officer and assistant industrial officer for the Municipal Employees' Union. In that role, Ms D'Amore identified the training needs of union members, based on her examination of applicable industrial awards and enterprise agreements. She also provided assistance to the main industrial officer who appeared before the Industrial Relations Commission on behalf of the Union. Ms D'Amore left her position with the Municipal Employees' Union to work for the NSW Nurses Association, initially as an organiser, and then later as an industrial officer. In the latter role, she appeared before the Industrial Relations Commission on behalf of the Nurses Association in relation to industrial disputes and to ratify enterprise agreements, and identified ways in which applicable awards and enterprise agreements could be changed or renegotiated to improve the conditions of employment for union members.

Ms D'Amore initially told the Commission that she knew that the Tribunal made annual determinations about Members' entitlements, and, as a result of being present at discussions conducted amongst her colleagues, also knew that a submission had been made to the Tribunal for additional staffing.

Mr McGill's email did not expressly alert Ms D'Amore to the fact that the Tribunal's Report and Determination made provision for additional staffing. Nevertheless, Ms D'Amore had a general interest in industrial matters, was experienced – generally – in industrial issues, particularly awards, knew that a submission for additional staff had been made to the Tribunal, and personally wished to obtain an additional staff member on sitting days. In these circumstances, it is likely that she would have read the Determination to ascertain whether it said anything about additional staffing.

Ms D'Amore had other reasons to read the Determination. She accepted that she had a responsibility as a Member of Parliament to acquaint herself with restrictions applying to Members' entitlements. She also acknowledged that a

ledger received from Parliament would be of no assistance to her in familiarising herself with the conditions upon which the new staffing entitlement could be claimed.

It is noteworthy that Ms D'Amore, having been taken by Counsel Assisting to various passages of the Determination relevant to the issue of additional staffing, said that notwithstanding that she had no recollection of reading the Determination, she may have done so. She said that if she had read the Determination, she would have appreciated the conditions upon which the sitting day relief entitlement could be claimed.

Memorandum of 18 August 2006 and email of 19 September 2007

Other documents were sent by Parliament to all Members, including Ms D'Amore, which squarely dealt with or referred to the relevant terms of the staffing entitlement.

On 18 August 2006, Elaine Schofield emailed a copy of the draft of the Legislative Assembly's policy and administrative practices document relating to sitting day relief to the parliamentary email address of all Members, including Ms D'Amore. The draft set out in clear terms the condition that the sitting day relief officer was required to work at the electorate office when the electorate officer worked at Parliament House on a sitting day. Also attached to the email was a one-page memorandum entitled, "Implementation of Parliamentary Remuneration Tribunal Determination 2006 – Staffing", an extract from the Tribunal's Determination, a copy of a blank claim form (as pictured on page 11 in this report) and a form to be used by electorate officers in order to record the number of days for which sitting day relief had been claimed in a financial year.

The email and memorandum invited Members to provide feedback about the draft policy and administrative practices document to either the Clerk of the Legislative Assembly or Ms Schofield.

The email that was sent to Ms D'Amore was opened at 11:08 am on 19 August 2006. The Commission is satisfied that Ms D'Amore opened the email. Ms D'Amore did not dispute this. Mr Nicoletti and Ms Ford said it was unlikely that they worked at the electorate office on that day. Mr Nicoletti said that, while he had access to Ms D'Amore's email account, he did not open her emails because he was told by another staff member in early 2006 that Ms D'Amore took responsibility for her own emails. Ms Ford said that she did not have access to Ms D'Amore's email account, and did not open emails addressed to her.

Ms D'Amore used a BlackBerry on 19 August 2006, which was synchronised with her parliamentary email account. She said that had she opened the email using her BlackBerry, she would not have read the memorandum

and draft administrative practices document on the BlackBerry. She said that, although she had no recollection of doing so, it was possible, albeit unlikely, that she read those documents when she attended the electorate office on Monday, 21 August 2006. It is noteworthy that the documents attached to the email consisted of seven pages, which, unlike the Report and Determination, would have taken a short time to read.

On the Monday after receiving the memorandum and draft administrative guidelines, Ms D'Amore telephoned Ms Schofield to discuss the issue of funding for the purchase of a computer intended for her use in her parliamentary office. Ms Schofield said that she had no independent recollection of the conversation but she had made a contemporaneous record of the substance of the conversation in a file note, in the following terms:

Computers – the biggest question is access. If the person is coming to Parliament. Purchase LSA – computer. Wants to know whether can purchase another computer from LSA. Needs to have network connectivity. Needs to know ASAP so they can set it up and organise purchase. Does not have laptop – has desk PC that she uses herself. Laptops provided were useless. This is an issue that members want resolved, otherwise 'ruckus' and reps to Speaker. If 'you people' don't realise and resolve the issue.

The accuracy of Ms Schofield's note was not the subject of any dispute.

Ms Schofield explained that the acronym, "LSA" stood for the Logistic Support Allocation, which was an entitlement that Members have to purchase equipment.

Ms Schofield was asked, "What gave rise to that discussion?" (that is, her telephone conversation with Ms D'Amore). She replied, "It was in the context of sitting day relief". She was not challenged about this reply. Ms D'Amore, too, agreed that the conversation was in the context of the sitting day relief entitlement (even though she did not recall speaking to Ms Schofield).

Ms Schofield said that, following the telephone conversation with Ms D'Amore, she made enquiries at Parliament to determine whether a short-term solution could be found about the request for computer facilities made by Ms D'Amore. Ms Schofield sent an email on 21 August 2006 to other staff at Parliament advising that:

We have had representations now from two members regarding computer facilities at Parliament House next week for the electorate officer who will work at Parliament house on sitting days. Two members had made enquiries, specifically that they are willing to buy additional computers from their LSA if this is Approved by the Legislative Assembly. Generally the representations

are that members will want these staff to have computer access and network access to allow them to work at Parliament House.

...

The short term solution for next week 29 August 2006 is to try to find some old computer [sic] that have been replaced here at Parl House (from upgrade to Parliamentary staff computers) and place them in the outer offices of members who have requested/made reps about computers. At the moment there are two requests – however this will increase this week and next week as more members address this question.

Ms Schofield said that Ms D'Amore was one of the "two members" referred to in the email. She said that she telephoned Ms D'Amore after sending the email, and advised her that she had found some computers to put in her office for the following week.

Ms D'Amore said that the phone call to Ms Schofield may have been unconnected with her receipt of the draft policy and administrative practices document and explicable on another basis. Ms D'Amore said that computers for her staff were always a matter of concern for her, and that she had previously complained about the issue. She said that the conversation attributed to her by Ms Schofield may have arisen because of those ongoing concerns and not because she had read the draft administrative practices document. It was submitted on behalf of Ms D'Amore that her conversation with Ms Schofield was not a basis for inferring that Ms D'Amore had read the draft.

In the Commission's view, while Ms D'Amore has advanced a possible explanation for her conversation with Ms Schofield, the more likely explanation lies elsewhere. The penultimate paragraph of the draft policy and administrative practices document, which had been emailed to Ms D'Amore on 18 August 2006, provided the following:

Equipment at Parliament House – Members must utilise the existing computer and printer equipment. Members are provided with a desktop computer for use at Parliament House and a laptop computer. The Legislative Assembly has no funding for additional computer equipment in the short term.

It would appear from Ms Schofield's file note that Ms D'Amore was concerned to find out from Ms Schofield whether she could fund the purchase of a computer from her Logistic Support Allocation. This is consistent with Ms D'Amore having read the penultimate paragraph of the draft administrative practices document and formed the view that, in the absence of funding from the Legislative Assembly, it was incumbent upon her to find another

means to fund the purchase of a computer for her staff working at Parliament House.

In the Commission's view, the circumstances of Ms D'Amore calling Ms Schofield, who was nominated in the email and memorandum as a contact person to whom Members could provide feedback, on the first available day after opening the email for the purpose of discussing an issue directly referable to a matter raised in the draft administrative practices document, are such as to make it improbable that the conversation with Ms Schofield on 21 August 2006 was unconnected to Ms D'Amore's reading of the draft administrative practices document. This view is reinforced by the evidence that that conversation had occurred in the context of sitting day relief. Further, it is exceedingly unlikely that an experienced Member like Ms D'Amore, who regarded the need for additional staffing as an important issue, would not have been sufficiently interested to take the trouble of reading the draft administrative practices document that explained the terms on which sitting day relief could be properly claimed.

The Tribunal's Determination remained in force until 30 August 2007, when it was superseded by a new determination. On 19 September 2007, Ms Schofield sent an email to all Members, including Ms D'Amore, advising of the change to the 2006 staffing entitlement, and enclosing an extract from the 2007 determination. In the text of the email, Ms Schofield made the following comments:

We wish to draw your attention to the changed provisions for the engagement of additional temporary staff in the 2007 determination of the Parliamentary Remuneration Tribunal.

Previously the sitting day relief entitlement required that members have one of their staff at Parliament House on sitting days and the relief staff engaged at the electorate office (for country members the relief staff could be engaged at Parliament House).

The PRT has removed both conditions. Members may now engage temporary staff up to the equivalent of 61 days per year at any time through the year and at either Parliament House or the Electorate Office.

Records establish that the email sent to Ms D'Amore was opened on 4 October 2007. Ms D'Amore said that she may have opened the email, but that it did not necessarily follow that she read it. She suggested that the subject matter would not really have concerned her and doubted whether she would have scrolled down far enough to read the comments made by Ms Schofield about the previous staffing entitlement.

The Commission does not accept this evidence. The email consists of six paragraphs and takes up less than half a page. It required, at the very least, a cursory reading by Ms

D'Amore before she was in a position to decide that the subject matter was of a nature that she could disregard. Furthermore, in the Commission' view, Ms D'Amore's expressed indifference to the email and its content was a pretense. The Commission is satisfied that Ms D'Amore was reluctant to admit that she had read the email. This is because she realised it referred to the requirement in the 2006 Determination that the sitting day relief officer should be engaged to work at the electorate office and that she was anxious to avoid admitting knowledge of this issue.

The forms

Ms D'Amore said that she did not read the forms, detailing claims for sitting day relief, prior to signing them. The following extract from her evidence is revealing, as it contains examples of how Ms D'Amore would attempt to avoid answering questions put to her:

[Counsel Assisting] Q: *All right. Okay. Would you accept that the sitting day relief claim forms are requiring more than just your signature?*

[Ms D'Amore] A: *The sitting day relief forms were filled out by staff and presented to me for signature.*

[Q]: *Would you agree that the sitting day relief forms require more from you than just your signature?*

[A]: *No, not really.*

[Q]: *Well, perhaps if you wouldn't mind having a look at the form at page 12. Do you see that? Do you see where your signature, sorry, page 10. Sorry, did I say 12? I'm sorry, page 10. Would you agree that that form requires more of you than just your signature?*

[A]: *It has my signature on it.*

[Q]: *Sure, but do you attach any significance at all to that, those bold words, Member's Declaration?*

[A]: *No, no.*

[Q]: *Did you ever read that?*

[A]: *No.*

[Q]: *Right. So I'm just curious as to*

how you know where to sign. How do you know where it says name, signature and date at the bottom of the form, that that's where you're supposed to put your signature and your name if you don't read the words, member's declaration? I'm just a little puzzled, Ms D'Amore?

[A]: *Mmm. These forms when they come to me are presented to me for my signature. You see that it says member's, so, and they would have been already signed by the time they came to me.*

[Q]: *Sorry, I see where it says member's, but the word right next to member's in bold text happens to be the word declaration, doesn't it, Ms D'Amore?*

[A]: *Yes, I understand that.*

[Q]: *Did you not read the word declaration, you stopped as soon as you read the word member because you were such a busy woman?*

[A]: *You just, you didn't allow me to finish.*

[Q]: *Kindly finish?*

[A]: *As I was saying, there's one box there with the signature of the relief officer and next to it is the empty box, so the only place I could sign was there.*

[Q]: *But you said you read the word member's above the, at the top of the box?*

[A]: *No, I'm referring to that now, but typically, because the relief officer has signed here to the right, the only empty box is to the left and that's where I signed, and staff come to you and say, can you please sign the form.*

[The Commissioner] Q: *So are you really saying that when you wrote your name*

next to the word name and had to look at the word name, you didn't see the words, member's declaration?

[A]: *I may have. I may have given it just a glimpse, a second glimpse, but I knew that that's where I was signing.*

[Q]: *Well, when you got a glimpse, you said you may have got a glimpse. Are you, are you saying that you don't know whether you read the word, member's declaration or not?*

[A]: *No, I don't, Commissioner. I don't recall reading that section.*

[Q]: *So when you saw the word name, you're saying that really, as I understand your evidence, the words, member's declaration made no impression on you?*

[A]: *No, other than I'm signing the name, signature and date.*

[Q]: *So I mean when you're saying no, are you agreeing with me?*

[A]: *Yeah, it made no impression on me.*

In the Commission's view, Ms D'Amore's responses in the above exchange are unconvincing. In the Commission's view, it is highly unlikely that Ms D'Amore would not have read the words "Member's Declaration" when signing the forms.

The form appears on page 11 of this report. It can be seen that the Member has to write on the form in three places at the bottom of the box, on the bottom left-hand side of the form, indicated by three lines: first, a line that proceeds horizontally from the printed word "Name"; secondly a line so proceeding from the word "Signature"; and thirdly a line so proceeding from the word "Date".

In signing and otherwise completing the 12 forms in issue in this inquiry, Ms D'Amore had to read at least the words "Name", "Signature", and "Date", otherwise she would not have known what part of the form she had to fill in. It is difficult to accept that, in looking at the form in order to know where to sign, Ms D'Amore would not have read the words "Member's Declaration", which were typed in bold at the top of the box and only four lines above the place where she had to write her name. Relevantly, the only part of the form that indicates where it has to be filled in by a Member is the part headed "Member's Declaration".

Had Ms D'Amore read the words "Member's Declaration", there would have been every incentive for her to have read the 28 words that followed, namely:

The electorate officer nominated above worked at Parliament House and temporary staff worked at my electorate office on the sitting days the relief staff entitlement has been claimed.

When questioned about her failure to read these words, Ms D'Amore said, "it may be incorrect but it's just the practice". The "practice" was her practice. When asked whether she now thought that the practice was wrong, she resisted answering the question but eventually conceded, "It could be seen as wrong". She asserted, however, that she attached no significance to the bold words "Member's Declaration".

Immediately adjacent to the Member's box on the form is the "Relief Electorate Officer" box. When the forms were presented to Ms D'Amore for signature, they had been completed and signed by the sitting day relief officers concerned (Ms Harbilas and Ms La Manna). The following exchange in this regard is relevant:

[The Commissioner] Q: *You're being asked what you read?*

[Ms D'Amore] A: *I wasn't reading anything on this form. I had a sitting day relief form that was being presented to me.*

[Q]: *Did you read the, did you read the words name, signature and date under the words member's declaration?*

[A]: *Yes, when I was filling it in I would've read that.*

[Counsel Assisting] Q: *So do you say you only read three words on the whole document name, signature and date?*

[A]: *What I'm saying is when this was presented to me for signature, I would've immediately gone to where I needed to sign and put my name, signature and date.*

[Q]: *But do you say you didn't read any words apart from those three words?*

[A]: *No, I probably would've looked at who the relief electorate officer was.*

[Q]: *And why would you have done that?*

I worked at the above electorate office on the days claimed for employment.

[A]: *Because that's who the form is for.*

This behaviour, as Ms D'Amore expressed it, sounds "silly". But the silliness is taken to an exponential degree when regard is had to the box headed "Name of electorate officer working at Parliament House". This box is more or less in the centre of the form, immediately above the Member's box and the Relief Electorate Officer's box. In the majority of the 12 relevant forms that Ms D'Amore signed, the name "David Nicoletti" was printed in large block letters three or four times in the box as being the name of the electorate officer working at Parliament House on the days claimed in the form. These names are so large and so clearly printed that they jump out at the reader. The following exchange in this regard is relevant:

[Q]: *Okay. So looking at who the relief electorate officer was, would you look at the top to see the surname and the first name?*

[The Commissioner] Q: *...I understand your evidence that you only just looked at where you had to sign and signed, but the four names, the four spaces filled in with the day with David Nicoletti in them, am I, I'm looking at them and doing my best to try and place myself in your position. They still seem to jump out at me. And I recognise it may be because I've been schooled in this and I've been looking at it for a long time. Doing the best I can, when I look at this form, and I also have to sign lots of forms, may I say, so I understand what happens and what the temptations are when one signs forms, when I look at it, I find it difficult to understand how one could not see the four names, David Nicoletti, being written there. Do you, do you understand what I'm saying?*

[A]: *Yes. I might've quickly looked at the top.*

[Q]: *Okay. So once you're looking at the top, above, under the surname of the relief officer it says details of relief officer working at the electorate office?*

[A]: *No. I would've looked at surname.*

[Q]: *Yes?*

[A]: *And then gone down and signed.*

[Q]: *See it's really hard though isn't it to sort of blinker yourself and read some things and not other things when everything's in one document isn't it Ms D'Amore?*

[A]: *Well, no not necessarily. These are staff that I'm familiar with that are filling out these relief forms so...*

[The Commissioner] Q: *So when you read surname and you've got, say for example, La Manna written in there and you read surname La Manna, I just don't understand how you can miss the words "Details of Relief Officer working in the Electorate Office" which are directly underneath?*

[Ms D'Amore] A:

Yes, Commissioner, I do understand what you're saying and, and having now the forms in front of me and looking at them in the detail that they are, that I am and you are, I'm thoroughly embarrassed by the error and mistake, but the reality is, Commissioner, that...

[A]: *Commissioner, as silly as this may sound, very easily, as these forms are processed very quickly and you see the surname, you recognise it, you sign the form. As silly as that may sound.*

In this exchange, Ms D'Amore conceded that she probably would have looked at the name of the Relief Electorate Officer but not the italicised words printed underneath:

[Q]:

I'm not trying to embarrass you and I'm not trying to force you to make some concession

at all. I suppose the question is, did the names, David Nicoletti, written four times in rather bold and capital letters, not jump out at you when you signed this document?

[A]: *No, they didn't, Commissioner.*

[Q]: *Because they're a jarring note on this form because even if you didn't know the terms of the relief, he really had nothing to do with any of this?*

[A]: *I understand that, Commissioner, but I just put it down to these forms are signed very quickly by me and I could have been distracted when I was signing these forms doing a number of things, that, that does occur in our jobs. I understand what you're saying, but, Commissioner, I do not recall these forms standing out to me in any way or thinking that there was anything wrong.*

[Q]: *The name David Nicoletti?*

[A]: *Yeah, or the form, or thinking that there's anything wrong with these forms.*

The Commission has had careful regard to the forms in question and Ms D'Amore's evidence in regard to Mr Nicoletti's name on them, but is unconvinced by Ms D'Amore's explanation. It is unlikely that a Member of Parliament, signing sitting day relief forms filled out, as were the forms signed by Ms D'Amore, would not notice that Mr Nicoletti's name had been inserted in them as being the name of the electorate officer attending Parliament House on the days for which sitting day relief was being claimed.

Had Ms D'Amore noticed Mr Nicoletti's name on the forms in the box headed "Name of electorate officer working at Parliament House" (and the Commission finds that it is probable that she did notice Mr Nicoletti's name in that box), she must immediately have realised that the representation that Mr Nicoletti had worked at Parliament House was false.

Accordingly, the format and the make-up of the forms, the words printed on them, and the way they had been completed before being presented to Ms D'Amore for signature, render Ms D'Amore's denial that she was aware of any of the detail contained in them improbable.

Conclusion

For the reasons set out above, in the Commission's view, it is more likely than not that, despite Ms D'Amore's denial, she knew of the requirements of the sitting day relief entitlement before the first day in 2006 on which Ms Harbilas came to Parliament House to work for her as a sitting day relief officer.

The credibility of Ms Harbilas

Ms Harbilas impressed as a witness who was genuinely telling the truth and the Commission is satisfied that her version of events, after she admitted that she worked at Parliament House, is entirely consistent with known and probable facts. Ms D'Amore, on the other hand, did not give her evidence in a convincing manner. The report has addressed the likelihood that she knew of the requirement of sitting day relief before Ms Harbilas came to work for her in 2006.

The Commission has given careful consideration to the effect on Ms Harbilas' credibility of her lie to investigators that she had not worked at Parliament House when she had. The Commission is satisfied that Ms Harbilas so lied because she realised she had engaged in wrongdoing and sought to cover it up. She admitted during her evidence at the public inquiry that she knew she had done the "wrong thing".

The Commission does not accept the submission made on behalf of Ms D'Amore that the lie told by Ms Harbilas demonstrates a dishonest proclivity on her part. The Commission notes that once Ms Harbilas acknowledged that she worked at Parliament House and not at the electorate office, her version of events thereafter became inherently consistent. She candidly accepted responsibility for the fact that she had made false statements on the claim forms.

It was submitted on behalf of Ms D'Amore that Ms Harbilas' inability to recall the circumstances surrounding her conversation with Ms D'Amore significantly diminished the probative force of her evidence. Ms Harbilas was unable to say when she filled in the form relative to when she received the instruction from Ms D'Amore to write Mr Nicoletti's name on it, whether she had the form with her when she spoke to Ms D'Amore about it, and whether or not Ms D'Amore was present when she filled it in.

There is no doubt that Ms Harbilas' memory of the circumstances immediately leading up to and surrounding her conversation with Ms D'Amore was limited and uncertain. An inability to recall surrounding circumstances with precision does not necessarily imply that a person is not telling the truth. The memory of such details may fade over time. In the Commission's view, the act of writing Mr Nicoletti's name on the form resonated with

Ms Harbilas because she knew at the time she had done something “wrong”, and was sufficiently anxious about what she had done to attempt to hide it, initially at least, from the Commission. It is unsurprising, therefore, that the instruction she received from Ms D'Amore and her actions in putting the instruction into effect were the two significant matters that she had no difficulty recalling.

The Commission is satisfied that Ms Harbilas gave her crucial evidence in a sincere, candid and truthful way. Furthermore, the critical aspect of Ms Harbilas' evidence concerning the instruction she received from Ms D'Amore is supported, in the Commission's view, by other matters.

The Commission is satisfied that at the time Ms Harbilas completed the first form she understood, rightly, that she was not an electorate officer but a sitting day relief officer. She understood from the form that her entitlement to get paid by Parliament depended on her working at the electorate office. She had, however, not worked in the electorate office but had worked at Parliament House. Indeed, she had been employed to work at Parliament House. It is readily understandable, in these circumstances, that Ms Harbilas would ask Ms D'Amore how to fill in the form. This instruction was necessary, as the form required the name of a full time electorate officer who had worked at Parliament House. Ms D'Amore was Ms Harbilas' only point of contact with regard to the relief position and, being present at Parliament House at the time, was available to Ms Harbilas to discuss the form. Moreover, Ms Harbilas knew that the form had to be submitted to Ms D'Amore for her signature.

The Commission is also of the view that it is highly improbable that Ms Harbilas would dishonestly enter false information on the form without the involvement of Ms D'Amore. It was not disputed that Ms Harbilas and Ms D'Amore had a friendly relationship at the relevant time, and it would appear that Ms Harbilas had some regard for Ms D'Amore's political career as she engaged in voluntary work for Ms D'Amore during her 2007 election campaign. In these circumstances, it is exceedingly unlikely that Ms Harbilas would have placed Ms D'Amore in a potentially compromising position by causing her to make declarations on two forms claiming payment for public monies that were materially false and misleading, unless she had been authorised to do so by Ms D'Amore. In addition, acting alone required Ms Harbilas to risk the likelihood that Ms D'Amore would detect that an attempt had been made on the part of Ms Harbilas to deceive her into making a false declaration. Ms Harbilas did not give the impression that she was the sort of person who would run this risk.

Finally, Ms Harbilas' action in telephoning Ms D'Amore immediately after her interview with Commission investigators and Ms D'Amore's attempt, during their conversation, to allay Ms Harbilas' anxieties about the

investigation are consistent with Ms D'Amore knowing of the false representation made by Ms Harbilas.

Conclusion as to conflicts between the evidence

For the reasons set out above, the Commission has come to the conclusions set out in (a) to (e) in the list on pages 12–13.

In other words, the Commission is satisfied that Ms D'Amore instructed Ms Harbilas to write Mr Nicoletti's name on the form. Ms D'Amore gave her that instruction because she knew that Ms Harbilas' entitlement to be paid for sitting day relief depended on her working at the electorate office on a sitting day, while an electorate officer (Mr Nicoletti) worked at Parliament House on a sitting day.

The Commission finds that Ms D'Amore signed the forms, once they had been completed by Ms Harbilas, for the purpose of causing parliamentary officers, responsible for checking and approving the claim forms, to falsely believe that the conditions of the entitlement had been met, when Ms D'Amore knew that they had not.

Payments were made based on misrepresentations

Wendy Tuttlebee, Supervisor of Personnel Administration in the Employee Services area of the Department of the Legislative Assembly, had delegated authority to approve sitting day relief claim forms in 2006 and 2007. She told the Commission that it was her understanding that a claim for payment of sitting day relief could not be approved unless a permanent electorate officer worked at Parliament House. She said that she instructed Alice Zai and Janice Adie, officers under her supervision and responsible for checking the claim forms received from Ms D'Amore's electorate office, to check each form to ensure that the Member had signed the form, that the person named as working at Parliament House was, in fact, a permanent electorate officer, that the appropriate rate of pay had been selected, and that the days claimed were sitting days. Ms Zai and Ms Adie told the Commission that they checked the forms received from Ms D'Amore's office, in accordance with these instructions. Ms Tuttlebee said that she approved these claims forms, including the two forms completed by Ms Harbilas, once she was satisfied that the forms had been checked by Ms Zai and Ms Adie, in accordance with her instructions.

Other issues raised on behalf of Ms D'Amore

Mr Street submitted that the Tribunal's Determination on staffing, when properly understood, did not preclude sitting day relief officers from being paid for working at Parliament House on sitting days, and Parliament's policy and

administrative practices document relating to the sitting day relief entitlement failed to reflect this fact and was invalid.

The Commission is satisfied, however, that if it is established that Ms D'Amore understood that Parliament would pay sitting day relief only if the sitting day relief officer worked at the electorate office while the electorate officer worked at Parliament House, and wilfully misrepresented to Parliament that those conditions had been met to obtain public monies for Ms Harbilas and Ms La Manna, then, for the purpose of considering whether Ms D'Amore's alleged conduct could fall within section 9(1)(a) and sections 9(4) and 9(5) of the ICAC Act, it is immaterial whether her belief about the terms of the entitlement was, in fact, incorrect.

In the Commission's view, Mr Street's submissions, if accepted, only have relevance in considering whether Ms D'Amore's alleged conduct could constitute or involve a substantial breach of Clause 4 of the Code of Conduct for Members.

The Commission's consideration of Mr Street's submissions should be read in this context.

The Determination, when properly understood, did not impose a limitation on the location of the sitting day relief officers workplace

The Tribunal relevantly expressed its Determination in relation to staffing in the following way:

6. *The Presiding Officers are to provide administrative support to each member in accordance with the following:*
 - i. *subject to (ii), each Member of the Legislative Assembly to have two staff members employed at each electoral office;*
 - ii. *each Member of the Legislative Assembly elected as an Independent shall have an additional staff member employed at his/her electoral office;*
 - iii. *each Member of the Legislative Assembly, not elected as an Independent, shall be provided with a budget specific for the recruitment of temporary staff. The budget is to provide for additional staffing in the electorate office when the Member brings one of his or her electorate staff to Parliament House on sitting days only. The budget is to be the equivalent of the salary of an electorate officer grade 2 for a period of 61 days per annum. Funds from this budget are not to be used for any other purpose.*

...

viii. This provision specifies the minimum staffing required in electorate offices. Nothing in this determination removes from the employer of staff the obligations arising under the Occupational Health and Safety Act 2000.

Mr Street submitted that the reference to "staffing" in paragraph 6 (viii), and the reference to "staff members" in paragraph 6 (i), includes permanent and temporary officers. He argued that paragraph 6 (iii) should be construed as being subject to the obligations set out in paragraphs 6 (i) and (viii). Therefore, he submitted, to construe the phrase "electorate staff" in paragraph 6 (iii), as including only permanent staff, would be to improperly qualify the obligation contained in paragraph 6 (i). In addition, Mr Street argued that, as paragraph 6 does not use the language of condition in explicit terms (unlike other grants of additional entitlements in the Determination), no prescriptive conditions of the type found in the administrative arrangements adopted by the Speaker can be implied by the words used in that paragraph.

The Commission does not accept these arguments. The words, "temporary staff" and "additional staffing" are used in the same sense in paragraph 6 (iii). The penultimate sentence in paragraph 6 (iii) provides that the maximum funds available to pay temporary staff should be the "equivalent" of the salary of an electorate officer grade 2 for a period of 61 days per annum. Temporary (or additional) staff receive the "equivalent" of what electorate officers grade 2 receive in payment. However, temporary (or additional) staff are not equated with electorate officers grade 2. In paragraph 6 (iii), these terms "temporary staff" and "additional staffing" are used in contradistinction to "electorate staff". Temporary officers and electorate officers are treated by the Tribunal as two separate categories. In the Commission's view, the ordinary meaning of the words used in paragraph 6 does not support the submissions advanced on Ms D'Amore's behalf.

The Commission is of the opinion, therefore, that the prescriptive elements described in the administrative arrangements that were approved by the Speaker, and reflected in the two claim forms completed by Ms Harbilas and the June 2007 claim forms completed by Ms La Manna, properly reflect the terms upon which the Tribunal provided for additional staffing in the 2006 Determination.

The validity of the Determination, if construed as containing prescriptive conditions

Alternatively, it was submitted that, accepting that a proper construction of the Tribunal's determination precluded payments to sitting day relief officers in circumstances where they worked at Parliament House on sitting days, any such prescription exceeded the Tribunal's jurisdiction

and was invalid. It was argued, therefore, that Members were entitled to claim the funds made available for additional staffing by the Tribunal in circumstances where a sitting day relief officer worked at Parliament House on sitting days.

Further, it was submitted that the Tribunal's Determination, as it related to staffing, was invalid because, by providing for an additional entitlement on the basis that temporary and electorate staff were required to work at particular locations, the Tribunal exceeded its statutory powers.

In exercising its powers under the *Parliamentary Remuneration Act 1989* (NSW), the Tribunal is required to make provision for additional entitlements for the purpose of facilitating the efficient performance of Members' parliamentary duties. It was submitted by Mr Street that the sitting day relief scheme as implemented by Parliament was arbitrary, irrational and rather than enhancing Members' efficiency, undermined their ability to work effectively because it forced electorate officers to work at a location which diminished their efficiency and productivity. In this connection, it was submitted that Parliament House was not an electorate officer's usual place of work and provided limited access to computers compared to the electorate office.

While it may be the case that having an electorate officer at Parliament House did not suit the preferences of individual Members, it is difficult to see, as Counsel Assisting submitted, how the provision of additional staff would not assist Members in the performance of their parliamentary duties. The Commission is satisfied that the provision of additional staff was occasioned, at least in part, by the Tribunal's desire to address the concerns expressed by some Members that the practice of bringing one electorate officer to Parliament House on sitting days created an undesirable occupational health and safety risk for the electorate officer remaining in the office. The Commission accepts the submission of Counsel Assisting that, in responding to these concerns, the Tribunal was justified in concluding that the efficient performance of Members' parliamentary duties would be facilitated by the provision of additional staff in the electorate office.

Mr Street also submitted that the Determination, as it related to staffing, and the administrative arrangements based on the Determination were invalid because, contrary to the provisions of the Crown Employees (Parliamentary Electorate Officers) Award ("the Award") governing the employment of electorate officers, they required electorate officers to work at Parliament House and remain there until 6:00 pm, at the direction of the Member. However, the Award does not proscribe Parliament House as a location at which an electorate office could perform their duties, and Ms Schofield gave evidence that the contract

of employment between the Speaker and electorate officers provided that the electorate officer could work at Parliament House or the electorate office. It is also noteworthy that the Award provides that Members may reasonably direct electorate staff to work beyond 5:00 pm. The Commission does not accept this submission.

Mr Street then submitted that the Determination was invalid by reason of the fact that it offended various provisions of the *Sex Discrimination Act 1984* (Commonwealth), which made it unlawful to discriminate against another person on the ground of the other person's sex, marital status, pregnancy or potential pregnancy. He argued that any arrangement that required an electorate officer to work at Parliament House had the potential to discriminate against a Member who was pregnant or breastfeeding because it deprived her of the ability to choose a suitable officer to work with at Parliament House. It was suggested that a Member in the position of Ms D'Amore, who returned to Parliament from maternity leave with a young baby in early October 2006, would feel more comfortable with the prospect of breastfeeding her baby at Parliament House if the choice of who to bring to Parliament was not limited to her electorate officers. The difficulty would be more acutely felt by such a Member, according to Mr Street, if those electorate officers were both male.

The Commission does not accept these submissions. It does not regard the Determination as discriminatory. In any event, there is nothing that precludes a member from employing a female full-time electorate officer to accompany her to Parliament.

It is to be noted that, as Counsel Assisting submitted, the potential for embarrassment alluded to by Mr Street did not arise in the case of Ms D'Amore, as she could have directed Ms Ford to work at Parliament House on sitting days after she returned from maternity leave.

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. Ms D'Amore instructed Ms Harbilas to falsely represent on the sitting day relief claim form for the period 24 to 26 October 2006 that Mr Nicoletti had worked at Parliament House.
2. Prior to giving this instruction, Ms D'Amore knew that Ms Harbilas' entitlement to be paid sitting day relief depended on her working at the electorate office when an electorate officer worked at Parliament House on sitting days.

3. As a result of the instruction given to her by Ms D'Amore, Ms Harbilas falsely represented on the first form that Mr Nicoletti had worked at Parliament House and that she had worked at the electorate office, and made the same false representation on the second form for the period 14 to 16 November 2006, in accordance with the earlier instruction she received from Ms D'Amore.
4. On 26 October 2006 and 16 November 2006, Ms D'Amore signed the claim forms completed by Ms Harbilas, knowing that they contained false representations about the location of Mr Nicoletti and Ms Harbilas.
5. Ms Harbilas submitted the claim forms to Parliament for approval, knowing that they contained false representations about her location and Mr Nicoletti's on the sitting days claimed.
6. Ms D'Amore engaged in the conduct described in findings of fact (1) and (4), and Ms Harbilas engaged in the conduct described in findings of fact (3) and (5), for the purpose of causing parliamentary officers to falsely believe that the conditions of the entitlement had been met, when they knew that they had not.
7. Ms D'Amore and Ms Harbilas caused Parliament to make payments of sitting day relief to Ms Harbilas on the strength of the misrepresentations contained in both claim forms.

- constituted or involved the dishonest or partial exercise by Ms D'Amore of her official functions, and therefore comes within section 8(1)(b) of the ICAC Act
- constituted or involved a breach of public trust on the part of Ms D'Amore, and therefore comes within section 8(1)(c) of the ICAC Act
- adversely affected, or could have adversely affected, either directly or indirectly, the exercise of official functions by Ms Harbilas, and parliamentary officers (that is, those functions connected with determining an application for payment for sitting day relief) and could involve official misconduct or fraud, and therefore comes within sections 8(2)(a) and 8(2)(e) 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 on the part of Ms D'Amore, the common law offence of misconduct in public office
- section 9(1)(d) of the ICAC Act, on the basis that it could constitute or involve a substantial breach of Clause 4 of the Code of Conduct for Members (in the Commission's view, the conduct could constitute a "substantial" breach because it involves deliberately making false representations and instructing Ms Harbilas, an employee, to do likewise)
- sections 9(4) and 9(5) of the ICAC Act, on the basis that it is such that it would cause a reasonable person to believe that it would bring the integrity of the office of a Member of the Legislative Assembly into serious disrepute and constitutes a breach of a law, namely, the common law offence of misconduct in public office.

Corrupt conduct

Angela D'Amore

The Commission finds that Angela D'Amore engaged in corrupt conduct by instructing Ms Harbilas to falsely represent on the sitting day relief claim form for the period 24 to 26 October 2006 that Mr Nicoletti had worked at Parliament House on the sitting days claimed, and by signing that claim form and another for the period 14 to 16 November 2006, which was completed by Ms Harbilas, knowing both forms contained false representations about the location of Mr Nicoletti and Ms Harbilas on the sitting days claimed.

This is because Ms D'Amore's conduct:

- adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of official functions by Ms Harbilas (that is, those functions connected with making true statements on claim forms and submitting true claim forms to Parliament for approval after they had been signed by the Member), and therefore comes within section 8(1)(a) of the ICAC Act

Karen Harbilas

Counsel Assisting submitted to the Commission that, notwithstanding Ms Harbilas' involvement in making false representations on two claim forms, a finding of corrupt conduct should not be made against her. In support of this submission, it was contended that the decision of Ms Harbilas to give truthful evidence before the Commission at her first compulsory examination, and to continue to do so, has led to a significantly greater understanding of what had occurred than might otherwise have transpired.

After she had been interviewed by Commission investigators, Ms Harbilas gave a consistently truthful and coherent account of events. Her evidence on the role played by Ms D'Amore in connection with the first form was critical in the context of the Commission's investigation and the public inquiry. The Commission is

satisfied that without her truthful evidence, the corrupt conduct engaged in by Ms D'Amore would not have been exposed. It is in the interests of the Commission and the community at large that persons who have information relevant to allegations of corrupt conduct investigated by the Commission, but who may have engaged in some form of wrongdoing themselves, are encouraged to provide honest and forthright testimony before the Commission.

The Commission, therefore, is of the view that these considerations justify the exercise of a discretion not to make a corrupt conduct finding against Ms Harbilas.

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 Ms D'Amore and Ms Harbilas come within the definition of "affected" persons.

Ms D'Amore

Ms D'Amore gave her evidence following a declaration made pursuant to section 38 of the ICAC Act. The effect of that declaration is that her evidence cannot be used against her in subsequent criminal prosecution, except a prosecution for an offence under the ICAC Act.

In the course of the investigation, however, the Commission obtained other evidence that would be admissible in the prosecution of Ms D'Amore. In particular, the evidence of Ms Harbilas, Mr Nicoletti and Ms Schofield is admissible against Ms D'Amore. In addition, other evidence would be available to the prosecuting authority, including the claim forms and evidence establishing Ms D'Amore's receipt and opening of the emails, which attached a copy of the Tribunal's Determination and draft administrative practices document.

The Commission, therefore, is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms D'Amore for the common law offence of misconduct in public office.

Ms Harbilas

The Commission is of the opinion that consideration should not be given to any of the matters referred to in section 74A(2) of the ICAC Act with respect to Ms Harbilas.

Chapter 4: Ms D'Amore and Ms La Manna

This chapter examines evidence obtained by the Commission in relation to the allegation that Ms D'Amore and Ms La Manna misrepresented to Parliament that the conditions of the sitting day relief entitlement had been met. It also sets out the Commission's findings in regard to these issues, and contains a statement required to be made under section 74A(2) of the ICAC Act.

Allegations and issues for consideration

Five sitting day relief claim forms were signed by Ms D'Amore, claiming payment for sitting day relief work performed by Ms La Manna on 19 sitting days between 7 May 2007 and 30 June 2007. The five forms indicated that Ms La Manna worked at the electorate office, while Mr Nicoletti worked at Parliament House on the sitting days claimed.

It was not disputed at the public inquiry that the first two claim forms were correctly filled in to record that, in respect to six sitting days in May 2007, Ms La Manna worked at the electorate office when Mr Nicoletti worked at Parliament House.

It was also not disputed that Ms La Manna had worked at Parliament House on all but one of 12 sitting days in June 2007, that Mr Nicoletti had worked at the electorate office on all those sitting days, and that the three claim forms which related to those days falsely represented that Ms La Manna had worked at the electorate office and Mr Nicoletti had worked at Parliament House. Ms La Manna completed those three claim forms.

Ms D'Amore had engaged Ms La Manna to work for her as a sitting day relief officer during this period, and signed the three claim forms for June 2007, which contained the false representations. These circumstances, which paralleled the circumstances in which Ms Harbilas completed two sitting day relief claim forms, gave rise to the following allegations, namely that:

- Ms La Manna had deliberately made the misrepresentations on the three June 2007 claim forms in order to obtain sitting day relief payments from Parliament, to which she knew she was not entitled
- Ms D'Amore had instructed or authorised her to make the false representations, and Ms D'Amore signed the claim forms, knowing that they contained false representations, with the intention of causing parliamentary officers to approve the claims for payment under the false belief that the conditions of the entitlement had been met
- in consequence of the false representations, Parliament paid sitting day relief, as claimed in the forms in question, when the requirements for the payment of sitting day relief had not been met.

Two principal issues emerge from the evidence of Ms La Manna and Ms D'Amore about the three June 2007 claim forms. The first is whether Ms La Manna knew that those forms were false when she gave them to Ms D'Amore to sign. Ms La Manna gave conflicting evidence about this at the public inquiry. On the one hand, she admitted that she knew they were false. On other occasions during her evidence, however, she suggested that she mistakenly wrote Mr Nicoletti's name on the forms.

The second is whether Ms D'Amore instructed Ms La Manna to make the false representations on the June 2007 claim forms. Ms La Manna denied receiving any such instruction from Ms D'Amore, and Ms D'Amore denied that she had any knowledge of or involvement in the making of the false representations on the forms. Other evidence, however, is capable of giving rise to the inference that Ms D'Amore instructed or authorised Ms La Manna to falsify those forms.

It was not disputed that Ms Tuttlebee approved the three June 2007 claim forms on the basis that the representations of fact, contained in the forms, complied with the Tribunal's Determination.

Background

Ms La Manna told the Commission that she had known Ms D'Amore for around 18 years, and regarded her as a friend. At the time Ms La Manna gave evidence at the public inquiry, she was working as Senior Electorate Officer to Ms D'Amore, having occupied that position after Mr Nicoletti vacated it in August 2007. Ms La Manna said that she felt loyalty towards Ms D'Amore.

In April or May 2007, Ms La Manna, who was looking for a more fulfilling position, asked Ms D'Amore if she had a position available. Ms D'Amore offered her some sitting day relief work at the electorate office, with a view to her taking over Mr Nicoletti's senior position. Ms La Manna said that since she was a child she had always wanted to work in the area of politics. She accepted the offer and worked as a sitting day relief officer at the electorate office for six sitting days in May 2007, while Mr Nicoletti worked at Parliament House on those days. She agreed that during her period of employment as a sitting day relief officer she wanted to impress on Ms D'Amore that she was a competent, careful and trustworthy employee, in the hope of obtaining the senior electorate officer's position. She said that she knew that Ms D'Amore's reputation as a Member was important, and agreed that she would not have done anything to compromise her reputation.

Decision to send Ms La Manna to Parliament House for sitting days in June 2007

Ms La Manna agreed that a discussion had taken place between herself, Ms D'Amore and Mr Nicoletti towards the end of May 2007 or on 1 June 2007, during which it was decided that she would work at Parliament House on sitting days in June 2007. She agreed that this was part of her grooming for the senior electorate officer's position.

Ms D'Amore first testified that the decision to have Ms La Manna work at Parliament House on sitting days in June 2007 was made on a daily basis, depending on workload in the office. Later, however, Ms D'Amore accepted that it was likely that she made a decision around the end of May 2007 to the effect that Ms La Manna would work at Parliament House for the remainder of the sitting days in June 2007. Subsequently, she backed away from this position, and said that the decision, "was still made sort of on a daily basis".

The evident change of practice that saw Ms La Manna attend Parliament House on all but one of the June 2007

sitting days is consistent with Ms La Manna's evidence that a decision had been made on or shortly prior to 1 June 2007 to send her to Parliament House for the remaining sitting days of June 2007.

Significantly, each of the three June 2007 claim forms were completed and signed by Ms D'Amore and Ms La Manna on the first sitting day of each sitting week. This was a practice permitted by Parliament in order to facilitate the payment of relief staff. This practice is inconsistent with the contention that the decision to send Ms La Manna to work at Parliament House in June 2007 was made on a daily basis.

The Commission does not accept that in June 2007 a decision was made on a daily basis as to which employee in the Five Dock electorate office would be sent to Parliament House. The Commission finds, on the contrary, that in late May 2007 or on 1 June 2007 a decision had been made, to which Ms D'Amore and Ms La Manna were parties, that in June 2007 Ms La Manna, and not Mr Nicoletti, would attend Parliament House (and Mr Nicoletti would work in the electorate office). This finding is in accordance with Ms La Manna's evidence referred to above.

Ms La Manna's evidence

Ms La Manna initially denied that she knew that the forms were false. She said it was possible that at the time she completed and signed the claim forms, which was on the first day of the sitting week, she may not have been told by Mr Nicoletti or Ms D'Amore that she would be working at Parliament House on that day. Ms La Manna's evidence in this regard is contrary to her evidence (and the Commission's finding) that it had been decided in late May 2007 or on 1 June 2007 that, in June, Ms La Manna would attend Parliament House and Mr Nicoletti would work at the electorate office.

In any event, on each sitting day in June 2007, Ms La Manna would have been advised soon after arriving to work at the electorate office that she would be working at Parliament House that day. At that stage (irrespective of the earlier decision that had been made in late May 2007 or on 1 June 2007), Ms La Manna would have known that it would be false to state on a sitting day relief claim form for that day that she had worked in the electorate office.

The Commission does not accept Ms La Manna's denial that she knew that the forms were false.

Ms La Manna eventually agreed that, at least in respect to the first and second of the three June 2007 claim forms, she knew that she had falsely represented that Mr Nicoletti had worked at Parliament House when she completed them. Ms La Manna admitted this having first agreed (or not disputed) that she:

- understood that she was required to write the name of the officer who had worked at Parliament House on the forms
- had written Mr Nicoletti's name on the forms to indicate that he had worked at Parliament House
- had worked at Parliament House on the sitting days claimed on the forms.

The following exchange in this regard is relevant:

[Counsel Assisting] Q: No. Okay. And you know that on any particular sitting day in this period either you or Mr Nicoletti would go to Parliament House and the other person would stay at the electorate office. Correct?

[Ms La Manna] A: Yes.

[Q]: Right. So it was either going to be your name or his name there as being the person who was working at Parliament House?

[A]: Yes.

[Q]: Right. Nothing difficult about that was there?

[A]: No.

[Q]: No. But on this form you've put in respect of four days, that David Nicoletti went to Parliament House when in fact you went to Parliament House?

[A]: Yes.

[Q]: And you've presented that to Ms D'Amore to sign on Tuesday, 5 June, 2007 notwithstanding that you knew at the time you presented it to her for signing that it contained a falsehood. Correct?

[A]: Yes.

Ms La Manna said that Ms D'Amore did not tell her how to complete the forms. She said, however, that she would not have done anything to mislead Ms D'Amore, and agreed that she would not have given Ms D'Amore a false form to sign unless she was satisfied that Ms D'Amore wanted her to do so. She gave the following evidence about this in the course of being questioned about the first of the three forms:

[Counsel Assisting] Q: Because you would never have, you would never have wanted to compromise her position, undermine her reputation, lead her into signing a false declaration unless you were comfortably satisfied that that's what she wanted you to do?

[Ms La Manna] A: Yes, as directed.

[Q]: When you say as directed, that's as directed by Ms D'Amore isn't it?

[A]: Or David Nicoletti.

[Q]: Well, just a minute. If David Nicoletti had asked you to make a false statement on this form, which you were to sign and present to signing for Ms D'Amore and for her to make a members declaration as a result of which you would be paid money, you'd want to know what she thought about signing a false declaration wouldn't you?

[A]: Yes.

[Q]: Because she was the one whose reputation was potentially on the line wasn't she?

[A]: That's correct.

[Q]: She was the one who you cared about more. Correct?

[A]: Yes.

When asked to provide a reason for writing Mr Nicoletti's name on the form and not her own, Ms La Manna asserted that she had made a "mistake". She repeated this on more than one occasion. Ms La Manna's explanation that she had merely made a "mistake" has echoes of the conversation that, according to Ms Harbilas, she had had with Ms D'Amore after she (Ms Harbilas) had first been questioned by Commission investigators. It will be recalled that, according to Ms Harbilas, Ms D'Amore attempted to assuage Ms Harbilas' concerns by telling her that it had all been a "mistake".

Ms La Manna provided a number of unconvincing explanations for stating on the forms that Mr Nicoletti had attended Parliament when, in fact, she had. These included that no one had advised her that she had done anything wrong, and that she had failed to read the forms properly.

Ms D'Amore's evidence

Ms D'Amore said that she was unaware that the three June 2007 forms completed by Ms La Manna represented that Mr Nicoletti worked at Parliament House. She said that her attention was not drawn to Mr Nicoletti's name on the forms, even though it had been written on the form four times to falsely reflect the number of occasions he had worked at Parliament House during the sitting week. For the reasons expressed in this report, the Commission does not accept Ms D'Amore's evidence about this issue.

Discussion

It was submitted on behalf of Ms D'Amore and Ms La Manna that Ms La Manna had mistakenly written Mr Nicoletti's name on the June 2007 claim forms. In support of this submission, reliance was placed on suggestions made by Ms La Manna during her evidence that Mr Nicoletti's name had found its way into the June 2007 claim forms, in circumstances where she had copied Mr Nicoletti's name from the May 2007 forms, which correctly recorded the fact that he had worked at Parliament House. It was submitted that, while Ms La Manna had failed to correct the forms, this was not attributable to an intention to deceive on her part but arose from the fact that parliamentary officers had failed to communicate to her their expectation that they should be alerted to changes in circumstances affecting prospectively completed forms. It was also submitted that there was no evidence indicating that Ms La Manna understood the terms and conditions of the sitting day relief entitlement. Therefore, there was no basis upon which the Commission could infer that Ms La Manna knew, that by working at Parliament House, she was not entitled to be paid for the work she had performed.

Ms La Manna was interviewed by Commission investigators prior to the public inquiry. During the interview, Ms La Manna denied that she worked at Parliament House with Ms D'Amore on sitting days in 2007. In the Commission's view, she did so because she knew she had deliberately misrepresented where she worked on the June 2007 claim forms.

The proposition that Ms La Manna wrote Mr Nicoletti's name on the June 2007 forms by reason of a mistake is contrary to her own evidence and probable facts. By 1 June 2007, Ms La Manna knew full well that she was to attend Parliament House during that month, and that Mr Nicoletti would not. When she signed the false claim forms, she knew that claims had been made for particular days when she, and not Mr Nicoletti, had attended Parliament House. There was no ambiguity in the forms. In stating that Mr Nicoletti had attended (or would attend) Parliament on days that she had attended (or intended to attend) Parliament, Ms La Manna was simply stating something that she knew well to be false. How this conduct could be

the result of a "mistake" is not apparent. The logical force underlying Counsel Assisting's questions impelled Ms La Manna to admit that she had falsely written Mr Nicoletti's name on the June 2007 claim forms.

Ms La Manna argued that there would have been "no purpose" in her deliberately representing, falsely, that Mr Nicoletti had attended Parliament House. This is plainly untrue as, had she inserted her own name on the forms as the person attending Parliament House, sitting day relief would not have been paid.

Ms La Manna admitted that she wrote Mr Nicoletti's name on the forms because she knew that she would not have been paid if her name appeared on the forms as the officer working at Parliament House. She gave the following evidence:

[The Commissioner] Q: Yes. You knew what that form, you knew that the box in question that we're discussing contained the words Name of Electorate Officer Working at Parliament House, you knew that?

[Ms La Manna] A: Yes.

[Q]: And you knew it at the time you filled it in didn't you?

[A]: Like I said it would've been...

[Q]: Didn't you?

[A]: Yes.

[Q]: So why did you put, the question that counsel assisting was asking you is knowing what the form required you to put in why did you at least for the first date put in the wrong name?

[A]: Because I was a sitting day relief officer.

[Q]: And therefore, what follows from that?

[A]: (NO AUDIBLE REPLY)

[Q]: I can suggest to you [what] follows from that. It means that because you were sitting day relief officer you knew that if you put your name in and not David Nicoletti's name Parliament wouldn't pay out. Isn't that so?

[A]:

Well, yes.

When questioned by Mr Street, Ms La Manna quickly retreated from the admissions she had made. This part of her testimony largely took the form of responses to leading questions. The Commission is not persuaded by this part of her testimony.

The Commission is satisfied that Ms La Manna wrote Mr Nicoletti's name on the forms with the purpose of inducing Parliament to pay sitting day relief for the work she did at Parliament House. The Commission finds that Ms La Manna knew, when writing Mr Nicoletti's name, that she was making a false representation.

There is a fundamental difference between the evidence tending to establish that Ms D'Amore instructed Ms Harbilas to falsify the first claim form and the evidence tending to establish that Ms D'Amore instructed or authorised Ms La Manna to do likewise in respect of the June 2007 forms. In the former case, Ms Harbilas directly implicates Ms D'Amore. In the latter case, there is no direct evidence of Ms D'Amore instructing Ms La Manna to falsify the forms.

The Commission, however, is satisfied, as a matter of probable inference, that Ms D'Amore instructed or authorised Ms La Manna to write Mr Nicoletti's name on the June 2007 claim forms.

For the reasons already given, the Commission is satisfied that Ms D'Amore knew the conditions that had to be met before sitting day relief could be properly claimed. In light of this finding, the Commission is satisfied that Ms D'Amore knew that in order for Ms La Manna to be paid for working at Parliament House on the June 2007 sitting days, the relevant claim forms would have to falsely represent that an electorate officer had worked at Parliament House and that Ms La Manna had worked at the electorate office. The Commission is satisfied that Ms D'Amore knew this on or prior to 1 June 2007, when she decided that Ms La Manna would work at Parliament House on the remaining sitting days of the parliamentary session. In these circumstances, it is probable that Ms D'Amore instructed or authorised Ms La Manna to falsify the forms in this manner.

In addition, Ms La Manna admitted that she would not have provided false forms to Ms D'Amore for her signature unless she knew that she had her authority to do so. The Commission accepts this evidence. It is consistent with her evidence that she respected and admired Ms D'Amore. In light of her unwillingness to compromise Ms D'Amore's reputation, which was not the subject of any dispute, it is improbable that Ms La Manna would have caused Ms D'Amore to make false declarations on the three June 2007 claim forms unless Ms D'Amore had instructed or authorised her to do so. This conclusion is consistent with the finding that Ms Harbilas was instructed by Ms D'Amore to write Mr Nicoletti's name on the first form.

The Commission is also satisfied that Ms D'Amore signed the false forms, which Ms La Manna had prepared, for the purpose of causing parliamentary officers to believe that the conditions of the sitting day relief entitlement had been met, when she knew that they had not.

Principal findings of fact relating to Ms D'Amore and Ms La Manna

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. Ms D'Amore instructed or authorised Ms La Manna to falsely represent on the three June 2007 sitting day relief claim forms that Mr Nicoletti had worked at Parliament House.
2. Prior to giving this instruction or authority, Ms D'Amore knew that Ms La Manna's entitlement to be paid sitting day relief depended on her working at the electorate office on sitting days, while a permanent electorate officer worked at Parliament House.
3. As a result of this instruction or authority, Ms La Manna falsely represented on each of the three June 2007 claim forms that Mr Nicoletti had worked at Parliament House and that she had worked at the electorate office.
4. Ms La Manna submitted the claim forms to Parliament for approval knowing that they contained false representations about her location and the location of Mr Nicoletti.
5. On 5, 19 and 22 June 2007, Ms D'Amore signed the three claim forms completed by Ms La Manna, knowing that they contained false representations about the location of Mr Nicoletti and Ms La Manna on the sitting days claimed.
6. Ms D'Amore engaged in the conduct described in findings of fact (1) and (5), and Ms La Manna engaged in the conduct described in findings of fact (3) and (4), for the purpose of causing parliamentary officers to believe that the conditions of the entitlement had been met, when they knew that they had not.
7. Ms D'Amore and Ms La Manna caused Parliament to make payments of sitting day relief to Ms La Manna on the strength of the misrepresentations contained in the claim forms.

Corrupt conduct

Angela D'Amore

The Commission finds that Angela D'Amore engaged in corrupt conduct by instructing Ms La Manna to falsely represent on the three June 2007 sitting day relief claim forms that Mr Nicoletti had worked at Parliament House on the sitting days claimed, and by signing the claim forms completed by Ms La Manna, knowing that they contained false representations about the location of Mr Nicoletti and Ms La Manna on the sitting days claimed.

This is because Ms D'Amore's conduct:

- adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of official functions by Ms La Manna (that is, those functions connected with making true statements on claim forms and submitting true claim forms to Parliament for approval after they had been signed by the Member), and therefore comes within section 8(1)(a) of the ICAC Act
- constituted or involved the dishonest or partial exercise by Ms D'Amore of her official functions, and therefore comes within section 8(1)(b) of the ICAC Act
- constituted or involved a breach of public trust on the part of Ms D'Amore, and therefore comes within section 8(1)(c) of the ICAC Act
- adversely affected, or could have adversely affected, either directly or indirectly, the exercise of official functions by Ms La Manna, and parliamentary officers (that is, those functions connected with determining an application for payment for sitting day relief) and could involve official misconduct or fraud, and therefore comes within sections 8(2)(a) and 8(2)(e) 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 on the part of Ms D'Amore, the common law offence of misconduct in public office
- section 9(1)(d) of the ICAC Act, on the basis that it could constitute or involve a substantial breach of Clause 4 of the Code of Conduct for Members (in the Commission's view, the conduct could constitute a "substantial" breach because it involves deliberately making false representations and instructing or authorising Ms La Manna, an employee, to do likewise)

- sections 9(4) and 9(5) of the ICAC Act, on the basis that it is such that it would cause a reasonable person to believe that it would bring the integrity of the office of a Member of the Legislative Assembly into serious disrepute and constitutes a breach of a law, namely the common law offence of misconduct in public office.

Agatha La Manna

The Commission finds that Agatha La Manna engaged in corrupt conduct by falsely representing on the three June 2007 claim forms that Mr Nicoletti had worked at Parliament House and that she had worked at the electorate office, and by submitting the forms to Parliament for approval after they had been signed by Ms D'Amore.

This is because Ms La Manna's conduct:

- adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of official functions by Ms D'Amore (that is, those functions connected with making true declarations on claim forms), and therefore comes within section 8(1)(a) of the ICAC Act
- constituted or involved the dishonest or partial exercise by Ms La Manna of her official functions, and therefore comes within section 8(1)(b) of the ICAC Act
- constituted or involved a breach of public trust on the part of Ms La Manna, and therefore comes within section 8(1)(c) of the ICAC Act
- adversely affected, either directly or indirectly, the exercise of official functions by Ms D'Amore and parliamentary officers (that is, those functions connected with determining an application for payment of sitting day relief) and could involve official misconduct or fraud, and therefore comes within sections 8(2)(a) and 8(2)(e) 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 on the part of Ms La Manna, the common law offence of misconduct in public office
- section 9(1)(c) of the ICAC Act, on the basis that it could constitute or involve reasonable grounds for dismissing, dispensing with the services of or otherwise terminating her services.

Section 74A(2) statement

For the purpose of this report, Ms D'Amore and Ms La Manna are "affected" persons.

Ms D'Amore

In the Commission's view, the evidence of Ms La Manna that she was unwilling to engage in conduct that would compromise Ms D'Amore's reputation, unless she was authorised to do so by her, would be admissible in a criminal prosecution against Ms D'Amore. Evidence establishing the falsity of the three June 2007 forms and evidence establishing that, before Ms D'Amore instructed or authorised Ms La Manna to falsify the June 2007 claim forms, she knew that Ms La Manna's entitlement to be paid sitting day relief depended on her working at the electorate office when an electorate officer worked at Parliament House on sitting days, would also be admissible against Ms D'Amore. The Commission, therefore, is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms D'Amore for the common law offence of misconduct in public office.

Ms La Manna

Ms La Manna gave evidence following a declaration made pursuant to section 38 of the ICAC Act. The effect of that declaration is that her evidence cannot be used against her in a subsequent criminal prosecution, except a prosecution for an offence under the ICAC Act.

The Commission is satisfied that there is insufficient admissible evidence available to justify a criminal prosecution of Ms La Manna, and is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of her for any specified criminal offence.

However, the Commission is of the opinion that consideration should be given to the taking of action against Ms La Manna with a view to dismissing, dispensing with the services of or otherwise terminating her services, on the grounds that she engaged in the misconduct described in this chapter.

Chapter 5: David Nicoletti

This chapter examines the evidence relating to the allegation that in October 2006 Mr Nicoletti deliberately misrepresented to Ms Zai, a parliamentary officer, that Ms Harbilas had worked at Parliament House when he knew that she had not. It also sets out the basis for the Commission's conclusion that there is insufficient evidence to support this allegation.

Mr Nicoletti's telephone conversation with Ms Zai on 26 October 2006

Ms Harbilas was required to write the dates that she had worked at the electorate office on the claim forms, but neglected to do so in relation to the first form. Having obtained Ms D'Amore's signature on the first form, Ms Harbilas faxed it to Parliament at 1:18 pm on 26 October 2006.

Sometime after 1:18 pm on 26 October 2006, Ms Zai checked the form and noticed that the dates were absent from it. She said that in keeping with her usual practice, which was to contact the senior electorate officer at the electorate office and confirm the details about which she was enquiring, she telephoned the Five Dock electorate office, and asked Mr Nicoletti to provide her with the dates that he had worked at Parliament House. Ms Zai said that she wrote the dates he gave her into the form, namely 24, 25 and 26 October 2006, the words "Confirm with David", and then dated and initialled the form.

The evidence of Ms Zai, if accepted, is capable of establishing that Mr Nicoletti misrepresented to her that he had worked at Parliament House on those sitting days because he knew that Ms Harbilas' entitlement to be paid sitting day relief depended on her working at the electorate office when he worked at Parliament House.

Mr Nicoletti's evidence

Mr Nicoletti said that he did not acquaint himself with the terms of the sitting day relief entitlement in 2006 because he did not consider the administration of Member's entitlement as being an important part of his duties. He said that he thought that the sitting day relief entitlement provided Members with a discretion as to who they could take to Parliament House on a sitting day, and was only recently disabused of that notion by Commission investigators. He said he knew that the Tribunal made annual determinations and that Parliament distributed memoranda explaining the meaning of Member's entitlements, but that he never read these documents because they were of no interest to him.

Mr Nicoletti did not dispute that he worked at the electorate office on 26 October 2006, but he said that he could not recall speaking with Ms Zai.

Analysis of the evidence

Mr Nicoletti's denial that he correctly understood the terms of the sitting day relief entitlement, if accepted, casts doubt upon the reliability of Ms Zai's evidence. This is because Mr Nicoletti had no reason to falsely represent to Ms Zai that he had worked at Parliament House if he mistakenly thought that Ms Harbilas was entitled to work at Parliament House as a sitting day relief officer.

The Commission is satisfied, however, that, contrary to Mr Nicoletti's evidence, it is likely that he did understand the terms of sitting day relief entitlement because it was discussed in the office prior to 26 October 2006, and Mr Nicoletti opened the email sent to him on 18 August 2006, which had a copy attached of the draft policy and administrative practices document relating to the sitting day relief entitlement.

Ms Turner, who job shared the other electorate officer's position at the Five Dock office with Ms Ford, told the Commission that, after obtaining clarification from

Parliament about how the new staffing entitlement operated, she shared her new found understanding with other staff members in the electorate office. Mr Nicoletti said that, while he did not recall the conversation with Ms Turner, he agreed it was possible that such a conversation may have occurred.

Records establish that on 18 August 2006 Mr Nicoletti opened the email with the attached draft administrative practices document, which had been sent to him earlier that day. He said that he probably did not read the attached document. In the Commission's view, having regard to his evidence that he regarded additional staffing as a matter of significance, and the fact that the email was the first occasion upon which he received written advice from Parliament about the terms of the new staffing entitlement, it is unlikely that Mr Nicoletti did not read the draft administrative practices document attached to the email after he had opened it.

Notwithstanding this view, the Commission is reluctant to make an adverse finding against Mr Nicoletti because there is a feature of Ms Zai's evidence that was left unexplored at the public inquiry. The effect of Ms Zai's account is that on 26 October 2006, Mr Nicoletti (while at the electorate office at Five Dock) confirmed with Ms Zai that he had worked at Parliament House on that day and the preceding two sitting days. Ms Zai was unable to say when she made the call to the electorate office. Clearly, the call was made after 1:18 pm, which was the time the form was received by Parliament. It is worth noting that the claim was approved by Ms Tuttlebee on 26 October 2006. This tends to indicate that the conversation between Ms Zai and Mr Nicoletti did not occur after normal working hours as there was sufficient time after Ms Zai had conducted the checks and made the call for Ms Tuttlebee to approve the claim.

Ms Zai was not asked whether she thought it was odd that Mr Nicoletti was at the electorate office when he confirmed that he had worked at Parliament House on that day, and if so, whether a possible explanation for the incongruity was that she may have been mistaken

about the nature of the enquiry she made of Mr Nicoletti. It is worth noting that Ms Zai did not appear to have an independent recollection of the conversation with Mr Nicoletti. She was also unable to say whether the information she recorded on the form could have been provided by Mr Nicoletti, as a result of her asking him about the dates upon which Ms Harbilas worked, and not about when he had worked at Parliament House.

Conclusion

The evidence of Ms Zai supports a suspicion that Mr Nicoletti provided her with false information. The Commission is not satisfied, however, that there is sufficient evidence to make a finding adverse to Mr Nicoletti because of the existence of the incongruity identified above and the absence of evidence to explain it.

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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AGAINST CORRUPTION

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