

I·C·A·C

INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES



**INVESTIGATION INTO
ALLEGATIONS OF CORRUPT
CONDUCT IN THE PROVISION
OF SECURITY PRODUCTS
AND SERVICES BY
SUPPLIERS, INSTALLERS AND
CONSULTANTS**

**ICAC REPORT
SEPTEMBER 2013**

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Mr President
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In accordance with s 74 of the *Independent Commission Against Corruption Act 1988* I am pleased to present the Commission's report on its investigation into allegations of corrupt conduct in the provision of security products and services by suppliers, installers and consultants.

I presided at the public inquiry held in aid of this matter.

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 s 78(2) of the *Independent Commission Against Corruption Act 1988*.

Yours sincerely



The Hon David Ipp AO QC
Commissioner

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Summary of investigation and results

This investigation by the NSW Independent Commission Against Corruption (“the Commission”) concerned allegations of corrupt conduct in the provision of security services to public authorities by suppliers of security products, installers of the products and consultants.

The allegations primarily concerned security service provider, Kings Security Group Pty Ltd (“Kings”), its directors – Peter (Charles) Diekman and Peter Roche – security industry consultant, Daniel Paul, and public officials, Mark Eschbank and Robert Huskic.

Results

Chapter 2 of this report concerns dealings between Mr Paul, Mr Eschbank and Kings in relation to a University of Western Sydney (UWS) security system upgrade project.

Findings are made that Mr Paul engaged in corrupt conduct by:

- accepting \$13,000 from Mr Diekman in 2008 as a reward for Mr Paul assisting Kings in relation to the UWS access control project and to influence him to favour Kings in relation to that project in the future
- deliberately failing to disclose to the UWS tender evaluation committee chairperson his conflict of interest arising from his personal and financial relationship with Mr Diekman.

A finding is made that Mr Diekman engaged in corrupt conduct by paying Mr Paul \$13,000 in 2008 as a reward for Mr Paul improperly exercising his public official functions to assist Kings in relation to the UWS access control project and for further assistance that Mr Diekman anticipated Mr Paul might provide in the future.

Statements are made in this chapter that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions

(the DPP) with respect to the prosecution of Mr Paul and Mr Diekman for offences under s 249B of the *Crimes Act 1900* (“the Crimes Act”).

Chapter 3 of this report concerns dealings between Mr Paul, Kings and Paul Thompson of Q Video Systems (QVS), a supplier of security equipment, in relation to an Art Gallery of NSW (AGNSW) security system upgrade project.

Findings are made that Mr Paul engaged in corrupt conduct by:

- accepting \$20,000 from Mr Diekman in 2009 as a reward for Mr Paul having improperly exercised his public official functions to assist Kings to win the AGNSW tender
- accepting \$27,500 from QVS in 2009 as a reward for improperly exercising his public official functions to assist QVS to become the main supplier of security products for the AGNSW contract
- deliberately failing to disclose to the AGNSW his conflicts of interest arising from his relationships with Mr Diekman, Kings and QVS.

A finding is made that Mr Diekman engaged in corrupt conduct by arranging for Mr Paul to be paid \$20,000 in 2009 as a reward for Mr Paul exercising his public official functions to improperly assist Kings to win the AGNSW tender.

A finding is made that Mr Roche engaged in corrupt conduct by agreeing with Mr Diekman that Mr Paul be paid \$20,000 in 2009 as a reward for Mr Paul exercising his public official functions to improperly assist Kings to win the AGNSW tender.

A finding is made that Mr Thompson engaged in corrupt conduct by arranging for Mr Paul to be paid \$27,500

by QVS in 2009 as a reward for Mr Paul exercising his public official functions to assist QVS to become the main supplier of security products for the AGNSW project.

The Commission has concluded that there is insufficient admissible evidence upon which to base any recommendation that consideration be given to obtaining the advice of the DPP with respect to the prosecution of any person in relation to the matters dealt with in this chapter.

Chapter 4 of this report concerns dealings between Kings and employees of the then Northern Sydney Central Coast Area Health Service (NSCCAHS) – Mr Huskic, Cameron Creary and Eric Kuiper.

Findings are made that Mr Huskic engaged in corrupt conduct by:

- seeking and accepting benefits from Mr Diekman between 2006 and 2011 in return for exercising his public official functions to favour Kings and in the expectation that he would do so in the future
- requesting Mr Diekman, in 2010, to arrange for the creation of dummy quotes for the Gosford hospital carpark security upgrade and his use of those quotes knowing they were false.

Findings are made that Mr Diekman engaged in corrupt conduct by:

- providing or authorising the provision of benefits to Mr Huskic between 2006 and 2011 in return for Mr Huskic having exercised his public official functions to favour Kings and in the expectation that he would do so in the future
- agreeing with Mr Huskic, in 2010, to submit two dummy quotes to the NSCCAHS for the Gosford hospital carpark security upgrade, knowing Mr Huskic would represent them as genuine quotes, and authorising the submission of those quotes.

A finding is made that Mr Roche engaged in corrupt conduct by agreeing with Mr Diekman that Mr Huskic be provided with benefits between 2006 and 2011 as a reward for Mr Huskic having exercised his public official duties to favour Kings and in the expectation that he would do so in the future.

A finding is made that David McMicking, an employee of Kings, engaged in corrupt conduct by agreeing with Mr Huskic, in 2010, to submit two dummy quotes to the NSCCAHS for the Gosford hospital carpark security upgrade, knowing they were false and that Mr Huskic would represent them as genuine quotes.

Statements are made in this chapter that the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Huskic and Mr Diekman for offences under s 254 and s 249B of the Crimes Act and for the prosecution of Mr Diekman for an offence under s 192E of the Crimes Act.

Chapter 5 of this report concerns the conduct of Mr Paul, Jonathan Nguyen, the managing director of Austek Security Solutions (“Austek”) – another security service provider, and Kings in relation to a Sydney Ports Corporation (SPC) tender.

A finding is made that Mr Diekman engaged in corrupt conduct by dishonestly providing Austek with the Kings costings for the SPC project in 2007 with the intention that these would be used by Mr Nguyen to submit a higher Austek quote to SPC, so that Kings’ chances of winning the contract for the SPC project would be increased.

A finding is made that Mr Nguyen engaged in corrupt conduct by dishonestly using Kings’ costings for the SPC project in 2007 to ensure that his company, Austek, submitted a higher quote than Kings to SPC, so that Kings’ chances of winning the contract for the SPC project would be increased.

A finding is made that Mr Paul engaged in corrupt conduct by deliberately failing to disclose to SPC his conflicts of interest arising from his relationships with Mr Diekman and Kings.

The Commission has concluded that there is insufficient admissible evidence upon which to base any recommendation that consideration be given to obtaining the advice of the DPP with respect to the prosecution of any person in relation to the matters dealt with in this chapter.

Chapter 6 of this report concerns Kings and others in relation to the then Department of Housing contracts. No findings of corrupt conduct are made in this chapter.

Chapter 7 of this report concerns the conduct of Mr Paul when working for Woollahra Municipal Council. A finding is made that Mr Paul engaged in corrupt conduct by deliberately failing to disclose to the council his conflicts of interest arising from his relationships with Mr Diekman and Kings.

Chapter 8 of this report sets out the Commission's consideration of the corruption risks exposed during the course of the investigation.

The investigation identified a number of weaknesses in the procurement and management of security services by public authorities. The Commission has made the following recommendations to address these weaknesses.

Recommendation 1

That NSW government agencies ensure that overall responsibility for identified tasks associated with the selection of security integrators is maintained in-house, including:

- determining project budgets
- determining the scope of projects
- selecting tenderers to bid for contracts (in the case of limited and select tenders)
- communicating with tenderers
- coordinating tender evaluation panels and making recommendations
- evaluating tender submissions and writing selection reports.

Recommendation 2

That NSW government agencies embarking on new large-scale security projects adopt a rigorous product selection approach. The selection process could include:

- obtaining feedback regarding product specifications from a variety of sources, including end-users
- extensive product testing and the evaluation of test results by a panel either to inform the development of tender specifications or as part of a tender evaluation process.

Recommendation 3

That NSW government agencies explore alternatives to relying exclusively on the advice of specialist consultants when selecting security integrators through a competitive process. Options for diluting the influence of specialist consultants include:

- identifying in-house security experts from other public sector agencies for tender evaluation panel participation
- ensuring that when consultants sit on tender evaluation panels, it is only in a technical advisory capacity
- identifying and seeking advice from agencies that have undertaken similar projects.

Recommendation 4

That NSW government agencies consider the feasibility of separating tasks between security consultants for large-scale and complex projects, in cases where specialist advice is required.

Recommendation 5

That NSW government agencies adopt a broad approach to the due diligence enquiries that are conducted as part of a security procurement process, including:

- the scrutiny of low bids
- consideration of previous performance
- seeking referee reports beyond those nominated by the tenderer
- the verification of case studies provided by tenderers
- conducting criminal record checks on successful applicants
- seeking information from established information networks.

Recommendation 6

That NSW government agencies adopt a preference for open tender methodologies (including staged processes that involve open expressions of interest) for new security installation projects above \$250,000 in value. For contracts up to \$250,000 in value, a minimum of three written quotes should be obtained, unless exceptional circumstances exist and are documented or the contract is worth \$30,000 or less.

This recommendation does not apply where whole-of-government or multi-agency arrangements are in place. It also does not apply where the agency has a pre-qualification scheme in place or where existing warranty or integration issues preclude open competition.

Recommendation 7

That NSW Health adopts a range of audit activities to ensure compliance with the requirements of its *Purchasing and Supply Manual*, including the formalisation of pre-qualification arrangements for contractors and obtaining the requisite number of quotations.

Recommendation 8

That NSW government agencies improve their project management systems by:

- clarifying project roles and responsibilities
- developing in-depth project scopes and plans, as appropriate, to the size and complexity of a project
- specifying and ensuring compliance with contract terms and conditions
- introducing tight inventory controls
- close monitoring of project budgets and project expenditure
- establishing processes to verify and approve variations, including the use of quantity surveyors.

Recommendation 9

That NSW government agencies ban employees directly involved in procurement activities from accepting any gifts, benefits and hospitality from potential contractors and consultants and existing contractors and consultants.

Recommendation 10

That NSW government agencies be proactive in explaining the obligations on contractors and consultants to declare conflicts of interest, including those arising from either a pecuniary or non-pecuniary relationship.

Recommendation 11

That NSW government agencies ensure compliance with the Department of Premier and Cabinet's *Guidelines for the Engagement and Use of Consultants* (C2004-17) when engaging and using consultants.

These recommendations are made pursuant to s 13(3)(b) of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act") and, as required by s 111E of the ICAC Act, will be furnished to the relevant public authorities and the ministers responsible for those authorities.

As required by s 111E(2) of the ICAC Act, the relevant public authorities must inform the Commission in writing within three months (or such longer period as the Commission may agree to in writing) after receiving the recommendations whether they propose to implement any plan of action in response to the recommendations affecting them and, if so, the plan of action.

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

The Commission will publish the responses to its recommendations, any plans of action and progress reports on their implementation on the Commission's website, www.icac.nsw.gov.au, for public viewing.

Recommendation that this report be made public

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

Chapter 1: Background

This chapter sets out background information concerning the Commission's investigation into allegations of corrupt conduct in the provision of security services to public authorities by suppliers of security products, installers of the products and consultants.

The allegations involved security service providers Kings Security Group Pty Ltd ("Kings"), ACG Fire and Security Pty Ltd ("ACG"), and Austek Security Solutions ("Austek"), security industry consultants Daniel Paul and Christopher La Greca, and public officials Mark Eschbank (of the University of Western Sydney (UWS)) and Robert Huskic, Cameron Creary and Eric Kuiper (of the Northern Sydney Central Coast Area Health Service (NSCCAHS)).

One set of allegations was that the directors of Kings – Peter (Charles) Diekman and Peter Roche – provided money and other benefits to Mr Paul, Mr Eschbank, Mr La Greca, Mr Huskic, Mr Kuipers and Mr Creary in return for them improperly assisting Kings in relation to obtaining work with public authorities and, in some cases, increasing the fees Kings was able to charge. Other allegations investigated included whether Mr Paul improperly assisted a distributor of security equipment, Q Video Systems (QVS), to become the supplier of equipment for a public sector contract and whether Kings and other businesses engaged in collusive tendering for NSW public sector contracts.

The Commission also examined whether Mr Paul failed to disclose to relevant public authorities his conflicts of interest arising from his relationship with Kings and Mr Diekman.

How the investigation came about

On 5 March 2009, the Commission received a complaint alleging that Mr Paul improperly favoured Kings in awarding it government contracts. The complainant claimed that, in return for Mr Paul awarding these contracts, Kings paid for Mr Paul's annual trips to a security industry conference in

Las Vegas. The complainant also alleged that Mr Paul had received about \$100,000 from Kings in return for favouring Kings in the tender for the security services contract of the Art Gallery of NSW (AGNSW).

The Commission's investigation was initially focused on the allegations of corrupt conduct in relation to the AGNSW contract. As the investigation progressed, new information came to light that resulted in the scope of the investigation being expanded to include the allegations set out above.

Why the Commission investigated

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

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

The role of the Commission is explained in more detail in Appendix 1, while Appendix 2 sets out the Commission's approach to making corrupt conduct findings.

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

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

Conduct of the investigation

During the course of the investigation, the Commission:

- obtained documents from various sources by issuing 143 notices under s 22 of the ICAC Act requiring production of documents
- issued two notices under s 21 of the ICAC Act requiring public officials to produce statements of information to the Commission
- lawfully executed six search warrants to obtain information relevant to the investigation
- obtained three warrants under the relevant legislation to enable the interception of telecommunications
- undertook physical surveillance of persons suspected of being involved in corrupt conduct
- interviewed and/or took statements from a number of persons
- conducted 42 compulsory examinations.

The public inquiry

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

The security industry uses sophisticated hardware and software products. The knowledge of these products and their use is not within everyone's reach. The agencies involved in this investigation had limited capabilities in the design, integration and installation of complex security systems. They placed substantial trust in consultants and external installers to provide impartial and honest services. The integrity of such consultants and installers is

of particular importance given the sensitive nature of their roles. The possibility that these persons might abuse the trust placed in them for personal gain raised an important issue for public sector administration as a whole.

The investigation also raised concerns about whether public sector agencies had failed to put in place adequate safeguards to deal with their lack of internal expertise in this field. In some cases, consultants were handed end-to-end control over the projects, as public sector managers effectively outsourced responsibility. It was appropriate and necessary to investigate fully these issues with a view to identifying measures that could be put in place to address corruption risks, not just in these agencies but throughout the public sector.

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

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

The public inquiry primarily focused on the alleged provision of money and other benefits by Kings in order to secure public sector contracts, the allegations of collusive tendering and the integrity of the tendering process.

The public inquiry was conducted over 24 days, between 18 June 2012 and 31 August 2012. The Hon David Ipp AO QC, Commissioner, presided at the inquiry. Philip Strickland SC and Julia Lonergan acted as Counsel Assisting the Commission. Evidence was taken from 31 witnesses.

At the conclusion of the public inquiry, Counsel Assisting prepared submissions setting out the evidence and the findings and recommendations the Commission could make based on the evidence. These submissions were provided

to all relevant parties and submissions were invited in response. All the submissions received in response have been taken into account in preparing the report.

The security industry

There are three main participants in the electronic security industry; namely, suppliers, installers and consultants.

- Suppliers sell electronic security system components to installers.
- Installers or integrators integrate and supply various products to meet client requirements. In the past, each electronic security component, such as an electronic access control system and closed circuit television (CCTV) surveillance system, was installed as a stand-alone system. Systems integration involves connecting these various components into a single system.
- Consultants provide expert advice on security solutions based on customer needs and budget requirements.

The people and businesses

Kings was an installer and integrator of security systems. Mr Diekman owned 51% of Kings' shares and was one of its directors. He was primarily responsible for the operational side of the business, including networking and winning contracts.

Mr Roche was Kings' managing director and held 49% of the shares. He was responsible for the administrative and financial side of the business. He also had a role in putting together tender submissions for various contracts.

Kings' traditional business was locksmithing and installing master key systems. Over the years, Kings' business grew considerably, as it branched out into security systems integration, access control, CCTV, biometrics and intruder alarm monitoring. Its income in the 2005–06 financial period was about \$6.7 million. By the 2009–10 financial period, this had more than doubled to about \$15 million.

ACG was another installer of security systems examined during the course of the investigation. Anthony Grubisic was a director of ACG. The investigation examined whether he was involved with Mr Diekman in collusive tendering for Department of Housing (DOH) contracts.

Austek was also investigated. The Commission examined whether Jonathan Nguyen of that business engaged in collusive tendering with Mr Diekman in relation to a Sydney Ports Corporation (SPC) tender.

Mr Paul was an experienced security services consultant who was engaged by several public sector agencies

as a consultant. As a consultant, he wrote tender specifications, provided advice on security products, participated in tender evaluation committees and acted as project superintendent. He was well known in the security services industry and had developed an extensive network of contacts. He had financial, commercial and social relationships with suppliers of security products, installers and public officials. Mr Paul had particularly close relationships with Kings and Mr Diekman, with whom he had been friends from about 2007.

Mr La Greca was another consultant whose conduct was examined in the investigation. He was a project manager at IPP Consulting Pty Ltd ("IPP Consulting"), with several years of experience in the security industry. The Commission's investigation focused on his conduct as a consultant for NSW Businesslink Pty Ltd ("NSW Businesslink"), a public authority, in relation to a DOH project. The investigation examined whether he had received, or agreed to receive, money from Mr Diekman in return for recommending that Kings be awarded DOH contracts and whether he facilitated collusive tendering by Mr Diekman and Mr La Greca for DOH contracts.

Mr Eschbank was the facilities services manager of UWS's Bankstown campus. The investigation examined whether he received benefits from Kings in return for improperly assisting Kings in regard to a UWS tender for a security system upgrade.

Mr Huskic, Mr Creary and Mr Kuiper were employed by the NSCCAHS. Mr Huskic and Mr Kuiper were project officers responsible for project managing security installations and maintenance at the NSCCAHS. Mr Creary was the NSCCAHS's security system administrator. He was responsible for the day-to-day management of security systems and project management of building design and refurbishment for every hospital within the NSCCAHS. The investigation examined whether these public officials assisted Kings in relation to NSCCAHS work in return for receiving various benefits from Kings.

Issues of credit

The credibility of Mr Diekman, Mr Roche, Mr Paul and Mr Huskic is relevant to the assessment of evidence. It is appropriate to set out the Commission's view as to their credibility.

Mr Diekman was an unsatisfactory witness. He admitted to telling lies to the Commission. At one stage during the public inquiry, he claimed that he had not told the truth because he was in fear of his safety. This concern was explored in a compulsory examination. The Commission is satisfied that there was no basis for any fear on his part. In order to avoid answering difficult questions,

Mr Diekman often claimed he was unable to recall salient events. His explanations for requesting cash cheques or cash from Kings were inconsistent and contradictory. Overall, the Commission came to the view that it could not rely on his evidence unless it involved an admission against interest or was corroborated by other evidence the Commission considered to be reliable. The Commission is aware that Mr Diekman had been seeing a psychiatrist for about seven years and he expressed anxiety about giving evidence at the public inquiry. The Commission has taken these matters into account in assessing Mr Diekman's credibility but does not consider they explain the unsatisfactory nature of his evidence.

Mr Roche was an evasive and unresponsive witness. He claimed that he could not recall most of the events that one would have ordinarily expected him to remember. He gave the impression of tailoring his evidence so as to avoid any admission of wrongdoing on his part or knowledge of any wrongdoing on the part of others. The Commission has not relied on his evidence unless it involves an admission against interest or is corroborated by other evidence the Commission considers to be reliable.

Mr Paul was an evasive and unreliable witness. He was prepared to give whatever evidence he thought would best exonerate his conduct without regard for the truth. He offered differing and conflicting explanations for his conduct. The Commission has treated his evidence in the same way as that of Mr Diekman and Mr Roche.

Mr Huskic was an unreliable witness. He gave contradictory evidence on a number of matters. Only when faced with the overwhelming evidence collected by the Commission did he make some admissions, including that he had given false evidence to the Commission at his compulsory examination. His evidence has been treated in the same way as that of Mr Diekman, Mr Roche and Mr Paul.

The gambling relationship between Mr Paul and Mr Diekman

There is evidence that a number of payments were made to Mr Paul by Mr Diekman through Kings. Both denied that the payments were made or accepted for the purpose of influencing Mr Paul to use his position, as consultant to various public authorities, to favour Kings. They claimed that most of the payments related to gambling debts that Mr Diekman owed to Mr Paul.

There is evidence that Mr Paul and Mr Diekman did gamble, although the extent to which they gambled is not clear on the evidence. The amounts for which they gambled and their losses, if any, also cannot be substantiated. There is evidence that, in the event any losses were incurred, there was no expectation that the loser would pay.

Email correspondence between Mr Paul and Mr Diekman on 23 May 2010 suggested gambling debts were not taken seriously by them. Mr Paul sent an email to Mr Diekman and others in which he referred to \$500 being owed to him by another person and said that he was taking bets "on whether I ever see that \$500 again". He then wrote: "then I remember the \$60,000 still owed by Mr Diekman (the pool king)". A little later, Mr Diekman responded by email with: "And as for the 60k I'm good for it.....double or nothing Mystery town 2011". These emails suggest friendly banter among friends, rather than an expectation that any gambling debts would be paid.

Mr Paul claimed that he did not keep track of the bets between himself and Mr Diekman because "it's bets between mates so sometimes we pay, sometimes just double or nothing and it eventually goes away". He would not have taken legal action to recover any gambling debt. Although he claimed that at one stage Mr Diekman owed him \$80,000, he did not keep any record of repayments and, at the time he gave evidence, he had no idea whether Mr Diekman still owed him any part of that debt.


Mr Paul claimed that, as at May 2012, he owed Mr Diekman \$30,000 for gambling debts. He said he had paid Mr Diekman \$5,000 off that debt sometime before he gave evidence to the Commission on 31 July 2012. There was no documentary evidence of such a debt or the alleged payment.

Mr Diekman said that, although Mr Paul did not ask him to pay the gambling debts he owed, he felt he was indebted to Mr Paul and had to pay. Mr Diekman could not recall whether he ever repaid all the money he owed to Mr Paul.

Michael Hingerty is the chief executive officer (CEO) of another security equipment installation business. He said that he had also gambled with Mr Paul and lost, but Mr Paul had never asked him to pay him back. Mr Hingerty said, occasionally, if he lost a bet to Mr Paul, they would take "double or nothing" bets until the debt was cleared. This evidence is consistent with a casual arrangement between friends in which gambling debts were not intended to be repaid.

Greg Poller was Kings' finance manager and processed a number of the cheques Mr Diekman claimed were to pay for his gambling debt to Mr Paul. Mr Poller told the Commission Mr Diekman never told him that any of the cheques were to pay a gambling debt and that Mr Diekman never mentioned that he had any gambling debts.

Neither Mr Diekman nor Mr Paul could give clear evidence as to how much was owed to Mr Diekman



at any given time, when the bets were made or what, if any, agreement was reached as to time of payment. Their evidence was vague and unsatisfactory. The evidence establishes that decisions about whether to repay a gambling debt, how much to repay or when to repay were entirely arbitrary.

The Commission is satisfied that Mr Paul and Mr Diekman gambled. It may well be that they paid small gambling debts they incurred to one another. The Commission does not, however, accept their evidence that, if they gambled for large stakes, they expected the loser to pay or that the loser did pay. Any such debts incurred were never intended to be honoured by either party. The Commission is satisfied that they used their gambling relationship to attempt to disguise from the Commission the true nature of the payments Mr Diekman made to Mr Paul.

Chapter 2: The University of Western Sydney's security system upgrade

This chapter examines whether:

- between June 2007 and October 2008 Mr Paul, as a consultant to UWS, and Mr Eschbank, as facilities services manager of UWS's Bankstown campus, improperly exercised their public official functions to assist Kings in relation to the UWS contract for the upgrading of its security system in return for payment from Mr Diekman of Kings
- Mr Paul breached his obligations to UWS by deliberately failing to declare a conflict of interest arising from his relationship with Mr Diekman.

If Mr Paul and Mr Eschbank received payment from Mr Diekman in return for improperly exercising their public official functions to assist Kings in relation to a UWS contract, their conduct would amount to corrupt conduct. This is because such conduct on their part could constitute or involve the dishonest or partial exercise of their official functions within the meaning of s 8(1)(b) of the ICAC Act. Their conduct could also constitute or involve a breach of public trust and therefore come under s 8(1)(c) of the ICAC Act. Such conduct could also adversely affect the exercise of their official functions and could involve official misconduct, bribery and obtaining secret commissions within the meaning of s 8(2)(a), s 8(2)(b) and s 8(2)(d) of the ICAC Act. It could also constitute or involve a criminal offence of corruptly receiving a reward contrary to s 249B(1) of the *Crimes Act 1900* ("the Crimes Act") for the purpose of s 9(1) (a) of the ICAC Act.

If Mr Diekman paid Mr Paul and Mr Eschbank in return for them improperly exercising their public official functions to assist Kings in relation to a UWS contract, his conduct would amount to corrupt conduct. This is because such conduct on his part could adversely affect, either directly or indirectly, the honest or impartial exercise of the official functions of Mr Paul and Mr Eschbank and therefore come within s 8(1)(a) of the ICAC Act. It is also conduct that could adversely affect the exercise of their official

functions and that could involve bribery or the offer of secret commissions within the meaning of s 8(2)(b) and s 8(2)(d) of the ICAC Act. For the purpose of s 9 of the ICAC Act, such conduct could also constitute or involve a criminal offence of corruptly giving a reward contrary to s 249B(2) of the Crimes Act.

If Mr Paul deliberately failed to declare to UWS a conflict of interest, his conduct could amount to corrupt conduct. This is because it could constitute or involve the dishonest or partial exercise of his official functions within the meaning of s 8(1)(b) of the ICAC Act. Such conduct could also, for the purposes of s 9(1)(c) of the ICAC Act, constitute or involve reasonable grounds for UWS dispensing with Mr Paul's services.

The UWS access control project

In 2007, UWS decided to upgrade its security system ("the access control project") for access to all its campus buildings using the Concept 4000 system. The Concept 4000 system is a modular integrated hardware package designed to provide control of access to buildings and the detection of intruders. It is manufactured by Inner Range Pty Ltd ("Inner Range").

Adam Byrne commenced work with UWS as director of campus safety and security in early 2007. One of his tasks was to oversee the access control project. As UWS staff lacked the necessary skills, it was decided to appoint a consultant to help manage the project. Three consultants were selected to tender. One of these was Mr Paul's business, Security Consultants International (SCI).

Was Mr Paul a public official?

On 27 June 2007, UWS appointed SCI as its consultant to advise and assist UWS with the installation and maintenance of equipment for the access control project. At the time, Mr Paul was the sole director of Hootspah

Pty Ltd, trading as SCI. Mr Paul was also a member of the tender evaluation committee (TEC), which was formed to assess tender submissions for the access control project, and became a member of the UWS steering committee, which was formed to monitor installation of the Concept 4000 system.

Mr Paul's counsel submitted that Mr Paul was not a public official for the purposes of the ICAC Act because UWS engaged SCI, Mr Paul's business, and not him personally, to act as a consultant for the access control project.

Section 3 of the ICAC Act defines a public official as, inter alia, an individual acting in a public official capacity or a person engaged by or acting for or on behalf of, or in the place of, a public authority.

UWS is a "public authority", as defined by the ICAC Act because the Auditor General has power under s 35 of the *Public Finance and Audit Act 1983* to inspect, examine and audit its accounts.

UWS was established under the *University of Western Sydney Act 1997* ("the UWS Act"). Its principal functions include the provision of facilities for education and research. Section 9 of the UWS Act states that UWS may, for the purposes of or in connection with the exercise of its functions, provide such facilities for its students and staff and other members of the university community as it considers desirable. The provision of secure facilities to students and staff and other members of the community is part of UWS's official functions.

Although UWS contracted with SCI to provide consultancy services for the access control project, it was always understood that the work would be performed by Mr Paul and he, in fact, performed the work. He was a member of the TEC and took part in assessing the tenders and provided technical advice to other members of the TEC. As a member of the TEC, Mr Paul was subject to a UWS code of conduct. As a member of the UWS steering committee, he was one of the persons responsible for overseeing implementation of the project. As such, he was personally discharging public duties. The Commission is satisfied that Mr Paul was engaged by, or acting for or on behalf of, UWS and was acting in a public official capacity. The Commission is satisfied that in the work he did for UWS, Mr Paul was a public official for the purposes of the ICAC Act.

Kings is awarded the UWS tender

On 30 June 2007, the access control project tender was advertised. On 11 July 2007, 16 contractors attended the mandatory pre-tender briefing with Mr Paul, Mr Byrne and the person appointed as the probity auditor. By the close of the tender, on 8 August 2007, submissions had been

received from five companies, including Kings. These were then assessed by the TEC.

Apart from Mr Paul, the TEC comprised Leo Fincher-Johnson, Harry Stephenson and Peter Shepherd. Mr Fincher-Johnson was a senior project officer at UWS and the chair of the TEC. Mr Stephenson was also a senior project officer at UWS. Mr Shepherd, a SPC employee, was appointed as the independent panel member, on Mr Paul's recommendation. Mr Byrne was an advisor to the TEC.

Kings was the successful tenderer, and was awarded a contract in November 2007. The access control project was completed in 2009.

Before considering Kings' work on the access control project, it is necessary to consider a number of events that occurred prior to Kings being awarded the contract and whether Mr Paul acted improperly to advantage Kings over the other tenderers.

Kings' prior work for UWS

In early 2007, Kings was engaged by UWS to install classroom doors with access control card readers at its Bankstown and Blacktown campuses using the Concept 4000 system. This project is referred to in this report as project 02173.

UWS staff complained to Mr Byrne about what they perceived to be the poor quality of work undertaken by Kings on project 02173. As Mr Paul was the specialist security consultant, Mr Byrne raised the matter with him. Mr Byrne recalled that Mr Paul told him that project 02173 was a difficult job and Kings' employees were not familiar with the equipment and had not installed it before, but that Mr Byrne should have faith in Kings' workmanship, as it was a good company. A UWS review of Kings' work on this project identified serious issues with Kings' workmanship. Kings subsequently rectified the problems.

Mr Byrne told the Commission that, at some stage prior to the awarding of the access control project tender, Mr Paul told him that Kings was a "great company", which was experienced in the use of Inner Range products.

Mr Fincher-Johnson said he raised the quality of Kings' work on project 02173 with Mr Paul prior to accepting Kings' tender for the access control project. At the time, Mr Fincher-Johnson was not aware that Kings had used the Concept 4000 system for project 02173. He recalled that Mr Paul told him that the system used in project 02173 was not the same as the one to be used in the access control project. It appears that Mr Fincher-Johnson became aware only in 2012 that project 02173 also involved the Concept 4000 system. He told the Commission that, if he

had been aware at the time that the system was the same, he believed that the TEC would have taken a significantly different view towards recommending that Kings be awarded the access control project tender.

Mr Paul claimed he could not recall project 02173 or whether he had any conversation with Mr Fincher-Johnson or Mr Byrne about complaints that had been made about Kings' work relating to that project.

The Commission accepts the evidence that the Concept 4000 system was installed as part of project 02173. The Commission also accepts the evidence of Mr Fincher-Johnson that Mr Paul told him that project 02173 involved a different system from the one to be used for the access control project. Mr Byrne's evidence, which is accepted by the Commission, demonstrates that Mr Paul was familiar with project 02173. The Commission is satisfied that Mr Paul knew at the time he spoke with Mr Byrne and Mr Fincher-Johnson that project 02173 involved the Concept 4000 system and that he deliberately lied to Mr Fincher-Johnson when he told him the system used in that project was different from the one to be used for the access control project. The Commission is satisfied that Mr Paul's lies about this issue were motivated by a desire to assist Kings to obtain the access control project tender.

Transfer of Inner Range accredited technicians

The Commission examined whether the Kings tender misrepresented the number of Inner Range accredited technicians employed by Kings. The Commission also examined whether Mr Paul assisted Kings in this regard by providing information to Mr Roche that it would be beneficial to Kings' chances of obtaining the contract for the access control project if it could demonstrate it had a number of employees accredited to use Inner Range products such as the Concept 4000 system.

Mr Roche's email of 9 August 2007

Inner Range maintains a website that lists accredited dealers of its products and the accredited technicians who work for those dealers.

The tender evaluation criteria for the access control project specified the availability of key personnel as a relevant factor in evaluating the tender.

On 9 August 2007, Mr Roche sent an email about the UWS tender to Vincent Lopes, a director of Inner Range. The email was copied to Mr Diekman. In the email, Mr Roche noted that one way for Kings to demonstrate that it had the necessary technical resources to manage the project was to show that Kings had more accredited technicians than any other tenderer. The email identified

four accredited technicians who were former Kings employees and current Kings contractors, and requested that Mr Lopes alter the Inner Range records to show that the contractors still worked for Kings. Mr Roche noted that the TEC was to meet on 14 August 2007 and said that the transfer needed to happen before then so that Kings could direct the TEC to the Inner Range website to show that the four persons were employed by Kings.

Mr Lopes acted on Mr Roche's request and altered the Inner Range records to show that the four accredited persons were current employees of Kings.

Mr Roche's email also requested that Mr Lopes send an email to Mr Paul stating that Mr Paul should recommend to the TEC that it identify the tenderer with the most technical experience, including Inner Range accredited personnel. Mr Lopes complied with this request by sending an email to Mr Paul on 13 August 2007. In the email, he noted that UWS had decided to use the Inner Range product range and advised that it would be difficult for any contractor that did not have a strong history of previous experience using Inner Range products to successfully undertake the access control project. The email went on to advise that, "we are of the opinion that the successful tenderer should have access to technicians who hold Inner Range accreditation...", and provided a link to the Inner Range website.

The Kings tender submission represented the additional four accredited technicians as being employed by Kings. This enabled Kings to represent in its tender that it had 11 Inner Range accredited employees. All other competing tenderers had fewer than three Inner Range accredited employees.

Mr Roche claimed that the four persons whose accreditation was transferred back to Kings were fully subcontracted to Kings with a commitment to work full-time. He conceded, however, that there was an advantage to Kings in showing the four persons as employees rather than contractors because the fact that Kings directly employed accredited personnel highlighted its technical capacity. There can be no doubt that Mr Roche was aware at the time he sent the email to Mr Lopes that there was an advantage for Kings in requesting the transfer. He made it clear in the email that he wanted the transfer in order to "blow the opposition away" and that the transfer had to occur before the TEC met on 14 August 2007. The Commission is satisfied that Mr Roche deliberately set out to mislead the TEC about the number of Inner Range accredited persons employed by Kings.

Kings gained an advantage by being able to demonstrate that it had a number of Concept 4000 system accredited employees. Kings scored full marks in relation to the key personnel tender evaluation criteria, which included the number of its personnel who were Inner Range-accredited.

That factor had a weighting of 35%, which represented 21% of the weighting in the context of the overall tender.

Mr Fincher-Johnson said that the number of accredited personnel available to each tenderer was discussed and considered an important factor by the TEC. He said that, in evaluating the different tenders, employees of tenderers were rated substantially higher than subcontractors to tenderers, even if the subcontractors were committed to work full-time. The Commission accepts this evidence.

The Commission is satisfied that Mr Roche believed there would be an advantage to Kings in showing that the additional four accredited persons were employed by Kings; although, in the event, that advantage was probably minimal. Without the additional four accredited persons, Kings still had more accredited employees than any of the other tenderers. The available evidence does not support a conclusion that the transfer of the four accredited persons was a determining factor in Kings being awarded the tender.

Did Mr Paul assist Kings?

The email that Mr Roche sent to Mr Lopes on 9 August 2007, requesting the transfer of accredited persons, did so on the basis that: "We have also been informed it would be a powerful case in our favour if KINGS could demonstrate they have the technical resources/fire power to do the [sic] manage the project".

Mr Roche told the Commission that he could not recall who told him that it would be a "powerful case" in Kings' favour if it could demonstrate it had the technical resources to manage the access control project.

Both Mr Byrne and Mr Fincher-Johnson denied that they ever communicated with Kings about the importance of the number of accredited personnel to the tender evaluation process. Mr Shepherd and Mr Stephenson were not questioned about this issue.

Telephone call charge records obtained by the Commission show that Mr Paul made five telephone calls to Mr Diekman's mobile telephone between 8 August 2007, the day the tender closed, and 9 August 2007. Mr Paul was unable to recall what he discussed with Mr Diekman, other than to say that they did not discuss the access control project tender.

Mr Paul denied having any discussion with Mr Diekman or Mr Roche during the tender evaluation process with regard to giving them a "heads up" in relation to the tender. He said Kings would have gleaned the importance of having accredited personnel in its employ from the tender documents. According to Mr Paul, such information was a matter of common sense for a tenderer. It is clear, however, from the wording of Mr Roche's email that Kings had been told something, rather than having gleaned information

from the tender documents. Nevertheless, while the telephone contact between Mr Paul and Mr Diekman raises a suspicion that Mr Paul may have been the source of this information, the Commission is not satisfied to the requisite standard that he was the source. As was pointed out in the submissions made on behalf of Mr Paul, other people may have provided this information either innocently or otherwise.

Mr Paul's provision of unsolicited information

The Commission investigated whether Mr Paul sought to advantage Kings in the assessment of its tender by providing unsolicited information to Mr Byrne and Mr Shepherd about Kings' work on another project involving the Concept 4000 system.

The Kings tender did not include reference to any work that it had done at the Royal Prince Alfred (RPA) hospital.

On 9 August 2007, the day after the access control project tender closed, Mr Roche sent an email to Mr Paul providing a website link to "...a Concept Case Study on the RPA Hospital at which KINGS did all the work". Mr Paul replied to Mr Roche's email stating, "Thanks I will blind copy you on an email".

Later that day, Mr Paul emailed to Mr Byrne and Mr Shepherd a hyperlink to the Inner Range website, which contained the RPA case study. Although Mr Byrne was not a member of the TEC, he had been appointed an advisor to it. Mr Shepherd was a member of the TEC. The email stated that, "This was on the Inner Range website ... Thought it was interesting. I believe the one for health was done by Kings".

Mr Paul accepted that he sent the email to Mr Byrne and Mr Shepherd. He also agreed that he blind-copied the email to Mr Roche. He denied that he was promoting Kings' ability to deliver a project involving the Concept 4000 system. He claimed that the email was sent for the benefit of UWS and to advise the TEC of Kings' prior history of carrying out large installations using the Concept 4000 system. The Commission considers this evidence to be disingenuous.

There was a clear advantage to Kings in having this information brought to the attention of the TEC. That is why Mr Roche brought it to Mr Paul's attention. As it was not included in the Kings tender, Mr Paul should not have provided the information to Mr Shepherd or Mr Byrne. By doing so, he advantaged Kings over other tenderers by providing Mr Shepherd and Mr Byrne with additional information supportive of Kings' ability to successfully undertake the project. The Commission is satisfied that Mr Paul's purpose in sending his email of 9

August 2007 to Mr Byrne and Mr Shepherd was to assist Kings in its bid for the access control project contract by promoting it as a company with experience in installing the Concept 4000 system. The Commission is also satisfied that, by copying the email to Mr Roche, Mr Paul intended to demonstrate to Mr Roche that he had done something to promote Kings' prospects of winning the tender.

It was submitted by counsel for Mr Paul that, because the TEC did not take the information into account when assessing the tenders, it could not be said that Mr Paul's purpose in providing the information was to promote Kings. The Commission rejects this submission. The Commission is satisfied that, in sending the information to Mr Byrne and Mr Shepherd, it was Mr Paul's intention to assist Kings. The fact that it does not appear to have assisted Kings does not affect Mr Paul's intention at the time he sent the information.

Implementation of the project

After the access control project contract was awarded to Kings, a steering committee was formed to implement the project. The steering committee was comprised of Mr Byrne, Peter Guilfoyle (another UWS employee), Mr Roche, Steven Kuryj (an employee of Kings) and Mr Paul. The evidence before the Commission suggested that Mr Paul acted to favour Kings' interests by:

- suggesting to Kings that it increase the prices it charged UWS for the purchase of equipment
- arranging for Kings to change its UWS progress payment schedule so that it could increase its cash flow at the earlier stages of the contract.

These matters are examined below.

Mr Paul suggests Kings increase its prices

On 19 November 2007, Kings was requested to install access control equipment to some 21 rooms at the UWS Bankstown campus. This work was additional to that required under the access control project. It was ultimately decided to treat the work as a variation to the access control project contract.

On 13 December 2007, Mr Byrne sent an email to Mr Paul, advising that he had sought an updated cost schedule from Kings, taking into account the extra 21 rooms at Bankstown, and seeking advice as to what additional equipment was required, taking into account the equipment then held by UWS. The email noted that Kings was required to provide a

list of recommended equipment to be procured and the total cost prior to any purchase being approved.

Mr Paul responded by email the same day, advising Mr Byrne that he had contacted Kings and asked for the information sought by Mr Byrne.

On Saturday, 15 December 2007, Mr Paul sent an email to Mr Roche. The email read as follows:

Peter

Your qty and price on the left, my suggested [sic] on the right.

The email then set out two columns. The left column refers to quantities of eight items of equipment and a number of prices that total \$266,412. In the column on the right, Mr Paul had increased the prices so that they total \$284,173, an increase of \$17,761. Mr Paul made no changes to the quantity of items. Although the items of equipment are not identified in the email, other documentation enables six of the items to be identified. These are electric strikes, recessed cable transfers, code pads, LAN isolators, reed switches and detectors.

Although Mr Paul had been instructed by UWS to copy Mr Byrne and Mr Guilfoyle into all correspondence with Kings, he did not copy them into this email.

On 18 December 2007, Kings submitted a list of additional equipment and prices to UWS. For the six items identified above, this list contained the increased prices that had been suggested by Mr Paul.

The steering committee reviewed Kings' quoted prices and asked Mr Paul to carry out a benchmarking exercise to compare the prices quoted by Kings and to advise whether they were reasonable.

On 19 December 2007, Mr Paul sent an email to Mr Byrne and Mr Guilfoyle, which sets out Kings' prices for the six items and compares those prices with the actual trade price and what Mr Paul considered to be a reasonable price. The prices for the six items in this email correspond to the prices suggested by Mr Paul in his email of 15 December 2007 to Mr Roche. Mr Paul considered Kings' prices for three items to be higher than he would expect and its prices for the other three items to be lower than he would expect. It appears, however, that no steps were taken to reduce Kings' prices and it, ultimately, invoiced UWS for the full amount quoted in the 18 December 2007 list.

Item	Mr Roche's original unit price	Mr Paul's suggested unit price	Quantity	Kings' additional profit
Electric strikes	\$280.00	\$292.00	524	\$6,288.00
Recessed cable transfers	\$33.00	\$35.90	524	\$1,519.60
Code pads	\$280.00	\$289.00	165	\$1,485.00
LAN isolators	\$330.00	\$336.00	20	\$120.00
Reed switches	\$25.00	\$31.60	100	\$660.00
Detectors	\$85.00	\$93.00	50	\$400.00
Total				\$10,472.60

The table above demonstrates the effect on Kings' profit of the price changes recommended by Mr Paul and charged by Kings.

Mr Paul claimed that someone at UWS instructed him to recommend Mr Roche increase Kings' prices. He said he could not recall who instructed him, but thought it could have been Mr Byrne, Mr Guilfoyle or Mr Fincher-Johnson. He said he could not recall the details of the instruction. He initially told the Commission that the price increase might have something to do with warranties. Later, he claimed that UWS wanted to increase the prices to also cover additional paperwork and training that UWS wanted from Kings. He explained that the paperwork could be schematic drawings and user manuals. He was not able to explain why, if UWS wanted Kings to do extra work or pay for additional warranties, it did not make a formal request to Kings, seek a quote, and vary the contract to cover any additional requirements and the cost of those requirements.

Mr Paul's counsel submitted that Mr Paul's action was authorised by the steering committee and that this was evidenced by the steering committee minutes of 17 December 2007.

Item 10 of these minutes states that "UWS will issue a formal advise [sic] in respect to the above prices and acceptance of the same, following SCI's benchmarking exercise – referencing the costs against trade prices and anticipated reasonable mark ups".

It was submitted that the reference to "reasonable mark ups" authorised Mr Paul to recommend Kings increase its prices. The Commission rejects this submission. Mr Paul was required to undertake a benchmarking exercise, as is demonstrated by his email of 19 December 2007 to Mr Byrne and Mr Guilfoyle. The object of this exercise was to ensure that UWS would get value for money, not to increase the prices being charged by Kings. Neither the benchmarking exercise nor the steering committee minutes of 17 December 2007 authorised Mr Paul to recommend to Kings that it increase its prices.

Mr Roche agreed that he adopted Mr Paul's recommended price increases. He told the Commission the increases were to cover the cost of extending warranties on the parts from 12 months to three to five years. He agreed, however, that, when he provided the original figures to Mr Paul, he knew what the warranty periods were under the contract. If there had been changes, he would have incorporated them into the original figures or specifically noted that they were not included. Although he conceded that he had read parts of Mr Paul's evidence at the public inquiry, he said that he could not recall reading Mr Paul's evidence on this issue and denied tailoring his evidence to correspond with Mr Paul's evidence.

There is no documentary material to support Mr Paul's evidence that UWS sought a price increase or that UWS wanted Kings to undertake additional work by way of training, preparation of drawings or manuals. There is no documentary evidence that UWS asked Kings to pay for extended warranties. There is nothing in Mr Paul's email of 15 December 2007 to Mr Roche about additional work and there is no mention of Mr Paul having been instructed by anyone at UWS to increase Kings' prices. There is no reference in the email to extended warranties or any indication how the price increases suggested by Mr Paul might relate to an extension of any warranties.

Mr Byrne and Mr Guilfoyle were the UWS members of the steering committee. They both denied giving any instruction to Mr Paul to recommend Kings increase its prices. Mr Fincher-Johnson was no longer involved with the project once Kings was awarded the tender. He told the Commission that he had no discussions with Mr Paul about increasing the prices Kings charged. The Commission accepts these witnesses' evidence.

The Commission is satisfied that the price increases suggested by Mr Paul had nothing to do with any additional work by way of training, preparation of drawings or manuals requested by UWS or any extension to the term of warranties. If the suggested increase was legitimately based, then it would be expected that

Mr Paul would have, in accordance with his instructions from UWS, copied the email to Mr Byrne and Mr Guilfoyle. It would also be expected that Mr Paul's email to Mr Roche would have explained the reason for increasing the prices and set out the basis for calculating the increases. These failures are consistent with an intention on Mr Paul's part to hide from UWS the fact that he was suggesting that Kings increase its prices. There was no advantage to UWS in Kings increasing its prices. The Commission is satisfied that Mr Paul suggested Kings increase its prices in order to benefit Kings.

Encouraging Kings to claim early payment

The access control project tender contract required Kings to provide a payment claim schedule.

On 18 January 2008, Mr Kuryj, an employee of Kings, sent an email to Mr Paul attaching Kings' proposed payment claim schedule. It proposed 12 payments to be made on the 25th day of each month, commencing on 25 December 2007 and finishing on 25 November 2008. The proposed December 2007 payment was for \$98,017.50 and the November 2008 payment was for \$63,082.50. The other 10 payments were for \$63,300 each. Mr Paul replied by email later that day, saying: "Looks ok, BUT, Why aren't you making any progress claims for the installation works? Only monthly? I would be inclined to claim differently. Call me to discuss". Although Mr Paul was required to copy his email correspondence with Kings to Mr Byrne and Mr Guilfoyle, he did not copy this email to them.

On 21 January 2008, Mr Kuryj emailed Mr Paul with a changed schedule. Although there is no difference in the total amount claimed by Kings, the revised schedule requires larger payments at an earlier stage of the contract. The payments from January 2008 are set out in the table below.

Month	Amount
January	\$97,400.00
February	\$95,800.00
March	\$91,400.00
April	\$86,000.00
May	\$63,300.00
June	\$59,000.00
July	\$55,600.00
August	\$44,600.00
September	\$32,000.00
October	\$39,380.00
November	\$31,602.00

Mr Paul told the Commission that he would have discussed the issue of progress payments with UWS staff at a steering committee meeting. He said Mr Guilfoyle, Mr Byrne and Mr Fincher-Johnson were at the steering committee meeting. He said that he would have been given an instruction to suggest a revised schedule to "smooth out the cash flow".

Mr Byrne denied instructing Mr Paul to have any communication with Kings about the structure or the manner in which Kings should make progress claims. Mr Byrne was surprised by the email correspondence and said he could not understand why UWS would involve itself in readjusting Kings' payment schedule. It was not necessary to question Mr Fincher-Johnson as he was not a member of the steering committee and was not involved with the project at this time. Even though Mr Guilfoyle was not questioned on whether this matter was discussed at the meeting, his evidence is not critical to the determination of this issue. This is because, if the issue was discussed at a steering committee meeting, it is most likely that Mr Byrne would have recalled such a discussion. In any event, Mr Paul was not a credible witness and his evidence that his action was authorised by the steering committee members is inherently implausible and is rejected.

Until Mr Paul's intervention, Kings was content to even-out the payments under the contract. As a result of his intervention, Kings adjusted its schedule to require larger payments at an earlier stage of the contract. This benefitted Kings by increasing its cash flow at the earlier stages of the contract. There was no benefit to UWS. Indeed, there was disadvantage to UWS, in that it was expending money at a faster pace than would otherwise have been the case. Although Mr Paul was engaged by UWS as a consultant, and should, therefore, have acted only in the interests of UWS, his action in this matter benefitted only Kings. The Commission is satisfied that it was Mr Paul's intention to benefit Kings by his actions.

Was Mr Paul rewarded for assisting Kings?

The Commission has found that Mr Paul improperly assisted Kings by:

- allaying the concerns Mr Byrne and Mr Fincher-Johnson had about the quality of Kings' work on project 02173 and lying to Mr Fincher-Johnson when he told him that project 02173 involved a different system from the one to be used in the access control project
- providing unsolicited information to Mr Shepherd, a TEC member, which promoted Kings as a company with previous experience in installing the Concept 4000 system

- suggesting Kings increase its prices to UWS for the purchase of additional equipment
- arranging for Kings to change its UWS payment claim schedule, thereby enabling it to increase its cash flow at the earlier stages of the contract.

In light of Mr Paul's assistance to Kings, the Commission investigated whether Mr Paul sought or received any benefit from Mr Diekman or Mr Roche in return for that assistance.

Practice of providing gifts to consultants

Mr Poller had been Kings' finance manager. He told the Commission of a Kings finance meeting in 2007, during which Mr Diekman told him and Mr Roche that, in order for Kings to remain visible in the industry, it had to provide gifts to consultants and other key players. Mr Diekman told them this was common practice in the industry. He recalled that Mr Roche did not like the idea and no decision was made at that meeting. Sometime later, at another meeting at which all three were present, Mr Roche asked how to disguise payments to consultants and others in Kings' accounting records. Mr Poller suggested raising false purchase orders to account for raising cash cheques. He said that both Mr Roche and Mr Diekman agreed with his suggestion. This was the system then put in place at Kings whenever cash was needed to pay consultants or others or to purchase gifts for them in return for them facilitating business opportunities for Kings.

Under this system, whenever Mr Diekman or Mr Roche wanted cash for a consultant, Mr Poller would either get an email or verbal request to prepare a cash cheque for a stipulated amount. Mr Poller then wrote the name of a genuine supplier, such as Chubb Security or Security Merchants, on the cheque butt. Mr Poller said Mr Roche facilitated this practice by preparing false purchase orders.

Mr Poller said the three of them also discussed the need to avoid scrutiny under the *Financial Transactions Reports Act 1988* by ensuring that any cheques for payments to consultants were for \$10,000 or less. The *Financial Transactions Reports Act 1988* requires financial institutions to report certain transactions to the Australian Transaction Reports and Analysis Centre (AUSTRAC), which may then be passed on to law enforcement agencies.

Mr Diekman said he could not recall being at a meeting where he told Mr Poller or Mr Roche that he needed cash to pay consultants and other key players. He denied that he made cash payments to any public officials or consultants in return for them assisting Kings to obtain work. He agreed, however, that, from time to time, he asked Mr Poller or Mr Roche for cash and instructed Mr Poller to account for that cash by falsely recording that the payments were made to contractors. Mr Diekman claimed that he spent this money

on his boat, to entertain clients and suppliers on his boat, and to take them to lunches, races and cricket matches for networking purposes. He agreed that it was dishonest for him to disguise personal expenses in this way.

Mr Poller said that he had no recollection of Mr Diekman wanting cash cheques to spend on his boat. According to Mr Poller, on every occasion Mr Diekman took money out of the company for his personal use, it was recorded in the general ledger. Mr Poller could not recall seeing any entry in the ledger for money spent on Mr Diekman's boat.

Mr Diekman said he also obtained cash to pay for contractors who performed after-hours work for Kings. The Commission rejects this evidence. He was not able to name any contractor to whom he paid money for having worked after hours. If Mr Diekman wanted to pay a contractor for after-hours work, there is no reason why this could not be recorded in the Kings' accounts rather than using the subterfuge of creating false purchase orders.

There was evidence that the system described by Mr Poller above was used to disguise payments to Mr Paul.

The 21 August 2007 email

It will be recalled that Mr Paul was engaged by UWS in June 2007 and the access control project was advertised on 30 June 2007. Kings was awarded the contract in November 2007 and completed the work in early 2009. Between November 2007 and early 2009, Mr Paul was responsible for advising UWS on the implementation of the access control project.

On 17 August 2007, Mr Roche sent an email to Mr Poller advising that Mr Diekman required "some cash for consultants". On 21 August 2007, Mr Diekman sent an email to Mr Roche advising that he needed \$8,000 cash, including \$2,000 cash for "Bankstown UWS". On the same day, a cash cheque was prepared for \$8,000. The relevant cheque butt described the payee as "Consultant fees".

Mr Diekman said that he could not think of any reason why he would pay cash to a consultant on the UWS project. He said, "Well I think [it] just shows that I put down anything. I'll say consultancy fees and I was paying contractors". Mr Diekman denied that he paid any money to Mr Paul in relation to the UWS project. He said he used the terms consultants and contractors interchangeably in his emails.

The Commission does not accept Mr Diekman's evidence that the \$8,000 was used to pay a contractor. He was not able to nominate any contractor to whom he paid the money and there was no documentary or other evidence that the money was paid to a contractor. There is, however, insufficient evidence to conclude that any part of the \$8,000 was paid to Mr Paul. Mr Paul denied receiving

any payment from Mr Diekman in relation to his work for UWS. There is no reference to him in either email and no banking records showing a cash deposit into Mr Paul's account at that time.

Cash cheques number 3227 and number 3228

On 4 January 2008, two cash cheques were issued by Kings, one for \$9,000 (cheque number 3227) and another for \$4,000 (cheque number 3228). Although the cheques were signed only by Mr Poller, the Commission accepts his evidence that he drew cash cheques only on the instructions of Mr Diekman or Mr Roche. The associated tax invoices for the cheques were made out to "Chubb Electronic Security". Mr Poller created a separate account called "Chubb Electronic Security", which was not a legitimate account for Chubb Security. The Chubb Electronic Security account was set up to cover false entries for the purpose of making cash payments. Mr Poller told the Commission that the use of this account indicated that the two cheques were really for cash to pay consultants.

The cheques were deposited into the account of Mr Paul's mother-in-law, Caroline Gent, on 13 and 15 February 2008 respectively. On 25 February 2008, \$13,000 was transferred from Ms Gent's account to the account of Mr Paul's wife. On 26 February 2008, \$12,000 cash was withdrawn from Mrs Paul's account.

Mr Diekman claimed he had no recollection of paying \$13,000 to Mr Paul. He told the Commission he assumed the payment was for a gambling debt he owed Mr Paul. He denied that the payment was in return for favours that Mr Paul had done for Kings or for favours that Mr Diekman hoped Mr Paul would do for Kings in the future.

Mr Roche told the Commission that he knew nothing about the two cheques until they were shown to him at the public inquiry.

The Commission is satisfied that the cheques were authorised and provided by Mr Diekman. It was he who was friends with Mr Paul and who dealt with him on a regular basis. The Commission accepts Mr Paul's evidence that he was given the cheques by Mr Diekman. There is no reason for Mr Paul to have lied about this.

Mr Paul said the cheques were given to him by Mr Diekman and that he deposited them into Ms Gent's account. He denied the \$13,000 payment was in return for him assisting Kings in relation to the UWS access control project contract.

Mr Paul's evidence about the reason for accepting the cheques was inconsistent and implausible.

Mr Paul claimed the \$13,000 might have been for work he had performed for Kings. He was not able to provide any details of any such work and there is no documentary evidence of any such work. The Commission rejects this explanation.

Mr Paul then said the \$13,000 was "definitely" payment of a gambling debt owed to him by Mr Diekman, although he could not recall what the bet was for. If this payment related to a gambling debt, there would be no reason to disguise the transaction by paying the cheques into Ms Gent's account.

Mr Paul claimed that he deposited the money into Ms Gent's account because he owed her money that he had borrowed from her to pay her husband for a jet ski. He could not recall how much he borrowed but thought it was about \$10,000 or \$15,000. Mr Paul only had one jet ski. Mrs Paul's bank records showed that there was a transaction for a jet ski payment but it took place in January 2011, and involved the sum of \$6,000. When this was put to him, Mr Paul abandoned the suggestion that he paid the cheques into Ms Gent's account to repay a loan.

The only other explanation Mr Paul was able to offer for paying the cheques into his mother-in-law's account was that, "I saw it as a, as a Kings' cheque and maybe somebody might look at it as if was, as if there was something wrong with it, albeit it was for a repayment of a bet".

That explanation is inconsistent with other evidence Mr Paul gave. A Kings cheque dated 2 February 2007 for \$11,000 was deposited into Mr Paul's bank account. This cheque was made payable to SCI. Mr Paul claimed the cheque was payment of a gambling debt owed to him by Mr Diekman. Whether it was payment of a gambling debt or for work SCI had performed for Kings is in dispute. In any event, the fact that he banked that cheque into his account belies his concern about banking Kings cheques into his account. What is clear, however, on any view of the matter, is that Mr Paul took steps to conceal his receipt of the \$13,000 by depositing the two cheques into his mother-in-law's account.

There is no independent evidence to support Mr Paul's claim that the \$13,000 was payment of a gambling debt owed to him by Mr Diekman.

The access control project tender was of significant value to Kings. The evidence referred to earlier in this chapter shows that Mr Paul had rendered assistance to Kings in various ways prior to the \$13,000 payment. Perhaps the most significant assistance was his role in arranging for Kings to increase the price it charged UWS for certain items of equipment.

The way in which Mr Paul treated the two cheques is relevant to the assessment of his conduct in this matter. If the cheques were payment of a gambling debt, there was no reason for him to disguise their receipt by paying them into his mother-in-law's account and then arranging for her to transfer the money into his wife's account. The Commission is satisfied that the mechanisms Mr Paul adopted were intended to conceal the source of the payment. Such concealment is consistent with knowledge on his part that the cheques were provided for an improper purpose.

The Commission is satisfied that, for the reasons given above, it was Mr Diekman who paid the \$13,000 to Mr Paul.

The Commission is also satisfied that the \$13,000 payment was made to Mr Paul by Mr Diekman on behalf of Kings in return for the assistance Mr Paul had rendered to Kings in relation to the UWS access control project and to influence Mr Paul to continue to assist Kings in relation to the UWS access control project. In this regard, the Commission notes that, shortly after he received the two cheques, Mr Paul arranged for Kings to change its UWS progress payment schedule to enable it to increase its cash flow at the earlier stages of the contract.

Did Mr Paul fail to declare a conflict of interest?

UWS had a code of conduct for TEC members. It set out a number of obligations applicable to TEC members. These included a requirement to disclose in writing to the TEC chairperson if a member became aware of any interest that "might possibly be thought to conflict with their duty to the TEC". If the conflict was serious, the code of conduct provided for the member to be replaced.

Mr Paul was provided with a copy of the code of conduct. On 14 August 2007, he signed a declaration that he had read and understood the code and agreed to be bound by its contents. He wrote in the declaration that, "I have no relationships commercial or otherwise with any of the tenderers or individuals" and "I do not believe there are any conflicts of interest with any tenderer or individual". In the declaration, he refers to having previously awarded tenders and denied tenders to, among others, Kings and that, in 2003, he had worked with Kings for Northern Area Health.

By 14 August 2007, Mr Paul was aware that Kings had tendered for the access control project contract. This is evident from his email to Mr Shepherd and Mr Byrne of 9 August 2007. Despite this, Mr Paul did not disclose any personal or gambling relationship with Mr Diekman.

Mr Paul gave evidence that he had known Mr Diekman for several years and had forged a close friendship by at least 2007. They socialised together and engaged in regular activities, such as attending lunches, dinners and football

matches. Mr Paul also visited Kings' offices frequently, sometimes every second day. It is not in dispute that, in 2007, Mr Paul had a personal relationship with Mr Diekman. Mr Paul and Mr Diekman also gambled together. Some of the evidence concerning their gambling relationship is set out in chapter 1.

Mr Paul claimed that, although he had not made any written disclosure of his relationship with Mr Diekman, he had made a verbal disclosure to "people" on the TEC. Mr Byrne was the only person he was able to identify as a person to whom he had made such a disclosure.

Mr Byrne gave evidence that at no time during the tender evaluation process was he aware of either the nature of any personal relationship between Mr Paul and Mr Diekman or that they had a gambling relationship. He said that such relationships would have concerned him because they could have compromised Mr Paul's independence. The Commission accepts Mr Byrne's evidence that Mr Paul never disclosed to him his relationship with Mr Diekman.

Mr Fincher-Johnson was the chairperson of the TEC and the person to whom Mr Paul was required, under the code of conduct, to disclose any conflicts of interest. He gave evidence that he was not aware that Mr Paul and Mr Diekman were friends or that they had a gambling relationship. He said that, if he had been informed of the extent of the relationship between Mr Diekman and Mr Paul, it would have affected the decision as to whether Mr Paul should be involved in the tender process at all. The Commission accepts Mr Fincher-Johnson's evidence.

Mr Paul admitted that he had never disclosed that he had a gambling relationship with Mr Diekman. He denied this failure was deliberate. He claimed that the gambling relationship was "irrelevant, it was, it was a completely separate thing that had no bearing on the outcome of the tender or on the outcome of them tendering". He denied that it was in his interest to ensure Kings was awarded the contract so that Mr Diekman would be in a financial position to pay his gambling debts to Mr Paul.

There was other evidence suggesting a commercial relationship between Mr Paul and Mr Diekman in 2007.

On 25 January 2007, Mr Diekman sent an email to Mr Paul advising that Mr Paul's quotation of \$10,000 for work relating to another project had been accepted, and requesting Mr Paul to forward an invoice to Kings so that payment could be processed. Later that day, Mr Paul emailed to Kings a SCI invoice for \$11,000, being \$10,000 plus GST. On 7 February 2007, a Kings cheque for \$11,000 made payable to SCI was deposited into Mr Paul's bank account. There was some dispute on the evidence as to whether the \$11,000 payment related to work Mr Paul had done for Kings or a gambling debt owed to him by Mr Diekman. It is not necessary to resolve

this dispute. The payment is evidence of a financial relationship between Mr Paul and Mr Diekman. Such a relationship represented, at the least, a potential conflict of interest in relation to Mr Paul's exercise of his functions in relation to his work for UWS.

Given Mr Paul's personal and financial relationship with Mr Diekman, Mr Paul had a clear conflict of interest in being part of the TEC when Kings was one of the tenderers being considered by the TEC for the access control project contract. The UWS code of conduct required Mr Paul to disclose any potential conflict of interest to Mr Fincher-Johnson in writing. Mr Paul failed to do so. The Commission is also satisfied that Mr Paul did not make any verbal disclosure of his relationship with Mr Diekman.

Mr Paul was an experienced consultant and, as such, would have readily appreciated what constitutes a conflict of interest. He had read the UWS code of conduct requiring him to make written disclosure of any interest "which might possibly be thought to conflict" with his duty to UWS. The Commission is satisfied that Mr Paul appreciated that the nature of his relationship with Mr Diekman came within this description and that he needed to disclose it to the TEC chairperson. The Commission is also satisfied that Mr Paul's failure to do so was deliberate and evidenced his desire to keep his relationship with Mr Diekman and Kings concealed from UWS so that he could continue to act as a consultant for the UWS tender and, thereby, remain in a position where he could favour Kings in relation to the UWS access control project.

Mr Eschbank and Kings

Mr Eschbank was the facility services manager at UWS's Bankstown campus. The evidence before the Commission indicated that Mr Eschbank had received a free television set from Kings. The Commission examined whether this gift was in return for any assistance Mr Eschbank provided to Kings in relation to Kings' tender response to the access control project tender or for providing any confidential information relating to the access control project tender to David McMicking, a Kings employee and friend of Mr Eschbank.

Prior to joining UWS, Mr Eschbank worked for Australian Consolidated Press as a security manager. In that position, he had contact with Mr Diekman, Mr Roche and Mr McMicking.

Mr Eschbank told the Commission that Mr Diekman telephoned him and asked what Kings needed to do to be considered for the access control project tender. Mr Eschbank said that he passed Kings' details on to his UWS director. He told the Commission that, at the time, he was also dealing with Mr McMicking in relation to project

02173 and they had agreed they would not discuss the access control project tender.

The access control project tender documents

A forensic analysis of Kings' computer shows that, on 10 July 2007, Mr Roche forwarded a copy of the tender document for the access control project to Mr Eschbank's wife's email address.

Mr Roche gave evidence that he sent the tender documents to Mr Eschbank because Mr Eschbank asked for a copy, as it was an area of interest to him. Mr Roche denied that Mr Eschbank provided any assistance to Kings in relation to its tender response. Mr Diekman also denied that Mr Eschbank provided any assistance in relation to the UWS contract.

Mr Eschbank said he asked for the documents to be sent to his wife's email account so that he could read them at home. The documents were sent to him so he could give Mr Roche advice on Kings' response to the tender. He said he made some suggestions to Mr Roche to assist Kings prepare its tender response but could not recall what he told Mr Roche. He denied that he could have assisted Kings with information relating to pricing, as he did not have access to such information.

Mr Eschbank recalled that Mr Roche had also asked him for "pointers" for the presentation Kings needed to make for the access control project. He told the Commission that he had a discussion with Mr Roche but could not recall the content of that discussion. He could not rule out the possibility that he had given "pointers" to Mr Roche about how Kings could win the tender.

There is no evidence that Mr Eschbank was in a position to influence the tender selection process to favour Kings or that he had access to any confidential information that might have been of assistance to Kings. While it is clear that Mr Eschbank provided some advice on the Kings tender to Mr Roche, there is no evidence to suggest that the assistance was of any significance or involved the divulging by Mr Eschbank of any confidential information.

Information about withdrawn tenders

On 26 July 2007, by way of an email, Mr Eschbank disclosed to Mr McMicking that two other tenderers for the access control project had withdrawn their interest in the tender. Mr McMicking passed this information on to Mr Roche by way of an email sent later that day.

Mr Eschbank said he acquired the information relating to the two tenderers from another contractor who submitted a tender. He did not regard the information as confidential.

Mr Diekman claimed that the information was wrong and Mr Eschbank "led us up the garden path". The tender evaluation report shows that one of the tenderers nominated by Mr Eschbank had not withdrawn its interest in the tender.

The television set

On 15 January 2008, Kings supplied a television set, valued at \$3,100, to Mr Eschbank. This was just two months after the UWS contract was awarded to Kings.

Mr Diekman denied that the television set was a reward for assistance that Mr Eschbank had provided Kings in securing the UWS access control project. He understood that Mr McMicking wanted to get Mr Eschbank a present for leads that he had given Kings over three or four years.

Mr Eschbank said he understood the television set was given to him as a "thank you" for the work he had introduced to Kings over the years. He did not believe it was in return for any assistance he had given Kings in relation to the access control project tender.

Counsel Assisting submitted that there is no evidence or insufficient evidence that Mr Eschbank exercised any public official functions dishonestly or impartially or that he misused or disclosed confidential information to Kings and, therefore, no finding of corrupt conduct should be made against Mr Eschbank. Although the Commission has reservations as to the nature of the assistance Mr Eschbank provided to Kings and the reason why he was given an expensive gift, the Commission has accepted this submission.

Corrupt conduct

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

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

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

Mr Paul

Mr Paul's conduct in accepting \$13,000 from Mr Diekman in 2008 as a reward for Mr Paul assisting Kings in relation to the UWS access control project and to influence him to favour Kings in relation to that project in the future is corrupt conduct.

This is because his conduct is conduct that adversely affected or could have adversely affected, either directly or indirectly, his honest or impartial exercise of his official functions within the meaning of s 8(1)(b) of the ICAC Act. His conduct also comes under s 8(2)(a) and s 8(2)(b) of the ICAC Act because it could adversely affect his exercise of his official functions and involves official misconduct or bribery.

His conduct could also adversely affect, either directly or indirectly, the exercise of official functions of UWS public officials responsible for determining which business should be awarded the access control project contract, those responsible for approving the prices submitted by Kings and those responsible for approving Kings' payment schedule, and involve bribery. As such, his conduct comes under s 8(2)(b) of the ICAC Act.

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

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

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

Mr Paul was the agent of UWS for the purpose of this section.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of

beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Paul has committed a criminal offence under s 249B(1) of the Crimes Act of corruptly receiving a benefit. The benefit was a reward for Mr Paul having favoured Kings in relation to the business of UWS and in the expectation that he would continue to do so.

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

Mr Paul's conduct in deliberately failing to disclose to the TEC chairperson his conflict of interest arising from his personal and financial relationship with Mr Diekman is corrupt conduct.

This is because his conduct could constitute or involve the dishonest or partial exercise of his official functions, namely deliberate failure to disclose his conflict of interest, within the meaning of s 8(1)(b) of the ICAC Act.

His conduct also comes within s 9(1)(c) of the ICAC Act. The Commission is satisfied that, if the facts as it found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Paul's conduct constituted or involved reasonable grounds for dispensing with or otherwise terminating his services.

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

Mr Diekman

Mr Diekman's conduct in paying Mr Paul \$13,000 in 2008 as a reward for Mr Paul improperly exercising his public official functions to assist Kings in relation to the UWS access control project and for further assistance that Mr Diekman anticipated Mr Paul might provide in the future is corrupt conduct.

This is because his conduct is conduct that adversely affected or could have adversely affected, either directly or indirectly, the honest or impartial exercise of official functions by Mr Paul as a public official within the meaning of s 8(1)(a) of the ICAC Act.

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

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

(a) *as an inducement or reward for or otherwise on account of the agent's:*

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

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

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

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

the firstmentioned person is liable to imprisonment for 7 years.

Mr Paul was the agent of UWS for the purpose of this section.

The Commission is satisfied for the purposes of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Diekman has committed a criminal offence of corruptly giving a benefit under s 249(2) of the Crimes Act. The benefit was a reward for Mr Paul having favoured Kings in relation to the business of UWS and in the expectation that he would continue to do so.

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

Mr Roche

Counsel Assisting submitted that no corrupt conduct finding should be made against Mr Roche, as there is insufficient evidence to show that he was aware that Mr Diekman had paid Mr Paul a reward for Mr Paul having assisted Kings in relation to the UWS access control project. In light of this submission, the Commission has not made a corrupt conduct finding against Mr Roche in relation to the \$13,000 payment to Mr Paul.

Section 74A(2) statements

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

- a) obtaining the advice of the 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 s 74A(3) of the ICAC Act as a person against whom, in the Commission’s opinion, substantial allegations have been made in the course of, or in connection with, the investigation.

The Commission is satisfied that, in respect of the matters canvassed in this chapter, Mr Paul, Mr Eschbank, Mr Diekman and Mr Roche are “affected” persons.

Mr Paul

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

There is, however, other admissible evidence that would be available. This includes UWS records, email records, banking records, and Kings accounting records. The evidence of Mr Byrne, Mr Shepherd, Mr Fincher-Johnson, Mr Guilfoyle and Mr Poller would also potentially be available.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Paul for a criminal offence of corruptly receiving a benefit (\$13,000) from Mr Diekman contrary to s 249B(1) of the Crimes Act.

Mr Eschbank

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Eschbank for any criminal offence or that consideration should be given to the taking of action against him by UWS for any disciplinary offence.

Mr Diekman

Mr Diekman also gave evidence subject to a declaration made pursuant to s 38 of the ICAC Act.

There is, however, other admissible evidence that would be available. This includes UWS records, email records, banking records, and Kings accounting records. The evidence of Mr Byrne, Mr Shepherd, Mr Fincher-Johnson, Mr Guilfoyle and Mr Poller would also potentially be available.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Diekman for a criminal offence of corruptly giving a benefit (\$13,000) to Mr Paul contrary to s 249B(2) of the Crimes Act.

Mr Roche

Mr Roche also gave evidence subject to a declaration made under s 38 of the ICAC Act.

The Commission does not consider there is sufficient admissible evidence to support a criminal prosecution against Mr Roche. In these circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Roche for any criminal offence.

Chapter 3: The Art Gallery of NSW's security upgrade

This chapter examines whether Mr Paul:

- improperly exercised his public official functions in 2009 to assist Kings and QVS, a supplier of security equipment, in relation to an AGNSW tender, in return for which he received payment from Mr Diekman of Kings and Paul Thompson of QVS
- breached his obligations to the AGNSW by deliberately failing to declare conflicts of interest arising from his relationships with Kings, QVS and Mr Diekman.

If Mr Paul received payment from Mr Diekman and Mr Thompson in return for improperly exercising his public official functions to assist Kings and QVS in relation to an AGNSW contract, his conduct would amount to corrupt conduct. This is because such conduct on his part could constitute or involve the dishonest or partial exercise of his official functions within the meaning of s 8(1)(b) of the ICAC Act. His conduct could also constitute or involve a breach of public trust and therefore come under s 8(1)(c) of the ICAC Act. Such conduct could also adversely affect the exercise of his official functions and could involve official misconduct, bribery, and obtaining secret commissions within the meaning of s 8(2)(a), s 8(2)(b) and s 8(2)(d) of the ICAC Act. It could also constitute or involve a criminal offence of corruptly receiving a reward contrary to s 249B(1) of the Crimes Act for the purpose of s 9(1)(a) of the ICAC Act.

If Mr Diekman and Mr Thompson paid Mr Paul in return for him improperly exercising his public official functions to assist their businesses in relation to an AGNSW contract, their conduct would amount to corrupt conduct. This is because such conduct on their part could adversely affect, either directly or indirectly, the honest or impartial exercise of the official functions of Mr Paul and therefore come within s 8(1)(a) of the ICAC Act. It is also conduct that could adversely affect the exercise of Mr Paul's official

functions and that could involve bribery or the offer of secret commissions within the meaning of s 8(2)(b) and s 8(2)(d) of the ICAC Act. For the purpose of s 9 of the ICAC Act, such conduct could also constitute or involve a criminal offence of corruptly giving a reward contrary to s 249B(2) of the Crimes Act.

If Mr Paul deliberately failed to declare to the AGNSW any conflicts of interest, his conduct could amount to corrupt conduct. This is because it could constitute or involve the dishonest or partial exercise of his official functions within the meaning of s 8(1)(b) of the ICAC Act. Such conduct could also, for the purposes of s 9(1)(c) of the ICAC Act, constitute or involve reasonable grounds for UWS dispensing with Mr Paul's services.

The AGNSW project

In 2007, following the theft of a painting from its collection, the AGNSW arranged for a security technology review to be undertaken to analyse its security system. The review recommended that a major security upgrade be undertaken. This involved, among other things, a large number of additional cameras and a substantial upgrade of the CCTV system.

As no one at the AGNSW had the required technical expertise to undertake such a complex project, a consultant engagement committee was formed to engage a security consultant. Three security specialist companies were invited to tender. On 21 August 2008, Mr Paul's business, SCI, won the consultancy services contract. The price of \$24,980, as quoted by SCI, was significantly lower than the other two tenders. Mr Paul told the Commission he submitted a low price to ensure he secured the contract.

Was Mr Paul a public official?

The AGNSW is a statutory corporation created by the *Art Gallery of New South Wales Act 1980*. The AGNSW is a “public authority”, as defined by the ICAC Act as the Auditor General has power under s 35 of the *Public Finance and Audit Act 1983* to inspect, examine and audit its accounts.

One of the principal objects of the AGNSW is to develop and maintain a collection of works of art. Ensuring the security of this collection falls within the AGNSW's official functions.

Although the AGNSW engaged Mr Paul's business to provide consultancy services, it was Mr Paul who actually performed the work. He prepared the technical specifications for the project, recommended what security equipment the AGNSW needed for the security upgrade, developed a budget, participated as a member of the TEC in assessing the merits of tenders for the project, and took part in reviewing delivery of the project. In undertaking this work, Mr Paul was personally discharging public duties. Mr Paul was engaged by, or acting for or on behalf of, the AGNSW. The Commission is satisfied that, in undertaking the work he did for the AGNSW, Mr Paul was acting in a public official capacity and was a public official for the purposes of the ICAC Act.

The tender process

Apart from Mr Paul, the other members of the TEC were Anne Flanagan (deputy director of the AGNSW), Anne Tregeagle (an AGNSW project manager) and Anthony Morris (head of AGNSW security).

In a report dated 31 January 2009, Mr Paul recommended the Lenel range of products for security access control purposes and Verint CCTV cameras, as most fully meeting all of the necessary performance criteria for the security upgrade project. The report also set out a recommended strategy, whereby the tender should be limited to invitees only. The rationale for this recommendation was that the “tender document contains a considerable amount of confidential detail pertaining to the proposed system, and the release of such detail to ‘anyone’ by way of public tender would impose uncontrollable risk”. The other members of the TEC supported the recommendation for a select-tender process.

Mr Paul's report nominated nine businesses to be invited to submit tenders. Kings was one of the businesses he nominated. The other TEC members were largely guided by Mr Paul as to which businesses should be invited to tender, as well as in relation to the products that should be used.

On 3 February 2009, tender specifications for the security upgrade project were issued to selected suppliers and installers. The tender specified a Lenel/Verint product combination, as the preferred product for the security upgrade. The tender specification allowed tenderers to submit equivalent alternative options.

The tenders received by the AGNSW were reviewed by the TEC and, following the culling process, three installers – Kings, ACG and Sydney Night Patrol (SNP) – were shortlisted for interviews.

On 23 February 2009, Kings submitted a primary bid of \$2.7 million (excluding GST) for the Lenel/Verint product combination and an alternative bid of \$2,690,000 (excluding GST) based on the supply of a Lenel and Pelco Endura 2 product combination. Both SNP and ACG put forward their bids based on the Lenel/Verint product combination. Their bids were priced respectively at \$2,809,558 and \$2,235,000 (excluding GST). All the bids exceeded the AGNSW project budget of \$2 million. The basic difference between the Verint product and the Pelco Endura 2 product related to design. Pelco Endura 2 is a hardware-based product with integration of software and hardware. Verint is a software product, which is combined with off-the-shelf hardware purchased from a third party.

On 27 February 2009, the TEC held preliminary interviews with the shortlisted companies. After interviewing SNP, the TEC decided not to proceed with its tender. At the interview with Kings, Mr Diekman put forward a new lump sum price of \$2 million (excluding GST) based on a Lenel/Pelco Endura 2 product combination. This was \$690,000 cheaper than Kings' 23 February 2009 tender price for this product option.

At the end of the first round of interviews, Kings was given a higher weighted score than ACG on all tender evaluation criteria, except for price. As ACG's price on the Lenel/Verint product combination was significantly cheaper than Kings, it scored a higher weighting on price criteria. The combined score based on all criteria placed ACG in first place.

On 2 March 2009, ACG was informed that it was the joint preferred tenderer with Kings and was asked to re-submit its tender based on a Lenel and Pelco Endura 2 product combination by close of business the next day. Its revised bid, based on the Lenel and Pelco Endura 2 product combination, was \$1,948,800 (excluding GST). Kings submitted a formal bid of \$2 million based on the Lenel and Pelco Endura 2 product combination.

On 5 March 2009, the AGNSW held second-round interviews with Kings and ACG. On 6 March 2009, Kings was awarded the security upgrade project contract.

Did Mr Diekman and Mr Roche misrepresent the Kings bid?

The Commission investigated how Kings came to submit a further bid for the Lenel and Pelco Endura 2 product combination, which was cheaper than its 23 February 2009 bid for this product combination, whether, in submitting the second bid, Mr Diekman and Mr Roche deliberately misled the TEC, and whether Mr Paul was aware of their misrepresentation and failed to bring this to the attention of the other TEC members.

The TEC preliminary interview with Kings on 27 February 2009 was attended by Mr Diekman, Mr Roche and Damien Dunphy (a Kings employee responsible for the technical aspects of Kings' tender). At the meeting, Mr Diekman presented the revised bid of \$2 million for the Lenel/Pelco Endura 2 product combination. There was evidence that Mr Diekman represented to the AGNSW that the cheaper bid was made possible because:

- Kings' initial 23 February 2009 alternative bid was based on the Pelco Endura 1 product
- Pelco was willing to offer Kings a significant cost saving for the Pelco Endura 2 product
- the Pelco Endura 2 product had just been released onto the market.

At the meeting on 27 February 2009, Kings submitted to the TEC a 10-page document titled "Tender Proposal Interview", which contained written answers to some questions posed to the tenderers by the TEC. The Pelco Endura 2 product is identified as Kings' preferred solution. Under the heading "Our Pricing", a number of points are set out, including the following – "Priced using Version 1/ Version 2 provides significant cost savings". The document, which was left with the TEC members after the meeting, represents that Kings' initial alternative bid of 23 February 2009 was for the Pelco Endura 1 product. Mr Diekman conceded that the representation was misleading but was not prepared to accept that it was false.

The Commission is satisfied, however, that it was false to represent that the Kings' alternative bid submitted on 23 February 2009 was for the Pelco Endura 1 product, as that bid clearly specified the Pelco Endura 2 product. Mr Diekman knew that the 23 February 2009 alternative bid specified the Pelco Endura 2 product.

Mr Diekman initially said he could not recall telling the TEC that the alternative bid submitted on 23 February 2009 was for the Pelco Endura 1 product. Later, he conceded that he told the TEC the earlier bid was based on an earlier version of the Pelco product. He agreed such a statement to the TEC was not true because he knew

Kings' alternative bid of 23 February 2009 was based on the Pelco Endura 2 product. Towards the end of his evidence, he claimed that he had not intended to convey to the TEC that the alternative bid of 23 February 2009 was based on the Pelco Endura 1 product.

Mr Diekman knew that, apart from Mr Paul, the TEC members had little technical background and did not understand the details of Kings' bid. He agreed that it was, therefore, safe to tell them that he was reducing the price because a new version of the Pelco product had been released.

Mr Roche's evidence on this issue was unsatisfactory. He had signed the 23 February 2009 bid and, at the time, anticipated that Kings' profit margin would be 30% of the prices submitted. Although he agreed that the AGNSW contract represented an important opportunity for Kings, he claimed that he did not discuss with Mr Diekman what they would tell the TEC at the 27 February 2009 meeting and did not discuss lowering Kings' price. He said that he was surprised when Mr Diekman offered to do the work for \$2 million.

Mr Diekman told the Commission, however, that he had discussed the new price with Mr Roche prior to the 27 February 2009 presentation to the TEC. There is no reason to disbelieve Mr Diekman on this matter. It is logical that he would have discussed such an important matter with his business partner and that he would have forewarned him of what he intended to say so that Mr Roche was not taken unawares at the meeting. The Commission is satisfied that, some time prior to the meeting with the TEC, Mr Diekman told Mr Roche that he intended to provide the TEC with a revised price of \$2 million.

Mr Roche helped to prepare the Tender Proposal Interview document and told the Commission he "probably" wrote the section titled "Our Pricing", which includes reference to version 1 and version 2 of the Pelco Endura product. He agreed that the statement in that section represented that Kings' 23 February 2009 alternative bid was based on the Pelco Endura 1 product and the 27 February 2009 bid was based on the Pelco Endura 2 product. Despite this, he claimed that he could not recall whether any representation was made at the 27 February 2009 meeting to the effect that Kings' bid of 23 February 2009 was based on the Pelco Endura 1 product. He could not recall whether any explanation was made to the TEC for the reduction in price. He was not prepared to agree that the TEC had been misled.

Mr Dunphy could not recall much about the 27 February 2009 meeting. He claimed his focus was confined to technical matters.

Ms Tregeagle attended the 27 February 2009 meeting. She said she believed that either Mr Diekman or Mr Roche said Kings could offer a revised price because a new product had become available since Kings had submitted its tender. If she had known the same product had been offered in Kings' 23 February 2009 bid, she would not have entertained the new offer and would have followed the tender guidelines, which would have resulted in the tender being awarded to ACG. Ms Tregeagle said that Mr Paul never said anything to dispel her belief that Kings' tender was based on a different product.

Ms Flanagan also attended the meeting. She told the Commission that, when she found out, much later, that Kings' tender bid of 23 February 2009 included the Pelco Endura 2 product, she became angry and upset because she believed that she had been misled.

Mr Morris also attended the meeting. He told the Commission he did not know that Kings' tender of 23 February 2009 included the Pelco Endura 2 product. He believed the tender only included an earlier version of the Pelco Endura product. Mr Morris was uncertain about how he came to that understanding. He expected that Mr Paul would have noticed this discrepancy, given that Mr Paul was the technical advisor on the AGNSW tender.

If Ms Tregeagle, Ms Flanagan and Mr Morris had carefully read Kings' alternative bid of 23 February 2009, they would have known that it was based on the Pelco Endura 2 product. The relevant information is, however, contained on page 129 of Kings' 147-page tender submission. The Kings tender submission included complex technical information, financial information and pricing schedules. In light of the lack of technical expertise held by the TEC panel members, except for Mr Paul, and the level of detail contained in the Kings tender submission, it is unsurprising that they were not aware that the 23 February 2009 alternative bid was based on the supply of the Pelco Endura 2 product. The Commission accepts the evidence of Ms Tregeagle, Ms Flanagan and Mr Morris that they were not aware that Kings' alternative bid on 23 February 2009 was based on supply of the Pelco Endura 2 product.

Each of Ms Tregeagle, Ms Flanagan and Mr Morris understood that, at the 27 February 2009 meeting, Mr Diekman was offering a different version of the Pelco product to that which was referred to in the 23 February 2009 alternative offer, and that was the reason Kings was able to reduce its price. The Commission is satisfied they obtained this understanding from what Mr Diekman said at the TEC meeting and what Mr Roche represented in the Tender Proposal Interview document. Both Mr Diekman and Mr Roche were aware that Kings' alternative bid of 23 February 2009 was based on the same product. The Commission is satisfied that Mr Diekman lied to the TEC when he represented that Kings' 23 February 2009 alternative offer

was for a different version of the Pelco product from that offered at the 27 February 2009 meeting. The Commission is also satisfied that, by preparing the relevant section of the Tender Proposal Interview document and not correcting Mr Diekman when he lied to the TEC, Mr Roche was a party to the deception.

The question arises as to whether Mr Paul was aware of the deception.

Mr Paul attended the 27 February 2009 meeting. He told the Commission he knew at that time that Kings' alternative bid of 23 February 2009 was based on the Pelco Endura 2 product. He said he could not recall anyone from Kings saying the 23 February 2009 alternative bid was based on the Pelco Endura 1 product. He said that, if he had been aware of such a statement, he would have informed the other TEC members that it was false. He said that it may not have dawned on him at the time that such a statement had been made. He claimed he had not read Kings' Tender Proposal Interview document closely and was not aware that it misrepresented the nature of Kings' alternative bid.

The Commission does not accept that Mr Paul was unaware that Mr Diekman misrepresented that Kings was offering a different product at the 27 February 2009 meeting or that he was unaware of the misrepresentation in the Tender Proposal Interview document. As the AGNSW consultant, he was responsible for providing the other TEC members with technical advice. He was familiar with the types of equipment required for the AGNSW project and was aware that Kings' 23 February 2009 alternative bid specified the Pelco Endura 2 product. He would have been alert to what was said at the 27 February 2009 meeting about what products were being proposed for the project, and the contents of any written material provided by Kings at that meeting, in order to be able to provide the required technical advice to the other TEC members. The Commission is satisfied that he was aware of the misrepresentations and, although he knew it was his duty to inform the other TEC members, he deliberately refrained from doing so. The Commission is satisfied that Mr Paul was motivated by a desire to assist Kings to win the AGNSW contract.

The Commission is satisfied that the AGNSW would not have entertained Kings' revised bid if the other members of the TEC knew that the reduction in price offered by Kings related to the same product specified in Kings' original bid.

Was Kings offered a price reduction?

Pelco provided its products for sale through Q Technology Group Pty Ltd, trading as QVS. On 18 February 2009, Terry Yallouris, general manager of Pelco Australia, sent an email to Mr Thompson, sales and marketing director of QVS, setting out quotes for the supply of the Endura 2 product for the AGNSW project. Later that day, QVS

gave Kings a quote of \$785,535 (excluding GST) for supply of the Pelco Endura 2 product. This is the only written quote received by Kings. Its bid of 23 February 2009 is based on this quote.

Mr Diekman told the TEC at the 27 February 2009 meeting that he was able to significantly drop the price of Pelco Endura 2 because “Pelco was coming to the party”, meaning that Pelco was willing to offer a substantial price reduction for the Pelco Endura 2 product.

His evidence to the Commission on this issue varied.

In a recorded interview with Commission investigators on 17 March 2011, Mr Diekman said that Mr Yallouris told him that Pelco would provide the Pelco Endura 2 product for nothing because it wanted to be involved in the AGNSW project. At his compulsory examination, Mr Diekman said Mr Yallouris offered to reduce the price by a couple of hundred thousand dollars. At the public inquiry, he agreed that Mr Yallouris did not say that Pelco would provide the product for nothing. He said that, sometime between Kings submitting its bid on 23 February 2009 and the meeting with the TEC on 27 February 2009, Mr Yallouris had offered to reduce Pelco’s price for the Pelco Endura 2 product. No written quote was provided. Although Mr Yallouris did not tell him by how much Pelco would reduce the price, Mr Diekman assumed there would be a reduction of a couple of hundred thousand dollars. The rest of the reduction in price proposed by him at the 27 February 2009 meeting with the TEC would come either from Kings’ profit margin or out of his own pocket. This, of course, differs from the representation he made to the TEC that the price reduction was accounted for by the reduction in price for the product.

Mr Yallouris recalled having a discussion with Mr Diekman after Mr Yallouris sent the Pelco quote to QVS on 18 February 2009, but believed the conversation was about a release date for the Pelco Endura 2 product. He could not recall if he discussed reducing the price with Mr Diekman. He agreed, however, that for the provision of products of the value involved in the AGNSW contract it was necessary for Pelco to provide a written quote and that, before reducing the price of any product, it was necessary to obtain permission from Pelco’s parent company, Pelco USA. There are no records of any Pelco written quote provided to Kings for the Pelco Endura 2 product. There are no records of any request to Pelco USA from anyone at Pelco to reduce the price of the Pelco Endura 2 product for Kings. Mr Yallouris also agreed that, if there had been any reduction offered to Kings, then Pelco would have advised QVS of this fact. There is no record of any such advice having been given to QVS. The Commission is satisfied that no request was made to Pelco USA to reduce the price of the Pelco Endura 2 product for the AGNSW project.

As the sales and marketing director of QVS, Mr Thompson had no recollection of Pelco offering QVS a

significantly lower price for the AGNSW contract.

George Chrobak, a Pelco sales manager, advised the Commission that the dealer (or trade) price of the Pelco Endura 2 product had not changed significantly from the quotation given on 18 February 2009 to its price on the release date of 1 April 2009. The Commission accepts this evidence.

Anthony Thiessen, business development manager of QVS, confirmed that the quote of 18 February 2009 was the only one provided by QVS to Kings. The Commission accepts this evidence.

Mr Roche said that he did not know whether Pelco had offered to reduce its price. It is unlikely that, if Mr Diekman had been offered a price reduction, he would not have communicated this fact to Mr Roche as the explanation for offering a reduced price at the 27 February 2009 meeting with the TEC.

The Commission is satisfied that, at the time of the 27 February 2009 meeting, Mr Diekman had not been offered any reduction in the cost of the Pelco Endura 2 product to justify his representation that Kings was able to significantly reduce its price because Pelco had agreed to reduce the price of the Pelco Endura 2 product. The Commission is satisfied that this was another lie that Mr Diekman told the TEC.

Had the Pelco Endura 2 product been released?

Mr Diekman agreed that, at the 27 February 2009 meeting, he represented to the TEC that the Pelco Endura 2 product had just been released onto the market. Mr Diekman said he obtained this information during a telephone conversation with Mr Yallouris, who told him Pelco had just released the new version somewhere in Asia.

Mr Yallouris said that his only recollection of a conversation with Mr Diekman on the availability of the Pelco Endura 2 product was based on the information he received from Pelco USA that Endura 2 was “still good for April”. He said there were always delays in the release of Pelco products. He could not recall telling anyone before the AGNSW tender was awarded that the release date of Pelco Endura 2 was going to be earlier than April 2009.

Mr Chrobak reviewed the Pelco records. He told the Commission that the Pelco Endura 2 product was officially released and launched at the International Security Conference (ISC) in the US on 1 April 2009. Mr Chrobak said that the Pelco Endura 2 product was available for distribution in Australia only from 24 June 2009.

The evidence establishes that the Pelco Endura 2 product was not released until April 2009 and would not have been available for distribution in February 2009. The Commission rejects Mr Diekman's assertion that Mr Yallouris told him the product had been released. The Commission is satisfied that Mr Diekman's representation to the TEC that the Pelco Endura 2 product had just been released onto the market was another lie he told the TEC members.

Mr Paul's knowledge of the release date

Mr Paul was told by Mr Yallouris sometime prior to 27 February 2009 that the official release date of the Pelco Endura 2 product was April 2009. He was surprised when Mr Diekman told the TEC that the product had been released.

After the TEC meeting with Kings, Ms Tregagle asked Mr Paul to contact a Pelco representative and verify that the Pelco Endura 2 product was available.

Mr Morris told the Commission that both he and Mr Paul met with Pelco representatives, one of whom he believed was Mr Yallouris, who confirmed that the Pelco Endura 2 product was "available". This meeting appears to have occurred on 5 March 2009 because on 3 March 2009 Mr Paul sent an email to Mr Yallouris requesting a meeting on 5 March 2009 with himself and Mr Morris to "review and discuss the Pelco product".

Mr Paul claimed that Mr Yallouris showed them that Pelco Endura 2 was an operational system and that it was available. Mr Paul understood "available" to mean that one could, with confidence, place an order in the knowledge that the specified product would be available to be installed when required. Mr Yallouris told the Commission that it was possible to place orders for the Pelco Endura 2 version prior to it being released but that there could be no delivery of equipment until after the product was officially released.

Mr Yallouris recalled the purpose of the 5 March 2009 meeting was to discuss Pelco/Lenel integration. He recalled giving Mr Paul and Mr Morris a working demonstration but could not recall whether he used Pelco Endura 1 or Pelco Endura 2 for the demonstration. He could not recall if they asked about the availability of Pelco Endura 2. He said he would not have told anyone that it was to be released before April 2009 unless Pelco USA advised him of this in writing. He could not recall receiving any such written notification. The Commission required Pelco to produce all relevant records, including those relating to the release of the Pelco Endura 2 product. No records were produced showing that the release date had been brought forward from April 2009.

The Commission is satisfied that the Pelco Endura 2 product was not available in Australia in February 2009. It was not released in the US until April 2009 and did not become available in Australia until sometime later. Given Mr Morris'

evidence, however, the Commission cannot be satisfied to the requisite standard that Mr Paul did not confuse what he was told about the availability of the product to conclude that it had been released.

Did Mr Paul disclose budget-related information?

The price of \$2 million offered by Kings in its revised tender bid on 27 February 2009 approximated the AGNSW budget for the security upgrade budget. The Commission examined whether the price reduction was the result of Mr Paul disclosing to Mr Diekman or someone else the AGNSW's budget for the security project.

Mr Diekman told the Commission that he had heard rumours that the budget for the AGNSW was about \$2 million. That the rumours were a reason for the revised price offered by Mr Diekman, is demonstrated by his following evidence:

Would you accept that a basis for you putting in your revised bid of \$2 million was your understanding that that was approximately the budget the Art Gallery had? Is that correct or not?---One of the reasons.

There was no dispute that Mr Paul was in regular telephone contact with Mr Diekman. Both denied, however, discussing budget information.

There is evidence that Mr Paul provided some budgetary information to QVS. The relevant evidence is dealt with later in this chapter. There is, however, no evidence that Mr Paul disclosed the AGNSW budget to Mr Diekman.

Was Mr Paul rewarded for assisting Kings?

The AGNSW tender process was flawed because both Mr Diekman and Mr Roche falsely represented to the TEC that Kings was able to reduce its price to \$2 million because a different product from that quoted in its 23 February 2009 bid had become available. This resulted in the TEC changing the rules of the tender selection process. The AGNSW would not have allowed Kings to substantially decrease its bid price if it was known that the reduction in price related to the same product referred to in Kings' alternative bid of 23 February 2009.

The Commission is satisfied that, at the TEC meeting of 27 February 2009, Mr Paul was aware of the misrepresentations that Kings' 23 February 2009 tender bid was based on the Pelco Endura 1 product and that the 27 February 2009 bid was based on the Pelco Endura 2 product.

The Commission is satisfied that Mr Paul improperly assisted Kings by deliberately failing to bring this knowledge to the attention of the other TEC members. The Commission is satisfied that he failed to do so because he knew the other TEC members would not allow Kings to submit a new bid and, in those circumstances, it was most likely that the tender would be awarded to ACG as the most price-competitive tenderer.

In light of Mr Paul's assistance to Kings, the Commission investigated whether he sought or received any benefit from Mr Diekman or Mr Roche in return for that assistance.

There is evidence that four Kings cheques, each for \$10,000, were paid into Mr Paul's American Express ("AMEX") account. There is evidence of another four cheques, each for \$10,000, made out to "Cash Art Gallery" or "Chubb Art Gallery", and evidence of two other Kings cheques for \$9,800 and \$9,900, which were given to Mr Paul. The evidence relating to these cheques is dealt with below.

The 12 February 2009 cheques

On 20 March 2009, two \$10,000 cheques dated 12 February 2009 were drawn from Kings' account, and deposited into Mr Paul's AMEX account. The cheque butts describe the cheques as "Vegas Conference Travel", and the cheques were signed by Mr Diekman and Mr Poller. The payments are recorded in the Kings' accounts as "Vegas Conference".

Mr Poller said the two cheques were drawn on Mr Diekman's instructions. He was not told why it was necessary to draw two cheques as opposed to one cheque for \$20,000.

Mr Diekman claimed that the cheques were made out to AMEX because he planned to give the cheques to Mr Paul, so that Mr Paul could arrange for their mutual friend, Maurice Ciot, and his fiancée, Michele Kellet, to travel to Las Vegas. Mr Diekman said the money was for Mr Ciot's 60th birthday, as a "thank you" for the assistance Mr Ciot gave to him when he first entered the security industry. He said that, after Mr Ciot and Ms Kellet turned down the offer to go to Las Vegas, it was agreed that Mr Paul would use the money to fund Mr Ciot's and Ms Kellet's travel to South Africa, and possibly Europe.

Mr Diekman said that he gave the money to Mr Paul to pay for Mr Ciot's and Ms Kellet's travel because Mr Ciot was hesitant to accept Kings' sponsorship.

According to Mr Paul, most of the proceeds from the cheques were used to pay for the accommodation and expenses for Mr Ciot and his partner's visit to South Africa and Switzerland.

Travel records confirm that Mr Ciot and Ms Kellet travelled to South Africa and Switzerland with Mr Paul between 20 and 28 April 2009. Mr Paul's bank records show that he incurred travel, accommodation and related expenses in the amount of \$12,898.47 in relation to Mr Ciot's and Ms Kellet's travel. Mr Paul told the Commission that he also made cash payments of about \$5,000 to cover the cost of meals and shows for Mr Ciot and Ms Kellet.

Mr Ciot gave evidence that Mr Diekman never offered to pay for him and his partner to take a trip to Las Vegas in 2009. He said that, in May 2009, he and his partner travelled to South Africa and Switzerland at Mr Paul's expense. They were not told by Mr Paul until their return to Australia that Mr Diekman had funded some of their travel.

Mr Ciot told the Commission that Mr Paul paid for their meals while overseas. Mr Paul arranged and paid for a safari in South Africa and for a return trip between Switzerland and Italy.

Ms Kellet was not required to give evidence at the public inquiry.

Given the evidence of Mr Ciot and the banking records, which show that Mr Paul incurred expenses on behalf of Mr Ciot and Ms Kellet, the Commission cannot discount the possibility that the \$20,000 was intended for, and substantially used to pay, the travelling and accommodation expenses of Mr Ciot and Ms Kellet. The Commission is not satisfied that the \$20,000 was intended as a payment to Mr Paul in return for any assistance he rendered Kings in relation to the AGNSW tender.

Before leaving this subject, it is necessary to briefly examine Mr Roche's evidence about these cheques. His evidence demonstrates his unreliability as a witness. When he gave evidence to the Commission on 22 June 2012, he said he had not discussed with Mr Diekman why Mr Diekman had signed the cheques. The Commission is satisfied this answer was false.

On 5 September 2011, the Commission issued a notice pursuant to s 22 of the ICAC Act requiring Kings to produce all documents relating to the two cheques. On that same day, Mr Roche gave evidence before the Commission in a compulsory examination. That night, after discussing the cheques with Mr Diekman, he prepared a document titled "Kings Security/Art Gallery Tender Statement of Events" ("the statement of events"). In the statement of events, Mr Roche identified the reason for providing the two cheques as: "Sponsor delegate to ISC West". He emailed the statement of events to Mr Diekman later that night and wrote, "Let's discuss in the morning..".

On 6 September 2011, Mr Roche sent Mr Diekman a further email attaching an altered statement of events in which the reason given for the two cheques was a gift for a business associate's 60th birthday and farewell. Mr Roche obtained this information from Mr Diekman. He claimed he had no independent knowledge of the purpose of the payments.

The 4 May 2009 cheques

On 7 May 2009, two Kings cheques dated 4 May 2009, each for \$10,000, were deposited into Mr Paul's AMEX account. The cheques were made out to "AMEX" and were signed by Mr Poller and Mr Diekman. "Vegas Conference" appears on both cheque butts.

On 24 January 2009, Mr Paul sent an email to Mr Diekman concerning the ISC. The email sets out a list of eight names, including Mr Paul's name. The email advises that Mr Paul is happy to pay for the eight people and then invoice Mr Diekman on the basis that payment would be received within 21 days of the invoice being issued. The email notes that, "\$6,000 per person allows for air fares and accommodation". The email was sent only a few days prior to Kings being invited to tender for the AGNSW contract. Mr Paul told the Commission the request for Mr Diekman to pay for him was not serious. He denied that Mr Diekman paid for his attendance at the 2009 ISC in Las Vegas.

Mr Diekman told the Commission that he was not surprised when he received the email because Mr Paul had made a previous request either in 2006 or 2007 for Kings to sponsor Mr Paul's guests for the Las Vegas ISC. Mr Diekman had agreed to that request. There is no reason to disbelieve Mr Diekman's evidence on this point.

Given that Mr Paul had previously sought and received payment from Mr Diekman for his expenses, the Commission rejects his claim that the email of 24 January 2009 was not a serious request for Mr Diekman to pay his expenses for the 2009 conference.

In the statement of events Mr Roche prepared on 5 September 2011, he identified the reason for providing the two cheques as "reimbursements for costs covered by SCI at ISC West". "SCI" refers to Mr Paul's company and "ISC West" refers to the Las Vegas ISC. Mr Roche said that he wrote down that information on the basis of what he was told by Mr Diekman.

Mr Roche's amended statement of events, which he sent to Mr Diekman on 6 September 2011, records the purpose of the two cheques as a payment to Mr Paul from Mr Diekman "for Charlie's unsuccessful gambling nights". Mr Roche said this information also came from Mr Diekman. He did not ask why Mr Diekman changed his explanation.

Mr Diekman agreed that he was the source of information about the cheques contained in the two statements of

events. He claimed the information in the first statement of events was wrong.

Mr Paul said that the cheques were to cover the cost of gambling chips Mr Diekman borrowed from him when they were at a casino in Las Vegas in 2009. Mr Paul claimed that every time Mr Diekman ran out of money, he grabbed a handful of Mr Paul's chips. Mr Paul claimed he was drunk at the time and could not recall the value of the chips that Mr Diekman took. Mr Paul said Mr Diekman turned up the next morning and said: "I think I owe you \$20,000". Mr Paul did not know whether Mr Diekman owed him \$20,000 or some other amount.

Despite having previously sponsored Mr Paul, Mr Diekman denied paying for Mr Paul or his guests to travel to Las Vegas in 2009. He claimed that the \$20,000 was payment for gambling chips he borrowed from Mr Paul in March 2009, while at Planet Hollywood in the US. Mr Diekman said that he was intoxicated on that night and could not recall the value of the chips he borrowed from Mr Paul.

Mr Hingerty was part of the group that travelled annually to Las Vegas with Mr Paul. He gave evidence that, on one occasion, he observed Mr Diekman helping himself to high value gambling chips belonging to Mr Paul at one of the gambling tables in a Las Vegas casino. Mr Hingerty could not recall the year when the chips were borrowed or the value of the chips. He said that Mr Paul was not very happy that Mr Diekman walked off with a handful of his chips and Mr Paul wanted them back.

Mr Poller signed both cheques. He did not know the purpose of the payments and could not recall Mr Diekman ever saying that he had incurred any gambling debts while in Las Vegas.

The Commission does not accept that the \$20,000 was payment for gambling chips Mr Diekman had taken from Mr Paul. Their evidence about this was unconvincing. Neither Mr Diekman nor Mr Paul could recall the actual value of the chips allegedly borrowed by Mr Diekman. If the \$20,000 was payment for the gambling chips, then it would be expected that Mr Diekman would pay from his own funds rather than Kings'. For the reasons given in chapter 1, the Commission is satisfied that Mr Paul and Mr Diekman used their gambling relationship to attempt to disguise from the Commission the real reason that Mr Diekman paid large sums of money to Mr Paul.

In his email of 24 January 2009, Mr Paul requested Kings sponsor his expenses associated with travelling to the ISC. The cheque butts for the two cheques describe the payments as being for "Vegas Conference". The cheques were attributed to travel expenses for the Las Vegas conference in Kings' relevant accounting records. The original statement of events, which was prepared by Mr Roche on information provided to him by Mr

Diekman, refers to the payments as “reimbursements for costs covered by SCI at ISC West”. The Commission is satisfied that the \$20,000 was paid to Mr Paul to cover his expenses in attending the international security conference in Las Vegas.

Winning the AGNSW security upgrade tender was important to Kings. The importance extended beyond the monetary value of the contract. As Mr Diekman explained to the Commission, being associated with a high-profile project like the AGNSW security upgrade was at least as important as its monetary value. Mr Paul sought payment from Kings for the international security conference just prior to tenders being sought. The tender was by invitation only. Mr Paul recommended Kings as one of the businesses which should be invited to tender. The two cheques were provided to Mr Paul within two months of Kings winning the AGNSW tender. By that time, Mr Paul had assisted Kings to win the tender by not advising the other TEC members of the lie told by Mr Diekman. If the payment was legitimate, there was no reason why two cheques were required. The fact that the payment was split into two suggests an attempt on the part of Mr Diekman and Mr Paul to avoid the transfer of funds being scrutinised by relevant authorities. The payment to Mr Paul is also consistent with Mr Poller’s evidence that there was an established practice whereby Mr Diekman paid consultants. The Commission is satisfied that Mr Diekman arranged for the payment of \$20,000 to Mr Paul as a reward for Mr Paul having assisted Kings to win the AGNSW tender.

The question arises as to whether Mr Roche was aware that Mr Paul was paid for his assistance to Kings in relation to the AGNSW contract or indeed whether he knew, generally, that consultants such as Mr Paul were paid in return for favouring Kings in relation to the awarding of public sector contracts.

Mr Roche said he could not recall if he knew about the \$20,000 payment to Mr Paul. He could not explain why the cheques were attributed to “travel expenses for the Las Vegas conference” in Kings’ accounting record. Mr Roche agreed that it was either he or Mr Diekman who told the finance section at Kings to record them in this manner.

Mr Roche admitted to knowing that Mr Diekman took tens of thousands of dollars out of the business and that the purposes to which these funds were put were concealed by making false entries in Kings’ accounting records. Mr Roche also agreed that he asked Mr Poller to make false records to cover cash payments and that he himself created false purchase orders for that purpose. He said this was necessary to disguise the true destination of these payments because Mr Diekman did not want them to know where the money went. He initially claimed that he had no real idea what Mr Diekman did with the money

and said he was unaware whether any of the money was used to pay consultants. He also initially claimed that he had not considered whether any of the money was used to pay consultants, but later agreed he had considered this was a possibility. Despite this, he avoided asking Mr Diekman whether the money was used to pay consultants. He was not able to offer any explanation for not questioning Mr Diekman on this issue. It was only towards the end of his evidence that he conceded that payments were made to consultants and this was the reason they were disguised in Kings’ accounting records. He maintained, however, that he did not know the payments were for favours that the consultants did for Kings.

Mr Roche denied having any discussions about a practice in the security industry of giving gifts to consultants who were influential in getting contracts awarded to installers. He knew, however, that public authorities inexperienced in security system installation often employed consultants for security projects and he knew that such consultants wielded significant influence over which integrator or installer was awarded a contract. He agreed that Mr Paul was one of the consultants who wielded such influence.

Mr Roche claimed he was not aware of any cash cheques provided to Mr Paul. He was aware of payments made to Mr Paul to pay for Mr Ciot’s and Ms Kellet’s travel expenses and thought Kings had also “sponsored some people to Vegas”, but claimed not to know any details.

There was other evidence indicating that Mr Roche had a far greater knowledge of the purpose of the payments to consultants than he was prepared to admit to the Commission.

Mr Poller’s evidence, which the Commission accepts, is set out in chapter 2. That evidence makes it clear that Mr Roche was aware that cash payments were made to consultants and that he had participated in a discussion about how to avoid reports being issued to AUSTRAC by keeping transactions under \$10,000.

Mr Roche denied there was a policy of avoiding drawing cash cheques for more than \$10,000 to avoid scrutiny by AUSTRAC.

This evidence is at odds with email correspondence between Mr Roche and his wife on 30 August 2011. The correspondence commences with an email from Mr Roche asking: “Did you get \$10k out of the bank instead of the amount requested” to which Mrs Roche responded in the affirmative. Mr Roche then responded: “All I need is the red flag raised! Never get \$10k.....always an odd amount so they don’t do a check”.

Mr Roche told the Commission that he was not sure why he wrote that response to his wife or what he meant by "a check".

The Commission is satisfied that Mr Roche believed that cash transactions over \$10,000 were subject to scrutiny and that, to avoid such scrutiny, it was necessary to ensure that transactions over this amount were split so as not to exceed the \$10,000 limit.

There are also email records that are relevant to assessing Mr Roche's knowledge. These show that for some years prior to 2009 he was aware that Mr Diekman had sought money to pay Mr Paul and other consultants.

On 13 February 2007, Mr Diekman sent an email to Mr Roche, in which he wrote: "I need to get Dan the 10k cash by Thursday morning". Mr Roche replied by email later that day, saying: "are there any others we need to combine?".

Mr Roche told the Commission he knew "10k" referred to \$10,000 and believed "Dan" was Mr Paul. He said he did not know why Mr Diekman wanted to pay Mr Paul \$10,000 in cash and could not recall if he had known at the time of the emails. His email response to Mr Diekman raised no questions about the cash payment. This indicates he understood the purpose of the payment at the time. The Commission does not accept he had forgotten the purpose when giving evidence to the Commission.

On 17 August 2007, Mr Roche sent an email to Mr Poller in which he wrote: "Greg I need some cash or cash cheque today to pay a contractor that is working for us – also Charlie requires some cash for consultants". He agreed that Mr Diekman had asked him for cash to pay consultants but said he could not recall who they were. Mr Roche agreed that Kings had not engaged any consultants at the time and, therefore, any payments would have been to consultants engaged by someone else. He said it was also possible that Mr Diekman had just wanted cash for himself.

On 9 September 2009, Mr Diekman sent an email to Mr Roche in which he advised he was owed \$42,500 he had paid out to "Dan" and others. Mr Roche understood "Dan" was Mr Paul but said he did not know why Mr Diekman had paid money to Mr Paul and had not asked him.

Mr Roche ultimately agreed that he knew Kings paid money for an improper purpose, although he claimed he did not know the details of the impropriety or even what kind of impropriety was involved.

Mr Roche owned 49% of the shares in Kings. All financial transactions, let alone significant cash withdrawals, would affect his investment in the company. Mr Poller described Mr Roche as a hands-on managing director who was involved with every aspect of the business and who knew the details of Kings' business. Mr Roche agreed that, of the two partners, he was the one who took control of the

finances. The Commission is satisfied that Mr Roche was intimately involved in the day-to-day running of the business and was aware of the details of all financial transactions affecting the company. On his own admission, he knew that impropriety of some nature was involved in the cash payments made by Kings. He knew some of these payments were made to consultants who wielded influence in the awarding of contracts. He knew Mr Paul was one of these consultants. The Commission is satisfied that Mr Roche was aware that money from Kings was used to pay consultants in return for those consultants assisting Kings to obtain work, and that he participated in that practice by creating false purchase orders and authorising Mr Poller to create false accounting records.

Mr Roche was aware of, and had been a party to, the deception of the AGNSW's TEC when it was represented that Kings was able to offer a new reduced price of \$2 million because a different product from that quoted for in its 23 February 2009 bid had become available. Mr Roche was aware that Mr Paul did not correct this lie and that this failure benefitted Kings.

In the circumstances, the Commission is satisfied that Mr Roche knew that Mr Diekman intended to pay Mr Paul for his assistance to Kings and concurred with the \$20,000 payment being made to Mr Paul for that purpose.

The 27 May 2009 and 4 August 2009 cheques

Kings' records show that, on 27 May 2009, a cheque for \$10,000 was drawn by Kings. The cheque butt records the payment as being for "Chubb Art Gallery". On 4 August 2009, three further cheques, each for \$10,000, were drawn by Kings. The cheque butts show the purpose of these payments as "Cash Art Gallery".

Joseph Laban, regional credit and collections manager at Chubb Australasia ("Chubb") told the Commission that Chubb did not receive \$10,000 cash or a cheque for that amount from Kings. The Commission accepts his evidence. Mr Poller told the Commission that payments to consultants for facilitating business opportunities were sometimes disguised by recording the name of a genuine supplier, such as Chubb, on the cheque butt. If the \$10,000 was not for Chubb, then the reference to "Art Gallery", and Mr Poller's evidence, raised the question whether the \$10,000 was a payment to Mr Paul in relation to his assistance to Kings with respect to the AGNSW tender.

Each of the three 4 August 2009 cheques was made out to cash. They were cashed by Mr Diekman.

Neither Mr Diekman nor Mr Roche could recall the reason the money was required. Mr Diekman speculated it could have been for subcontractors, purchase of goods for the AGNSW project or for his personal use.

Mr Paul denied receiving any payments from Mr Diekman or Kings in relation to the AGNSW tender.

The evidence concerning the four cheques is unsatisfactory. There is, however, insufficient evidence to conclude that any part of the \$40,000 was paid to Mr Paul.

The June 2010 Harvey Norman cheques

In June 2010, Mr Paul was given two Kings cheques made out to “Harvey Norman Electric” and “Harvey Norman Hardware” in the amounts of \$9,800 and \$9,900 respectively. Mr Paul claimed that these two cheques were part of the repayment of a 2010 \$80,000 gambling debt incurred by Mr Diekman while they were in the US.

Mr Diekman also said that the cheques related to repayment of an \$80,000 gambling debt. He said the cheques were made out to Harvey Norman in order to conceal the true nature of the payments from Mr Roche.

Mr Hingerty recalled witnessing a pool game between Mr Diekman and Mr Paul where the stakes got up to \$80,000. He did not recall who lost.

Mr McMicking, who generally impressed as a truthful witness, recalled being present at a pool game in Las Vegas in 2010 where Mr Diekman lost \$60,000 to Mr Paul in various “double or nothing” pool games.

The Commission accepts that Mr Diekman and Mr Paul bet, and that they bet on a pool game in Las Vegas in 2010. The Commission is not satisfied that any gambling debts incurred at that time were genuine. As explained in chapter 1, the Commission is satisfied that Mr Paul and Mr Diekman used their gambling relationship to attempt to disguise the true nature of payments made to Mr Paul.

The timing of these payments makes it unlikely that they were for assistance Mr Paul had provided to Kings with respect to the AGNSW tender. Kings won the tender in March 2009. Mr Paul had already received \$20,000 from Kings as a reward for having assisted it to win the tender. The Commission does not consider there is sufficient evidence to draw any conclusion as to the true purpose of the two payments in June 2010.

Mr Paul’s assistance to QVS

QVS is a seller and distributor of surveillance and monitoring equipment, including CCTV cameras, digital video recorders and security video management systems. The Commission investigated whether Mr Paul improperly assisted QVS to become the supplier of equipment for the AGNSW security upgrade contract and whether he received payment from QVS for such assistance.

There was no dispute that Mr Paul arranged for QVS employees to attend the AGNSW in order to assess its CCTV requirements. Mr Paul said this was done to assist him to formulate the requirements for the tender, including the budget.

On 31 October 2008, Mr Paul sent an email to Mr Thiessen of QVS, attaching an AGNSW budget spreadsheet that Mr Paul was working on. The budget spreadsheet specified \$1.4 million for the AGNSW security upgrade project. The email also stated that, “we are 300k over right now. HmMMM DO NOT EMAIL THIS AROUND”.

Mr Paul said the figures in the spreadsheet had been provided to him by QVS. He said that QVS was in an ideal position to assist him with the budget, as it supplied both Verint and Pelco products. He did not provide the information to any other supplier.

Mr Thiessen said that he had provided some pricing information to Mr Paul but the spreadsheet contained additional information. He was surprised to receive the spreadsheet, as it was not normal practice for such information to be provided.

Although initially reluctant to agree that the pricing information provided by Mr Paul was of assistance to QVS, Mr Thompson ultimately conceded that it was “of some significance”, and later said that it was “...a small benefit to have an indication of what’s going on, any information that you can glean on any of these things”. He also agreed that it was of benefit to know what items of equipment Mr Paul preferred. This, of course, was precisely the type of information Mr Paul provided in his email of 2 November 2008 (dealt with below).

Mr Paul claimed that the information he provided to QVS was only confidential in relation to integrators. The Commission rejects this claim. It is apparent that such information would also be very useful to any business considering quoting for the supply of equipment for the AGNSW security upgrade project. It would be useful to QVS to know how much the AGNSW was intending to spend, as such information could assist QVS in determining what prices to quote integrators for the supply of equipment. There was also no guarantee that QVS would not provide the information to installers, such as Kings, and then work with Kings to come up with a quote that would meet AGNSW budget expectations.

Ms Tregeagle told the Commission that on several occasions before and during the tender process, she told Mr Paul that all communications with both integrators and suppliers should be vetted by her. This was important to ensure control over the release of information and that the tender process was fair. She said Mr Paul agreed to her instruction. The fact that, in sending the email to

Mr Thiessen, Mr Paul did not comply with her instruction is consistent with his understanding that the information he was providing to Mr Thiessen was confidential, and that Ms Tregeagle would not have authorised him divulging such information to QVS.

On Sunday, 2 November 2008, Mr Paul sent an email to Mr Thiessen and other QVS employees, setting out a detailed list of cameras and their proposed location for the AGNSW security upgrade project. The information was highly technical and included the type and number of CCTV cameras required, their accessories and each component of the Verint system software and hardware that was proposed to be used. Mr Paul did not provide this information to any other supplier.

Mr Paul invited potential tenderers to attend a site-inspection briefing at the AGNSW on 6 February 2009. He also invited QVS, thereby providing it with an opportunity to meet potential tenderers and promote its products to those tenderers.

On Saturday, 7 February 2009, Mr Paul sent an email to Mr Thiessen asking him what he thought about the briefing. Mr Thiessen replied by email later that day that he had concerns about the ability of the Lenel product to deliver all the CCTV tasks outlined in the tender specifications. Mr Paul responded that, if Mr Thiessen had any ideas, he should put them forward in an alternative bid. Mr Paul suggested they meet to discuss the matter.

On 16 February 2009, Mr Thompson sent an email to Mr Yallouris advising that he had spent a couple of hours with Mr Paul who "likes the idea of option 2 very much". The email went on to note that Mr Paul was leaning towards Kings being awarded the tender.

Mr Thompson told the Commission that the "option 2" referred to in his email was the Pelco Endura 2 product. The Commission accepts Mr Thompson's evidence on this issue.

The Commission is satisfied that Mr Paul advised Mr Thompson that he was in favour of using the Pelco Endura 2 product for the AGNSW project. This knowledge gave QVS an advantage over all other potential suppliers who remained ignorant of this preference. Two days later, on 18 February 2009, QVS supplied Kings with a quote for the Pelco Endura 2 product. The Kings alternate bid of 23 February 2009 was based on using the Pelco Endura 2 product.

Mr Paul initially said that he dealt with QVS because it was the only wholesaler of Verint products. Later, he changed his evidence and said that QVS was not the only wholesaler of the products, but it was the largest wholesaler. Mr Paul said that he also invited Astar, a company that sold a range of products in direct competition to QVS, to attend the AGNSW pre-tender presentation.

Mr Ciot, an employee of Astar, gave evidence that Astar did not carry the type of equipment that would meet the specifications for major projects, such as the AGNSW security upgrade project. He said Astar did not distribute Lenel, Verint or Pelco security products.

According to Mr Thiessen, QVS invested a lot of time and energy in providing information about its product to Mr Paul. Mr Thiessen said Mr Paul provided assistance to ensure that a QVS product was specified as a benchmark product in the tender.

Mr Thompson gave evidence that Mr Paul always gave QVS an opportunity to put its products and services forward and to work with him in any opportunities that arose in the market place.

Richard Stokes is the CEO of QVS. He said QVS was the main, but not the only, distributor of Verint products in Australia. QVS was one of a number of distributors of Pelco products. Mr Paul was regarded as an influential player in the security industry because he was a consultant on many projects. According to Mr Stokes, Mr Paul was very active in nominating QVS-supplied products in tenders. Mr Stokes agreed that specifying its products in the tender is a help to the company that supplied the product. He believed that Mr Paul assisted QVS to become a supplier of CCTV products in relation to the AGNSW security upgrade project. The assistance included allowing QVS to do all the testing so that it could show the AGNSW it was being proactive in getting the best solution.

Although it might be expected that Mr Paul would consult with potential suppliers in order to gain a better understanding of how relevant products could be used to meet the AGNSW needs, the Commission is satisfied that his dealings with QVS went beyond this. The Commission is satisfied that Mr Paul used his position with the AGNSW to assist QVS to become the supplier of products for the AGNSW security upgrade project.

Was Mr Paul rewarded for assisting QVS?

On 6 March 2009, Kings was awarded the contract to design, supply and install the security system for the AGNSW security upgrade project. It purchased equipment for the project from QVS.

On 19 June 2009, Mr Paul submitted an SCI invoice to QVS for \$27,500 (including GST). The invoice describes the services as "provision of consultancy services". The invoice does not specify where or when the services were performed. The invoice refers to Mr Thompson as the QVS contact person.

On 2 September 2009, Mr Paul sent a text message to Mr Stokes asking him whether he had managed to sort out “that issue I called you about on Saturday”. Mr Stokes replied, “Paul [Thompson] said he spoke to you on Monday we are still waiting to be paid by all parties”. Mr Paul replied to Mr Stokes, “He didn’t tell me that. I organised to get you paid for the first part before delivery I wish he had told me!!! I’ll call him, that was never discussed”. Later that evening, Mr Stokes emailed Mr Paul, “ok by the way I was also never told that we were in the loop for the art gallery as there is not a lot in this for us, so I am surprised also. I have not seen an invoice yet either. I hear it is quite big so will need to be split into smaller amounts to avoid scrutiny”.

On 3 September 2009, Jamie Taylor, payments officer of QVS, emailed Mr Thompson seeking information about the appropriate business division to which he should allocate the invoice. On the same day, Mr Thompson forwarded Mr Taylor’s email to Mr Stokes with the comment, “How’s this for funny...”.

On 4 September 2009, Mr Thompson replied to Mr Taylor’s email stating “apologies on this one ... please disregard the invoice for \$25k ... what Dan should have done is provide us with 4 separate invoices which are now attached”. Mr Thompson then instructed Mr Taylor to pay the first invoice as soon as possible and the remainder over the next few weeks.

The four invoices attached to Mr Thompson’s email (numbered from 1906091 to 1906094) are for varying amounts, totalling \$27,500 (including GST). The services are described in the invoices as, “Provision of Consultancy services, Training for tender submissions”. The four invoices refer to training provided in Perth (February 2009), Queensland (March 2009), Victoria (April 2009) and Sydney (May 2009).

SCI’s bank account shows the four invoices were paid by QVS in the following manner:

• 10 September 2009	\$9,075.00
• 2 October 2009	\$7,425.00
• 19 October 2009	\$7,425.00
• 22 October 2009	\$3,575.00
• Total	\$27,500.00

Mr Paul initially gave evidence that he submitted invoices to QVS for a “tender assessment presentation”, which he provided to Mr Thompson. Mr Paul said that a considerable time before the AGNSW tender, he had sat with Mr Thompson and took him through previous tenders so that he could understand the type of things that go into a tender assessment. He claimed that the presentation was

carried out over about six meetings with Mr Thompson. Some of the meetings were held over coffee, which went for a few hours. He estimated that he spent in total about 20 to 30 hours. He had no written record of the hours he worked.

Mr Paul created the four invoices because he was asked to do so by Mr Thompson. He understood Mr Stokes wanted four invoices, but did not know what Mr Stokes meant by the reference in his email to the need to avoid scrutiny. Mr Paul admitted that he wrote false descriptions on the four invoices. He said the false descriptions related to the date of delivery and the location of the delivery of services. He resisted accepting that his actions in making false entries on the invoices were dishonest. Despite the false descriptions, he insisted that he had provided the consultancy services and denied that the payments were in return for assistance he rendered QVS in relation to the AGNSW security upgrade project.

Based on what he had been told by Mr Thompson, Mr Stokes believed that Mr Paul had trained Mr Thompson and the invoices related to that training. Although Mr Stokes thought the total amount charged by Mr Paul was excessive, he agreed to pay it because he believed Mr Paul was influential in the security industry and failure to pay the full amount might prejudice the ability of QVS to get future work, if Mr Paul used his influence against QVS. He explained that he wanted four invoices “to avoid scrutiny” because QVS had a substantial cash flow problem and he wanted to spread payment over a period of time to avoid scrutiny from shareholders when they came to examine the quarterly cash flow accounts.

Mr Thompson was in charge of the NSW branch of QVS. He described himself as being a close friend of Mr Paul’s, and said that he had worked with Mr Paul when Mr Paul had been a consultant on a number of projects. He regarded Mr Paul as a loyal supporter of QVS.

Mr Thompson denied that he authorised payment of \$27,500 to Mr Paul as a reward for Mr Paul having assisted QVS. He told the Commission that the invoices related to work Mr Paul had done in providing guidance to Mr Thompson on how to focus QVS sales staff on being more successful in the tender process. He had agreed with Mr Paul that he would charge a lump sum of \$25,000 for these services. Unlike Mr Paul, who claimed he had completed the work, Mr Thompson said he believed that only about 10 to 20% of the work had been done at the time the invoices were submitted. The balance of the work was never performed. Despite this, he never asked Mr Paul for a refund.

Mr Thompson could not recall speaking to anyone else at QVS about the training. There is no documentary evidence of any request from Mr Thompson to Mr Paul

for training and no documentary evidence (apart from the invoices) that any training was provided. The Commission does not accept that any training was performed by Mr Paul or that it was ever intended that any training would be performed by him. The Commission is satisfied that the \$27,500 was neither sought nor paid in return for any such training.

Mr Paul had assisted QVS by ensuring it would become the main supplier of equipment for the AGNSW tender. That assistance was of direct benefit to Mr Thompson as his pay was, to a large extent, commission-based. He agreed that he benefitted personally from the sales generated by QVS from the AGNSW contract. He knew that Mr Paul was in a position to provide opportunities for QVS to put forward its products in the market place. Mr Paul's original invoice was submitted shortly after Kings was awarded the AGNSW security upgrade tender and QVS, thereby, became the main supplier of the security products for that project. The most logical inference is that the payment was sought and provided in return for Mr Paul's assistance in relation to that project. In the circumstances, the Commission is satisfied that Mr Thompson arranged the payment of \$27,500 to Mr Paul, and Mr Paul accepted the payment as a reward for Mr Paul having exercised his public official functions to assist QVS to become the main supplier of security products for the AGNSW security upgrade project.

Did Mr Paul fail to declare conflicts of interest?

In his initial expression of interest for the AGNSW consultancy contract, dated 12 August 2008, Mr Paul informed the AGNSW that SCI had no commercial relationship with suppliers, manufacturers or system installers.

In his 31 January 2009 report outlining the strategy for the security upgrade, Mr Paul reiterated the previous disclosure statement. In an attached probity statement, dated 1 February 2009, Mr Paul advised the AGNSW that "no commercial arrangements or known potential conflicts of interest exist between Hootspah Pty Ltd [Mr Paul's company], its trading companies, directors or employees with any suppliers, manufacturers, trading companies, installation, monitoring or manpower service providers".

The evidence before the Commission shows that these assurances by Mr Paul were clearly false.

There is no dispute that Mr Paul had forged a close friendship with Mr Diekman by at least 2007. At the time of the AGNSW project, there were frequent telephone calls between Mr Paul and Mr Diekman. Mr Paul explained that he spoke with Mr Diekman about other projects on which they were working.

Earlier reference is made in this chapter to a number of Kings cheques that Mr Paul received from Mr Diekman. Whatever the reason for these payments, they demonstrated, at the very least, a financial connection between Mr Paul, Kings and Mr Diekman.

Mr Paul also agreed that he did not declare to the AGNSW that he received payment from QVS, a potential and, as it turned out, actual supplier of security products for the security upgrade project.

Mr Paul had been a member of several TECs. He was an experienced consultant and, as such, knew the importance of declaring potential and actual conflicts of interest. He understood that the intent behind his conflict of interest declaration was to assure his clients that the decision to award a tender or prefer a particular product was not influenced by his financial or commercial relationship with those bidding for contracts or supplying products for the tender.

The financial transactions referred to above, and the relationship with Mr Diekman, were evidence of a connection between Mr Paul, Kings, Mr Diekman and QVS, which gave rise to at least potential conflicts of interest. Mr Paul was duty bound to report these to the AGNSW. He did not do so.

The Commission is satisfied that his failure to do so was deliberate. This is consistent with his desire to keep the nature of his relationship with Kings, Mr Diekman and QVS concealed from the AGNSW so that he could continue to act as a consultant for the AGNSW security upgrade project tender and, thereby, remain in a position where he could favour Kings and QVS in relation to that project.

Corrupt conduct

The Commission has found that, at the AGNSW TEC meeting of 27 February 2009, Mr Paul was aware of the misrepresentations that Kings' 23 February 2009 tender bid was based on the Pelco Endura 1 product and that the 27 February 2009 bid was based on the Pelco Endura 2 product, and that he improperly assisted Kings by deliberately failing to bring this knowledge to the attention of the other TEC members. He failed to do so because he knew the other TEC members would not allow Kings to submit a new bid and, in those circumstances, it was most likely that the tender would be awarded to ACG, as the most price-competitive tenderer.

The Commission has also found that Mr Diekman, with Mr Roche's concurrence, arranged for the payment of \$20,000 to be provided Mr Paul on 7 May 2009, as a reward for Mr Paul having assisted Kings to win the AGNSW tender. That payment was accepted by Mr Paul as his reward for having assisted Kings.

The Commission has also found that in 2009 Mr Thompson arranged payment of \$27,500 to Mr Paul, which was accepted by Mr Paul, as a reward for Mr Paul having exercised his public official functions to assist QVS to become the main supplier of security products for the AGNSW project.

Mr Paul

Mr Paul's conduct in accepting \$20,000 from Mr Diekman in 2009 as a reward for Mr Paul having improperly exercised his public official functions to assist Kings to win the AGNSW tender is corrupt conduct.

This is because his conduct is conduct that constituted or involved the dishonest or partial exercise of his official functions within the meaning of s 8(1)(b) of the ICAC Act.

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

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

Mr Paul's conduct in accepting \$27,500 from QVS in 2009 as a reward for improperly exercising his public official functions to assist QVS to become the main supplier of security products for the AGNSW contract is corrupt conduct.

This is because his conduct is conduct that constituted or involved the dishonest or partial exercise of his official functions within the meaning of s 8(1)(b) of the ICAC Act.

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

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

Mr Paul's conduct in deliberately failing to disclose to the AGNSW his conflicts of interest arising from his relationships with Mr Diekman, Kings and QVS is also corrupt conduct.

This is because his conduct could constitute or involve the dishonest or partial exercise of his official functions, namely deliberate failure to disclose his conflict of interest, within the meaning of s 8(1)(b) of the ICAC Act.

His conduct also comes within s 9(1)(c) of the ICAC Act. The Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Paul's conduct constituted or involved reasonable grounds for dispensing with or otherwise terminating his services.

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

Mr Diekman

Mr Diekman's conduct in arranging for Mr Paul to be paid \$20,000 in 2009 as a reward for Mr Paul exercising his public official functions to improperly assist Kings to win the AGNSW tender is corrupt conduct.

This is because his conduct is conduct that adversely affected or could have adversely affected, either directly or indirectly, the honest or impartial exercise of official functions by Mr Paul as a public official within the meaning of s 8(1)(a) of the ICAC Act.

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

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

Mr Roche

Mr Roche's conduct in agreeing with Mr Diekman that Mr Paul be paid \$20,000 in 2009 as a reward for Mr Paul exercising his public official functions to improperly assist Kings to win the AGNSW tender is corrupt conduct.

This is because his conduct is conduct that adversely affected or could have adversely affected, either directly or indirectly, the honest or impartial exercise of official functions by Mr Paul as a public official within the meaning of s 8(1)(a) of the ICAC Act.

The Commission is satisfied for the purposes of s 9(1)(a) of the ICAC Act that, if the facts it has found were to

be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Roche was an accessory before the fact to a serious indictable offence, being an offence under s 249B(2) of the Crimes Act of corruptly giving a benefit.

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

Mr Thompson

Mr Thompson's conduct in arranging for Mr Paul to be paid \$27,500 by QVS in 2009 as a reward for Mr Paul exercising his public official functions to assist QVS to become the main supplier of security products for the AGNSW security upgrade project is corrupt conduct.

This is because his conduct is conduct that adversely affected or could have adversely affected, either directly or indirectly, the honest or impartial exercise of official functions by Mr Paul as a public official within the meaning of s 8(1)(a) of the ICAC Act.

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

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

Section 74A(2) statements

The Commission is satisfied that, in respect of matters canvassed in this chapter, Mr Diekman, Mr Roche, Mr Paul and Mr Thompson are "affected" persons.

Each of Mr Diekman, Mr Roche, Mr Paul and Mr Thompson gave their evidence subject to a declaration made under s 38 of the ICAC Act. This means that their evidence cannot be used against them in any criminal prosecution (other than a prosecution for an offence under the ICAC Act).

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to their prosecution for any criminal offences, as there is insufficient admissible evidence available to support any prosecution.

Chapter 4: The Northern Sydney Central Coast Area Health Service

This chapter examines whether:

- between about 2006 and 2011, Mr Huskic, Mr Creary and Mr Kuiper, when working for the NSCCAHS, improperly exercised their public official functions to favour Kings in return for benefits from Mr Diekman
- Mr Diekman, Mr McMicking and Mr Huskic were knowingly involved in the submission of dummy quotes to the NSCCAHS.

The NSCCAHS was a statutory corporation created by the *Health Services Act 1997*. It was dissolved on 1 January 2011. The NSCCAHS was a public authority within the meaning of the ICAC Act. After 1 January 2011, Mr Huskic, Mr Creary and Mr Kuiper were employed as members of staff of the NSW Health Service. At all times relevant to the conduct examined in this chapter, they were public officials within the meaning of the ICAC Act.

If any of Mr Huskic, Mr Creary and Mr Kuiper sought, or received benefits from, Mr Diekman in return for exercising their public official functions to favour Kings, their conduct would be corrupt conduct. This is because such conduct could adversely affect, either directly or indirectly, the honest or impartial exercise of their official functions and therefore come within s 8(1)(a) of the ICAC Act. It is also conduct that could constitute or involve the dishonest or partial exercise of their official functions within the meaning of s 8(1)(b) of the ICAC Act. The conduct could also constitute or involve a breach of public trust and therefore come under s 8(1)(c) of the ICAC Act. Such conduct is also conduct which could adversely affect the exercise of their official functions and that could involve official misconduct, bribery, and obtaining secret commissions within the meaning of s 8(2)(a), s 8(2)(b) and s 8(2)(d) of the ICAC Act. It could also constitute or involve criminal offences of corruptly soliciting or receiving a benefit contrary to s 249B(1) of the Crimes Act for the purpose of s 9(1)(a) of the ICAC Act.

If Mr Diekman offered or provided benefits to any of Mr Huskic, Mr Creary and Mr Kuiper in return for any one of them exercising his public official functions to favour Kings, his conduct would be corrupt conduct. This is because it could involve conduct that could adversely affect, either directly or indirectly, the honest or impartial exercise of their official functions and therefore come within s 8(1)(a) of the ICAC Act. It is also conduct that could adversely affect the exercise of their official functions and that could involve bribery or the offer of secret commissions within the meaning of s 8(2)(b) and s 8(2)(d) of the ICAC Act. For the purpose of s 9 of the ICAC Act, such conduct could also constitute or involve a criminal offence of corruptly offering or giving a benefit contrary to s 249B(2) of the Crimes Act.

If Mr Diekman, Mr McMicking and Mr Huskic were involved in submitting false quotes to the NSCCAHS, their conduct could amount to corrupt conduct within the meaning of the ICAC Act. This is because such conduct adversely affects or could adversely affect, either directly or indirectly, the exercise of official functions by public officials responsible for procurement and that could involve fraud for the purpose of s 8(2)(e) of the ICAC Act. For the purposes of s 9(1)(a) of the ICAC Act, it is also conduct that could constitute or involve a criminal offence of fraud under s 192E of the Crimes Act or the criminal offence of using a false instrument under s 254 of the Crimes Act.

The roles of Mr Huskic, Mr Creary and Mr Kuiper

Mr Huskic and Mr Kuiper were NSCCAHS security project officers. Mr Creary, who held the position of security system administrator, was their line manager for security projects. They each reported to Scott Anderson, area manager of security at the NSCCAHS.

The job descriptions for Mr Huskic, Mr Creary and Mr Kuiper required them to ensure that all NSCCAHS

electronic security equipment was adequately installed and was in working order. They also arranged for the upgrade and installation of new security equipment. This involved identifying what equipment was needed, liaising with other NSCCAHS staff, obtaining quotes from installers, and monitoring their work performance. Mr Anderson allocated Mr Huskic and Mr Kuiper to “look after” Kings. This meant that all quotations from Kings went to them first. Mr Huskic, in particular, was responsible for confirming Kings had performed required work and for recommending payment of its invoices.

Mr Huskic, Mr Creary and Mr Kuiper did not have any financial delegation. Each of them, however, exercised control over the way in which security contracts were scoped, quotes obtained, and installers engaged by the NSCCAHS.

The transfer of alarm monitoring

The first issue examined in this chapter concerns the role played by Mr Creary and Mr Huskic in transferring to Kings the monitoring of security alarms for NSCCAHS sites in 2009. The transfer also affected two private organisations that rented office accommodation from the NSCCAHS.

From about 2003, Boss Safes and Security Pty Ltd (“Boss Security”) had carried out the alarm monitoring function at 71 NSCCAHS sites, including sites at Manly and Macquarie hospitals. There was no written contract with the NSCCAHS. Boss Security also carried out alarm monitoring for Peninsula Sleep Laboratory (PSL) and the Australian College of Health Service Management (ACHSM), two private organisations that rented office accommodation from Manly hospital and Macquarie hospital, respectively.

On 20 January 2009, Mr Huskic sent an email to Mr Anderson advising that there had been technical problems with some alarms, which, despite requests, had not been fixed by Boss Security. He advised that he was in the process of obtaining a quote from Kings to compare prices and suggested that, if Kings came in cheaper “we should transfer the accounts over to them”. Mr Anderson emailed back that he had no problems with Mr Huskic’s proposal.

On 9 February 2009, Mr Huskic instructed that the management of all NSCCAHS accounts be transferred from Boss Security to Kings by 13 February 2009. When it was pointed out to him that this instruction also affected PSL and ACHSM he advised that, as their offices were on NSCCAHS premises, their monitoring should also be transferred to Kings.

Steve Young, managing director of Boss Security, told the Commission that the alarm monitoring work was worth about \$100,000 a year to Boss Security. Until he received Mr Creary’s email, Mr Young had not been aware of any

problems with Boss Security’s work. He said the criticism of Boss Security in Mr Creary’s email was unfounded.

Audrey Panetta, office manager of ACHSM, provided a statement to the Commission. She said that ACHSM had no reason to transfer its alarm monitoring work from Boss Security to Kings. She also stated that ACHSM had not authorised anyone from the NSCCAHS to replace Boss Security.

Susan Burgess, business manager of PSL, also provided a statement to the Commission. She said that PSL did not authorise the transfer of the alarm monitoring work from Boss Security to Kings. She also saw no reason to justify the transfer.

Mr Huskic claimed that Mr Anderson gave the instructions to transfer the monitoring work to Kings, including the monitoring of the PSL and ACHSM premises. He agreed that neither PSL nor ACHSM requested a change in monitoring company. He also agreed that PSL and ACHSM paid for their own alarm monitoring.

Mr Anderson said that he relied on Mr Huskic’s background knowledge and experience and accepted his recommendation to transfer the alarm monitoring work to Kings. The Commission is satisfied that Mr Anderson’s approval of the transfer was based on the advice that he received from Mr Huskic.

The effect of the transfer was to benefit Kings by providing it with additional work.

Renewing the master key system agreement

In April 2006, Kings entered into a contract to supply and install Assa Abloy Protec locks and keys to NSCCAHS hospitals at a prescribed price set out in the contract. This was known as the master key system agreement. The agreement was for a period of four years, with provision for an extension of a further four years. Mr Anderson explained that, under the agreement, any new building would be fitted with the new locks and, if locks on existing buildings were not working, they would be replaced with the new locks. He estimated the annual value of the agreement as between \$30,000 and \$40,000. Mr Huskic and Mr Kuiper were responsible for dealing with Kings in relation to the agreement.

The master key system agreement with Kings was renewed in early 2010. The new agreement substantially increased some of Kings’ prices compared to those in the 2006 agreement. Some of the prices were increased by 65%. The revised price schedule also made additional provision for an annual price review, in addition to CPI increases. The Commission examined how these changes, which benefitted Kings, came about.

On 7 January 2010, Mr Roche sent an email to Mr Huskic noting that the 2006 agreement was due to expire in April 2010, and requesting a meeting in February 2010. There was further email correspondence between them later that day, in which Mr Roche ultimately suggested they meet on 11 February 2010. Mr Huskic sent an email in response advising: "sounds good. i don't know if we have to meet up im happy just for someone to drop the contract off and ill arrange to get it signed off by the powers above. there shouldn't be too much of a change should there?". Mr Roche responded that he would review the agreement and advise what price increase would be sought.

Mr Huskic said he subsequently received a draft agreement from Kings. He could not recall any meeting with Mr Roche or anyone else from Kings to discuss the new agreement.

Mr Huskic claimed that his role was limited to obtaining the necessary documents from Kings and passing them on for approval. He denied that he had any role in negotiating prices with Kings or recommending the agreement be renewed. The Commission does not consider this an accurate description of the role he performed.

When Mr Roche sent his email to Mr Huskic requesting a meeting to discuss renewing the agreement, Mr Huskic responded, "Yes no problem", and advised that any day except Friday, 26 February 2010 was suitable. The fact that Mr Roche sent his email to Mr Huskic – and Mr Huskic's response in return – is consistent with both understanding that Mr Huskic would have a role in recommending whether the agreement should be extended and the terms of any such extension.

Mr Huskic agreed that part of his role was to read the proposed agreement to make sure it met the needs of his employer. He said that he would have looked at the price schedule in the proposed agreement to compare it with the existing agreement. The Commission is satisfied that, in doing so, he would have become aware that Kings was seeking a substantial price increase. He said that he did not try to negotiate lower prices and could not recall having any conversation with Mr Anderson in which he advised Mr Anderson of the proposed price increases.

Mr Anderson signed the new agreement. He told the Commission that he did not read the agreement but relied on Mr Huskic's advice. He was not told of the substantial price increases or that there was provision for an annual price review in addition to CPI increases. Mr Anderson said that, if he had known about these changes, he would have required formal negotiation of the agreement. Although Mr Huskic was present when the agreement was signed by Mr Anderson, and witnessed his signature, he never brought these matters to Mr Anderson's attention.

The Commission is satisfied that Mr Huskic read the new agreement and was aware that Kings was seeking substantial price increases and an annual price review in addition to CPI increases. Despite being under a duty to advise his superiors of these facts, he failed to do so. Kings directly benefitted as a result of Mr Huskic's failure to fulfil his duty to the NSCCAHS.

The Gosford hospital carpark security upgrade

The security upgrade of the Gosford hospital carpark in 2010 required the supply and installation of boom gates, the upgrading of parking meters and associated work.

Mr Huskic was the project manager for the upgrade and his role involved obtaining quotes. The relevant purchasing procedure required him to obtain a minimum of three quotes for work valued between \$30,001 and \$250,000 (including GST).

Email correspondence obtained by the Commission shows that, in 2010, Mr Huskic sought quotations from Mr McMicking at Kings and Robert Agnew at Eco Traffic Solutions ("Eco") for boom gates, ticket dispensers and the removal of parking meters. It was clear from the quotes he received that the cost of the work fell between \$30,001 and \$250,000 and, therefore, three quotes were required. The documentation obtained by the Commission indicated that, in May 2010, Mr Huskic received a third set of quotes on the letterhead of MJH Security Installations ("MJH"). Further enquiry by the Commission revealed that these were dummy quotes.

On 4 May 2010, Mr Diekman emailed Mr McMicking a quote from MJH relating to a CCTV system unrelated to the Gosford hospital carpark security upgrade project. On the same day, a quote on MJH letterhead for the supply of boom gates and associated services for the Gosford hospital carpark was received by the NSCCAHS. This quote is for \$41,600 (excluding GST). Examination of Kings' computer server revealed a quote in identical terms. The quote located on Kings' computer server was created by Mr McMicking on 4 May 2010, only 19 minutes after he received Mr Diekman's email.

A further quote on MJH letterhead, dated 12 May 2010, for \$174,500 (excluding GST) was also received by the NSCCAHS. This quote is for the supply of further boom gates and access control equipment for the carpark project. Examination of Kings' computer server revealed an identical quote had been created by Mr McMicking on 12 May 2010.

The total price of the two MJH quotes for the security upgrade work came to \$216,100 (excluding GST). This was higher than Kings' quote for the same work.

Mr McMicking was the Kings employee responsible for preparing Kings' quotes for the project and for liaising with Mr Huskic in relation to the project. He admitted creating both MJH quotes. He said that Mr Huskic had requested the quotes from him because Mr Huskic required quotes from three contractors for the work. He said that he went to Mr Diekman who told him to submit the additional quotes and suggested he contact MJH. Mr McMicking said he then spoke with Mr Hingerty of MJH, who agreed to the use of MJH letterhead for the quotes.

Mr Diekman agreed that the MJH quote dated 4 May 2010 was false. He said that Mr Huskic asked him to provide another quote on someone else's letterhead because Mr Huskic wanted a third quote in order to comply with the NSCCAHS procedures, but did not have time to get the quote himself. He told Mr Diekman to ensure that the quote was higher than Kings' quote. Mr Diekman knew the false quote would improve Kings' chances of winning the contract.

Although Mr Diekman was not questioned about the 12 May 2010 MJH quote during the public inquiry, this matter was dealt with in the submissions of Counsel Assisting and the submissions received in response. The Commission accepts Mr McMicking's evidence that Mr Diekman approved Mr McMicking creating and submitting both quotes.

Mr Hingerty is the CEO of the security company that previously traded as MJH. MJH had ceased to trade under that name in September 2007. He confirmed neither quotation was genuine. He said he never gave permission to Mr Diekman or Mr McMicking to submit quotes on MJH letterhead.

Mr Huskic's evidence as to his knowledge that the MJH quotes were false was equivocal. He said he could not recall whether or not he asked Mr McMicking to provide the MJH quotes. He said he was unable to recall whether he knew at the time that the MJH quotes were false. He had not, however, spoken with Mr Hingerty about the MJH quote and was not aware of Mr Hingerty doing any site inspection in order to quote for the work. He agreed that, together with Mr Anderson, he submitted a report to the NSCCAHS's capital works committee, recommending the quote, submitted by Kings, be accepted.

The Commission is satisfied that the two MJH quotes were dummy quotes prepared and submitted by Mr McMicking, with Mr Diekman's authority, following Mr Huskic's request to Mr Diekman for dummy quotes. Mr Huskic sought the dummy quotes so that he could falsely represent that he had complied with the NSCCAHS procedures by obtaining quotes from three suppliers. The effect of Mr Huskic's conduct was to benefit Kings, as it reduced the competition for the carpark security upgrade project.

There was further evidence that Mr Huskic manipulated the procurement process to favour Kings.

The Eco quote obtained by Mr Huskic is for \$158,836.90 (excluding GST). It is considerably less than the Kings quote of \$202,300 (excluding GST). The dummy MJH quotes total \$216,100 (excluding GST).

Mr Huskic wrote on the Eco quote that Kings' quote, 48821, for the access control component of the project had to be added to the Eco quote. Kings' quote, 48821, is addressed to Mr Huskic. It is dated 13 May 2010 and is for \$11,200 (excluding GST). Adding this to the Eco quote increases that quote to \$170,036.90, which is still lower than the Kings quote.

On 27 May 2010, Mr Huskic sent an email to Tracey Clifford, manager of NSCCAHS capital works, attaching quotes for the project. Kings' quote, 48821, was not attached to the Eco quote. Instead, another Kings quote, dated 3 May 2010 for \$19,800 (excluding GST), was attached. It is for the same items as the earlier Kings quote. Mr Huskic also included another Eco quote, dated 28 May 2008 for \$40,990 (excluding GST). The effect of adding these amounts to the Eco quote was to increase it to \$219,626.90 (excluding GST), which exceeded the amount quoted by Kings. This now made Kings' quote the most price competitive.

On 2 June 2010, Ms Clifford sent Mr Huskic an email asking him to confirm that three quotes were obtained. Mr Huskic responded by email on 7 June 2010 advising that quotes had been obtained from Kings for \$202,300, from Eco for \$219,626.90 and from MJH for \$216,100. He noted a separate Kings quote was attached to the Eco quote because Eco was required to use NSCCAHS contractors for the electronic access control component of the contract.

On 8 June 2010, Mr Huskic submitted a report to the capital works committee recommending acceptance of the Kings quote. The contract was subsequently awarded to Kings.

Mr Agnew is the owner of Eco. He said he understood that Kings would undertake the access control work for the project but that Kings would be separately contracted by the NSCCAHS for that work. He was never told he would need to subcontract Kings for that work. He was not told that any Kings quote would be added to the Eco quote and did not give permission for this to occur. He said the Eco quote for \$40,990 dated 28 May 2008 had nothing to do with the 2010 carpark project. It had been prepared in 2008 for work proposed, at that time, to be undertaken at Gosford hospital. He never authorised Mr Huskic to represent that the Eco quote was for \$219,626.90. Mr Agnew presented as an honest witness. His evidence was logical and consistent with

the documentary evidence. The Commission accepts his evidence.

Mr Huskic agreed that he did not tell Mr Agnew that he would add a Kings quote to the Eco quote. He explained that it was necessary to add a quote for the access control work for the project. Initially, he was unable to explain how the Kings quote of 3 May 2010 for \$19,800 came to be substituted for the Kings quote of 13 May 2010 for \$11,200. He then recalled that he had asked Kings to submit a new quote, excluding the cost of electrical work. This does not explain why the date of the lower quote is earlier than the date of the higher quote. Nor is there any reference in the 3 May 2010 quote to electrical work. However, even if it was the case that the 3 May 2010 quote included the cost of electrical work, that does not explain why Mr Huskic submitted the 3 May 2010 quote as part of the Eco quote. He claimed this was an error on his part.

Adding the 3 May 2010 quote to the Eco quote brought the total Eco quote up to \$178,636.90, which is still considerably less than the Kings quote of \$202,300. It was the addition of the Eco quote of 28 May 2008 for \$40,990 that brought the overall Eco quote above the Kings quote and represented Kings as being the most competitive contractor on price.

Mr Huskic initially said that the 28 May 2008 Eco quote had nothing to do with the 2010 project. Later, he claimed it did relate to the 2010 project and, therefore, had to be included as part of the overall Eco quote. He said that the 28 May 2008 date on the quote was incorrect and insisted that the quote was supplied by Mr Agnew for the 2010 contract on the same day that Mr Agnew submitted the Eco quote for \$158,836.90 to him. The 28 May 2008 quote is addressed to Mr Huskic at St Leonards, while the \$158,836.90 quote is addressed to him at Gosford. The 28 May 2008 quote has a telephone number for Mr Huskic, which he had in 2008 but not in 2010. There are also different fax numbers for Mr Huskic. He claimed these were errors made by Mr Agnew.

Mr Huskic gave contradictory evidence as to whether the 28 May 2008 Eco quote related to the 2010 project. His claim that Mr Agnew made an error in relation to the date on the 28 May 2008 quote is unconvincing and is contrary to the evidence given by Mr Agnew. The Commission rejects Mr Huskic's claim that the 2008 Eco quote related to the 2010 project. The Commission is satisfied that Mr Huskic knew at all times that it did not relate to the 2010 project and that he misrepresented to Ms Clifford that it did, and recommended the capital works committee accept Kings' quote knowing that, in fact, the Eco quote was cheaper.

Kings benefitted from Mr Huskic's actions by being presented as the most price-competitive contractor for the project.

Mr Huskic's reference for Kings

In January 2010, Mr Huskic wrote a reference for a Department of Commerce application, reporting favourably on Kings' work performance at Manly hospital and the Royal North Shore Hospital. The reference document is headed "Client Referee Report on the Applicant's Performance on the Contract". In the reference, Mr Huskic states that Kings had at all times carried out installation and service work in a professional manner.

Mr Huskic agreed that he was not authorised to provide a reference for service providers, such as Kings, without seeking Mr Anderson's prior approval. Mr Huskic said that he did not regard what he had provided to Kings as a reference but rather a checklist of Kings' performance on a specific project.

The Commission rejects Mr Huskic's claim that he did not appreciate that he was providing a written reference to Kings. His claim that he was providing an evaluation of Kings' performance on a particular project is unconvincing, as the request for the document came from Mr Roche and not the Department of Commerce. Furthermore, the document's title "Client Referee Report on the Applicant's Performance on the Contract" reflects the fact that the document is a reference. In the circumstances, the Commission is satisfied that Mr Huskic provided the reference as a favour to Kings when he had no authority to do so.

Benefits provided to Mr Huskic

There was evidence suggesting that Mr Huskic had sought and received various benefits, including cash, from Mr Diekman and Kings. That evidence is dealt with below.

Mr Huskic arranges an alarm for his cousin

The first known benefit Kings provided to Mr Huskic was the installation of an alarm at his cousin's home in 2006, for which Kings provided a substantial discount.

On 21 July 2006, Mr Huskic sent an email to Mr Diekman asking for a quote to install an alarm at his cousin's home. On 2 August 2006, Mr Diekman emailed him a quote for \$300 for the supply of an alarm and advised that he would provide Mr Huskic with the name of a technician who could install it for cash.

On 29 September 2006, Mr Diekman sent an email to Mr Roche in which he advised that the alarm for Mr Huskic's cousin was to be supplied free-of-charge. The reason given in the email was that "he [Mr Huskic] will

make sure our invoices for [the NSCCAHS] will no longer get held up [in] the system”.

Mr Diekman said that Kings provided the alarm at a discount by charging only the cost price. He agreed that the discount was a favour to Mr Huskic but initially claimed that the favour was in return for work Mr Huskic did on Mr Diekman’s boat and because they were friends. After being shown his email of 29 September 2006, Mr Diekman said a further reason he provided the discount was that Kings was having difficulty getting its invoices paid on time by the NSCCAHS. He told the Commission invoices were being paid up to seven months late.

Towards the end of the public inquiry, Mr Diekman admitted that he arranged the discount to keep in Mr Huskic’s good books to ensure that he would do favours for Kings. One of the favours was to speed up the payment of Kings’ invoices.

Mr Huskic told the Commission that he requested a quote from Mr Diekman because he knew he would get a discount. He said this was because they were friends. He did not claim that any discount was in return for work he did on Mr Diekman’s boat.

Part of Mr Huskic’s duties involved processing invoices. He agreed that there were delays in the NSCCAHS paying invoices and that he contacted the accounts section on several occasions to attempt to speed up the payment of Kings’ invoices.

Mr McMicking gave evidence that the approximate market value for the supply and installation of the alarm system in 2006 was \$1,200. He said Mr Huskic’s cousin was charged \$500 for the supply and installation of the alarm, which included Kings’ \$200 installation cost. This represented a discount of about \$700.

Mr Huskic’s cousin made a statement to the Commission. He recalled paying \$500 to the person who installed the alarm.

The Commission is satisfied that Mr Huskic sought a discount from Mr Diekman for the cost of supplying and installing an alarm at his cousin’s house and that Mr Diekman provided a discount of \$700 for what would normally have been charged. The Commission is satisfied that the discount was sought and provided in return for Mr Huskic seeking to speed up the NSCCAHS’s payment of Kings’ invoices.

Mr Huskic receives \$10,000

There was evidence that Mr Huskic’s financial situation in mid-2007 was poor. He had credit card debt of over \$9,000 and was paying penalty interest on the debt.

Records obtained by the Commission establish that, on 31 May 2007, Mr Huskic telephoned Mr Diekman. The telephone call lasted for seven minutes and 46 seconds.

At 1.41 pm on 1 June 2007, Mr Huskic telephoned Mr Diekman. This call lasted for 20 seconds. At 2.22 pm on that day, Mr Diekman withdrew \$10,000 in \$50 notes from his bank. At 3.08 pm that day, Mr Huskic deposited \$9,500 in \$50 notes into his account.

At the public inquiry, Mr Huskic said he asked Mr Diekman for \$10,000 to reduce his credit card debt. He said that Mr Diekman gave him the \$10,000 because they were friends. Although he described the \$10,000 as a loan, there was no written record of the debt, no agreement to pay any interest and no arrangement to make repayments. Although the payment was made in June 2007, no repayments had been made at the time Mr Huskic gave evidence at the public inquiry in August 2012.

The evidence Mr Huskic gave at the public inquiry was inconsistent with his earlier evidence at a compulsory examination in December 2011. At that time, in 2011, Mr Huskic said that he had sold his Jeep about five years before June 2007 for about \$22,000 cash. He had kept that cash in a tin at his house. What was left after about five years, together with some savings, comprised the \$9,500 deposited in his bank account in June 2007. At the public inquiry, he said that he had been confused when he gave his evidence in the compulsory examination. He denied that he had deliberately lied.

Mr Diekman initially had no explanation for the payment of \$10,000 that he made to Mr Huskic. Later, he claimed it was a loan about which he had forgotten when he gave his earlier evidence. Mr Diekman’s change of evidence came after Mr Huskic had given his evidence that the \$10,000 was a loan.

On 30 May 2008, Mr Diekman sent an email to Mr Roche titled “Marketing Budget”. Mr Diekman wrote in the email that, “I have paid for a number of opportunities out of my account in the last year”. He then listed a number of names and amounts, including “Robert H \$10,000”. Although Mr Diekman agreed that he had paid Mr Huskic the \$10,000 out of his own account, he denied that the reference in the email was to that payment.

Both Mr Huskic and Mr Diekman denied that the payment was in return for favours or assistance that Mr Huskic could provide to Kings in relation to the NSCCAHS. Both Mr Diekman and Mr Huskic were unreliable witnesses who were prepared to lie if they thought it might advance their interests. The absence of any agreement as to repayment, and the fact that no repayment was made or sought over a period of about five years, demonstrates that the payment was not a loan but a gift from Mr Diekman to Mr Huskic. The \$10,000 was paid in cash rather than by cheque. The cash payment is consistent with an intention on the part of both Mr Diekman and Mr Huskic to hide the transaction. Although Mr Huskic had a duty to declare any conflicts of interest, he made no effort to declare

the payment to anyone at the NSCCAHS. When first confronted by the Commission, he gave a false explanation for the \$9,500 deposit he made into his account.

Mr Huskic receives \$4,490

On 27 July 2007, \$2,500 was transferred via the internet from Mrs Diekman's bank account to Mr Huskic's bank account. The bank transfer recorded the purpose of the payment as "2nd hand TV". On 9 August 2007, an internet transfer of \$2,490 was made from Mrs Diekman's account to Mr Huskic's bank account. The purpose of this transfer was recorded as "balance second-hand TV".

Mr Diekman admitted to transferring these amounts to Mr Huskic. He said that the money was payment for Mr Huskic having cleaned Mr Diekman's 28-foot boat in 2007. He said he paid Mr Huskic about \$20 or \$30 per hour for this work. He was vague about the times Mr Huskic spent cleaning the boat, but thought it was two to three weeks' work. There was no documentary evidence to show that Mr Huskic had worked on Mr Diekman's boat in 2007, let alone the times he had worked to justify payment of almost \$5,000. Mr Huskic would have had to work about 150 hours at \$30 an hour to justify such a payment. Mr Diekman was unable to explain how Mr Huskic could fit in so much time on his boat while working full time for the NSCCAHS.

The internet transfer records make no reference to any work on a boat. Mr Diekman admitted he disguised the description of the payments. He claimed that he did this as a favour so that Mr Huskic would not have to declare the payment as income in his tax return. When it was put to him that this would be one way to get into Mr Huskic's good books, he agreed, but then claimed he could not recall whether he told Mr Huskic that he had disguised the description of the payment.

Mr Diekman's "Marketing Budget" email of 30 May 2008 to Mr Roche (referred to above) also refers to two amounts, each of \$2,500, in relation to "Robert H". Mr Diekman conceded that these were references to the two internet transfers to Mr Huskic. He claimed the "opportunities" he referred to in the email related to Mr Huskic cleaning his boat so that it would be available for entertaining clients and taking out staff for team building.

It would be expected that, if the money was payment for work Mr Huskic did on Mr Diekman's boat, Mr Huskic would have given this explanation to the Commission. He did not do so. Instead, Mr Huskic claimed the money was a loan. He admitted that he had not repaid any part of the loan, although he claimed it was his intention to do so. At his previous compulsory examination, Mr Huskic was asked about his financial relationship with Mr Diekman but made no mention of these transactions. At the public

inquiry, he claimed he had forgotten about them when he gave evidence at the compulsory examination.

The Commission rejects the evidence of Mr Diekman and Mr Huskic as to the purpose of the payments. Their explanations were at odds with each other. The bank transfer records make no reference to work Mr Huskic did on Mr Diekman's boat or a loan. There are no records or other evidence to support Mr Diekman's claim that the payment was for work Mr Huskic did on his boat or that Mr Huskic did any work on his boat. Mr Huskic's failure to make any repayments to Mr Diekman is inconsistent with the money having been advanced as a loan. The Commission is satisfied that the money was provided to, and accepted by, Mr Huskic as a gift.

Lock work at Mr Huskic's home

On 1 July 2008, Kings issued an invoice to Mr Huskic in the amount of \$1,421.85 (including GST). The invoice was for the supply and installation of locks at Mr Huskic's home. On 15 January 2009, a Kings internal email headed "Robert Huskic" noted that the invoice had been returned, marked "return to sender", and inquired whether the work was for Mr Huskic personally or for a hospital account. An internal Kings email in response advised that the job was "non-chargeable". Kings financial records show the "sale amount" for the job was reversed in February 2009.

Mr Huskic claimed that he paid cash for this work. He said he kept cash at his home, despite having to pay penalty interest on his credit card debt. There is no evidence of any receipt issued to Mr Huskic for such a payment.

On 25 July 2008, at Kings' request, All Safe Security attended Mr Huskic's home and fitted door and window grilles to a value of \$1,866. The work was invoiced to Kings. On 1 October 2008, Kings paid this invoice through a direct bank deposit. Mr Diekman could not recall if Mr Huskic paid him for the work. There are no Kings records showing any payment made by Mr Huskic. Mr Diekman said it was possible that Mr Huskic paid him cash, which he kept rather than put the payment through Kings' accounts.

Mr Huskic said that he and his sister each paid half the cost for the grilles. He claimed that he gave Mr Diekman around \$1,900, although he did not get a receipt for the payment. He said his share came from cash he kept at his home. He was not able to offer any satisfactory explanation for why he kept such a considerable amount of cash at his home at a time when he had credit card debt, for which he was paying high interest.

Mr Huskic's sister provided a statement to the Commission. She said that she shared the property with

Mr Huskic and gave him cash to pay for her half of the cost of the security installations in July 2008. This, of course, does not prove that Mr Huskic used any of his sister's money to pay Mr Diekman.

The email records and the lack of any documentary evidence as to payment support the inference that Mr Huskic did not pay for the locks or grilles. The Commission is satisfied that Kings was not paid for the lock work it did at Mr Huskic's home, that it paid for the installation of the grilles, and that it did not seek or obtain payment for these from Mr Huskic.

Mr Huskic gets a Vespa scooter

In May 2009, Mr Diekman arranged for Kings to purchase a Vespa scooter for Mr Huskic. Kings paid \$9,999.99 for the scooter. Mr Diekman emailed the invoice to Mr Poller and Mr Roche with the message: "I need to discuss".

Mr Diekman said that Mr Huskic gave him \$3,000 in cash towards the purchase of the scooter and that he paid the balance out of his personal account in return for cleaning and light maintenance work that Mr Huskic did on his boat. His evidence about what work Mr Huskic did and when he did it was vague, as was his evidence about how he calculated how much he owed Mr Huskic for the work. There was no documentary evidence to support his assertion that Mr Huskic had worked on his boat or was owed money for such work. Mr Diekman employed another person to clean and maintain his boat. It is unlikely that he would have engaged Mr Huskic to do the same work.

Mr Huskic contradicted Mr Diekman in some respects. He said Mr Diekman paid for the scooter and did not give Mr Diekman any money towards its purchase. Although he did not pay Mr Diekman for the scooter, Mr Huskic denied it was a gift. He claimed the scooter was in return for having cleaned Mr Diekman's boat. He claimed to have cleaned Mr Diekman's boat about 12 times over about a year at an agreed rate of "about \$30 per hour". He probably spent two to four hours a time cleaning the boat. Even assuming he worked a maximum of four hours on 12 occasions at the rate of \$30 per hour, the amount he would have been owed is well short of \$10,000. He would have had to work some 333 hours at a rate of \$30 per hour cleaning and maintaining the boat during a 12-month period to earn \$10,000.

Although Mr Huskic claimed he did work on Mr Diekman's boat in return for payment, he did not comply with the NSCCAHS code of conduct by seeking approval for secondary employment. He claimed this was because he did not regard his work for Mr Diekman as employment.

The Commission is satisfied that Mr Diekman paid for the scooter and that it was a gift to Mr Huskic. The Commission does not accept that the scooter was provided in return for Mr Huskic having worked on Mr Diekman's boat.

In January 2009, Mr Huskic arranged for the alarm monitoring work to be removed from Boss Security and given to Kings. The work was worth about \$100,000 a year. Given the timing of the Vespa scooter purchase, the value of the alarm monitoring work to Kings, Mr Diekman's practice of rewarding people for business opportunities and the absence of any other satisfactory explanation for the payment, the Commission is satisfied that Mr Diekman purchased the Vespa scooter for Mr Huskic as a reward for his assistance in transferring the alarm monitoring work to Kings and further assistance that Mr Diekman anticipated Mr Huskic might provide in the future.

A security door for Mr Huskic's parents

Mr McMicking told the Commission that, sometime in 2009 or 2010, he was asked by Mr Huskic to install a security door at his parents' home. He estimated the cost of the security door was about \$900. He said the work was approved by Mr Diekman. Mr McMicking understood the provision of the security door was a gift.

Mr Diekman had a vague recollection of Mr Huskic asking for a security door to be installed either at his cousin's or his parents' home. He said he did not recall whether the door was, in fact, installed.

Mr Huskic was not questioned about this matter but it was identified in the submissions of Counsel Assisting as one of the benefits it was submitted had been provided to Mr Huskic in return for him exercising his public official functions to favour Kings, and dealt with in Mr Huskic's submissions in response.

Mr McMicking was a reliable witness and the Commission is satisfied that Mr Diekman authorised him to install a security door for Mr Huskic's parents. Based on his evidence, the Commission is satisfied that this was another gift to Mr Huskic.

Mr Huskic goes to Las Vegas

In March 2010, Mr Huskic attended the ISC in Las Vegas as Kings' guest.

Mr Huskic told the Commission that he paid for his own airfare. There is some evidence that his sister gave him money to pay for his airfare.

Mr Huskic said that, while in Las Vegas, he gave Mr McMicking cash to pay for his accommodation.

Mr McMicking said that he paid for Mr Huskic's accommodation with his credit card. He claimed that Mr Diekman had authorised him to make the payment, and that he was subsequently reimbursed by Kings. He said Mr Huskic never offered to reimburse him. He estimated the accommodation expenses were about \$900. Mr McMicking said that Mr Diekman told him

to tell the Commission that Mr Huskic paid for his own accommodation.

Mr Diekman said that Mr Huskic wanted Kings to book his accommodation as he wanted to travel with the Kings party. He claimed that he did not know who paid for Mr Huskic's accommodation. He did not believe he authorised Mr McMicking to pay for Mr Huskic's accommodation. He said he could not recall whether he asked Mr McMicking to tell the Commission that Mr Huskic paid for his own accommodation.

When giving evidence in his compulsory examination, Mr Huskic initially claimed to have paid cash to Mr McMicking for his accommodation when they were in Las Vegas. After hearing Mr McMicking's evidence at the public inquiry, he conceded that he had not repaid Mr McMicking or anyone from Kings for his accommodation expenses. Mr Huskic said he offered to give Mr McMicking cash for his share of the accommodation on a number of occasions while in the US but Mr McMicking refused, and told him that Kings would pay.

The Commission accepts Mr McMicking's evidence and Mr Huskic's admission that he did not pay for his accommodation. The Commission is satisfied that Mr Huskic's accommodation expenses were initially paid for by Mr McMicking, who was subsequently reimbursed by Kings. The Commission is satisfied that these arrangements were approved by Mr Diekman.

Mr Huskic claimed that the payment for his accommodation was not a gift but that he regarded it as "an annual leave going away with the mates". The Commission is satisfied it was a gift and that Mr Huskic appreciated that it was a gift at the time.

Mr Huskic did not disclose the trip to the NSCCAHS and contravened the code of conduct by accepting the gift. He told Mr Anderson that he was travelling with his sister and her girlfriend. Mr Anderson was not told that Mr Huskic was going to Las Vegas on a trip arranged by Kings. Mr Anderson told the Commission that, as Mr Huskic was, at the time, involved in the renewal of the master key system contract, which involved Kings, it was a conflict of interest for him to go on the trip. If Mr Anderson had been aware that Kings had organised the trip, he would have reported the matter to his manager and to the internal audit director.

Mr Huskic's accommodation expenses were paid for by Kings at a time when Mr Huskic had benefitted Kings by deliberately failing to advise Mr Anderson of the substantial price increases and annual price review that Kings was seeking in the new master key system agreement. The Commission is satisfied that the payment for Mr Huskic's accommodation expenses was approved by Mr Diekman, and accepted by Mr Huskic, as a reward for him exercising his public official functions with respect to the new master key system agreement to benefit Kings.

Mr Huskic requests various electronic items

Mr McMicking gave evidence that, in mid-2011, Mr Huskic provided him with a list of electronic items, including an iPad, iPhone, PlayStation games and an external hard drive. Mr McMicking said that he showed the list to Mr Diekman, and that Mr Diekman authorised him to purchase the items using Kings' funds. The items were purchased by Mr McMicking from Video Security Products at a cost of \$3,130.95. Mr McMicking said he delivered the goods to Mr Huskic, and did so with Mr Diekman's approval. He agreed that it was possible that the goods were provided by Kings to keep in Mr Huskic's "good books". Mr McMicking said he was not aware of Mr Huskic ever offering to pay for, or to pay Kings for, the items.

Mr Diekman claimed that he could not recall seeing the list of electronic items or speaking to Mr McMicking about paying for the items for Mr Huskic.

Mr Huskic agreed he got the items. He said he gave Mr McMicking the list because he understood Mr McMicking could obtain the items at a discount. When he asked Mr McMicking how much he needed to pay, Mr McMicking said he would get back to him. Mr Huskic agreed that he had not paid Mr McMicking.

The Commission is satisfied that the items were provided to Mr Huskic as a gift from Kings, and sought and accepted as such by Mr Huskic.

What was the purpose of the gifts?

The Commission is satisfied that Mr Huskic received the following gifts from Mr Diekman or from Kings with Mr Diekman's approval:

- a discount of \$700 on the cost of supplying and installing an alarm at Mr Huskic's cousin's home in 2006
- \$10,000 on 1 June 2007
- \$2,500 on 27 July 2007
- \$2,490 on 9 August 2007
- free supply and installation of locks at Mr Huskic's home in July 2008, valued at \$1,421.85
- payment of the \$1,866 cost of supplying and installing a security door and window grilles at Mr Huskic's home in July 2008
- a Vespa scooter, at a cost of \$9,999.99, supplied in May 2009
- the supply and installation of a security door at

Mr Huskic's parents' home, valued at about \$900, in 2009 or 2010

- accommodation in Las Vegas, valued at about \$900, in March 2010
- various electronic items, purchased for \$3,130.95, in mid-2011.

The obvious question arises as to why these gifts were provided to Mr Huskic.

The Commission has already found that some of these gifts were provided as a reward for Mr Huskic exercising his public official functions to favour Kings. The \$700 discount on the cost of supplying and installing an alarm at Mr Huskic's cousin's home in 2006 was in return for Mr Huskic taking steps to speed up the NSCCAHS payment of Kings' invoices. The Vespa scooter was a reward for Mr Huskic's assistance in transferring the alarm monitoring work to Kings. Mr Huskic's accommodation expenses in the US were paid as a reward for him exercising his public official functions to benefit Kings with respect to the new master key system agreement.

The Commission has rejected the claims that various payments were for work Mr Huskic did on Mr Diekman's boat or were loans made to Mr Huskic.

In 2006, the total value of Kings' work for the NSCCAHS was \$68,000. The value of security work obtained from the NSCCAHS by Kings between 2007 and 2011 ranged between \$800,000 and \$1.2 million each year. This was obviously a substantial increase in business.

Mr Huskic was in a position to influence the awarding of NSCCAHS work to Kings. He dealt with Kings on a regular basis and was one of the NSCCAHS's officers responsible for deciding from which businesses to seek quotes. It was his responsibility to confirm Kings had done the work for which it was contracted and to recommend whether or not its invoices should be paid.

As demonstrated above, various actions taken by Mr Huskic benefitted Kings by bringing it new work (for example, the alarm monitoring and the Gosford hospital carpark project) or allowing it to increase its charges (the new master key system agreement). He also used his official position to provide a favourable reference to Kings, which would be of assistance to Kings in obtaining other work in the public sector.

Mr Huskic was in a position to assist Kings in relation to the NSCCAHS work and did so. The Commission is satisfied that Mr Diekman was aware that Mr Huskic had assisted Kings and was in a position to continue doing so. The Commission is satisfied that the gifts identified above were sought and accepted by Mr Huskic and provided to him, either by Mr Diekman directly or with his authority, either as a reward for Mr Huskic having exercised his

NSCCAHS public official functions to favour Kings and in the expectation that he would continue do so in the future.

Mr Roche's knowledge

The Commission is satisfied that Mr Roche was aware of, and agreed with, the provision of benefits to Mr Huskic as a reward or inducement for Mr Huskic exercising his NSCCAHS public official functions to favour Kings and in the expectation that he would continue do so in the future.

The Commission has dealt with Mr Roche's knowledge of, and involvement in, improper payments in chapter 3. Mr Roche knew that large sums of money were taken out of Kings' business for an improper purpose. He approved this practice by creating false purchase orders to help disguise the destination of the payments and by authorising Mr Poller to create false accounting records. Mr Roche was intimately involved in the day-to-day running of Kings and took particular interest in, and responsibility for, its financial management. He was aware that money was paid to consultants or others to assist Kings to obtain work. He had a financial stake in Kings and an interest in protecting that stake by ensuring that he was aware of what money was spent by the business and how it was spent. The Commission is satisfied that Mr Roche was informed of the payments that were made from Kings' accounts and the purpose of those payments. Mr Roche also had an interest in ensuring not only that Kings continued to obtain work but that it increased the amount of work it took on. He knew Mr Huskic was influential in getting NSCCAHS work for Kings. Given his knowledge of how Kings operated, he would have appreciated that Mr Huskic was receiving benefits from Kings in order to reward and encourage him to favour Kings.

There is other evidence that demonstrates that Mr Roche knew there was a practice at Kings of providing benefits to Mr Huskic, and that he agreed with that practice.

The \$700 discount on the cost of supplying and installing an alarm at Mr Huskic's cousin's home in 2006 was in return for Mr Huskic taking steps to speed up the NSCCAHS's payment of Kings' invoices. Mr Diekman made this clear to Mr Roche in his email of 29 September 2006. The Commission is satisfied that Mr Roche was aware that this benefit was being provided to induce Mr Huskic to exercise his public official functions to favour Kings and that he concurred with the benefit being provided for that purpose.

The transfer of the alarm monitoring work to Kings represented a financial benefit of which Mr Roche would have been aware. When Mr Diekman arranged for Kings to purchase the Vespa scooter as a reward for Mr Huskic, he emailed Mr Roche the invoice with the message that he needed to discuss the matter. This demonstrates that

Mr Diekman kept Mr Roche informed about what he was doing.

Mr Diekman's "Marketing Budget" email of 30 May 2008 makes it clear that he (Mr Diekman) had made payments of at least \$15,000 to Mr Huskic for "a number of opportunities". Mr Roche understood the reference to "Robert H" in the email was a reference to Mr Huskic. The only "opportunities" Mr Huskic could have provided related to the exercise of his public official functions. Mr Roche would have understood this. The Commission is satisfied this email demonstrates that Mr Roche was aware that \$15,000 had been paid to Mr Huskic and that the payment of that money related to Mr Huskic's exercise of his public official functions.

Benefits provided to Mr Kuiper

There was evidence that Kings also provided some minor benefits to Mr Kuiper.

Mr Kuiper was a security project officer at the NSCCAHS. His function was to organise quotes. He had no cost delegations and could not authorise Kings to do work. He regularly liaised with Mr McMicking to obtain quotes and had occasional dealings with Mr Diekman.

Mr Kuiper said that Kings sponsored his rugby team. There was evidence that he disclosed the sponsorship to Mr Anderson. Mr Kuiper agreed that McMicking provided him with a small second-hand computer screen, which he thought was worth about \$50. Mr Kuiper did not tell his employer that he had received a computer screen from Kings. The NSCCAHS code of conduct requires acceptance of any token gifts by an employee to be reported to the employee's supervisor and that the supervisor's agreement be sought to retain the gift.

There is no evidence that Mr Kuiper did anything specific to assist Kings. The Commission is not satisfied that the benefits outlined above were sought or accepted by him in connection with the exercise of his public official functions.

Benefits provided to Mr Creary

There was evidence suggesting that Kings also provided benefits to Mr Creary.

In June 2006, Mr Creary was provided with a television set by Mr Diekman. He told the Commission that, a few weeks after discussing television brands with Mr Diekman, he received a telephone call from Mr Diekman. Mr Diekman told him that he had found the particular brand they had discussed and, if they purchased one each, they would get a better price. Mr Creary said he gave Mr Diekman cash to purchase the television.

Mr Diekman said that he sold a plasma television to Mr Creary for which Mr Creary paid him \$4,500 in cash.

In the circumstances, the Commission is not satisfied that the television set was provided as a gift to Mr Creary.

On 31 August 2008, Mr Diekman transferred ownership of a second-hand Holden Commodore from Kings to Mr Creary. Records from the then Roads and Traffic Authority indicate that the sale value of the vehicle was \$6,000. Kings accounting records relating to the sale of the car show a "Cameron Clearly" owed Kings \$5,454.55 for that vehicle on 31 July 2008. The debt remained in Kings' account for more than three months and was subsequently cleared by way of a book entry by Kings' accountants.

Mr Poller gave evidence that the "Cameron Clearly" referred to in Kings' account is a reference to Cameron Creary. Mr Poller said that he provided instructions for Kings' accountants to clear the debt following authorisation from Mr Diekman.

Mr Creary said that he paid Mr Diekman between \$6,500 and \$7,000 in cash for the car. Mr Creary said that he had large amounts of cash in his home, given to him by his father before he died.

Mr Diekman gave evidence that he received \$7,000 cash from Mr Creary. Mr Diekman was unable to say whether he paid Kings the money he received from Mr Creary. Mr Diekman could also not recall whether or not he had arranged the accounting entry that cleared Mr Creary's debt from Kings' books.

There are two possible hypotheses in relation to the payment for the car. First, Mr Creary gave Mr Diekman cash for the car and Mr Diekman never used the cash to repay Kings for the car. Secondly, Mr Creary was given the car as a gift and paid no cash for it. As there is insufficient evidence to discount the first hypothesis, the Commission is not satisfied that the car was given to Mr Creary as a gift by Mr Diekman.

Corrupt conduct

The Commission is satisfied that Mr Huskic, Mr Diekman, Mr Roche and Mr McMicking each engaged in corrupt conduct.

Mr Huskic

Mr Huskic's conduct in seeking and accepting benefits from Mr Diekman between 2006 and 2011 in return for exercising his public official functions to favour Kings and in the expectation that he would do so in the future is corrupt conduct. This is because his conduct adversely affected or could have adversely affected, either directly

or indirectly, the honest or impartial exercise of his official functions under s 8(1)(a) of the ICAC Act and constituted or involved the dishonest or partial exercise of his official functions under s 8(1)(b) of the ICAC Act.

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

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

Mr Huskic's conduct of 2010 in requesting Mr Diekman to arrange for the creation of dummy quotes for the Gosford hospital carpark security upgrade and his use of those quotes knowing they were false is corrupt conduct. This is because his conduct adversely affected the honest or impartial exercise of his official functions within the meaning of s 8(1)(a) of the ICAC Act. It is also conduct that could adversely affect, either directly or indirectly, the exercise of the official functions of other NSCCAHS officers involved in assessing the quotes and awarding the contract for the work and could involve official misconduct and fraud and therefore comes within s 8(2)(a) and s 8(2)(e) of the ICAC Act.

For the purposes of s 9(1)(a) of the ICAC Act, it is relevant to consider s 254 of the Crimes Act, which provides:

A person who uses a false document, knowing that it is false, with the intention of:

- (a) *inducing some person to accept it as genuine, and*
- (b) *because of its being accepted as genuine:*
 - (i) *obtaining any property belonging to another, or*
 - (ii) *obtaining any financial advantage or causing any financial disadvantage, or*
 - (iii) *influencing the exercise of a public duty,*

is guilty of an offence.

The Commission is satisfied for the purposes of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Huskic has committed criminal offences of using a false document under s 254 of the Crimes Act.

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

Mr Diekman

Mr Diekman's conduct in providing or authorising the provision of benefits to Mr Huskic between 2006 and 2011 in return for Mr Huskic having exercised his public official functions to favour Kings and in the expectation that he would do so in the future is corrupt conduct. This is because his conduct adversely affected or could have adversely affected, either directly or indirectly, the honest or impartial exercise of Mr Huskic's official functions and therefore comes within s 8(1)(a) of the ICAC Act. It is also conduct that could adversely affect the exercise of Mr Huskic's official functions and that could involve bribery or offering secret commissions and therefore comes within s 8(2)(b) and s 8(2)(d) of the ICAC Act.

The Commission is satisfied for the purposes of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Diekman has committed criminal offences of corruptly giving benefits contrary to s 249B(2) of the Crimes Act.

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

Mr Diekman's conduct in agreeing with Mr Huskic in 2010 to submit two dummy quotes to the NSCCAHS for the Gosford hospital carpark security upgrade, knowing Mr Huskic would represent them as genuine quotes, and authorising the submission of those quotes, is corrupt conduct. His conduct in reaching that agreement with Mr Huskic could adversely affect, either directly or indirectly, the honest or impartial exercise of Mr Huskic's official functions and therefore comes within s 8(1)(a) of the ICAC Act.

For the purposes of s 9(1)(a) of the ICAC Act, it is relevant to consider s 192E(1) of the Crimes Act, which provides:

A person who, by any deception, dishonestly:

- (a) *obtains property belonging to another, or*
- (b) *obtains any financial advantage or causes any financial disadvantage,*

is guilty of the offence of fraud.

The Commission is satisfied for the purposes of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate

tribunal, they would be grounds on which such a tribunal would find that Mr Diekman has committed criminal offences of using a false document under s 254 of the Crimes Act or a criminal offence of fraud under s 192E of the Crimes Act. In the latter case, the financial advantage obtained is maximising the opportunity of Kings winning the Gosford hospital carpark security upgrade contract.

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

Mr Roche

Mr Roche's conduct in agreeing with Mr Diekman that Mr Huskic be provided with benefits between 2006 and 2011 as a reward for Mr Huskic having exercised his public official duties to favour Kings and in the expectation that he would do so in the future is corrupt conduct.

This is because his conduct is conduct that adversely affected or could have adversely affected, either directly or indirectly, the honest or impartial exercise of official functions by Mr Huskic as a public official within the meaning of s 8(1)(a) of the ICAC Act.

The Commission is satisfied for the purposes of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Roche was an accessory before or after the fact to serious indictable offences, being offences under s 249B(2) of the Crimes Act of corruptly giving benefits.

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

Mr McMicking

Mr McMicking's conduct in agreeing with Mr Huskic in 2010 to submit two dummy quotes to the NSCCAHS for the Gosford hospital carpark security upgrade, knowing they were false and that Mr Huskic would represent them as genuine quotes, is corrupt conduct.

This is because his conduct in reaching that agreement with Mr Huskic could adversely affect, either directly or indirectly, the honest or impartial exercise of Mr Huskic's official functions and therefore comes within s 8(1)(a) of the ICAC Act. It is also conduct which could adversely affect, either directly or indirectly, the exercise of the official functions of other NSCCAHS officers involved in assessing the quotes and awarding the contract for the work and could involve fraud and therefore comes within s 8(2)(e) of the ICAC Act.

The Commission is satisfied for the purposes of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr McMicking has committed a criminal offence of using a false document under s 254 of the Crimes Act or an offence of being an accessory to fraud under s 192E of the Crimes Act. In the latter case, the financial advantage obtained is maximising the opportunity of Kings winning the Gosford hospital carpark security upgrade contract.

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

Section 74A(2) statements

For the purpose of this chapter, Mr Huskic, Mr Diekman, Mr Roche, Mr McMicking, Mr Creary and Mr Kuiper are "affected" persons.

Mr Huskic

Mr Huskic gave evidence subject to a declaration made under s 38 of the ICAC Act. This means that his evidence cannot be used against him in any criminal prosecution, except for an offence under the ICAC Act. There is, however, other admissible evidence that is available. This includes emails, banking records, invoices, accounting records and NSCCAHS records available to the prosecuting authority. The evidence of Mr Anderson, Ms Clifford, Mr Agnew, Mr Poller and Mr McMicking would also potentially be available.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Huskic for criminal offences of corruptly soliciting or receiving rewards from Mr Diekman contrary to s 249B(1) of the Crimes Act.

The Commission is also of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Huskic for a criminal offence of using a false document under s 254 of the Crimes Act in relation to his use of the two MJH dummy quotes.

Mr Diekman

Mr Diekman also gave evidence subject to a declaration made under s 38 of the ICAC Act. There is, however, other available admissible evidence. This includes emails, banking records, invoices, Kings' accounting records and NSCCAHS's records. The evidence of Mr Anderson, Mr Poller, Mr McMicking, Mr Agnew, and Mr Hingerty would also potentially be available.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Diekman for criminal offences of corruptly giving rewards to Mr Huskic contrary to s 249B(2) of the Crimes Act in relation to the gifts identified above.

The Commission is also of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Diekman for the criminal offence of fraud under s 192E of the Crimes Act or the criminal offence of using a false document under s 254 of the Crimes Act in relation to authorising the preparation and submission of the two dummy MJH quotes.

Mr Roche

Mr Roche also gave evidence subject to a declaration made under s 38 of the ICAC Act. The Commission does not consider there is sufficient admissible evidence to support a criminal prosecution against Mr Roche. In these circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Roche for any criminal offence.

Mr McMicking

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr McMicking for any criminal offence.

Mr Creary

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Creary for any criminal offence.

Mr Kuiper

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Kuiper for any criminal offence.

Chapter 5: Sydney Ports Corporation

This chapter examines whether:

- Mr Nguyen engaged in collusive tendering with Mr Diekman in 2007 in relation to an SPC tender
- Mr Paul breached his obligation to SPC by deliberately failing to declare his conflicts of interest arising from his relationships with Kings and Mr Diekman.

If Mr Nguyen and Mr Diekman engaged in collusive tendering for the SPC contract, their conduct would be corrupt conduct. This is because such conduct could adversely affect, either directly or indirectly, the exercise of official functions of the public official responsible for awarding the contract and could constitute or involve fraud and therefore come within s 8(2) of the ICAC Act. For the purpose of s 9 of the ICAC Act, such conduct could also constitute or involve a criminal offence of obtaining a financial advantage by deception contrary to s 178BA of the Crimes Act.

If Mr Paul deliberately failed to disclose to SPC his conflicts of interest arising from his relationships with Kings and Mr Diekman his conduct would be corrupt conduct. This is because his conduct could constitute or involve the dishonest or partial exercise of his official functions, namely, deliberate failure to declare his conflicts of interest, and therefore come under s 8(1)(b) of the ICAC Act. Such conduct could also, for the purposes of s 9(1)(c) of the ICAC Act, constitute or involve reasonable grounds for SPC dispensing with Mr Paul's services.

The SPC project and Mr Paul

In 2005, SPC engaged Mr Paul's company, Hootspah Pty Ltd, trading as SCI, to review and assess SPC's security and control requirements. The actual work, which also included preparation of budgets for the project, preparation of specifications and recommending which business should

be awarded work for the project, was undertaken by Mr Paul. For the reasons set out previously in this report, the Commission is satisfied that, in undertaking this work for SPC, which is a public authority, Mr Paul was a public official for the purposes of the ICAC Act.

In July 2007, SPC sought tenders for the supply and installation of an electronic access control and security system, including installation of gates and bollards at various sites. Four companies selected by Mr Paul were invited to submit quotes. These included Kings and Mr Nguyen's company, Orion Integration Pty Ltd, trading as Austek.

All four companies submitted quotes. Kings submitted the lowest quote and Austek submitted the next lowest quote. On 13 November 2007, Mr Paul, in his capacity as the SPC tender adviser, recommended that the work be awarded to Kings. His recommendation was accepted, and Kings was awarded the contract on 26 November 2007. As it turned out, however, Kings did not complete the work. Around October 2009, SPC advised Kings that it would not proceed with the project. Kings was paid \$106,803 for the work it had completed.

Was there collusive tendering?

On 28 October 2007, three days prior to the closing date for submission of quotes, Mark Ashworth, an Austek employee, sent an email to Mr Diekman requesting costings for "all the gate, bollard and civil work on the Ports tender".

On 29 October 2007, Mr Diekman emailed Mr Ashworth, saying: "This is what we are going in at". Mr Diekman's email attached a schedule of service rates. The schedule is the same as the schedule of service rates Kings submitted as part of its quote to SPC on 31 October 2007. Also attached to the email are two tables setting out cost estimates for various SPC locations. The prices set out in these tables total

\$561,770. There is no reference to gates or bollards in the schedule or tables. The prices set out in the tables provided to SPC, as part of the Kings quote, are slightly higher, at \$569,570.

Mr Nguyen is the managing director of Austek. A computer forensic examination of his computer by the Commission revealed that Mr Diekman's email of 29 October 2007, together with the attached schedule and tables, was automatically forwarded to Mr Nguyen's computer.

On 30 October 2007, Mr Nguyen sent an email to his Austek employees, titled "Ports Tender". In the email he advised, "BTW do NOT officially nominate Kings Security as a subcontractor. They are technically a competitor. Use their quote as a reference and guideline only". Mr Nguyen sent his staff other emails, which included instructions for completion of the SPC tender documents. These indicate that he was aware of the information that had been provided to Mr Ashworth by Mr Diekman.

Mr Nguyen gave evidence that he was interested only in the electronic component of the SPC tender, as Austek did not have the capability to supply and install gates and bollards. He said that when the tender came out and included the supply and installation of gates and bollards he decided that, if Austek succeeded in being awarded the tender, he would subcontract the supply and installation of gates and bollards to Kings, and had, therefore, sought a pricing from Kings for this aspect of the project.

Although the Austek quote documentation notes that the installation of gate hardware and fencing would be undertaken by subcontractors, it does not name any subcontractor. Mr Nguyen conceded that he never advised SPC of any intention to subcontract work to Kings.

Mr Nguyen claimed that, when he saw the information provided by Mr Diekman, he did not appreciate that it set out the schedule of fees that Kings would quote for the SPC project. The Commission does not accept this evidence. The words, "This is what we are going in at", in Mr Diekman's email clearly indicate that the schedule of service rates is what Kings intended to include in its quote to SPC. The information provided in the schedule and tables clearly relates to the entirety of the SPC project. The Commission is satisfied that, at the time he saw the attachments to the email, Mr Nguyen would have appreciated that the attachments contained Kings' figures for its quote for the SPC project.

Mr Nguyen told the Commission that he could not recall if he made a deliberate decision to submit a quote higher than the Kings quote. He said, however, that he did not want Austek to submit the lowest quote and, therefore, deliberately submitted a high quote so that Austek would not get the work. He explained that this was because the work involved the supply and installation of gates and

bollards, which was "a high risk job for us". If this was the case, it would have been open to Austek not to bid for the project at all. Mr Nguyen claimed, however, that by the time he became aware that the work involved supplying and installing gates and bollards he had already told SPC that Austek would quote for the work, and he considered that not doing so might be seen by SPC as an "affront" and result in SPC not asking Austek to quote for future work. He claimed that he worked out what he regarded as a high quote based on what he understood to be industry pricing for the project. He conceded that the schedule of service rates provided by Mr Diekman was one of the sources of industry pricing to which he had reference.

There was no documentary evidence of Austek having sought quotes from other sources for the supply of gates and bollards and Mr Nguyen was unable to nominate any other business that had been approached for this purpose.

There is nothing in the schedule or the tables attached to Mr Diekman's email of 29 October 2007 that specifically refers to gates or bollards or identifies any specific costs in relation to their supply and installation. It is apparent from other documentation obtained by the Commission that some of the locations mentioned in the two tables involved installation of gates and bollards. This may have been apparent to Mr Nguyen based on his understanding from SPC about what was involved in the project. The project, however, involved more than just installing gates and bollards. The information contained in the schedule and tables would have been of no use to Austek in trying to calculate how much it should allow for the supply and installation of gates and bollards. The Commission rejects Mr Nguyen's claim that the purpose of the information was to allow Austek to calculate the cost of the supply and installation of gates and bollards.

The most Mr Nguyen was prepared to concede was that the conduct of Austek in quoting for the SPC project came close to being collusive conduct with Kings.

Mr Diekman agreed that the attachments to his 29 October 2007 email contained Kings' figures for the SPC project. He gave the following explanation for sending this information to Austek:

From memory he [Mr Nguyen] just said he wanted to pull out so he said he didn't want to tender but he wanted to put a price in because he was concerned that if he doesn't put his price in, a price in or a tender response in that he'd be left off the tender.

The available inference from this evidence is that Mr Diekman knew that Austek did not want to get the SPC contract and wanted the Kings quote so that it could submit an uncompetitive quote to ensure that it was not awarded the contract. Although Mr Diekman said that he knew the Austek quote would be higher

than the Kings quote, he resisted the proposition that he knew Austek would submit a dummy quote. He told the Commission he believed the Austek quote would be higher because it would have to cover the payments to Kings for subcontracting the supply and installation of gates and bollards. Even if Austek intended to subcontract this work to Kings, it does not follow that its quote for the whole project would have had to be higher than the Kings quote. The project involved more than just the supply and installation of gates and bollards and, if Austek was genuinely interested in obtaining the work, it may have been able to undercut Kings on other components of the project. If Austek was genuinely trying to win the SPC work and believed Kings' prices for supplying gates and bollards was high, then it could have sought a more competitive quote elsewhere.

If Mr Diekman believed that Austek was a genuine competitor for the work, he would not have supplied it with Kings costings for the project; to do so would have given Austek an opportunity of undercutting Kings.

The Commission is satisfied that Mr Diekman provided Austek with the Kings costings for the SPC project with the intention that these would be used by Mr Nguyen to submit a higher Austek quote to SPC, and that Mr Nguyen used the Kings figures to ensure that Austek submitted a quote higher than the Kings quote. The actions of both were undertaken with the intention of increasing Kings' chances of winning the contract for the SPC project.

In reaching this conclusion, the Commission also takes into account evidence of an arrangement between Mr Diekman and Mr Nguyen for the submission of a dummy quote in relation to another matter. In February 2008, Mr Diekman sent an email to Mr Nguyen advising that he needed to provide a second quote on a job and requesting Mr Nguyen to "...send me your letterhead and will do the quote and send it back to you to send on". Mr Nguyen complied with Mr Diekman's request. Mr Diekman agreed that, on that occasion, he needed to arrange for a quote higher than the Kings quote, although he claimed that obtaining dummy quotes was only ever done at the client's request, and that Kings would not otherwise request dummy quotes.

The effect of the submission of the dummy Austek quote was that SPC was deprived of a truly competitive tender process.

Did Mr Paul fail to declare his conflicts of interest?

On 30 May 2005, Mr Paul sent a letter to SPC that included a statement that there were "no commercial arrangements or known potential conflicts of interest between Hootspah Pty Ltd, its trading companies,

directors, associates, and/or employees with any suppliers, manufacturers, trading companies, installation, monitoring or manpower service providers". He also stated that, should this situation change, he would notify SPC in writing and declare any potential conflicts of interest without delay. Mr Paul is a director of Hootspah Pty Ltd and, therefore, this statement applied to him personally.

Mr Paul recommended that SPC seek tenders from Kings for the project and was involved in the assessment process that led to Kings being awarded the contract. For the reasons set out previously in this report, the Commission is satisfied that, in performing this work for SPC, Mr Paul was a public official for the purposes of the ICAC Act.

At no time did Mr Paul make any disclosure to SPC about any relationship he had with Kings or Mr Diekman.

Mr Paul told the Commission that, by at least 2007, he and Mr Diekman were friends and they gambled together. As set out elsewhere in this report, there is evidence of a number of financial transactions involving Mr Paul, Kings and Mr Diekman. There is evidence of at least one financial transaction between them in early 2007, a little prior to the seeking of tenders by SPC.

On 25 January 2007, Mr Diekman sent an email to Mr Paul advising that Mr Paul's quotation of \$10,000 for work relating to another project had been accepted and requesting Mr Paul to forward an invoice to Kings so that payment could be processed.

Mr Paul responded later that day by emailing an SCI invoice for \$11,000 (including GST). The invoice described the work done as development of policy and procedure manuals for the management of a registered key system. A Kings cheque for \$11,000 was subsequently deposited into Mr Paul's bank account.

Mr Paul told the Commission that he did provide Mr Diekman with the documents referred to in the invoice but that he had previously received payment from Kings for that work. He claimed the \$10,000 was, in fact, a gambling debt owed to him by Mr Diekman and that the invoice was created to allow Mr Diekman to draw on Kings for the debt owed to Mr Paul.

Mr Diekman told the Commission he could not recall whether the payment related to the provision of the documents referred to in the invoice or was for the discharge of his gambling debt to Mr Paul.

It is not necessary to resolve whether the invoice was legitimate, merely a cover for the payment of a gambling debt or cover for payment for some other purpose. On Mr Paul's own admission, he had performed work for Kings. This establishes that there had been a business

relationship between Kings and Mr Paul's company. Other chapters of this report refer to other payments Mr Paul received from Kings. In addition, there was a close personal relationship between Mr Paul and Mr Diekman, including gambling together. These relationships posed a significant conflict of interest when Mr Paul was involved in recommending that Kings quote for the SPC project, in assessing quotes and in recommending which company should be awarded the work. They were conflicts of interest that he should have declared.

Mr Paul agreed that his letter of 30 May 2005 to SPC demonstrated that he understood the need to declare actual and potential conflicts of interest. The Commission is satisfied that, as an experienced consultant, he knew the importance attached to such declarations by public sector clients. The fact that he sent the letter to SPC demonstrates that he understood it was relevant for SPC to know of any conflicts of interest.

The Commission is satisfied that Mr Paul's relationships with Mr Diekman and Kings posed conflicts of interest in relation to his work for SPC, and that Mr Paul was aware of this fact. The Commission is satisfied that Mr Paul was aware of the need to declare any conflicts of interest and that he deliberately failed to do so.

Corrupt conduct

Findings are made that Mr Diekman, Mr Nguyen and Mr Paul engaged in corrupt conduct.

Mr Diekman

Mr Diekman's conduct in dishonestly providing Austek with the Kings' costings for the SPC project in 2007 with the intention that these would be used by Mr Nguyen to submit a higher Austek quote to SPC, so that Kings' chances of winning the contract for the SPC project would be increased, is corrupt conduct.

This is because his conduct could adversely affect the exercise of official functions by those public officials involved in assessing the quotes for the SPC project and deciding the awarding of the contract and could involve fraud and therefore comes within s 8(2)(e) of the ICAC Act.

In considering the requirements of s 9(1)(a) of the ICAC Act, it is relevant to consider s 178BA(1) of the Crimes Act (the section applicable at the time the conduct occurred) and the common law offence of conspiracy to defraud. Section 178BA(1) of the Crimes Act provides that:

Whosoever by any deception dishonestly obtains for himself or herself or another person any money or valuable thing or any financial advantage of any kind whatsoever shall be liable to imprisonment for 5 years.

The common law offence of conspiracy to defraud arises where two or more persons agree to use dishonest means with the intention of obtaining, making use of, or prejudicing another person's economic right or interest, or inducing another person to act, or refrain from acting, to his or her economic detriment. The submission of a dummy quote to improve Kings' chances of winning the SPC contract could prejudice the economic rights or interests of SPC by depriving it of a truly competitive process and, therefore, prejudice its chances of obtaining best value for money.

The Commission is satisfied for the purposes of s 9(1)(a) of the ICAC Act that, if the facts as it found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal they would be grounds on which such a tribunal would find that Mr Diekman had committed a criminal offence of attempting to obtain a financial advantage by deception contrary to s 178BA(1) of the Crimes Act or an offence of conspiracy to defraud. The relevant financial advantage is maximising Kings' opportunity of being awarded the SPC contract.

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

Mr Nguyen

Mr Nguyen's conduct in dishonestly using the Kings' costings in 2007 for the SPC project to ensure that his company, Austek, submitted a higher quote than Kings to SPC, so that Kings' chances of winning the contract for the SPC project would be increased, is corrupt conduct.

This is because his conduct could adversely affect the exercise of official functions by those public officials involved in assessing the quotes for the SPC project and deciding the awarding of the contract and could involve fraud and therefore comes within s 8(2)(e) of the ICAC Act.

For the purposes of s 9(1)(a) of the ICAC Act, the Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal they would be grounds on which such a tribunal would find that Mr Nguyen had committed a criminal offence of being an accessory before the fact to attempting to obtain a financial advantage by deception contrary to s 178BA(1) of the Crimes Act or an offence of conspiracy to defraud.

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

Mr Paul

Mr Paul's conduct in deliberately failing to disclose to SPC his conflicts of interest arising from his relationships with Mr Diekman and Kings is corrupt conduct.

This is because his conduct could constitute or involve the dishonest or partial exercise of his official functions, namely deliberate failure to declare his conflicts of interest, and therefore comes within s 8(1)(b) of the ICAC Act.

For the purpose of s 9(1)(c) of the ICAC Act, the Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal they would be grounds on which such a tribunal would find that Mr Paul's conduct constituted or involved reasonable grounds for dispensing with or otherwise terminating his services.

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

Section 74A(2) statement

Mr Diekman, Mr Nguyen and Mr Paul each gave their evidence subject to a declaration made under s 38 of the ICAC Act. The effect of this is that their evidence cannot be used against them in any criminal proceedings, other than for an offence under the ICAC Act.

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of any person for any criminal offence in relation to the matters set out in this chapter. This is because there is insufficient admissible evidence to warrant the commencement of any prosecution.

Chapter 6: Kings and the Department of Housing

This chapter examines whether:

- Mr La Greca improperly exercised his public official functions in 2007 by recommending DOH contracts be awarded to Kings in return for which he received, or agreed to receive, money from Mr Diekman
- Mr Grubisic, an ACG director, was involved with Mr Diekman in collusive tendering for DOH contracts in 2007
- Mr La Greca misused his public official functions to facilitate such collusive tendering, in return for which he agreed to receive, or received, money from Mr Grubisic and Mr Diekman.

If Mr La Greca improperly exercised his public official functions by recommending DOH contracts be awarded to Kings in return for which he received, or agreed to receive, money from Mr Diekman, his conduct would amount to corrupt conduct. This is because such conduct could constitute or involve the dishonest or partial exercise of his official functions within the meaning of s 8(1)(b) of the ICAC Act. His conduct could also constitute or involve a breach of public trust and therefore come under s 8(1)(c) of the ICAC Act. Such conduct could also adversely affect the exercise of his official functions and could involve official misconduct, bribery, and obtaining secret commissions within the meaning of s 8(2)(a), s 8(2)(b) and s 8(2)(d) of the ICAC Act. It could also constitute or involve a criminal offence of corruptly receiving or agreeing to receive a reward contrary to s 249B(1) of the Crimes Act for the purpose of s 9(1)(a) of the ICAC Act.

If Mr Diekman provided, or agreed to provide, money to Mr La Greca in return for Mr La Greca exercising his public official functions by recommending the awarding of DOH contracts to Kings, his conduct would amount to corrupt conduct. This is because his conduct could adversely affect, either directly or indirectly, the honest or impartial exercise of Mr La Greca's official functions and therefore come

within s 8(1)(a) of the ICAC Act. It is also conduct that could adversely affect the exercise of Mr La Greca's official functions and that could involve bribery or the offer of secret commissions within the meaning of s 8(2)(b) and s 8(2)(d) of the ICAC Act. For the purpose of s 9 of the ICAC Act, such conduct could also constitute or involve a criminal offence of corruptly giving or offering a reward contrary to s 249B(2) of the Crimes Act.

If Mr Grubisic and Mr Diekman engaged in collusive tendering for the DOH contracts, their conduct would be corrupt conduct. This is because such conduct could adversely affect, either directly or indirectly, the exercise of official functions of the public officials responsible for awarding contracts and could constitute or involve fraud and therefore come within s 8(2)(e) of the ICAC Act. It could also constitute or involve a criminal offence of obtaining a financial advantage by deception contrary to s 178BA of the Crimes Act.

If Mr La Greca misused his public official functions to facilitate collusive tendering for DOH contracts in return for which he agreed to receive, or received, money from Mr Grubisic and Mr Diekman, his conduct would amount to corrupt conduct. This is because it could constitute or involve the dishonest or partial exercise of his official functions within the meaning of s 8(1)(b) of the ICAC Act. His conduct could also constitute or involve a breach of public trust and therefore come under s 8(1)(c) of the ICAC Act. Such conduct could also adversely affect the exercise of his official functions and could involve official misconduct, bribery, and obtaining secret commissions within the meaning of s 8(2)(a), s 8(2)(b) and s 8(2)(d) of the ICAC Act. For the purpose of s 9(1)(a) of the ICAC Act, it could also constitute or involve a criminal offence of corruptly receiving or agreeing to receive a reward contrary to s 249B(1) of the Crimes Act.

The DOH refurbishment project

NSW Businesslink is a “public authority” for the purposes of the ICAC Act. One of its functions is to manage refurbishment and fit outs of NSW government offices. In 2006, the DOH retained NSW Businesslink to project manage the refurbishment of its offices across the DOH Greater Western Sydney Division. In addition to the refurbishment, DOH wanted to install a new integrated security system in its offices, so that its staff could use access cards across all the different DOH offices. In December 2006, NSW Businesslink engaged IPP Consulting to develop a standard security specification for the project, including relevant technical requirements, and a scope of works.

The actual work for which IPP Consulting was engaged was undertaken by Mr La Greca, who also evaluated tenders and made recommendations as to which tenders should be accepted. The Commission is satisfied that in the work he undertook for the DOH refurbishment project Mr La Greca was a person engaged by, or acting for or on behalf of, a public authority and was, therefore, a public official for the purposes of the ICAC Act.

The Commission examined Mr La Greca’s role in the awarding of two tenders to Kings. These were for work at the Penrith and Mount Druitt offices, and work at the Liverpool, Campbelltown, Bankstown and Fairfield offices.

In each case, only two businesses were invited to tender for these projects. They were Kings and ACG. In each case, Kings was awarded the contract on Mr La Greca’s recommendation.

The decision to invite tenders

Robert Smith is one of the NSW Businesslink representatives who worked on the DOH refurbishment project. He gave evidence that, given the budget for each office refurbishment was in the vicinity of \$60,000, he would have expected that three quotes would have been sought. He told the Commission that Mr La Greca never suggested that more than two quotes should be obtained. If Mr La Greca had raised the issue, Mr Smith would have agreed to obtain additional quotes. Mr Smith said that there were no time restraints on the project that would have impacted on a decision regarding the number of quotes to be obtained.

At his compulsory examination, Mr La Greca said he had told Mr Smith and another NSW Businesslink representative, Kevin Moody, that he would like to obtain three quotes and it was IPP Consulting’s philosophy to never seek only two quotes. He claimed he was overruled because Mr Smith and Mr Moody wanted a quick turnaround time for the project and told him it was appropriate to proceed with two quotes. He claimed that two representatives from Custance were also present at the meeting where this discussion had taken place.

Mr Smith denied making such a statement to Mr La Greca. The Commission was unable to obtain evidence from Mr Moody as he was deceased. Neither of the two Custance representatives recalled Mr La Greca suggesting that more than two quotes should be sought. Neither understood the deadline for the project to be so tight as to preclude the obtaining of more than two quotes.

At the public inquiry, Mr La Greca initially claimed that he could not recall whether the decision to seek only two quotes was made by him or someone else. Later in his evidence, he said the decision was made by Mr Smith and Mr Moody.

Mr Smith's denial that he told Mr La Greca to obtain only two quotes because the deadline for the project was tight is supported, to some extent, by the evidence of the two Custance representatives that there were no deadlines necessitating restrictions on the number of quotes to be sought. The Commission accepts the evidence of Mr Smith and the evidence of the two Custance representatives. The Commission is satisfied that it was Mr La Greca who made the decision to seek only two quotes for each of the relevant tenders.

The first tender

On 10 April 2007, Kings submitted a tender for installation of a security alarm and access control system, including CCTV cameras, for DOH offices at Penrith and Mt Druitt. The quote for the Penrith office was \$58,900 and the quote for the Mt Druitt office was \$62,900.

On 11 April 2007, ACG submitted a tender for the same offices. ACG's quote for the Penrith office was \$64,250 and the quote for the Mt Druitt office was \$61,125.

On 13 April 2007, Mr La Greca submitted his tender evaluation report to NSW Businesslink, recommending that Kings be awarded the tender for the Penrith and Mount Druitt offices. Mr La Greca's recommendation was accepted, and the work was awarded to Kings.

The second tender

On 2 May 2007, while Kings was undertaking work at the DOH Penrith and Mt Druitt offices, Mr La Greca sent an email to Mr Diekman advising him to "keep an eye out for a chance to quote on more work coming from DOH. We are currently documenting three more sites".

On 15 June 2007, Mr La Greca forwarded to Kings and ACG documents relating to a new tender for security systems at DOH offices in Liverpool, Campbelltown Bankstown and Fairfield.

On 28 June 2007, Mr La Greca submitted to NSW Businesslink his tender evaluation report for this project. His report recommended that Kings be awarded the tender. Mr La Greca's recommendation was accepted, and the work was awarded to Kings.

The respective quotes from ACG and Kings were as follows:

Tenderer	Campbelltown	Liverpool	Bankstown	Fairfield	Total
ACG	\$76,615	\$74,800	\$76,615	\$5,335	\$233,365
Kings	\$70,840	\$72,490	\$72,600	\$5,720	\$221,650

Was Mr La Greca paid by Mr Diekman?

Mr La Greca's decision to seek quotes from only two tenderers, including Kings, for the above projects reduced competition and could, thereby, have improved the chances of Kings obtaining the work. Both the tender evaluation reports written by Mr La Greca recommended that the relevant tenders be awarded to Kings. There was evidence that Mr Diekman had obtained at least \$5,000 from Kings in circumstances that suggested the money had something to do with IPP Consulting. The Commission investigated whether the money was paid to Mr La Greca and, if so, whether it was a reward for him having exercised his public official functions to improperly favour Kings.

On 29 June 2007, the day after Mr La Greca had submitted his tender evaluation report for the Liverpool, Campbelltown Bankstown and Fairfield offices, Mr Diekman sent an email to Mr Roche stating that he needed cash, including "DOH IPP \$5k".

On 4 July 2007, Mr Poller and Mr Roche signed a Kings cheque for \$9,205. The detail on the cheque butt referred to "Security Merchants". Mr Poller told the Commission that making out cheques payable to "Security Merchants" was one of the ways used to conceal the identity of the true recipient of payments. Mr Poller also told the Commission that it was not unusual at Kings for a written request for a sum of money to be followed by a verbal request for a different amount.

Mr Diekman was unable to explain why he referred to "IPP" in the email of 29 June 2007. He claimed that the request may have been made in order to pay contractors working at night for Kings or might have been commission due to him. Neither explanation accounts for the reference to "IPP" in the email of 29 June 2007. The Commission does not accept Mr Diekman's explanations.

Mr Roche told the Commission that he did not know why Mr Diekman wanted \$5,000.

Mr La Greca denied that he ever received any money from Kings or Mr Diekman.

There is no other evidence to show whether Mr Diekman or anyone else at Kings paid any money to Mr La Greca or that Mr La Greca sought or was promised any payment. In

these circumstances, the Commission considers that there is insufficient evidence to conclude that the \$5,000 sought by Mr Diekman was intended for Mr La Greca or that Mr La Greca received \$5,000 from Mr Diekman or Kings.

Was there collusion between ACG and Kings?

Mr Diekman sent emails to Mr Roche on 3 March 2008 and 30 May 2008, which, when read together, raise a possibility that Mr Grubisic and Mr Diekman were involved in collusive tendering for DOH contracts, and that Mr Grubisic had agreed to receive or had received payment from Mr Diekman for so colluding. Two of the emails also raise a possibility that Mr La Greca had facilitated the collusive tendering between Mr Grubisic and Mr Diekman and, in return, had agreed to receive, or had received, payment from Mr Grubisic and Mr Diekman.

On 3 March 2008, Mr Diekman sent an email to Mr Roche on the subject of "Incentive and Review Update". The email included the following: "Lets discuss, there are other fees also that need to be applied to the job EG \$15K cash to Tony Grubisek". The Commission is satisfied that the reference to "Tony Grubisek" is meant to be a reference to Mr Grubisic. The email clearly indicates an intention to pay \$15,000 to Mr Grubisic.

Later on 3 March 2008, Mr Diekman sent a further email to Mr Roche in which he wrote: "yeh \$5K per site they split it between the IPP cons and himself? I put 5K on each job and marked it up 65%. The next three sites Tony gets and he pays us and so on". This email suggests that \$5,000 per site was to be split between IPP Consulting and someone else. Given the context of the email and the reference to "Tony", there is an inference that the other person referred to is Mr Grubisic. The email also strongly suggests an arrangement, whereby Mr Grubisic's company, ACG, would win jobs on the "next three sites" in return for which Kings would receive a payment.

On 30 May 2008, Mr Diekman sent an email to Mr Roche in which he wrote: "we need to credit all ACG invoices. I also paid \$7.5 cash to the consultant via ACG for the DOH jobs". The email suggests that \$7,500 was paid to a consultant on the DOH project and that the payment was made through ACG. Mr La Greca was a consultant employed on the DOH projects.

Later on 30 May 2008, Mr Diekman made a \$7,500 internet transfer from his bank account to the joint account held by himself and his wife. He then withdrew \$7,500 from the joint account. The internet transfer for the \$7,500 was described as "lppacg". This suggested the payment had something to do with IPP Consulting and ACG.

Mr Diekman denied that there was any collusive arrangement between him and Mr Grubisic in relation to tendering for the DOH refurbishment project.

Mr Diekman said that the "\$15K cash to Tony Grubisic" referred to in his email of 3 March 2008 related to some work Kings did for ACG that did not meet Mr Grubisic's approval. Mr Roche told the Commission he did not understand the email.

In relation to the 30 May 2008 email, Mr Diekman claimed that he wanted to credit all ACG invoices because he wanted to write off all the invoices sent by Kings for the work that fell short of Mr Grubisic's expectations. He claimed the reference to paying \$7,500 to a consultant via ACG was a lie to Mr Roche. He was unable to provide an explanation for why he lied to Mr Roche.

Mr Diekman admitted that he created the notation describing the internet transfer of \$7,500 as "lppacg". He also admitted that he withdrew \$7,500 from the bank on that day. He claimed, however, that he did not know why he made the notation. He denied that he used the money to pay IPP Consulting, ACG, Mr Grubisic or Mr La Greca.

Mr Grubisic was not questioned about whether Kings had done work for ACG that did not meet his approval or whether Kings had credited ACG invoices as a consequence of the poor quality of Kings' work for ACG. He told the Commission that there had been no discussions between himself and Mr Diekman about the DOH refurbishment project. He denied that he had received any cash or other payment from Mr Diekman or Kings for himself or for Mr La Greca.

Mr Grubisic said that ACG did not win any DOH work in 2008. There was no evidence that any DOH refurbishment project contracts were awarded to ACG in 2008. The fact that ACG did not obtain any DOH work makes it less likely that there was a collusive arrangement between Kings and ACG, whereby they manipulated their quotes in order to ensure each received DOH work.

Mr La Greca denied that he ever received any payments from Mr Grubisic or Mr Diekman.

While Mr Diekman's emails and the notation for the \$7,500 internet transfer raise suspicions as to whether there was a collusive agreement between Mr Diekman and Mr Grubisic in relation to tendering for the DOH refurbishment project, and whether Mr La Greca was a party to that agreement, there is insufficient evidence to conclude that this was the case.



Corrupt conduct

No findings are made that any person engaged in corrupt conduct.

Section 74A(2) statement

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of any person for any criminal offence in relation to the matters set out in this chapter.

Chapter 7: Mr Paul at Woollahra Municipal Council

This chapter examines whether Mr Paul:

- breached his obligation to Woollahra Municipal Council (“the council”) in 2008 by deliberately failing to disclose to the council his relationships with Kings and Mr Diekman
- improperly exercised his public official functions to assist Kings in relation to a council tender.

If Mr Paul breached his obligation to the council by deliberately failing to declare his conflicts of interest arising from his relationships with Kings or Mr Diekman, his conduct would be corrupt conduct. This is because his conduct could constitute or involve the dishonest or partial exercise of his official functions, namely deliberate failure to declare his conflicts of interest, and therefore come under s 8(1)(b) of the ICAC Act. Such conduct could also, for the purposes of s 9(1)(c) of the ICAC Act, constitute or involve reasonable grounds for the council dispensing with his services.

If Mr Paul improperly exercised his public official functions to assist Kings in relation to a council tender, his conduct would be corrupt conduct. This is because his conduct could constitute or involve the dishonest or partial exercise of his official functions and therefore come under s 8(1)(b) of the ICAC Act. Such conduct could also come within s 9(1)(a) of the ICAC Act, as it could constitute or involve the common law offence of misconduct in public office. Such conduct could also come within s 9(1)(c) of the ICAC Act, as it could constitute or involve reasonable grounds for the council dispensing with his services.

The Gap project

“The Gap” is an ocean cliff that is a well-known location for suicides. In March 2008, the council adopted a plan for suicide prevention known as the Gap project. The Gap project involved installing CCTV cameras to provide warning of behaviour consistent with an intention to

commit suicide, so that suitable intervention could be undertaken to prevent suicides from occurring.

In July 2008, the council issued an invitation to a range of CCTV companies to quote for the design, supply and installation of CCTV systems at the Gap. Due to the overwhelming response, the lack of CCTV expertise within the council and the potential costs involved in implementing the Gap project, it was decided that professional assistance should be sought to provide design and specification advice.

In November 2008, Mr Paul’s company, Hootspah Pty Ltd, trading as SCI, was engaged by the council. Its role was to review and evaluate the requirements for the Gap project, provide technical advice and prepare tender documents. The actual work was to be performed by Mr Paul, who was the sole director of Hootspah Pty Ltd. Mr Paul was also a member of the council’s tender evaluation panel for the Gap project.

For the reasons set out previously in this report, the Commission is satisfied that, in performing this work for the council, Mr Paul was a public official for the purposes of the ICAC Act.

On 7 July 2009, the Gap project went out to tender. The tender closed on 6 August 2009. On 25 August 2009, Kings was advised that it had been awarded the tender.

Did Mr Paul have a conflict of interest?

By letter to the council dated 3 December 2008, Mr Paul advised that:

No commercial arrangements or known potential conflicts of interest exist between Hootspah Pty Ltd, its trading companies, directors or employees with any suppliers, manufacturers, trading companies, installation, monitoring or manpower service providers.

Mr Paul's letter also contained the following:

I declare the above statement to be true and factual at this time, should the above situation change for any reason whatsoever during the course of providing works and services to Woollahra Municipal Council, or under the scope of services being provided, Daniel Paul as Director of Hootspah Pty Ltd shall notify Council in writing and declare any potential conflicts of interest concisely, openly and without delay for consideration by Council to act or respond as Council deems appropriate.

The letter was signed by Mr Paul and clearly demonstrates his understanding of the need to advise the council of any potential conflicts of interest arising from his involvement in the Gap project. Despite this understanding, Mr Paul made no disclosure to the council of his relationships with Mr Diekman or Kings.

There was evidence before the Commission of a personal relationship between Mr Paul and Mr Diekman. Both Mr Diekman and Mr Paul gave evidence that they had a gambling relationship, at least by 2007, and from time-to-time, Mr Diekman owed gambling debts to Mr Paul.

There was other evidence of payments that Mr Paul had received from Kings about the time of his work on the Gap project. These include:

- a cheque for \$9,000 dated 4 January 2008 and a cheque for \$4,000 of the same date, which were deposited into Mr Paul's mother-in-law's account on 13 and 15 February 2008, respectively, and subsequently transferred to his wife's account (see chapter 2)
- two cheques dated 4 May 2009, each for \$10,000, deposited into Mr Paul's AMEX account on 7 May 2009 (see chapter 3).

Mr Paul claimed that these payments related to gambling debts owed to him by Mr Diekman. The Commission, however, has found that the payments of \$13,000 and \$20,000 were made in return for Mr Paul having misused his public official position to favour Kings. In any event, the payments establish a clear financial connection between Mr Paul and Kings, both prior to Mr Paul commencing his work for the council and during that work.

Les Windle, governance manager at the council, told the Commission that, if the council had been aware prior to the tender that Mr Paul had a gambling relationship with Mr Diekman, then the council would not have engaged Mr Paul. Mr Windle believed that, if this relationship had become known during the tender process, then the council would have terminated Mr Paul's services.

Mr Paul said that he did not disclose to the council his relationship with Kings because he considered it had nothing

to do with his involvement in the Gap project. He said he did not tell the council about his relationship with Mr Diekman because he believed it was irrelevant. The Commission rejects this evidence.

The Commission is satisfied that Mr Paul was aware of the need to declare any actual or potential conflict of interest to the council. He knew that Kings was involved in the tender process. As referred to below, Mr Paul knew that Mr Diekman was involved in the Kings tender. The Commission is satisfied that he appreciated his dealings with Mr Diekman and Kings constituted precisely the sort of conflict that, in his letter to the council of 3 December 2008, he had undertaken to report to the council. Mr Paul was experienced in providing consultancy services, both generally and to the public sector. He was well aware that by disclosing his conflicts of interest, he risked his engagement with the council being terminated and the likely consequential loss of income from the council. The Commission is satisfied that he deliberately failed to disclose to the council his conflicts of interest arising from his relationships with Kings and Mr Diekman.

Did Mr Paul assist Kings?

Samantha Jarvey, a former Kings employee, alleged that Mr Paul assisted Kings during the time the Gap project tender was underway. She said that Mr Paul assisted by drawing directional drilling diagrams on some maps to indicate the locations where drilling should be undertaken and where cables for the CCTV cameras should be run, and also assisted Mr Diekman by providing advice on the quality of CCTV cameras required for the project.

At the public inquiry, Ms Jarvey gave evidence that Mr Diekman gave her maps with drawings showing where drilling should be undertaken and where cables should be run. She recognised the drawings as Mr Paul's, as she was familiar with his unique drawing style, having previously done some private work for him. She claimed that these drawings were used as the basis for the drawings submitted by Kings in its tender for the Gap project. As she had ceased to work at Kings at the time she gave this evidence, she no longer had the maps with Mr Paul's drawings.

Ms Jarvey also recalled that Mr Paul and Mr Diekman had discussed directional drilling and that, prior to Kings submitting its tender, Mr Paul had provided advice to Mr Diekman about the quality of camera poles needed for the project.

In her earlier compulsory examination in October 2010, Ms Jarvey said that she had never seen Mr Paul in the Kings office assisting with the preparation of the tender documents for the Gap project. When questioned at the public inquiry about this evidence, she told the Commission that, at the time of her compulsory examination, she was

concerned about losing her job if she told the Commission about these matters. Her concern arose because she understood that Mr Paul had a strong relationship with Kings and, if she said anything to get him into trouble, that could adversely affect her employment with Kings. She said that, at the time she gave evidence at the public inquiry, she was no longer employed by Kings and, therefore, was not constrained by such concerns.

Mr Paul acknowledged that he had been in the Kings office at the time of the Gap project tender and that he had discussed the tender with Mr Diekman. He also agreed that Ms Jarvey was familiar with his drawings. He denied that he provided Mr Diekman or Kings with any drawings in relation to directional drilling or that he provided any other assistance to Kings in relation to its tender for the project.

Mr Diekman left open the possibility that Mr Paul attended the Kings office at the time of the tender process but denied that Mr Paul drew diagrams for Kings regarding directional drilling or provided any other assistance to Kings.

There is no independent evidence to support Ms Jarvey's allegations that Mr Paul assisted Kings by drawing directional drilling diagrams on some maps or that he provided advice to Mr Diekman about the quality of camera poles needed for the project. Although both Mr Diekman and Mr Paul have denied these allegations, the Commission does not regard either as credible witnesses and can place no reliance on such denials. In light, however, of the submissions of Counsel Assisting that there is insufficient evidence to find that Mr Paul improperly assisted Mr Diekman in relation to the Gap project tender, the Commission does not propose to consider this matter further.

There was a further matter considered in the public inquiry arising from Ms Jarvey's compulsory examination in October 2010. At the public inquiry, Ms Jarvey told the Commission that, in early 2011, she had a conversation with Mr Roche in which she was told by him that the company had lost trust in her because she had been to the Commission. Mr Roche denied such a conversation. Ms Jarvey claimed that she felt forced to leave Kings. Proceedings that she commenced for unfair dismissal were subsequently settled. After hearing evidence on this matter at the public inquiry, the Commission announced it would not further investigate this matter and that it would not make any adverse findings.

Corrupt conduct

Mr Paul's conduct in deliberately failing to disclose to Woollahra Municipal Council his conflicts of interest arising from his relationships with Mr Diekman and Kings is corrupt conduct.

This is because his conduct could constitute or involve the dishonest or partial exercise of his official functions, namely deliberate failure to declare his conflicts of interest, and therefore comes within s 8(1)(b) of the ICAC Act.

For the purpose of s 9(1)(c) of the ICAC Act, the Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Paul's conduct constituted or involved reasonable grounds for dispensing with or otherwise terminating his services.

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

Section 74A(2) statement

The Commission is not of the opinion that consideration should be given to obtaining that advice of the DPP with respect to the prosecution of Mr Paul for any criminal offence in relation to the matters set out in this chapter.

Chapter 8: Corruption prevention

The design and installation of high-end security systems is a complex and specialised area requiring the integration of different security and communications subsystems. This involves product expertise, as well as IT, engineering and electrical knowledge. Most of the government agencies involved in this investigation had limited internal capabilities in this area. This is a point of difference compared to private sector organisations with security challenges, where a dedicated person (or persons) is usually responsible for security installations. Unlike the private sector, the government agencies in this investigation did not have a repertoire of industry knowledge to inform projects. Mr Paul was able to exploit this situation to his own advantage.

Mr Paul's corrupt activities permeated numerous government agencies and different stages of procurement and project management activities within those agencies. He was afforded end-to-end control across various security projects and exercised a heavy degree of influence within each project stage. This investigation has highlighted the trustful dependence those agencies placed in Mr Paul and how he was able to abuse that trust. A key lesson from this investigation is that a government agency cannot transfer its responsibility for the integrity of government procurement and project delivery to an external source.

Weak procurement and project management practices also facilitated the corruption. Some agencies failed to adhere to established state government requirements aimed at ensuring fairness. Loose practices were also common. There was a general failure to appreciate the significance of the activities that were being undertaken and the role of public officials in safeguarding those activities. This represented a further yielding of responsibility by some agencies.

Some agencies were also uninformed about the vested interests and collusion that are common in the security industry. Consequently, their vulnerability to corruption went unrecognised and so, too, the imperative for good governance, due process and robust systems.

Obtaining security expertise

Most government agencies responded to the challenge of undertaking a specialised project by hiring an external security expert to provide advice and undertake specific tasks, such as developing project specifications. This was reasonable and arguably necessary, considering the highly specialised and complex nature of the subject matter. Yet, reliance on outsourced expertise necessitated an appreciation of the vulnerabilities involved in this approach and the adoption of strategies to counter these risks.

There was a general failure amongst the agencies to appreciate that, while security experts were independent, in the sense that they had no prior connection to the various government agencies, they were not free from the influence of the wider security industry. Consequently, not only was the need for additional safeguards unrecognised but the involvement of an "independent" was regarded as a safeguard rather than a risk. In the end, corruption prevailed.

Expert security consultants are susceptible to conflicts of interest and shifting alliances, due to the short-term nature of their work. This is particularly the case in the security industry, where it is common for technicians to move between companies, and rapidly changing technology necessitates information-sharing. The business model adopted by many manufacturers and suppliers of equipment also creates interdependent relationships involving consultants and integrators.

Social connections between industry participants are strong. Mr Paul gave evidence about his relationships with integrators and suppliers of security products, as follows:

So for what, whatever, whether it was long-standing or not the fact is you, you had close personal relationships with integrators and suppliers, didn't you?---Of course.

I mean, you socialised with them?---Of course.

Had lunches with them?---Yeah.

Dinners?---Yeah.

Went out to football matches?---Sure.

Or social occasions?---Yes.

Similarly, Mr Nguyen, director of Orion Integration Pty Ltd, explained during the public inquiry that, “Unfortunately it’s a very small incestuous industry and we all know what everyone else is doing”.

The interdependent relationships in the security industry were seen by some as driving dishonest practices. Mr Stokes, CEO of QVS, gave the following evidence about the security industry:

And why did you think that, that threats had been made?---No, no, it’s, it’s just the, the history of this industry is it’s a, I don’t like the security industry, I’ve made a lot of money out of it but I haven’t enjoyed my time in it all the time and the history is that you scratch someone’s back, they scratch yours and that’s in, everything in the technology market I believe is the same and, you know, I’m not proud of a lot of things that have happened in our company over the years but we’ve tried to put things in place to rectify that now...

Mr La Greca, project manager at IPP Consulting, also confirmed that “there’s always talk” about the practice of kickbacks in the security industry.

Some witnesses acknowledged the heavy reliance placed on expert consultants during the selection and project management phases of the security projects. In her evidence, Ms Flanagan, deputy director of the AGNSW, said that, “we were very very reliant on [Mr Paul’s] expertise in that field”. In hindsight, she reflected that:

...there was far too great a reliance on a security consultant to drive the tender process and the specification of that tender process and the selection and the recommendation and in turn selection of the tenderer and the associated equipment...

Another related problem was that the role of the security experts was rarely clearly defined. Once engaged, their role often extended beyond the initial envisaged scope of their engagement. By way of example, at UWS, Mr Paul was described in documents as the access control Concept 4000 project superintendent. Mr Paul was also the contract administrator for the Gap project at Woollahra Municipal Council. This issue is discussed in more detail later in this chapter and addressed in recommendation (11).

In practice, the security experts were handed end-to-end control over the projects as public sector managers effectively outsourced accountability. The outsourcing of accountability was evident in the breadth of control afforded to Mr Paul across the length of the various security projects and his level of influence within each project stage. His degree of control was, in some cases, astounding. It also created a real opportunity for corrupt conduct.

In some cases, the failure to recognise the risk of corrupt conduct was despite explicit policies and procedures dealing with the risks posed by consultants. The AGNSW’s corruption prevention policy stated that managers should identify high-risk areas where corruption may occur and develop or modify practices to reduce risk. The policy particularly alerted managers to contracting-out and outsourcing as risk areas, and required them to assess their risk exposure and implement appropriate counter-measures prior to commencing. This did not occur prior to the engagement of Mr Paul at the AGNSW nor was the policy discussed amongst the TEC.

At the AGNSW, Mr Paul selected and rated products for inclusion in the tender brief, developed the tender specifications, selected the suppliers and wholesalers that would be invited to attend the tender briefing, was involved in the decision to adopt a limited-tender method, and recommended the companies that would be invited to tender. He also calculated the final tender weightings.

The arrangements around these processes were loose and largely left to Mr Paul's discretion. They were also unfair. QVS was given the opportunity to attend the AGNSW and demonstrate camera equipment to Mr Morris. It was Mr Morris' recollection that no other suppliers attended the AGNSW.

Mr Paul also provided budget information to QVS without the knowledge of the AGNSW. Other potential suppliers were not provided with this information. This gave QVS a competitive advantage. Mr Morris acknowledged this, as follows:

Would you agree that Q Video would have an advantage over other wholesalers and suppliers who hadn't been party to the budget spreadsheet that I showed you, Exhibit 65, tab 15?---Yes, that would be the case.

And would you agree it's therefore inappropriate to include Q Video to be involved supplying product to the integrators because they may well include information that's confidential to the Art Gallery?---Correct.

Mr Paul's span of influence was equally broad across the other agencies. An example is the UWS access control tender, where he was involved in briefing potential tenderers, selected the independent for the evaluation panel, and was a member of the tender evaluation panel.

It is customary in the private sector to build safeguards into procurement and project management processes to limit the discretion afforded to security consultants. An area where this approach is adopted is the selection of security products for projects. During this process, product testing criteria is developed based on input from a variety of sources, such as end-users. Panels are also typically used to evaluate product test results and to select benchmark products. The results then inform project specifications. Product-testing panels are also used to evaluate tender submissions, including alternative solutions. This approach reduces the influence of consultants by facilitating input from a number of informed decision-makers.

Other options for diluting the influence of external security consultants available to government agencies include seeking assistance from the NSW Government's specialised security group, now located within the Department of Finance and Services. This group operates a security consultancy service and is available to assist with a number of tasks, including the provision of independent panel members for TECs.

Another option is to draw on institutions that have successfully completed similar security projects as a reference point and also those institutions as a source of independent panel members. Large tertiary and cultural institutions are obvious examples.

The Commission has formulated recommendations to dilute the influence of expert security consultants during

large-scale security projects. The recommendations would have equal application to other types of complex projects and their applicability in a broader context could also be considered by the agencies.

The Commission recognises that it would be impractical and unnecessary to implement recommendation (2), where agencies are "locked in" to using existing products, including minor works projects, upgrades to existing systems and where multiple sites are being integrated into an existing system.

The Commission also accepts that the establishment of a whole-of-government security product installation contract would render parts of the recommendations obsolete for some agencies. To date, the NSW Government has not adopted a whole-of-government approach to security products, given that agency security requirements are often inconsistent and vary depending on the available budget.

For the purposes of these recommendations, the Commission defines large-scale security projects as above \$250,000 in value.

The following recommendations are directed to the AGNSW, UWS, Woollahra Municipal Council, SPC and NSW Businesslink.

Recommendation 1

That NSW government agencies ensure that overall responsibility for identified tasks associated with the selection of security integrators is maintained in-house, including:

- determining project budgets
- determining the scope of projects
- selecting tenderers to bid for contracts (in the case of limited and select tenders)
- communicating with tenderers
- coordinating tender evaluation panels and making recommendations
- evaluating tender submissions and writing selection reports.

Recommendation 2

That NSW government agencies embarking on new large-scale security projects adopt a rigorous product selection approach. The selection process could include:

- obtaining feedback regarding product specifications from a variety of sources, including end-users

- extensive product testing and the evaluation of test results by a panel either to inform the development of tender specifications or as part of a tender evaluation process.

Recommendation 3

That NSW government agencies explore alternatives to relying exclusively on the advice of specialist consultants when selecting security integrators through a competitive process. Options for diluting the influence of specialist consultants include:

- identifying in-house security experts from other public sector agencies for tender evaluation panel participation
- ensuring that when consultants sit on tender evaluation panels, it is only in a technical advisory capacity
- identifying and seeking advice from agencies that have undertaken similar projects.

Recommendation 4

That NSW government agencies consider the feasibility of separating tasks between security consultants for large-scale and complex projects, in cases where specialist advice is required.

Engaging consultants and installers

Lack of due diligence

In the Commission's experience, public sector due diligence enquiries are often limited in their application. This investigation has highlighted that practice. A common theme was the lack of broad due diligence enquiries undertaken, as part of the security consultant and integrator selection processes.

Due diligence is a tool that can be used to reduce an agency's risk exposure, including its exposure to the risk of corrupt conduct. Due diligence enquires should be both substantial and valid in order to provide a solid foundation for supporting procurement decisions. The type and nature of due diligence enquiries should also be influenced by the size and scale of a project, the perceived risks, and where the information is likely to be located and communicated. The scale of the projects undertaken by many of the agencies and the close links between many industry operatives necessitated a broad approach to due diligence.

In addition, the security industry's reputation for questionable practices should result in extensive due diligence enquiries, although, many of the public sector agencies were unaware of this reputation at the relevant time.

Mr Morris acknowledged that price was the main consideration involved in the engagement of Mr Paul by the AGNSW:

So again I put to you, was the only, was the only criterion price?---Well that would have had a significant bearing on the outcome of the - - -

Was there anything else?---Not that I can recall.

Mr Paul nominated several referees when he applied for the AGNSW consultancy. The selection panel did not contact all of the nominated referees and failed to conduct any broader due diligence enquiries.

Ms Flanagan gave evidence that she received information about concerns with Mr Paul's relationships with installers. It was her evidence that she advised Mr Morris and Ms Tregeagle to "act professionally in the way in which we were carrying out that process" as a result of the allegations. This was contradicted by Mr Morris, who gave evidence that Ms Flanagan told him of the allegations more than a year after the contract was completed and after the Commission had begun its investigation. Ms Flanagan agreed that no written record was made of the conversation nor were the allegations investigated. Ms Flanagan also acknowledged in her evidence that she would act differently if a similar situation arose:

What steps would you have taken now?---I think firstly that one would investigate further and would request something that was not off-the-record to understand more fully the implication of that, those, that comment that was made about our security consultant and then I would speak further about that once I knew and had in writing what those comments were.

It is always possible that due diligence enquiries will uncover allegations of corrupt conduct. In the NSW public sector, decision-makers are required to adhere to the principles of administrative law. Ministerial Memorandum M2006-01, *Guidelines for Managing Lobbyists and Corruption Allegations made during Lobbying*, provides a useful protocol for dealing with allegations of improper conduct within this framework.

Mr Paul's modus operandi in order to secure work included bidding low. His low bid did not attract any scrutiny or suspicion that he had other opportunities to generate money arising out of dishonest dealings connected to his consultancy role. Mr Paul's price was

the most competitive with regard to the AGNSW security consultancy (\$24,980 compared to \$56,000 and \$110,000). Ms Flanagan gave evidence that this did not give cause for great alarm at the AGNSW:

And did that attract any particular scrutiny on behalf of yourself or anyone else at Art Gallery on the basis that he'd bid low because there's a potential for him to recoup money in other less legitimate ways?---The – his bid was 25,000, the BRI was 56,000 and the third party I think was around 110, so there was quite a difference in the three prices. I questioned both Tony Morris and Anne Tregeagle and was reassured that he was a single operator, he didn't carry large overheads and hence his price was at that point. The fact that tenderers can vary so much can happen in a tender process and I think with the Art Gallery or with any organisation people bid not only on price but they may want to have on a resume that they've actually performed tasks for those organisations. That was not discussed but I was reassured by the fact that he was a small operator and had reference checks done on him duly.

At UWS, it was acknowledged that external referee checks for Kings may not have been performed. Instead, it was possible that the panel only relied on information provided in tender responses and input from Mr Paul.

Mr Paul also nominated Mr Shepherd as the UWS independent TEC member, on the basis he had current relevant experience in the procurement of security systems. The chair of the tender panel gave the following evidence about Mr Shepherd's selection:

You met with him on several occasions didn't you, that is Shepherd?---The panel met on a number of occasions, yes.

Did you ask him what that current relevant experience in security systems was?---Not as I recall, no.

Did it not interest you?---We were provided advice that he had just implemented a major security installation at Ports and he was recommended to us as a member of the panel.

Did you not - - -?---He was from a public body.

Did you not have any interest in inquiring what that major security system was and who did it?---In retrospect I should have. I don't recall having that conversation with him, no.

Furthermore, while UWS raised Kings' poor performance on a previous project with Kings, this was not an impediment to the company being awarded the project.

Generally, the standard of due diligence enquiries for large-scale private sector security projects is more rigorous in comparison to the public sector agencies that featured in the investigation. The Commission believes that the standards

adopted in the private sector in this regard provide a useful benchmark for public sector projects. As a minimum, due diligence enquiries should include nominated referee checks. Ideally, due diligence enquiries should extend to a tenderer's previous work experience as well as taking active steps to gain access to industry information networks.

Some agencies have taken steps to improve their access to existing industry knowledge. UWS is now participating in a national association of university security managers, which facilitates the sharing of information about the security industry. This type of arrangement mirrors similar methods of obtaining information about the security industry that are adopted in other industries, such as the banking and retail sectors.

Government agencies may also consider undertaking criminal records checks on consultants and contractors involved in sensitive work. In a corruption context, "sensitive" should include consideration of matters, such as potential access to security systems. For practical reasons, such checks are best done at the point of entry to an agency by nominated personnel.

Recommendation (5) deals with the issue of due diligence and is directed to the AGNSW, UWS, Woollahra Municipal Council, SPC and NSW Businesslink.

Recommendation 5

That NSW government agencies adopt a broad approach to the due diligence enquiries that are conducted as part of a security procurement process, including:

- the scrutiny of low bids
- consideration of previous performance
- seeking referee reports beyond those nominated by the tenderer
- the verification of case studies provided by tenderers
- conducting criminal record checks on successful applicants
- seeking information from established information networks.

Lack of competition

The adoption of open competitive processes reduces opportunities for collusion and favouritism. This is an important consideration when dealing with an industry characterised by strong networks, interdependent relationships and a reputation for dishonest practices. It is possible that the collusion that has been identified in this investigation would not have occurred if open tender

methods were adopted, as competition would have been increased. For this reason, the Commission favours the adoption of open tender methods for security contracts over \$250,000 in value, in the absence of justifications, such as existing warranties, a requirement for accredited installers or the need to integrate with an existing system.

Agencies should also be wary of limited tendering methodologies where they rely on the advice of industry operatives about who should tender and where there is no pre-existing, pre-qualification scheme in place. Mr Paul was open about the fact that he had pre-existing relationships with integrators that he recommended for limited tenders:

Now all of those companies, MJH, Kings, Austek, AFN, they were all - - -?---Known of me, yes.

- - - known and close to you. Would you agree with that?---I wouldn't, they're, they're known to me, they're friends, yeah.

Ms Flanagan gave the following evidence about the decision by the AGNSW to adopt a limited tender:

Do you recall there being discussions about whether the tender should be an open one, that is invited - any company can respond to a publicly advertised tender or was some other form of tender decided upon?---There was a recommendation by Daniel Paul for a select tender and we fully endorsed that given the confidential nature of what we were dealing with.

As an alternative, the issue of confidentiality could have been resolved through a staged process involving the pre-qualification of tenderers prior to allowing detailed submissions. This could be achieved through an open call for expressions of interest, followed by a set of pre-qualification criteria around licensing requirements, membership of relevant security associations, technical capability and previous experience. Non-disclosure obligations could also form part of this process, and were, in fact, used by the AGNSW.

In 2007, the NSCCAHS awarded Kings the security upgrade at Wyong hospital for the sum of \$308,000, despite quotations only being obtained from two companies. At the time, there was a requirement for public health organisations to invite tenders for goods and services over \$150,000 in value, while three quotations were required for goods and services over \$30,000 and up to \$150,000 in value. Select and invited (that is, limited) tender methods were provided for under NSCCAHS's procurement policy; however, there was a requirement that the reason for adopting these methodologies be documented and that a minimum of three selective tenders were invited subject to availability.

Recommendations (6) and (7) address the issue of lack of competition. Recommendation (6) is directed to the AGNSW, UWS, SPC and NSW Businesslink. Recommendation (7) is directed to NSW Health.

Recommendation 6

That NSW government agencies adopt a preference for open tender methodologies (including staged processes that involve open expressions of interest) for new security installation projects above \$250,000 in value. For contracts up to \$250,000 in value, a minimum of three written quotes should be obtained, unless exceptional circumstances exist and are documented or the contract is worth \$30,000 or less.

This recommendation does not apply where whole-of-government or multi-agency arrangements are in place. It also does not apply where the agency has a pre-qualification scheme in place or where existing warranty or integration issues preclude open competition.

Recommendation 7

That NSW Health adopts a range of audit activities to ensure compliance with the requirements of its *Purchasing and Supply Manual*, including the formalisation of pre-qualification arrangements for contractors and obtaining the requisite number of quotations.

Loose contractual arrangements

Kings and Sielox were initially the only authorised installers for the Honeywell Pro watch access control system that was used within the NSCCAHS. Consequently, building and electrical contractors performing new construction work within the NSCCAHS were informed that Kings and Sielox were the preferred contractors for the provision of electrical security services. Over the years, the NSCCAHS had only used Kings and Sielox to supply and install electronic security systems. This arrangement was not subject to a written contract nor was it formally documented.

Mr Anderson, area manager of security at the NSCCAHS, gave the following evidence about this arrangement:

And you'll see that says that Sielox and Kings are the preferred suppliers for electronic security access. Do you see that?---Yes.

And who told you that it was historical practice that that arrangement was in place?---It was, excuse me, it was just something I was aware of being part of the security department.

But you can't recall now who told you that that was the practice or how you became aware of that fact?---No, I couldn't say who actually told me.

The practice of nominating Kings and Sielox as authorised installers was also not formally reviewed. Mr Anderson did recognise that an additional installer should have been sourced by the NSCCAHS and took steps to draft a letter to a potential installer. Mr Anderson relied on Mr Huskic to pursue the issue. It was never followed up.

There was also a general lack of awareness of the requirement for the NSCCAHS to use the former State Contracts Control Board's whole-of-government contracts, where available, to purchase goods and services. In particular, Kings was contracted by the NSCCAHS to monitor alarms, despite not being a supplier for this service under State Contract 0302682.

The Northern Sydney and Central Coast Local Health Districts have undertaken reviews of their security services to ensure that they are compliant with NSW Government and NSW Health procurement policies and procedures. Recommendation (7) requires NSW Health to adopt a range of audit activities to monitor this compliance.

Limited training in procurement

Various former NSCCAHS employees gave evidence at the public inquiry about their lack of procurement training and lack of familiarity with procurement requirements. An example is Mr Anderson, as follows:

And when you commenced that role as the manager of Security Services for Northern Health did you receive training in procurement?---No.

No formal training?---No formal training.

Did you receive any informal training or orientation regarding procedures that were in place relevant to your, the completion of your role?---Yes.

And what was that?---Where I could find policies and procured [sic] on the Health intranet site.

So somebody told you that they were available?---Yes.

On the intranet site?---Yes.

You weren't taken through them or formally trained in them yourself by any of your superiors?---No.

The Local Health Districts and the NSW Ministry of Health are addressing the lack of guidance given to staff about procurement matters and their lack of knowledge of procurement requirements. Some of these reforms are discussed at the end of this section.

Lack of effective oversight of procurement

Ms Tregagle gave the following evidence about her role and that of Mr Paul regarding the scrutiny of tender proposals:

Did you as the project manager read all of the tender responses of all the integrators who had submitted a tender?---Not, not in full I didn't, no. We, yeah.

You were, you were going to say you relied on - - -?---Relied on Mr Paul to do a review of the technical responses that we'd received and to give us a summary of his findings.

Consequently, Ms Tregagle and Mr Morris were not aware that Kings' original submission was based on a Pelco Endura 2 solution.

There were no tender evaluation panels for the DOH security installer contracts, rather Kings was engaged based on the recommendations of Mr La Greca. The quotations received by Mr La Greca were not reviewed by NSW Businesslink staff.

Mr Anderson reviewed Mr Huskic's briefing note regarding the master key renewal at the NSCCAHS. He gave evidence that he was unaware of the 65% increase in prices between the initial agreement in 2006 and the 2010 renewal. At the time, section 3.8.7 of the "Purchasing and Supply Manual for Public Health Organisations" stated that all proposals for variations, including significant changes to costs, "require careful consideration, applying the principles of value for money; probity and accountability". Mr Anderson also did not realise that the renewal provided Kings with potentially eight years service on top of the four years since 2006.

Changing of tender weightings

The AGNSW's TEC changed the weightings attached to the evaluation criteria for the security upgrade project after submissions were received and opened. The weighting for price went from 50% to 40%. This change favoured Kings because ACG offered a more competitive price. It was also unfair given that evaluation weightings influence the drafting of tender submissions.

The change in weightings was a breach of the NSW Government Procurement Policy, which stated "ideally, the weighting of the evaluation criteria should be determined

prior to calling of tenders but shall be not later than close of tenders". The practice of changing weightings after the close of tenders can also facilitate corrupt conduct, as the potential exists for tender submissions to influence changes.

Unfair post-tender submission negotiations

After the initial interview with the preferred tenderers, the AGNSW requested Kings review its submitted maintenance costs. A similar request was not made of ACG. This provided Kings with an unfair advantage. Ms Tregeagle gave evidence that in hindsight this was not a good process.

ACG was given 29 hours to submit an entirely new Pelco Endura 2 proposal. Ms Tregeagle acknowledged that this was not enough time, and that the written request provided to ACG about this was unclear. Again, this provided an unfair advantage to Kings, given that ACG had not previously prepared a Lenel/Pelco bid.

The unfair nature of the post-tender submission negotiations at the AGNSW gave rise to the perception that the TEC had decided to award the tender to Kings and, in effect, re-opened the tender to favour Kings. Ms Tregeagle acknowledged that this was, "Well, subconsciously possibly" the case.

Ms Tregeagle provided the following evidence about the tender process:

Do you consider that the process, do you consider that the process that was adopted after Kings presented their new solution for their upgraded version on 27 February was a flawed one?---In hindsight, definitely.

And in what do you consider it to be flawed?---I, I believe there wasn't enough time [given to ACG], I believe certainly as, as we've just discussed the information was not clear. And I believe that on the --following the tendering guidelines we mostly likely should have given the tender to, to AGC at the end of the first interview or at least gone to a second round of interviews for further clarifications or identified AGC as, as a single preferred tenderer and negotiated with them because they were at that point in time ahead of Kings.

Failure to refer tender to NSW Procurement

Some of the agencies were in breach of the State Contracts Control Board purchasing delegations, which at the time required purchases of over \$150,000 in value (changed to \$250,000 in April 2009) to be referred to NSW Procurement. In the case of the AGNSW, an

incorrect assumption was held that it had the capability to procure large-scale projects in its own right. The AGNSW has acknowledged that this understanding was incorrect.

The referral of the tenders to NSW Procurement would have provided an additional level of oversight of the tender documents and processes. It is likely that NSW Procurement would have alerted the agencies to the availability of security expertise within the then Department of Commerce.

NSW Government procurement reforms

The Department of Finance and Services has a program that is being extended across the NSW public sector to improve procurement capability. A review has commenced on a cluster-by-cluster basis to determine accreditation for procurement based on the requisite skills and experience. The department has committed to put in place programs to develop skills and knowledge where procurement expertise is lacking. This program should address some of the corruption risks highlighted in this investigation, such as lack of effective oversight of procurement, the changing of tender weightings after the close of submissions and unfair negotiations with tenderers.

In addition, Health Support Services (a division of the Health Administration Corporation) is now accredited to manage procurement processes for Local Health Districts. Local Health Districts are now required to use Health Support Services for this purpose. The benefit of this requirement includes greater oversight and transparency over procurement activities. The NSW Ministry of Health is conducting workshops about the role of Health Support Services. NSW Health is also conducting contract management and procurement risk management courses for Local Health Districts.

The AGNSW has also undertaken an extensive review of its procurement processes and taken steps to put corruption prevention safeguards in place.

Project management capabilities and structures

The project management of large-scale contracts is a specialised discipline requiring particular planning, coordinating, budgeting and risk-management skills. Some of the security installation contracts were project managed by public officials with little or no qualifications or experience in this area. An example is Mr Byrne, who was the project manager for the UWS access control contract despite lacking project management experience or qualifications at the time.

A project's scope should be clearly defined to accurately estimate factors such as costs and delivery schedules. Some agencies did not maintain adequate control over this task. This enhanced their vulnerability to overcharging and collusion. Kings budgeted labour costs at \$60,000 for the work relating to the DOH premises at Campbelltown, Liverpool and Bankstown. The labour component was then subcontracted for \$26,620, suggesting that their budgeted cost was inflated.

The control of inventory at UWS also demonstrates the weak project management processes in place at the time. The inventory register for the access control project did not show where items were installed, the date they were installed or whether UWS received all of the items that it had purchased. Nor could UWS be sure that the equipment that it had earmarked for the contract was available to Kings at the time of installation. The limitations of the asset register made it difficult to refute a claim by Kings that a contract variation was required due to a shortfall in equipment. It also made it difficult to reconcile equipment as currently installed against "as built" documentation provided by Kings.

Various measures can be adopted to verify installed products against the products that are purchased by an agency and installed by a contractor. Maintaining a tight asset register that remains the property of the agency upon completion of a project is a key feature. For large-scale projects additional measures should be considered, such as utilising the services of a quantity surveyor who is separated from other contractors and consultants and reports directly to a permanent member of staff.

Quantity surveyors can also be used to verify whether a variation is required and its value. The oversight of variations is also improved through the use of a variations register and approval processes that involve employees who are not directly involved in the supervision of the contract. Variations represent a particular risk for agencies, as they provide a way for a tenderer to increase the value of a contract and provide a means of avoiding tender threshold requirements. The role of consultants, such as Mr Paul, in recommending variations also represents a risk of collusion between contractors and consultants.

UWS has now introduced a professional project management system that addresses its earlier deficiencies.

Recommendation (8) concerns project management systems. It is directed to the AGNSW, UWS, SPC and NSW Businesslink.

Recommendation 8

That NSW government agencies improve their project management systems by:

- **clarifying project roles and responsibilities**
- **developing in-depth project scopes and plans, as appropriate, to the size and complexity of a project**
- **specifying and ensuring compliance with contract terms and conditions**
- **introducing tight inventory controls**
- **close monitoring of project budgets and project expenditure**
- **establishing processes to verify and approve variations, including the use of quantity surveyors.**

Governance arrangements

Gifts

The offering and acceptance of gifts and hospitality by public officials involved in procurement was a constant theme throughout the investigation. While there were some examples of public officials refusing offers of hospitality, there were many cases where this did not occur.

The gifts and hospitality that were accepted ranged from small-scale items through to gifts of significant value. Many of these gifts were not declared by public officials. This was a breach of policy requirements. Perhaps of even greater concern was the fact that the acceptance of significant gifts was sanctioned by some public sector agencies.

The link between gifts and the development of improper relationships represents a significant corruption risk in the area of procurement. This is because of the ability of public officials to influence procurement processes and the value that this can provide to a proponent. For this reason, the Commission favours a "zero tolerance" approach to the acceptance of gifts and benefits by public officials directly involved in procurement when offered by potential contractors and consultants as well as existing contractors and consultants.

Some of the agencies' existing codes of conduct place general prohibitions on gifts that may create a sense of obligation on the part of the public official concerned; however, in the Commission's experience, some public officials fail to recognise the issue of influence. A specific prohibition on procurement staff accepting gifts and benefits will provide clarity by removing any confusion about what is acceptable and what is not.

Recommendation (9) deals with this issue. This recommendation is directed to NSW Health, the AGNSW, UWS, SPC, Woollahra Municipal Council and NSW Businesslink.

Recommendation 9

That NSW government agencies ban employees directly involved in procurement activities from accepting any gifts, benefits and hospitality from potential contractors and consultants and existing contractors and consultants.

Associations and conflicts of interest

The government agencies adopted a variety of approaches to the potential conflicts of interest of its consultants and contractors. Some agencies placed clear obligations on contractors and consultants but this was not always the case. One agency did not provide Mr Paul with any information relating to conflict of interest disclosure obligations. Mr Paul was also proactive in providing various statements of probity that dealt with conflicts of interest.

Mr Paul had a particularly close commercial and financial relationship with Kings, and a close personal relationship with one of the directors of Kings, Mr Diekman. Mr Paul and Kings also attended the annual ISC and industry dinners together with other suppliers, integrators and public officials. A significant component of these functions was social, providing the opportunity for friendships to develop. The investigation exposed the extensive networks that arose between security industry participants.

Conflicts of interest include situations where someone, with whom a contractor or consultant is associated, has an interest in the matter under consideration. This association can be either pecuniary in nature or non-pecuniary; for example, an association based on a friendship. Agencies should be proactive in explaining conflict of interest disclosure obligations to contractors, particularly given the interdependent nature of the security industry.

Recommendation (10) deals with this issue. This recommendation is directed to NSW Health, the AGNSW, UWS, Woollahra Municipal Council, SPC and NSW Businesslink.

Recommendation 10

That NSW government agencies be proactive in explaining the obligations on contractors and consultants to declare conflicts of interest, including those arising from either a pecuniary or non-pecuniary relationship.

Government guidelines for engagement of consultants

The State Contracts Control Board allowed public sector agencies to invite and accept tenders for the procurement of consultancy services subject to compliance with the Department of Premier and Cabinet's *Guidelines for the Engagement and Use of Consultants* (C2004-17). The agencies required to comply with the guidelines failed to do so and were unaware of their existence. The guidelines cover the specifications of requirements for consultants, including what should be covered in terms of references. They also deal with oversight arrangements for consultants, reporting arrangements and ethical practices by consultants.

Recommendation (11) addresses this issue, and is directed to the AGNSW, UWS, SPC and NSW Businesslink.

Recommendation 11

That NSW government agencies ensure compliance with the Department of Premier and Cabinet's *Guidelines for the Engagement and Use of Consultants* (C2004-17) when engaging and using consultants.

These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E of the ICAC Act, will be furnished to the relevant public authorities and the ministers responsible for those authorities.

As required by s 111E(2) of the ICAC Act, the relevant public authorities must inform the Commission in writing within three months (or such longer period as the Commission may agree to in writing) after receiving the recommendations whether they propose to implement any plan of action in response to the recommendations affecting them and, if so, the plan of action.

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

The Commission will publish the responses to its recommendations, any plans of action and progress reports on their implementation on the Commission's website, www.icac.nsw.gov.au, for public viewing.

Appendix 1: The role of the Commission

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

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

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

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

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

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

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

Appendix 2: Making corrupt conduct findings

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

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

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

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

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

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

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

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

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

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

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

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

requirements of s 13(3A) and, in the case of a Minister of the Crown or a member of a House of Parliament, the jurisdictional requirements of s 9(5). In the case of s 9(1)(a) and s 9(5) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence. In the case of s 9(1)(b), s 9(1)(c) and s 9(1)(d) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

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

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

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

the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

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

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

See also *Rejcek v McElroy* (1965) 112 CLR 517, the *Report of the Royal Commission of inquiry into matters in relation to electoral redistribution, Queensland, 1977* (McGregor J) and the *Report of the Royal Commission into An Attempt to Bribe a Member of the House of Assembly, and Other Matters* (Hon W Carter QC, Tasmania, 1991).

Findings of fact and corrupt conduct set out in this report have been made applying the principles detailed in this Appendix.



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