

I·C·A·C

INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES



**INVESTIGATION INTO THE
POSSESSION AND SUPPLY
OF STEROIDS AND OTHER
MATTERS INVOLVING A
CORRECTIVE SERVICES NSW
CORRECTIONS OFFICER**

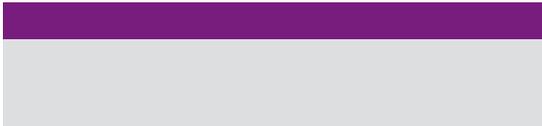
**ICAC REPORT
SEPTEMBER 2013**

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Mr President
Madam Speaker

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 the possession and supply of steroids by a Corrective Services NSW corrections officer.

No public inquiry was held in this matter. A number of compulsory examinations were conducted at which Assistant Commissioner Hamilton presided.

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 is a report on an investigation conducted by the NSW Independent Commission Against Corruption (“the Commission”) into allegations that Robert Di-Bona, a corrections officer at the Metropolitan Special Programs Centre (MSPC) of Corrective Services NSW (CSNSW), was involved in supplying prohibited drugs and restricted substances to inmates and other persons, and in supplying contraband, including mobile telephones, to inmates. The investigation also examined Mr Di-Bona’s alleged use of prohibited drugs, prescribed restricted substances and a mobile telephone while on duty at the MSPC.

Chapter 2 of the report contains findings that, in December 2012 and February 2013, Mr Di-Bona supplied prescribed restricted substances (steroids) to fellow CSNSW officer, Christopher Warren, in exchange for cash payment. Findings are made in chapter 2 that Mr Di-Bona engaged in corrupt conduct by supplying steroids to Mr Warren. A finding is also made that Mr Warren engaged in corrupt conduct by purchasing, and subsequently possessing, steroids.

Chapter 2 of the report also contains findings that both Mr Di-Bona and Mr Warren engaged in corrupt conduct by failing to report each other’s use of steroids in accordance with the disclosure obligations imposed on them by CSNSW’s Alcohol and Other Drugs Policy.

Chapter 3 of the report contains findings that Mr Di-Bona attended work at the MSPC on two occasions while under the influence of 3,4-methylenedioxymethylamphetamine, a prohibited drug commonly known as “ecstasy”. On one occasion, Mr Di-Bona completed a shift under the influence of ecstasy following a night out with friends. The Commission was unable to make a finding in relation to when this incident occurred, though Mr Di-Bona’s explanation that the incident occurred eight or nine years ago was not accepted by the Commission. On another occasion, Mr Di-Bona consumed two ecstasy tablets at

home in February 2013 before reporting to work at the MSPC. A finding of corrupt conduct is made against Mr Di-Bona in relation to attending work while under the influence of prohibited drugs on two occasions.

Chapter 4 of the report contains findings that Mr Di-Bona sold steroids to a former CSNSW inmate referred to as “NL” on at least three occasions between late 2012 and early 2013 in exchange for cash payment. A finding of corrupt conduct is made against Mr Di-Bona in relation to these supplies.

Chapter 4 also contains a finding that Mr Di-Bona failed to disclose his contact with someone classified by CSNSW as an “offender”, contrary to CSNSW’s Contact with Offender Policy. A finding is made that NL was an offender for the purposes of CSNSW’s policy, and a finding is also made that Mr Di-Bona was aware that NL was an offender under the policy and aware of his obligations to disclose his contact with NL, but neglected to do so. A finding of corrupt conduct is made against Mr Di-Bona for his failure to disclose his relationship with NL.

Chapter 5 of the report contains a finding that Mr Di-Bona purchased steroids from an associate known as “IO” in December 2012. Mr Di-Bona attended IO’s home on 18 December 2012 and purchased three vials of steroids – two vials of Trenbolone and one vial of Testosterone.

Chapter 5 also contains findings that Mr Di-Bona knowingly gave false evidence to the Commission during compulsory examinations on 15 March 2013 and 1 May 2013 in relation to the number of times that he had purchased steroids from IO. On 15 March 2013, Mr Di-Bona said that he had purchased steroids from IO on only one occasion, while, on 1 May 2013, Mr Di-Bona said that he had not purchased steroids from IO in the

previous five years. During later evidence on 1 May 2013, Mr Di-Bona admitted that he had regularly purchased steroids from IO over the years. Mr Di-Bona also admitted that he had lied to the Commission during his evidence on 15 March 2013 and 1 May 2013.

Chapter 5 of the report also contains findings that Mr Di-Bona purchased steroids from an associate named “Jim” on a number of occasions between late 2012 and January 2013. Mr Di-Bona met Jim at the BP service station at Greystanes on 17 and 21 January 2013 and purchased two vials of steroid on each occasion. Mr Di-Bona also admitted to purchasing steroids from Jim on another two or three occasions in late 2012.

Chapter 5 also contains a finding that Mr Di-Bona knowingly gave false evidence to the Commission at a compulsory examination on 1 May 2013 when he said that he had purchased steroids from Jim on only one occasion. Mr Di-Bona later admitted that he had lied to the Commission.

Chapter 6 of the report contains findings that Mr Di-Bona regularly used his mobile telephone while on duty at the MSPC for social purposes. The possession of a mobile telephone within a correctional centre is unlawful, even if that possession is by a CSNSW employee. Mr Di-Bona was in regular telephone contact with a female associate known as “RF” while on duty at the MSPC throughout December 2012 and January 2013. A finding of corrupt conduct is made against Mr Di-Bona for his use of his mobile telephone while on duty on a number of occasions.

Chapter 6 also contains findings that Mr Di-Bona knowingly gave false evidence to the Commission on three occasions in relation to his use of his mobile telephone while at work. On 15 March 2013, Mr Di-Bona told the Commission that he rarely took his mobile telephone into the MSPC and estimated that he had done so only on about 10 occasions. On 1 May 2013, Mr Di-Bona told

the Commission that he had used his mobile telephone only in the gatehouse or while sitting at a table outside the gatehouse. On 1 May 2013, Mr Di-Bona also told the Commission that the only reasons that he used his mobile telephone at the MSPC were in relation to the sale of a house and a dispute in relation to the proceeds from a vehicle he had sold. Evidence tendered before the Commission established that Mr Di-Bona had given false evidence in relation to each of the three occasions.

Section 74A(2) statements

Statements pursuant to s 74A of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) are made in this report. The Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of Mr Di-Bona for six offences of giving false evidence to the Commission pursuant to s 87 of the ICAC Act.

The Commission is also of the opinion that consideration should be given by CSNSW to taking disciplinary action against Mr Di-Bona for misconduct with a view to his dismissal in relation to the conduct that is the subject of the findings made in the report.

The Commission is also of the opinion that consideration should be given by CSNSW to taking disciplinary action against Mr Warren for his use of steroids.

The investigation exposed systemic and operational weaknesses, the substance of which had recently been addressed in recommendations made in the ICAC report, *Investigation into the smuggling of contraband into the Metropolitan Special Programs Centre at the Long Bay Correctional Complex* (released in January 2013).



In that report, the Commission made five recommendations that focused not only on public correctional centre security standards, but on early intervention to address corrections officer misconduct through post rotation, further development of an early intervention system, implementation of a performance management system and equipping managers to deal with staff considered a potential security risk.

These recommendations also address the corruption risks exposed in this investigation.

CSNSW has indicated that all the recommendations will be implemented as recommended and a 12-month report on the action plan is due to be received by the Commission in April 2014. As a result, the Commission is of the view that no new or revised recommendations need to be made in relation to this matter.

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 the Houses of Parliament to make the report public, whether or not Parliament is in session.

Chapter 1: Background

This chapter sets out some background information on how this investigation came about, how it was conducted, and the public officials whose conduct was investigated.

How the investigation came about

In July 2012, the NSW Independent Commission Against Corruption (“the Commission”) received a report from Corrective Services NSW (CSNSW) pursuant to s 11 of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”). Section 11 of the ICAC Act imposes an obligation on the principal officer of a public authority to report any possible corrupt conduct to the Commission.

The report alleged that corrections officer, Robert Di-Bona was involved in trafficking steroids, illegal drugs and other contraband items into the Metropolitan Special Programs Centre (MSPC), in return for which he was paid between \$500 and \$1,000 for each delivery.

At the time the Commission received the allegation, CSNSW provided supporting information from three separate sources identifying a person of identical description to Mr Di-Bona as being responsible for trafficking contraband into the MSPC and subsequently receiving payment from friends and relatives of inmates.

Why the Commission investigated

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

- (i) *corrupt conduct, or*
- (ii) *conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or*
- (iii) *conduct connected with corrupt conduct,*

may have occurred, may be occurring or may be about to occur.

The role of the Commission is explained in more detail in Appendix 1, while Appendix 2 sets out the approach taken by the Commission in determining whether corrupt conduct has occurred.

The conduct reported to the Commission was serious and could, if established, constitute corrupt conduct within the meaning of the ICAC Act. The Commission decided that it was in the public interest to conduct an investigation to establish whether corrupt conduct had occurred and 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 relevant information and documents from CSNSW, financial institutions and various other sources by issuing notices under s 22 of the ICAC Act. These documents and information were closely analysed and used to guide the investigative process.

The Commission made use of lawful covert surveillance, both physical and electronic, pursuant to a warrant obtained under the *Surveillance Devices Act 2007* and a warrant obtained under the *Telecommunications (Interception and Access) Act 1979*.

Commission investigators were also present and worked in conjunction with CSNSW investigators when they conducted a personal search of Mr Di-Bona on 7 March 2013, during his shift at the MSPC.

The Commission conducted compulsory examinations with persons of interest between 15 March and 1 May 2013. As required by the ICAC Act, these examinations were conducted in private. The Commission conducted these examinations in order to obtain further relevant evidence, refine areas of investigation, and give persons of interest the opportunity to respond to allegations and potentially unfavourable evidence.

The evidence obtained from the compulsory examinations and from the use of electronic surveillance devices established that Mr Di-Bona had supplied steroids to a fellow CSNSW employee, maintained a personal relationship with a former prisoner and supplied that person with steroids, attended work while under the influence of a prohibited drug on two occasions, and repeatedly used his mobile telephone while on duty at the MSPC contrary to NSW criminal laws.

In these circumstances, and taking into account s 31(2) of the ICAC Act, the Commission determined that it was neither necessary nor in the public interest to conduct a public inquiry. Such an inquiry would merely duplicate the evidence already obtained in the compulsory examinations, would not materially assist the investigation and would necessarily delay publication of the investigation report.

The Commission also took into account that this investigation followed soon after the Commission conducted a public inquiry concerning similar allegations involving another CSNSW employee at the MSPC. That investigation report, which was published on 25 January 2013, included findings of corrupt conduct against former CSNSW employee, Karaha Pene Te-Hira. The Commission also made recommendations in the report in relation to various corruption prevention procedures for the MSPC. Each of those corruption prevention recommendations has been accepted and CSNSW has indicated that they will be fully implemented.

The evidence obtained during the course of the investigation into Mr Di-Bona did not identify additional corruption prevention issues.

Instead of conducting a public inquiry, the Commission provided confidential submissions to relevant persons for comment and reply. The submissions set out the evidence upon which the Commission proposed to rely on for this report and also addressed the findings and recommendations that could be made based on the available evidence. When preparing this report,

the Commission has taken into account submissions received in response on behalf of Christopher Warren, another CSNSW employee whose conduct is relevant to the investigation. The Commission did not receive any submissions in response from, or on behalf of, Mr Di-Bona.

The MSPC

The MSPC is a correctional centre within the Long Bay Correctional Complex situated in Matraville, NSW. The MSPC houses all classifications of inmates and consists of three areas, each providing a range of therapeutic programs that are part of statewide strategies implemented by CSNSW to address specific behavioural issues.

Mr Di-Bona

Mr Di-Bona is a carpenter by trade and has worked as a corrections officer for CSNSW for approximately 10 years.

CSNSW records indicate that Mr Di-Bona commenced employment with CSNSW (then known as the Department of Corrective Services) on 10 June 2003. He commenced work at the MSPC on 6 February 2006, and continued to be employed by CSNSW until his suspension in March 2013.

Mr Di-Bona is a public official for the purposes of the ICAC Act, as he is an employee of CSNSW, a public authority.

Mr Warren

CSNSW records indicate that Mr Warren commenced employment with CSNSW on 9 February 2009. He commenced work at the MSPC on 19 July 2010.

Mr Warren is a public official for the purposes of the ICAC Act, as he is an employee of CSNSW, a public authority.

Chapter 2: Mr Di-Bona and Mr Warren

This chapter deals with allegations that on two occasions Mr Di-Bona supplied fellow CSNSW officer, Mr Warren, with the steroid Trenbolone in return for cash payments. The first occasion was in December 2012 and the second occasion was in February 2013.

Trenbolone is classified as a prescribed restricted substance pursuant to s 61 of the Poisons and Therapeutic Goods Regulation 2008.

This chapter also deals with the failure of both Mr Di-Bona and Mr Warren to report each other's use of steroids to CSNSW management, contrary to disclosure obligations imposed on them by CSNSW's Alcohol and Other Drugs Policy. That policy imposes obligations on CSNSW employees to report the use of alcohol and/or other drugs by fellow employees to management.

Under the heading "responsibility to report", the policy states:

11. Any member of staff who reasonably suspects that another member of staff may have an AOD [alcohol and other drug] issue is to report that suspicion to his/her manager. Such a report need not be in writing; however the manager should create a written report.

The supply on 19 December 2012

Mr Di-Bona and Mr Warren met, and became friends, when Mr Warren commenced work at the MSPC in July 2010. They occasionally socialised outside of the work environment, although their friendship was largely based at the MSPC.

As part of its investigation, the Commission utilised a lawfully obtained telecommunications intercept warrant to intercept the mobile telephone service of Mr Di-Bona between December 2012 and January 2013.

In December 2012, intercepted text messages between Mr Di-Bona and Mr Warren revealed plans for Mr Warren to

meet with Mr Di-Bona at Mr Di-Bona's home on 19 December 2012.

On 15 December 2012, Mr Warren sent Mr Di-Bona a text message asking Mr Di-Bona if he could get him "something".

On 18 December 2012, Mr Warren sent Mr Di-Bona a text message asking for his address and indicating that he would probably "get there around lunch time".

Mr Warren and a female friend drove to Mr Di-Bona's home in Sydney's western suburbs on 19 December 2012, arriving at approximately 12 pm.

The Commission conducted covert physical surveillance of this meeting, and saw Mr Warren arrive at Mr Di-Bona's home and walk inside with his female friend. Mr Warren was inside for a short period of time before emerging with Mr Di-Bona, getting in his car and driving away with his female friend.

While at Mr Di-Bona's home, Mr Warren purchased a quantity of the steroid Trenbolone from Mr Di-Bona in exchange for cash payment.

In his evidence to the Commission, Mr Warren admitted that he attended Mr Di-Bona's home on 19 December 2012 and purchased a 10-millilitre vial of the steroid Trenbolone from Mr Di-Bona. Mr Warren said that he paid Mr Di-Bona \$200 in cash. He intended to use the steroid himself for bodybuilding.

Mr Warren said that he asked Mr Di-Bona whether Mr Di-Bona could source steroids during their discussions about gym training and bodybuilding. Mr Warren was aware that Mr Di-Bona had used steroids in the past.

While Mr Di-Bona denied that he had discussed the use of steroids with Mr Warren directly, Mr Di-Bona did say that he was aware that Mr Warren trained hard at the gym and the request for steroids by Mr Warren had not been "out of the blue".

Mr Di-Bona told the Commission that Mr Warren attended his home on 19 December 2012 in order to purchase steroids. He admitted to supplying steroids to Mr Warren, but recalled that it was three vials of Trenbolone rather than one. Mr Di-Bona said that Mr Warren paid him \$450 cash for the three vials.

Mr Di-Bona told the Commission that he had purchased the three vials from a friend named Jim to assist with the rehabilitation of an injury, but decided that he no longer wanted to use them so he decided to sell them to Mr Warren. Mr Di-Bona said that it was Mr Warren who had approached him about buying steroids.

Mr Di-Bona's relationship with the person referred to as Jim is dealt with in chapter 5 of this report.

For the purposes of this report, the Commission does not consider it necessary to make a final determination as to the precise quantity of steroids supplied to Mr Warren by Mr Di-Bona.

The Commission is satisfied that on this occasion Mr Di-Bona supplied Mr Warren with at least one, but no more than three, vials of the steroid Trenbolone and, in return, Mr Warren paid Mr Di-Bona between \$200 and \$450.

The supply in February 2013

During his compulsory examination on 15 March 2013, Mr Warren told the Commission of a second occasion when he purchased steroids from Mr Di-Bona.

Mr Warren said that he purchased four vials of the steroid Trenbolone from Mr Di-Bona in the carpark of the MSPC sometime in February 2013. He paid Mr Di-Bona \$800 cash. Mr Warren said that this transaction occurred as he was leaving work at the completion of a shift and Mr Di-Bona was arriving at work to commence a shift.

Mr Di-Bona was asked specifically about this allegation during his compulsory examination on 1 May 2013.

Mr Di-Bona denied that the transaction had occurred in the carpark at the MSPC, but did not disagree with the suggestion that he had supplied Mr Warren with steroids on more than one occasion. When asked whether he had a specific memory of the second occasion on which he had supplied steroids to Mr Warren, Mr Di-Bona said:

Not really, I know it must have been two occasions that he got the Tren [Trenbolone] then after this conversation. The first three he grabbed them from my place so if there was any more after that, if he's said he's got them, there would have been one more, I don't, like I said, I can't remember that.

The following exchange then took place:

[Counsel Assisting]: I want you to be specific about Mr Warren now sir, bearing in mind the oath you've given. Do you agree that you definitely gave Mr Warren ... steroids in December?

[Mr Di-Bona]: Yeah, definitely, yeah.

[Q]: Now since then, or on any other occasion, have you supplied steroids to Mr Warren?

[A]: Yeah, maybe on one other occasion.

[Q]: Maybe, with respect sir, isn't definitive. Have you or haven't you?

[A]: I'm not 100% sure, probably, probably, yeah.

[Q]: Do you recall when that was?

[A]: No, I don't, I don't.

The Commission is satisfied that Mr Di-Bona supplied steroids to Mr Warren in February 2013, most likely in the carpark at the MSPC.

The Commission found Mr Warren to be a generally honest and reliable witness, and finds no reason to doubt his testimony in relation to the second supply. Mr Di-Bona

agreed that he probably supplied steroids to Mr Warren on a second occasion.

The Commission found Mr Di-Bona to be generally evasive in his evidence in relation to the supply of steroids. The Commission does not accept that Mr Di-Bona has such a poor memory about events that occurred only a matter of months before he gave evidence about them.

The Commission is satisfied that Mr Di-Bona supplied steroids to Mr Warren in February 2013, most likely in the carpark at the MSPC, and that Mr Warren paid Mr Di-Bona for the steroids.

Corrupt conduct

In making findings of fact and corrupt conduct, the Commission applies the civil standard of proof of reasonable satisfaction taking into account the decisions in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362 and *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171.

Corrupt conduct is defined in s 8 and s 9 of the ICAC Act. 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 based on the balance of probabilities. The Commission then determines whether those facts fall within the terms of s 8(1) or s 8(2) of the ICAC Act. If they do, the Commission then considers s 9 of the ICAC Act and the jurisdictional requirements contained within 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 a tribunal of fact, they would be grounds upon which such a tribunal would find the person had 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 upon which such a tribunal would find the person had committed a disciplinary offence.

Mr Di-Bona

The Commission finds that Mr Di-Bona engaged in corrupt conduct by supplying a prescribed restricted substance (steroids) to Mr Warren on two occasions between December 2012 and February 2013 in return for cash payment.

This is because Mr Di-Bona's conduct constitutes or involves a breach of public trust and therefore comes within s 8(1)(c) of the ICAC Act. It is also conduct that adversely affects the exercise of Mr Di-Bona's official functions and could involve illegal drug dealing and therefore could come within s 8(2)(p) of the ICAC Act.

In each case, Mr Di-Bona deliberately failed to meet the obligation imposed on him by CSNSW's Guide to Conduct and Ethics ("the Guide"), which places an obligation on CSNSW employees to act with integrity and to obey the law. Further, the Guide also stresses the requirement that, as members of a law enforcement agency, CSNSW employees are expected to act in accordance with the law. The Commission is satisfied that, in each case, Mr Di-Bona knew that he was breaking the law by supplying steroids to Mr Warren.

The Commission is satisfied that, for the purposes of s 9(1)(a) of the ICAC Act, if the facts it has found concerning Mr Di-Bona's supply of steroids to Mr Warren, as outlined above, 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 upon which the tribunal could find that Mr Di-Bona had committed offences of supplying a prescribed restricted substance contrary to s 10 of the *Poisons and Therapeutic Goods Act 1966*.

The Commission also finds that Mr Di-Bona engaged in corrupt conduct by failing to report Mr Warren's purchase and use of steroids to CSNSW management. This is because Mr Di-Bona's conduct involves the partial exercise of his official functions and therefore comes within s 8(1)(b) of the ICAC Act.

The failure to report the purchase and use of steroids by Mr Warren is a neglect of Mr Di-Bona's duty as a corrections officer, as CSNSW's Alcohol and Other Drugs Policy imposes an obligation on CSNSW employees to report to management the use of alcohol and/or other drugs by fellow employees.

The Commission is satisfied that, for the purposes of s 9(1)(b) of the ICAC Act, if the facts it has found concerning Mr Di-Bona's failure to report Mr Warren's purchase and use of steroids to CSNSW management, as outlined above, were to be proved on admissible evidence to the appropriate civil standard of the balance of probabilities and accepted by an appropriate tribunal, they would be grounds upon which such a tribunal would find that Mr Di-Bona has committed a disciplinary offence involving a breach of CSNSW's Alcohol and Other Drugs Policy.

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

Mr Warren

Mr Warren deliberately failed to meet the obligation imposed on him by the Guide, which places an obligation on CSNSW employees to act with integrity and to obey the law. Further, the Guide also stresses the requirement that, as members of a law enforcement agency, CSNSW employees are expected to act in accordance with the law. The Commission is satisfied that, in each case, Mr Warren knew that he was breaking the law by purchasing steroids from Mr Di-Bona.

The Commission finds that Mr Warren engaged in corrupt conduct by purchasing a prescribed restricted substance (steroids) from fellow CSNSW officer Mr Di-Bona on two occasions between December 2012 and February 2013.

This is because his conduct constitutes or involves a breach of public trust and therefore comes within s 8(1)(c) of the ICAC Act. It is also conduct that adversely affects the exercise of Mr Warren's official functions and could involve illegal drug dealing and could therefore come within s 8(2)(p) of the ICAC Act.

The Commission is satisfied that, for the purposes of s 9(1)(a) of the ICAC Act, if the facts it has found concerning Mr Warren's purchase of steroids from Mr Di-Bona, as outlined above, 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 upon which the tribunal could find that Mr Warren had committed offences of possessing a prescribed restricted substance contrary to s 16 of the *Poisons and Therapeutic Goods Act 1966*.

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

It was submitted on behalf of Mr Warren that Mr Warren's conduct in purchasing a number of vials of steroids could not constitute a breach of public trust because Mr Warren has an existing prescription for a similar substance due to an existing medical condition. The Commission does not accept this submission. While Mr Warren may have a prescription for a similar substance, Mr Warren's purchase of steroids from Mr Di-Bona and subsequent possession is still in breach of s 16 of the *Poisons and Therapeutic Goods Act 1966*. Section 16(1)(b) of the *Poisons and Therapeutic Goods Act 1966* creates an exception for persons in possession of a prescription, but states that possession must be in accordance with a prescription of a medical practitioner. Mr Warren admitted in his evidence on 15 March 2013 that his treating doctor

was not aware that Mr Warren was obtaining steroids from Mr Di-Bona. The Commission does not accept that Mr Warren's prescription for the steroid purchased from Mr Di-Bona was in accordance with a prescription of a medical practitioner.

It was also submitted on behalf of Mr Warren that, even if the Commission were satisfied that Mr Warren's conduct was capable of amounting to corrupt conduct, the Commission should exercise its discretion and not make formal findings of corrupt conduct against Mr Warren. This submission was largely based on a suggestion that Mr Warren had given frank and truthful evidence during his compulsory examination.

While the Commission finds that Mr Warren was a generally honest and reliable witness, the Commission does not consider this an appropriate matter to exercise its discretion not to make findings of corrupt conduct. First, the possession of steroids is a serious matter. The possession of steroids is a criminal offence that carries a maximum penalty of two years imprisonment and/or a fine of \$2,200. Secondly, the Guide places a clear obligation on employees to act with integrity and obey the law. The Commission finds that Mr Warren was aware that he was breaking the law by purchasing steroids from Mr Di-Bona.

The CSNSW's Alcohol and Other Drugs Policy imposes an obligation on CSNSW employees to report to management the use of alcohol and/or other drugs by fellow employees.

In submissions received on behalf of Mr Warren, it was submitted that there was no evidence that the Alcohol and Other Drugs Policy was brought to Mr Warren's attention by CSNSW and no evidence that it was included in any induction process or was made part of any training given to CSNSW staff.

During the compulsory examination of 15 March 2013, Mr Warren said that he was aware of an obligation to report misconduct on the part of other officers. When asked specifically whether there were any circumstances of Mr Di-Bona's conduct that he thought should have been reported, Mr Warren referred to the supply of steroids in the MSPC carpark in February 2013 as a matter that he should have reported to a senior officer.

Further, the Guide makes specific reference to the use of alcohol and other drugs by CSNSW employees and refers readers to the Alcohol and Other Drugs Policy as a further reference. The Guide is provided to all CSNSW employees and says that it is designed to help employees maintain a professional level of conduct at all times. The Guide also lists the relevant legislation, policies,

procedures and CSNSW Commissioner's instructions with which employees must comply.

The Commission finds that Mr Warren was aware of his obligation to report Mr Di-Bona's supply and use of steroids. His failure to report this is a neglect of Mr Warren's duty as a corrections officer.

The Commission finds that Mr Warren engaged in corrupt conduct by failing to report Mr Di-Bona's supply and use of steroids to CSNSW management. This is because Mr Warren's conduct involves the partial exercise of his official functions and therefore comes within s 8(1)(b) of the ICAC Act.

The Commission is satisfied that, for the purposes of s 9(1)(b) of the ICAC Act, if the facts it has found concerning Mr Warren's failure to report Mr Di-Bona's supply and use of steroids to CSNSW management, as outlined above, were to be proved on admissible evidence to the appropriate civil standard of the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Warren has committed a disciplinary offence involving a breach of CSNSW's Alcohol and Other Drugs Policy.

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

Section 74A(2) statements

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

- (a) obtaining the advice of the 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 a person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

An "affected" person is defined in 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.

For the purposes of this chapter, Mr Di-Bona and Mr Warren are affected persons.

Mr Di-Bona

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 Di-Bona for an offence of supplying a prescribed restricted substance under s 10 of the *Poisons and Therapeutic Goods Act 1966* for his supply of steroids to Mr Warren on two occasions.

The findings of corrupt conduct in this chapter are based on the admissions by Mr Di-Bona and the evidence of Mr Warren. Mr Di-Bona's admissions were made under objection with the protection of a declaration under s 38 of the ICAC Act that any answers cannot be used against him in criminal or civil proceedings, except for offences under the ICAC Act.

Further, any charge brought under s 10 of the *Poisons and Therapeutic Goods Act 1966* is a summary offence and proceedings must be commenced within six months of the date of the offence. Any prospective charge under this section is now statute-barred.

The Commission is of the opinion that CSNSW should give consideration to taking disciplinary action against Mr Di-Bona for misconduct with a view to his dismissal in relation to the conduct that is the subject of the corrupt conduct findings in this chapter.

Recent amendments to the ICAC Act allow the employer of a public official to take disciplinary action against a public official based on corrupt conduct findings made by the Commission and published in a public report.

Section 114A(5) of the ICAC Act allows evidence given to the Commission by a public official to be admitted and used in disciplinary proceedings against the public official.

Mr Warren

Although Mr Warren gave evidence admitting that he purchased, and subsequently possessed, prescribed restricted substances from Mr Di-Bona, the Commission is of the view that there is insufficient admissible evidence to recommend that consideration be given to the prosecution of Mr Warren for an offence of possessing a prescribed restricted substance under s 16 of the *Poisons and Therapeutic Goods Act 1966*.

Mr Warren's admissions were made under objection with the protection of a declaration under s 38 of the ICAC Act

that any answers cannot be used against him in criminal proceedings, except for offences under the ICAC Act.

Further, any charge brought under s 16 of the *Poisons and Therapeutic Goods Act 1966* is a summary offence and proceedings must be commenced within six months of the date of the offence. Any prospective charge under this section is now statute-barred.

The Commission is of the opinion that CSNSW should give consideration to taking disciplinary action against Mr Warren for misconduct in relation to his use of prescribed restricted substances, and his failure to report the supply and use of steroids by Mr Di-Bona to CSNSW management, in accordance with his obligations under CSNSW's Alcohol and Other Drugs Policy.

Chapter 3: Mr Di-Bona at work while under the influence of prohibited drugs

This chapter deals with evidence demonstrating that, on two occasions since he commenced employment with CSNSW, Mr Di-Bona attended work and commenced a shift while under the influence of the prohibited drug commonly known as ecstasy.

Ecstasy is a prohibited drug under the *Drug Misuse and Trafficking Act 1985*.

CSNSW policies

Reporting to work under the influence of a prohibited drug is a clear breach of CSNSW's Alcohol and Other Drugs Policy. Section 2 of the policy states:

A member of staff must not be adversely affected by alcohol or other drugs at any CSNSW workplace or in any CSNSW vehicle.

In relation to an employee's responsibilities when reporting for work, s 7.6 of the policy states:

Staff may not have prohibited drugs/prohibited plants or excessive drugs present in any of his/her biological material when on, or presenting for duty.

The primary objective of a corrections officer, such as Mr Di-Bona, is outlined in the position description, as follows:

Provide a high standard of continuous static and dynamic security in the containment and oversight of inmate activities to contribute to the safety, security, welfare, development and rehabilitation of inmates and the safety of the public, in compliance with the direction of the Courts and Departmental policies and procedures.

The position description also outlines the specific duties and responsibilities expected of corrections officers posted to specified locations. One such location specified in the position description is "tower duty". The position description states that officers rostered to "tower duty" during a shift are required to use their powers of observation to detect any changes in daily routine.

The position description also states that officers on tower duty carry weapons which act as a visual deterrent to escape. Mr Di-Bona confirmed during evidence that he carried a firearm for this shift.

The tower incident

On 31 December 2012, the Commission intercepted a mobile telephone call between Mr Di-Bona and a friend, where the consumption of prohibited drugs, specifically ecstasy tablets, was discussed. During the telephone call, Mr Di-Bona made the following comments in relation to the use of ecstasy while at work:

"Mate if I had it I'd even take it at work and been off my dial at work I'm like nah I've done it before I'm on me own. It's fucking great best time to do it."

"They don't know they don't fucking know I can control it really good you know."

"Yeah I did it in tower once fucken the quickest eight hours I ever did."

After listening to this conversation in a compulsory examination on 1 May 2013, Mr Di-Bona told the Commission that he was referring to an occasion eight or nine years earlier when he had attended work the morning after being out with friends and had been consuming ecstasy. Mr Di-Bona said that he had been out with friends the night before commencing a day shift at MSPC. Mr Di-Bona admitted that he consumed ecstasy on this night out with friends, then went home, showered and drove straight to work to commence his shift.

The Commission is satisfied that Mr Di-Bona attended work on a previous occasion while under the influence of a prohibited drug and completed a shift on tower duty. The Commission is satisfied that Mr Di-Bona was adversely affected by the drug while at work.

The February 2013 incident

During a compulsory examination on 1 May 2013, Mr Di-Bona told the Commission that he consumed two ecstasy tablets in February 2013 while at home. This occurred at approximately 6 pm. He commenced work at 11 pm that evening. By his own admission, Mr Di-Bona was still under the influence of the two tablets at work.

Mr Di-Bona told the Commission that he used the drug as a muscle relaxant as he was suffering a number of injuries relating to his use of weights at the gym and also a work accident some 20 years ago. Mr Di-Bona admitted that he had purchased the ecstasy tablets from a friend for \$20 each.

The Commission is satisfied that Mr Di-Bona commenced a shift at the MSPC after consuming two ecstasy tablets at home. The Commission is further satisfied that Mr Di-Bona was adversely affected by the drug while at work.

Corrupt conduct

Reporting to work under the influence of a prohibited drug is a clear breach of CSNSW's Alcohol and Other Drugs Policy. As indicated above, the policy states that an employee must not be adversely affected by alcohol or another drug at a CSNSW workplace.

Further, the fact that Mr Di-Bona was under the influence of prohibited drugs through both shifts could adversely have affected his ability to perform his official functions, as outlined in the position description of a corrections officer.

The Commission finds that Mr Di-Bona engaged in corrupt conduct by attending work on two occasions while under the influence of a prohibited drug, namely ecstasy.

The conduct of Mr Di-Bona amounts to corrupt conduct because, pursuant to s 8(2)(p) of the ICAC Act, it adversely affected, or could adversely have affected, the exercise of his official functions as a corrections officer.

Mr Di-Bona's actions in possessing, and then consuming, prohibited drugs fall within the broader definition of "illegal drug dealings" in s 8(2)(p) of the ICAC Act. Both the possession and consumption of prohibited drugs are separate and distinct criminal offences under s 10 and s 12 respectively of the *Drug Misuse and Trafficking Act 1985*.

The fact that Mr Di-Bona attended work while knowingly under the influence of prohibited drugs also constitutes a breach of public trust, such that s 8(1)(c) of the ICAC Act is also applicable in relation to a finding of corrupt conduct.

The Commission is satisfied that, for the purposes of s 9(1)(a) of the ICAC Act, if the facts it has found concerning Mr Di-Bona's attendance at work while under the influence of prohibited drugs 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 Di-Bona had committed criminal offences of consuming a prohibited drug contrary to s 12 of the *Drug Misuse and Trafficking Act 1985*.

The Commission is also satisfied that, for the purposes of s 9(1)(b) of the ICAC Act, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard of the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Di-Bona has, by attending a CSNSW workplace while under the influence of a prohibited drug, committed disciplinary offences involving a breach of CSNSW's Alcohol and Other Drugs Policy and the Guide.

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 the advice of the DPP with



respect to the prosecution of Mr Di-Bona for the criminal offence of consuming a prohibited drug contrary to s 12 of the *Drug Misuse and Trafficking Act 1985*.

In relation to the February 2013 incident, the only evidence comes from Mr Di-Bona himself. Mr Di-Bona gave evidence on both occasions under objection and with the benefit of protection under s 38 of the ICAC Act. There is no other admissible evidence capable of supporting a charge.

In relation to the tower incident, while it is not clear on the evidence when this incident occurred, it is noted that a charge under s 12 of the *Drug Misuse and Trafficking Act 1985* becomes statute-barred after six months. As it cannot be proved on admissible evidence that this incident occurred in the last six months, a criminal charge could not be made out.

The Commission is of the opinion that CSNSW should give consideration to taking disciplinary action against Mr Di-Bona for misconduct with a view to his dismissal in relation to the conduct that is the subject of the corrupt conduct findings in this chapter.

Chapter 4: The relationship between Mr Di-Bona and NL

This chapter deals with allegations that Mr Di-Bona sold steroids to a former CSNSW inmate on a number of occasions between late 2012 and early 2013.

The former inmate was on parole at the time. CSNSW's Contact with Offender Policy required Mr Di-Bona to disclose his contact with any known offenders. There was evidence that Mr Di-Bona failed to make any such disclosure.

The former inmate is referred to by the pseudonym NL in this report to protect his identity. NL did not give evidence before the Commission during the course of the investigation and has not had an opportunity to respond to allegations made against him.

Ongoing relationship with NL

Mr Di-Bona told the Commission that he first met NL approximately 10 years ago through NL's brother.

Mr Di-Bona met the brothers through the gym they attended. Although they spent the majority of their time together while at the gym, Mr Di-Bona also visited them at their home.

NL served a sentence of imprisonment for drug offences in NSW from April 2011 until his release on parole in June 2012. Following his release, NL was to remain on parole until July 2013.

CSNSW's Contact with Offender Policy

CSNSW's Contact with Offender Policy strictly regulates the way in which CSNSW employees interact with people defined as offenders and places specific obligations on employees to report any contact immediately.

Under the heading "purpose/rationale", the policy states:

Employees are ... obliged to report all known relationships or significant social or off duty contact with offenders, including interstate offenders. Failure to

report or misrepresentation of the relationship/contact may result in disciplinary action. Improper relationships/contact of any kind with offenders, including interstate offenders, will not be tolerated.

The policy states that an employee is required to make a report in writing immediately of any known relationships or significant off-duty contact with someone they know to be an offender, or as soon as they report to work on the next occasion.

CSNSW defines "misconduct" in relation to the policy as follows:

In relation to contact with offenders, 'misconduct' includes, but is not limited to: failure to identify any personal involvement, relationship, or significant social or off-duty contact with an offender or offenders when the employee could have reasonably been expected to do so; failure to declare any personal involvement, relationship or significant social or off-duty contact with an offender or offenders.

Mr Di-Bona's evidence

During his evidence on 1 May 2013, Mr Di-Bona admitted that he was aware that NL had been incarcerated for a period of time in the last five years, as he was told this by NL. Mr Di-Bona denied knowing that NL had been in custody for drug offences and thought that he had been in custody in relation to an outstanding warrant. Nevertheless, Mr Di-Bona acknowledged that he was aware of CSNSW's Contact with Offender Policy and conceded that he should have disclosed his association with NL to CSNSW.

The Commission is satisfied that NL was an offender for the purposes of CSNSW's Contact with Offender Policy. Further, the Commission is satisfied that Mr Di-Bona was aware that NL was an offender under the policy, and was aware of the requirement to disclose his contact with NL but deliberately failed to do so.

Supply of steroids to NL

In January 2013, the Commission intercepted a number of telephone calls between Mr Di-Bona and NL. During the telephone calls, arrangements were made for Mr Di-Bona to attend NL's home on 20 January 2013. Surveillance indicates that Mr Di-Bona attended NL's home at approximately 4.30 pm that day.

During his compulsory examination on 1 May 2013, Mr Di-Bona was played intercepted telephone calls and asked about his attendance at NL's home. Mr Di-Bona admitted that he attended NL's home for the purpose of supplying him with the steroid known as Boldenone or Equipoise. Mr Di-Bona said that he supplied NL with one bottle of the steroid for which NL paid him \$150 in cash.

Mr Di-Bona went on to admit that he had supplied NL with steroids in identical circumstances on two or three occasions prior to 20 January 2013. Mr Di-Bona said that NL usually bought only one bottle at a time.

The Commission is satisfied that Mr Di-Bona supplied NL with one vial of the steroid Boldenone on 20 January 2012 at NL's home.

The Commission is also satisfied that Mr Di-Bona supplied steroids to NL on at least two other occasions between late 2012 and 20 January 2013.

Corrupt conduct

Each employee of CSNSW is bound by the Guide. The Guide places an obligation on CSNSW employees to act with integrity and to obey the law. Further, it stresses the requirement that, as members of a law enforcement agency, CSNSW employees are expected to act in accordance with the law.

The Commission finds that Mr Di-Bona engaged in corrupt conduct by:

- supplying steroids to NL on at least three occasions between late 2012 and 20 January 2013
- failing to disclose a relationship with NL contrary to his obligations under CSNSW's Contact with Offender Policy.

In relation to the supply of steroids, Mr Di-Bona's conduct adversely affected his official functions as a corrections officer under s 8(2)(p) of the ICAC Act, as his involvement in illegal drug dealing showed a clear defiance of the Guide.

The Commission is satisfied that, for the purposes of s 9(1)(a) of the ICAC Act, if the facts it has found concerning Mr Di-Bona's supply of steroids to NL, as outlined above, 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 upon which the tribunal could find that Mr Di-Bona had committed offences of supplying a prescribed restricted substance contrary to s 10 of the *Poisons and Therapeutic Goods Act 1966*.

The Commission is also satisfied that, for the purposes of s 9(1)(b) of the ICAC Act, if the facts it has found concerning Mr Di-Bona's supply of steroids to NL, as outlined above, were to be proved to the requisite civil standard and accepted by an appropriate tribunal, they would be grounds upon which the tribunal could find that Mr Di-Bona had committed disciplinary offences involving a substantial breach of an applicable code of conduct.

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

In relation to the relationship with NL, the conduct of Mr Di-Bona amounted to a deliberate breach of CSNSW's Contact with Offender Policy and therefore constitutes a breach of public trust under s 8(1)(c) of the ICAC Act.

The conduct of Mr Di-Bona is also conduct which adversely affected, or could have adversely affected, the exercise of Mr Di-Bona's official functions and that could involve official misconduct under s 8(2)(a) of the ICAC Act.

The Commission is satisfied that, for the purposes of s 9(1)(b) of the ICAC Act, if the facts it has found concerning Mr Di-Bona's relationship with NL and the failure to disclose the existence of the relationship to CSNSW, as outlined above, were to be proved to the requisite civil standard and accepted by an appropriate tribunal, they would be grounds upon which the tribunal could find that Mr Di-Bona had committed disciplinary offences involving a substantial breach of an applicable code of conduct.

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

Section 74A(2) statements

Mr Di-Bona

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP in relation to the prosecution of Mr Di-Bona for an offence of supplying a prescribed restricted substance contrary to s 10 of the *Poisons and Therapeutic Goods Act 1966*.

Mr Di-Bona gave evidence under objection and with the protection of a declaration under s 38 of the ICAC Act.

NL has not provided a statement to the Commission. The Commission is of the view that there is little, if any, admissible evidence capable of supporting a criminal charge in relation to the supply of steroids to NL.

Even if a statement were to be obtained from NL, any prospective charges would become statute-barred before a prosecution could be brought before the courts.

The Commission is of the opinion that CSNSW should give consideration to taking disciplinary action against Mr Di-Bona with a view to his dismissal in relation to the conduct that is the subject of the corrupt conduct findings in this chapter.

NL

The Commission is of the view that there is no admissible evidence to support any criminal charge against NL.

Chapter 5: Mr Di-Bona's relationship with IO and Jim

This chapter deals with the relationship between Mr Di-Bona and two associates from whom Mr Di-Bona frequently purchased steroids and occasionally purchased prohibited drugs.

The two men are identified in this report by the pseudonyms IO and Jim to protect their identities. Neither gave evidence before the Commission and neither has had an opportunity to respond to allegations made against them.

Mr Di-Bona has regularly purchased steroids from IO for a number of years. He has also purchased ecstasy and cocaine from him.

Mr Di-Bona has known Jim since only 2012, but has purchased prohibited steroids from him on a number of occasions in 2012 and 2013.

Mr Di-Bona gave conflicting evidence about his relationship with both IO and Jim, and conflicting evidence about the frequency with which he purchased steroids or prohibited drugs from both individuals.

Relationship with IO

Mr Di-Bona told the Commission that he met IO about 10 years ago, as they attended the same gym. IO was a frequent source of steroids and prohibited drugs for Mr Di-Bona over this period.

Lawfully intercepted telephone calls and text messages show that Mr Di-Bona and IO discussed prohibited drugs and steroids on a number of occasions between December 2012 and January 2013.

In a text message sent at 7.12 pm on 15 December 2012, Mr Di-Bona placed an order with IO for two vials of the steroid Trenbolone and one vial of the steroid Testosterone.

Mr Di-Bona spoke to IO via a telephone call at 12:20 pm on 16 December 2012. During the call, the pair discussed how IO had been out the night before with friends. There was also discussion about IO consuming ecstasy tablets during the night and a further discussion about the strength and quality of the tablets. During the call, arrangements were made for Mr Di-Bona to attend IO's home on 18 December 2012 to collect the steroids that he had ordered the previous day.

Mr Di-Bona next spoke to IO via telephone at 8.07 am on 19 December 2012. The tone of the conversation suggested that Mr Di-Bona attended IO's home the previous evening and collecting the three vials of steroid, as arranged on 15 and 16 December 2012. During the call, IO made reference to the steroids collected by Mr Di-Bona the previous evening. The call also suggested that at least some of the steroids collected were to be passed on to a friend of Mr Di-Bona's. The supply of steroids by Mr Di-Bona to Mr Warren occurred later that day (the circumstances of that supply are outlined in chapter 2 of this report). There was further discussion during the call concerning steroids and new varieties that were becoming available from IO's contacts. The call concluded with Mr Di-Bona placing a further order for steroids.

On 31 January 2013, IO sent Mr Di-Bona a text message asking whether he knew of anyone interested in buying two boxes of Jintropin for \$1,300 per box. Jintropin is a steroid used to replicate human growth hormone. Mr Di-Bona replied that he would ask around.

When Mr Di-Bona first gave evidence before the Commission on 15 March 2013, he said that he had purchased prohibited drugs or steroids from IO on only two occasions: once in 2011, when Mr Di-Bona purchased a small quantity of cocaine to consume with his partner on a trip away to Wollongong and, secondly, in early 2013 when Mr Di-Bona purchased one vial of steroid from IO.

When Mr Di-Bona gave further evidence at a compulsory examination on 1 May 2013, he told the Commission that he had also purchased two ecstasy tablets from IO in early 2013, which he consumed at home (dealt with in chapter 3 of this report). Mr Di-Bona also said that he could not recall purchasing any steroids from IO.

Mr Di-Bona told the Commission that he may have purchased steroids from IO a long time ago, perhaps as far back as 10 years. He was adamant, however, that he had not purchased steroids from IO in the last five years. Mr Di-Bona said that he was “100% sure” that the only substances that he had purchased from IO in the last five years were the ecstasy tablets and the cocaine.

After it was revealed to Mr Di-Bona in the compulsory examination on 1 May 2013 that the Commission had intercepted his mobile telephone calls and messages, Mr Di-Bona’s evidence changed. After the interception was revealed, Mr Di-Bona told the Commission that he had purchased steroids from IO on four or five occasions since the beginning of 2012. Mr Di-Bona admitted that he had lied to the Commission when he said that he had purchased steroids from IO only once “about 10 years ago”. Mr Di-Bona conceded that he had regularly purchased steroids from IO over several years.

The Commission is satisfied that Mr Di-Bona knowingly gave false evidence in the compulsory examination on 1 May 2013 when he said that he had not purchased steroids from IO in the last five years. The Commission is also satisfied that Mr Di-Bona knowingly gave false evidence in the compulsory examination on 15 March 2013 when he said that he had purchased steroids from IO on only one occasion.

Mr Di-Bona gave evidence about the various text messages and telephone calls intercepted by the Commission.

In relation to the text message on 15 December 2012, Mr Di-Bona confirmed that he was placing an order for the steroids Trenbolone and Testosterone with IO. Mr Di-Bona told the Commission that he could not remember whether he visited IO at home on 18 December 2012 to collect the two vials of Trenbolone and one vial of Testosterone, but that he presumed he had done so.

The Commission is satisfied that Mr Di-Bona attended IO’s home on 18 December 2012 and purchased three vials of steroids.

When asked about the telephone call with IO on 16 December 2012, Mr Di-Bona told the Commission that he and IO were talking about ecstasy tablets and, in particular, the tablets that IO had consumed the previous evening. Although it was suggested to him that he appeared to be speaking with some authority about the strength of ecstasy tablets and the particular type available at that time, Mr Di-Bona maintained that he was not a regular consumer of ecstasy and had used it only once in the past 10 years, and this was in February 2013 (dealt with in chapter 3 of this report).

In relation to the synthetic growth hormone offered by IO in the text message on 31 January 2013, Mr Di-Bona denied ever being offered large quantities of steroid by IO that he might try to “on-sell” to other people. Mr Di-Bona said that such an occurrence would imply that IO was a “dealer” of steroids and that was not the case. Mr Di-Bona said that he did recall one occasion when IO asked him if he knew anyone who wanted some growth hormone, but that related only to a single bottle.

When shown the text message from 31 January 2013 during his compulsory examination, Mr Di-Bona confirmed that Jintropin was a growth hormone. Mr Di-Bona did not agree that the two boxes of growth hormone referred to by IO, for sale at \$1,300

each, constituted a large quantity of the substance. Notwithstanding the evidence of the text message, Mr Di-Bona maintained that the occasion he referred to earlier in his evidence, where IO asked him if he knew someone who wanted a single bottle of growth hormone, and the occasion evidenced by the text message where IO appeared to be offering two boxes of the substance at \$1,300 each box, were the same event.

Mr Di-Bona told the Commission that, despite telling IO that he would "ask around", he never did.

Relationship with Jim

Mr Di-Bona told the Commission that he met Jim in mid- to late-2012 at one of the gyms he frequented.

On 17 January 2013, Mr Di-Bona was in contact with Jim via text messages and a telephone call, during which Mr Di-Bona and Jim arranged to meet at a service station on Merrylands Road in Greystanes that evening. During a phone call at 6.46 pm on the same day to arrange the location of the meeting, Jim told Mr Di-Bona that he would bring the Anizone and Equipoise with him to the meeting. Anizone and Equipoise are both steroids.

Commission officers observed Mr Di-Bona and Jim meet at approximately 7.15 pm on 17 January 2013. Mr Di-Bona and Jim both arrived separately in their own vehicles. Mr Di-Bona walked to Jim's vehicle and sat in the front passenger seat. After about five minutes, Mr Di-Bona left Jim and returned to his own vehicle before driving away.

During the afternoon of 20 January 2013, Mr Di-Bona sent Jim a text message requesting the steroids Equipoise and Anavar. Jim replied saying that there would be no problem but that he was away and unable to meet that day.

On 21 January 2013, Mr Di-Bona telephoned Jim and asked him to come down to the gym, but the men eventually made arrangements to meet at the BP service station in Greystanes later that day.

Commission officers observed Mr Di-Bona and Jim meet at approximately 6.25 pm on 21 January 2013. Mr Di-Bona parked on one side of the road and remained in his car. Jim approached from the other direction and pulled up his vehicle alongside Mr Di-Bona's. The two men spoke briefly between the vehicles and the transaction took place.

On the first occasion that he gave evidence before the Commission on 15 March 2013, Mr Di-Bona said that he had purchased steroids from Jim on three occasions since meeting him about six months previously. Mr Di-Bona told the Commission that, on each occasion, he had purchased three vials of either Testosterone or an anabolic steroid from Jim and paid him a total of \$450 in cash each time.

Mr Di-Bona said that Jim delivered the steroids to him at home. He said that the last time he had purchased steroids from Jim was in late 2012.

When Mr Di-Bona gave evidence at his compulsory examination on 1 May 2013, he told the Commission that there was only one occasion when he had purchased steroids from Jim. Mr Di-Bona told the Commission that he purchased three vials of Trenbolone from Jim in early 2013 to help treat a bicep injury. Mr Di-Bona said that he definitely recalled the three vials of Trenbolone as he had not used them himself, but had given them to Mr Warren (the supply of steroids by Mr Di-Bona to Mr Warren is dealt with in chapter 2 of this report).

Mr Di-Bona told the Commission that he had been discussing his bicep injury and told Jim that he wanted to take something to assist with the injury. Mr Di-Bona said that Jim had suggested taking a steroid. Mr Di-Bona told the Commission that he purchased the three vials of Trenbolone from Jim but did not use them because the injury healed itself with the use of anti-inflammatory medication.

During his compulsory examination on 1 May 2013, Mr Di-Bona was reminded about his evidence on 15 March 2013, when he had told the Commission that he had purchased steroids from Jim on three occasions. Mr Di-Bona told the Commission that he did not think that there were any other occasions where he had purchased steroids from Jim, apart from the purchase of the Trenbolone, which he did not end up using.

During his compulsory examination on 1 May 2013, it was suggested to Mr Di-Bona that he had met with Jim on 17 January 2013 and purchased the steroids Equipoise and Anavar. When shown the text messages arranging the meeting, Mr Di-Bona told the Commission that he had asked for the substances, but said that the purchase never took place. Mr Di-Bona admitted that he went to the BP service station in Greystanes and met with Jim, but told the Commission that he did not purchase the steroids from Jim. Mr Di-Bona said that he did not feel comfortable about taking the steroids, and told the Commission that he had told Jim that he did not want to go through with the transaction.

Mr Di-Bona conceded that he did not attempt to cancel the meeting or tell Jim prior to arriving at the service station that he did not want to proceed with purchasing the steroids. Mr Di-Bona said that Jim was "ok" and "relaxed" when he told him that he did not want to purchase the steroids, after all.

The Commission does not accept Mr Di-Bona's evidence about this meeting. Throughout his evidence, the Commission formed the view that Mr Di-Bona was

attempting to minimise his involvement in the purchase, and use, of steroids. The Commission does not accept Mr Di-Bona's evidence that he decided that he did not want to proceed with the purchase. The Commission considers it significant that Mr Di-Bona made no attempt to cancel the meeting after apparently deciding that he did not want to purchase the steroids. The Commission does not accept that Mr Di-Bona was hesitant to purchase steroids from Jim. In coming to this view, the Commission takes into account the fact that Mr Di-Bona was a regular purchaser of steroids from IO, and the fact that he arranged another purchase of steroids from Jim three days later.

In relation to the second meeting with Jim that occurred on 21 January 2013, Mr Di-Bona told the Commission that he requested steroids from Jim. When asked why he requested steroids from Jim again, some three days after apparently cancelling an order, Mr Di-Bona told the Commission that he thought his injury had flared up again. Mr Di-Bona told the Commission that he met with Jim at the BP service station and purchased two vials of steroids that were handed to him through his car window by Jim.

When challenged about the evidence he had given earlier in his compulsory examination, specifically his claim that he had purchased steroids from Jim only on one occasion, Mr Di-Bona admitted that he had lied to the Commission. He said that he did not want to give the impression that he was a "junkie". Mr Di-Bona told the Commission that he estimated that he had purchased steroids from Jim on four or five occasions in the preceding six months.

The Commission is satisfied that Mr Di-Bona deliberately gave false evidence in the compulsory examination on 1 May 2013 when he said that he had purchased steroids from Jim on only one occasion.

The Commission is satisfied that Mr Di-Bona purchased two vials of steroids from Jim during the meeting at the BP service station in Greystanes on 17 January 2013, and that he purchased two vials of steroids from Jim during the meeting at the BP service station in Greystanes on 21 January 2013. Based on his own admissions, the Commission is also satisfied that Mr Di-Bona has purchased steroids from Jim on at least another two or three occasions since late 2012.

Corrupt conduct

The Commission makes no findings of corrupt conduct in respect of Mr Di-Bona's relationship with IO or Jim. This is because it cannot be established that his conduct in each instance had an adverse affect on his official functions as a corrections officer.

Section 74A(2) statement

While the possession of prescribed restricted substances is a criminal offence contrary to s 16 of the *Poison and Therapeutic Goods Act 1966*, there is no admissible evidence capable of proving Mr Di-Bona's possession to the requisite standard. The findings of fact in this report are made largely on the admissions of Mr Di-Bona, which cannot be used in criminal proceedings. 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 Di-Bona for any criminal offence arising out of his dealings with IO or Jim.

The Commission does consider, however, that the advice of the DPP should be sought in relation to the prosecution of Mr Di-Bona for three offences of giving false or misleading evidence to the Commission pursuant to s 87 of the ICAC Act.

The first offence relates to Mr Di-Bona's evidence on 15 March 2013 that he had purchased steroids from IO on only one occasion.

Similarly, the second offence relates to Mr Di-Bona's evidence on 1 May 2013 that he had not purchased steroids from IO in the past five years.

The third offence relates to Mr Di-Bona's evidence on 1 May 2013 that he had purchased steroids from Jim on only one occasion.

Chapter 6: Use of mobile telephones in correctional centres

This chapter relates to Mr Di-Bona's use of his mobile telephone while on duty at the MSPC. The possession of a mobile telephone within a CSNSW correctional centre is unlawful.

The Commission's investigation revealed that Mr Di-Bona regularly used his mobile telephone while on duty for social purposes. Mr Di-Bona was in regular contact with a female associate. The Commission uses the pseudonym "RF" in this report to protect that person's identity. RF has not given evidence before the Commission.

In his evidence before the Commission, Mr Di-Bona gave conflicting evidence about his use of his mobile telephone while working and his reasons for doing so.

Ban of mobile telephones

In July 2002, a direction was issued by CSNSW banning mobile telephones from all correctional centres under CSNSW control. The direction indicated that no one was to be in possession of a mobile telephone in a correctional centre unless that possession had been authorised by the Commissioner. The Commissioner had previously authorised emergency services personnel (that is, ambulance, police and fire brigade officers) to carry mobile telephones into correctional centres only during emergency situations. The ban on mobile telephones also includes CSNSW staff.

CSNSW relies on s 27E(2) of the *Summary Offences Act 1988* to make the possession of a mobile telephone within a correctional centre unlawful. Section 27E(2)(b) states that any person who, without lawful authority, brings or attempts to bring anything into a place of detention is guilty of an offence. The maximum penalty for an offence contrary to s 27(2) is imprisonment for two years and/or a fine of \$2,200.

Before entering the MSPC, visitors and all CSNSW staff need to pass through the gatehouse, which contains scanners. All visitors and staff are required to pass through these scanners before proceeding to the rest of the centre. The gatehouse also contains a small safe where mobile telephones are taken from visitors and locked until the conclusion of their visit. All CSNSW staff are issued with a transparent bag in which to carry their personal belongings when arriving at work. These bags, containing food, drinks and personal items, are kept in the locker room. The purpose of the transparent bag is to ensure that no mobile telephones or other contraband are carried into the centre.

Mr Di-Bona's mobile telephone usage

The telephone interception warrant obtained during the investigation gave the Commission access to all incoming and outgoing telephone calls and text messages from Mr Di-Bona's mobile telephone service.

On 15 December 2012, Mr Di-Bona commenced a shift at the MSPC at 3 pm. At 7.12 pm that day, Mr Di-Bona sent a text message to IO placing an order for steroids. Mr Di-Bona requested two vials of Trenbolone and one vial of Testosterone. IO replied almost immediately saying "no worries", and that he was "out", and asked Mr Di-Bona to remind him on Monday. Mr Di-Bona replied to IO and said "ok enjoy yrself [sic]".

On 22 December 2012, Mr Di-Bona commenced a shift at the MSPC at 11 pm. He was rostered from 11 pm on 22 December 2012 to 7 am on 23 December 2012. At 11.30 pm on 22 December 2012, RF sent Mr Di-Bona a text message saying "have a good shift rob". Mr Di-Bona replied to RF's text message with a text message of his own at 2.39 am on 23 December 2012 saying, among other things, that he was "just relaxing in the yard" and that there was a "bit of a breeze".

On 24 December 2012, Mr Di-Bona commenced a shift at MSPC at 11 pm. He was rostered from 11 pm on 24 December 2012 to 7 am on 25 December 2012. At 1.14 am on 25 December 2012, RF sent Mr Di-Bona a text message saying that she should let him go as she did not want him to get in trouble for using his telephone. Mr Di-Bona replied at 1.16 am saying, "I'm on rear gate on my own, let the trucks in and out, no problem with phone up to you". RF replied at 1.18 am asking Mr Di-Bona what trucks come and go at that time of night. Mr Di-Bona replied at 1.21 am telling RF the name of the company responsible for the deliveries, along with the nature and frequency of the deliveries. Mr Di-Bona sent a further text message to RF at 1.24 am saying that nothing could be brought in "here" and it was very strict.

On 29 December 2012, Mr Di-Bona commenced another shift at the MSPC at 11 pm. He was rostered from 11 pm on 29 December 2012 to 7 am on 30 December 2012. At 12.30 am on 30 December 2012, RF sent Mr Di-Bona a text message asking about his day. Mr Di-Bona replied with a text message at 12.35 am telling her about his day. Mr Di-Bona sent a further text message to RF at 1.43 am telling her that he was missing her. RF replied to this text message at 1.44 am saying, "how can you be missing me you clown ... we've been texting for hours!!!".

On 23 January 2013, Mr Di-Bona commenced a shift at the MSPC at 3 pm. He was rostered until 11 pm that night. At 8.46 pm, RF sent Mr Di-Bona a text message in which she apologised for missing his earlier call and indicated that she was away on holiday and having a great time. Mr Di-Bona replied at 8.50 pm, saying that he was at work, so it was just a quick hello.

On 8 March 2013, Commission investigators, working alongside CSNSW investigators, attended the MSPC while Mr Di-Bona was working and conducted a personal

search of Mr Di-Bona and his belongings. During the search, Mr Di-Bona admitted that he had brought his mobile telephone past the screening area and had used his telephone inside the MSPC gatehouse.

In his compulsory examination on 15 March 2013, Mr Di-Bona was asked about the use of his mobile telephone at work. Mr Di-Bona admitted taking his telephone past the gatehouse screening point on occasions and locking it in the safe at the gatehouse. He told the Commission that this safe was locked with a key that was kept by the corrections officer performing the role of gatekeeper for each shift. Mr Di-Bona told the Commission that he was aware that no telephones were permitted past the screening point, and that even "opening" a telephone in the gatehouse was an offence. Mr Di-Bona estimated that he had taken his telephone into the gatehouse "maybe 10 times over the years".

Mr Di-Bona told the Commission that he rarely took his telephone into the MSPC, and did so only when he needed to. As an example, he said that he was in the process of putting his house on the market, so had needed to take his telephone to work more regularly since the start of the year than he had in the past.

Mr Di-Bona acknowledged that he was committing an offence by using his telephone at work, and admitted to going to the gatehouse to check his telephone during shifts, sending a text message and returning the telephone to the safe.

Mr Di-Bona claimed that he was not aware that he was not allowed to store his telephone in the safe within the gatehouse, and admitted that, when he had performed the role of gatekeeper in the past, he had given other corrections officers access to their telephones that were also stored in the safe.

Mr Di-Bona gave further evidence about this topic at a compulsory examination on 1 May 2013.

At that time, he told the Commission that he had used his mobile telephone in the gate area, and admitted that he had done so “about 5 or 6 times, maybe more” in the previous 12 months. He went on to say: “It’s – ‘cause everyone does it so, it’s not – I didn’t, I didn’t see it as a, as a breach of security so to speak”.

In relation to his reasons for needing to use his telephone while at work, Mr Di-Bona repeated his evidence from 15 March 2013 that he was in the process of selling his house and would have been in contact with his partner about issues to do with the sale of his home. He also indicated that he was owed a sum of money by a man who had recently purchased a car from Mr Di-Bona.

Mr Di-Bona was asked a number of questions about the manner in which he used his telephone while on duty. During those questions, the following exchange took place:

[Counsel Assisting]: So you’ve said the gatekeeper who opens the safe for you, he’s there while you use the phone and then you put it back in. Is that correct?

[Mr Di-Bona]: Yeah, that’s correct, sir.

[Q]: Have you ever used your phone somewhere other than in the gatehouse with the gatekeeper there watching?

[A]: No, just outside the visiting area, sitting on a table.

During the compulsory examination on 1 May 2013, it was revealed to Mr Di-Bona that the Commission had intercepted his mobile telephone communications. After the interception was revealed, Mr Di-Bona was asked further questions about the frequency of his mobile telephone use.

Mr Di-Bona told the Commission that, in the previous 12 months, he had probably used his mobile telephone at least once to send a text message during each shift. He conceded that the text messages may have been social messages and not just related to the sale of his home or to the vehicle he gave evidence about earlier, but denied that he sent text messages at work for any criminal activity.

During his evidence on 1 May 2013, Mr Di-Bona was shown each of the text messages that the Commission alleged were sent while Mr Di-Bona was at work, along with copies of his roster showing his shifts on the relevant days.

In relation to the 15 December 2012 text message, where he placed an order for steroids with IO, Mr Di-Bona said that he could not remember that occasion, but accepted that he had done so and described his conduct as “pretty silly”.

In relation to the various text messages between himself and RF, Mr Di-Bona described RF as “just one of the girls

from the gym, just a friend”. Mr Di-Bona admitted that, when he sent a text message to RF at 2.39 am on 23 December 2012 saying that he was “relaxing in the yard”, he was sitting outside the gatehouse in a visitors’ area within the yard.

In relation to the text message he sent to RF at 1.16 am on 25 December 2012, in which he indicated that he was “on rear gate on my own”, Mr Di-Bona confirmed that he was working at the rear gate of the MSPC, at the opposite end of the centre to the gatehouse. Mr Di-Bona told the Commission that he was the only person working in that area at the time, and was able to sit there sending text messages on his telephone.

Mr Di-Bona said that he had taken his telephone with him when he commenced the shift at the rear gate, and had carried his mobile telephone through the yard from the gatehouse at the front of the gaol to the rear gate.

In relation to the text messages between himself and RF at approximately 12.30 am on 30 December 2012, Mr Di-Bona recalled that he was sitting in the gate within area 2 at the MSPC. At the time, Mr Di-Bona estimates that there were about five other corrections officers within the gate area and they were all sitting around using their telephones and sending text messages.

While admitting that he knew that he should not have had his mobile telephone in the gate area let alone use it, Mr Di-Bona attempted to justify his actions by saying that a lot of people did it, and said that they all used their telephones in the gate area.

When asked about all of the intercepted text messages between December 2012 and January 2013, Mr Di-Bona agreed that none of them related to the sale of his house, family issues or the sale of a car as he had indicated previously in his evidence. He conceded that all of the messages intercepted by the Commission were social text messages and none required urgent responses.

The Commission is satisfied that Mr Di-Bona knowingly gave false evidence at a compulsory examination on 15 March 2013 when he said that he rarely took his mobile telephone into work and estimated that he had only done so on 10 occasions. During his evidence on 1 May 2013, Mr Di-Bona admitted that he had used his mobile telephone to send a text message on at least one occasion during each shift.

Further, the Commission is satisfied that Mr Di-Bona knowingly gave false evidence during the compulsory examination on 1 May 2013 when he said that he had only used his telephone inside the gatehouse and while sitting on a table in the visitors’ area outside the gatehouse. During later evidence on 1 May 2013, Mr Di-Bona

admitted taking his mobile telephone through the gaol to the rear gate and sending social text messages to RF while sitting there alone.

The Commission is also satisfied that Mr Di-Bona knowingly gave false evidence during the compulsory examination on 1 May 2013 when he said that he took his mobile telephone inside the MSPC only because he had his home on the market and because he was owed money in relation to the sale of a vehicle. Mr Di-Bona admitted during later evidence that none of the text messages intercepted by the Commission related to either of these topics and, rather, were social in nature.

The Commission is satisfied of the following facts based on the available evidence:

- On 15 December 2012, Mr Di-Bona sent two text messages to IO concerning an order for steroids from IO while on duty at the MSPC.
- At 2.39 am on 23 December 2012, Mr Di-Bona sent a social text message to RF while sitting in the yard area at the MSPC.
- Between 1.16 am and 1.24 am on 25 December 2012, Mr Di-Bona sent three social text messages to RF while on duty at the MSPC. At the time, Mr Di-Bona was working from the rear gate at the MSPC, and carried his mobile telephone from the gatehouse through the yard of the gaol to the rear gate.
- At 12.35 am and 1.43 am on 30 December 2012, Mr Di-Bona sent social text messages to RF while on duty at the MSPC.
- At 8.50 pm on 23 January 2013, Mr Di-Bona sent a social text message to RF while on duty at the MSPC.

Corrupt conduct

It is a criminal offence to carry a mobile telephone into a correctional centre, but Mr Di-Bona knowingly contravened this law on numerous occasions when he took his mobile telephone past the scanners at the MSPC and used it while on duty.

The Commission finds that Mr Di-Bona engaged in corrupt conduct by using his mobile telephone while on duty at the MSPC on a number of occasions.

The conduct of Mr Di-Bona amounts to corrupt conduct because, pursuant to s 8(1)(c) of the ICAC Act, his conduct involves a breach of public trust.

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

concerning Mr Di-Bona's use of his mobile telephone while on duty at the MSPC, as outlined above, 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 upon which the tribunal could find that Mr Di-Bona had committed offences of bringing an item into a place of detention without lawful authority contrary to s 27E(2) of the *Summary Offences Act 1988*.

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

Section 74A(2) statement

While the possession of a mobile telephone inside a correctional centre is a criminal offence under s 27E(2) of the *Summary Offences Act 1988*, any prosecution must be commenced within six months of the date of the offence. As a result, any possible charge under s 27E(2) is now statute-barred.

The Commission considers that the advice of the DPP should be sought in relation to the prosecution of Mr Di-Bona for three offences of giving false or misleading evidence to the Commission pursuant to s 87 of the ICAC Act.

The first of these offences relates to Mr Di-Bona's evidence on 15 March 2013 when he said that he rarely took his mobile telephone into the MSPC and estimated that he had only done so on 10 occasions.

The second offence relates to Mr Di-Bona's evidence on 1 May 2013 when he said that he had used his mobile telephone only in the gatehouse or while sitting at a table outside the gatehouse.

The third offence relates to Mr Di-Bona's evidence on 1 May 2013 when he said that he took his mobile telephone into the MSPC only because he had his home on the market and because he was in a dispute in relation to the proceeds from a vehicle he had sold.

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 *Rejfeck 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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