

I·C·A·C

INDEPENDENT COMMISSION
AGAINST CORRUPTION



**INVESTIGATION INTO THE
SMUGGLING OF CONTRABAND
INTO THE METROPOLITAN
SPECIAL PROGRAMS
CENTRE AT THE LONG BAY
CORRECTIONAL COMPLEX**

**ICAC REPORT
JANUARY 2013**

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Mr President
Madam Speaker

In accordance with section 74 of the *Independent Commission Against Corruption Act 1988* I am pleased to present the Commission's report on its investigation into the smuggling of contraband into the Metropolitan Special Programs Centre at the Long Bay Correctional Complex.

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

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

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

Yours sincerely



The Hon David Ipp AO QC
Commissioner

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Summary of investigation and results

This investigation by the Independent Commission Against Corruption (“the Commission”) concerned the trafficking of contraband items into the Metropolitan Special Programs Centre (MSPC) at the Long Bay Correctional Complex. Karaha Pene Te-Hira, an activities officer employed by Corrective Services NSW (CSNSW) at the MSPC, admitted that, over a six-month period in 2012, he trafficked contraband, including food, clothing, shoes, mail, mobile telephones, chargers, SIM cards, steroids and a plunger for steroid injection, for two MSPC inmates in return for payment.

The smuggling of contraband into correctional centres was previously dealt with in the Commission’s July 2010 report on an investigation involving the John Morony Correctional Centre.¹ The question of how and why the same kind of conduct had recurred, despite the corruption prevention recommendations made by the Commission on that occasion having been implemented to some degree, was also explored in this investigation. This investigation examined the steps that had been taken by CSNSW to date and made recommendations about further measures to be adopted by CSNSW in the future.

Results

The Commission found that the following persons engaged in corrupt conduct:

- i. Mr Te-Hira by
 - i. trafficking contraband, including food, clothing, shoes, mail, mobile telephones, chargers, SIM cards, steroids and a plunger for steroid injection, into the MSPC for an inmate named Omar Zahed and another inmate identified during the inquiry as Prisoner X over a six-month period in 2012

- ii. trafficking a pair of shoes into the MSPC, which he delivered to Mr Zahed on or around 14 June 2012, in return for cash and a pair of shoes
 - iii. trafficking a pair of shoes into the MSPC, which he delivered to Mr Zahed on or around 28 June 2012, in return for a pair of shoes
 - iv. accepting a benefit of at least \$500 towards the cost of a car stereo and DVD system installed in his vehicle by Xtreme Car Audio on 23 June 2012, which he knew came from either an inmate named Alfred Fonua or another inmate, on the understanding that he would exercise his official functions in favour of Mr Fonua or Mr Zahed or another inmate associated with Mr Fonua or Mr Zahed.
2. Mr Zahed by arranging for his sister, Asmahen Zahed, to provide Mr Te-Hira with shoes for delivery to himself in the MSPC and to reward Mr Te-Hira with shoes and cash in return.
 3. Ms Zahed by providing a pair of shoes and cash on 13 June 2012 and a pair of shoes on 27 June 2012 to Mr Te-Hira in return for his delivering shoes to Mr Zahed in the MSPC.

These findings are set out in chapter 2 of this report.

The Commission also found that Mr Te-Hira engaged in corrupt conduct by:

- trafficking one pair of shoes, tweezers and a shaving razor into the MSPC, which he delivered to Prisoner X in April 2012, in return for a cash payment exceeding \$50
- trafficking unspecified contraband items into the MSPC, which he delivered to Prisoner X in June 2012

¹ Independent Commission Against Corruption, *Investigation into the smuggling of contraband into the John Morony Correctional Centre*, July 2010.

- trafficking two HTC mobile telephones into the MSPC, which he delivered to Prisoner X sometime after 28 June 2012.

These findings are set out in chapter 3 of this report.

Chapters 2 and 3 of the report also contain statements pursuant to section 74A(2) of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) that the Commission is of the opinion that the advice of the Director of Public Prosecutions (DPP) should be obtained with respect to the prosecution of Mr Te-Hira for offences of corruptly receiving a reward contrary to section 249B(1) of the *Crimes Act 1900* (“the Crimes Act”).

The Commission is also of the opinion that CSNSW should give consideration to taking disciplinary action against Mr Te-Hira with a view to his dismissal.

Chapter 4 sets out the Commission’s corruption prevention response to the conduct disclosed during the investigation. The Commission has made the following recommendations to CSNSW.

Recommendation 1

That the draft, *Public Correctional Centre Operating Standards – Security*, be further developed by CSNSW and include relevant recommendations made by the Commission in its 2010 report, *Investigation into the smuggling of contraband into the John Morony Correctional Centre*, and those made as a result of this investigation.

Recommendation 2

That CSNSW implements a post rotation system for roles where familiarity can impact on officer behaviour; for example, roles that involve security screening and extensive interaction with inmates.

Recommendation 3

That the Early Intervention System (EIS) currently being development by CSNSW includes, at a minimum, management observations, staff disclosures, HR records, performance review information, minor incidents and misconduct.

Recommendation 4

That CSNSW implements a performance management system.

Recommendation 5

That CSNSW educates managers on risk factors and supports managerial preventative intervention with regard to staff considered a potential security risk.

These recommendations are made pursuant to section 13(3)(b) of the ICAC Act and, as required by section 111E of the ICAC Act, will be furnished to CSNSW and the Minister for Justice.

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

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

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



Recommendation that this report be made public

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

Chapter 1: Background

This chapter sets out some background information concerning the Commission's investigation and Karaha Pene Te-Hira.

How the investigation came about

On 10 October 2011, Corrective Services NSW (CSNSW) made a report to the Commission on the alleged trafficking of mobile telephones and illegal drugs into the MSPC by Mr Te-Hira. This report was made pursuant to section 11 of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act"), which imposes a duty on the principal officer of a public authority to report any possible corrupt conduct to the Commission.

The CSNSW report noted that its investigation unit was not in a position to investigate the allegations at that time due to its engagement in another investigation. It also noted that an effective investigation would require the use of covert electronic surveillance and that CSNSW did not have the requisite statutory powers to conduct such surveillance.

Why the Commission investigated

One of the Commission's principal functions, as specified in section 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 information and documents from CSNSW, financial institutions and various other sources by issuing 35 notices under section 22 of the ICAC Act
- made use of lawful covert surveillance, both physical and electronic, pursuant to three warrants obtained under the *Surveillance Devices Act 2007* and three warrants obtained under the *Telecommunications (Interception and Access) Act 1979*
- interviewed and obtained statements from a number of witnesses
- conducted eight compulsory examinations between 20 August and 12 September 2012.

On 16 August 2012, seven search warrants were executed, including on Mr Te-Hira's vehicle, in which cash in the amount of \$9,500 was located. Mr Te-Hira later admitted that part of this money represented payments he had received from inmates in return for providing them with contraband goods.

The public inquiry

The Commission reviewed the information that had been gathered during the investigation and the evidence given at the compulsory examinations. Taking into account this material and each of the matters set out in section 31(2) of the ICAC Act, the Commission

determined that it was in the public interest to hold a public inquiry. In making this determination, the Commission had regard to the following considerations:

- the seriousness of the conduct, namely the trafficking of contraband into a correctional facility by a CSNSW officer
- the need to establish the extent of Mr Te-Hira's trafficking activities and the identity of any others involved
- the desirability of exposing the conduct for the purpose of educating and deterring others who might be minded to engage in similar conduct
- the risk of prejudice to the reputation of persons who would be called to give evidence at the inquiry not being, in the circumstances, undue
- the public interest in identifying any corruption risks and system weaknesses in NSW correctional facilities in order to encourage reform.

The public inquiry was held over two days on 8 and 9 October 2012. Theresa Hamilton, Assistant Commissioner, presided at the inquiry and Kate Williams acted as Counsel Assisting the Commission.

A total of 10 witnesses gave evidence. One of the two inmates for whose benefit it was alleged Mr Te-Hira trafficked contraband into the MSPC was unable to attend the public inquiry to give evidence due to his involvement in an ongoing criminal trial at the time the public inquiry was held. His sister and his mother gave evidence, however, and the names of all three persons, referred to in this report as Prisoner X, Prisoner X's sister and Prisoner X's mother respectively, were made the subject of non-publication orders pursuant to section 112 of the ICAC Act.

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

Commission could make based on the evidence. These submissions were provided to all relevant parties. The responses received by the Commission have been taken into account in preparing this report.

Corrective Services NSW and inmates

CSNSW is responsible for the administration of the correctional centre system in NSW under the *Crimes (Administration of Sentences) Act 1999*. It operates the majority of correctional facilities in NSW, including the Long Bay Correctional Complex. The Metropolitan Special Programs Centre (MSPC) is a facility within the Long Bay Correctional Complex where Mr Te-Hira has been employed as an activities officer since 9 February 2009. He was suspended from duty in August 2012.

Inmates at the Long Bay Correctional Complex, including at the MSPC, are prohibited from possessing items sourced from outside the correctional centre. Such items are generally referred to as contraband items and include sports shoes sourced from outside the correctional facility.

It is an offence under section 27DA of the *Summary Offences Act 1988* ("the Summary Offences Act") for an inmate to have possession of a mobile telephone, SIM card or mobile telephone charger without reasonable excuse, proof of which lies on the inmate.

Correctional staff and visitors to the MSPC are prohibited from delivering contraband items to inmates or otherwise bringing such items into the MSPC. It is an offence under section 27E of the Summary Offences Act for any person, including a correctional officer, to bring anything into a correctional facility or deliver anything to an inmate, or to attempt to do so, without lawful authority.



Karaha Pene Te-Hira

According to CSNSW records, Mr Te-Hira commenced employment with CSNSW (then known as the Department of Corrective Services) on 22 October 1990 as a corrections officer. He commenced work at the MSPC on 21 January 2006 and became an activities officer at the MSPC on 9 February 2009. He was suspended from work following the execution of a search warrant by the Commission at the MSPC on 16 August 2012.

As an activities officer, Mr Te-Hira worked from the MSPC's Activities Centre and had a closer interaction with inmates than was the case for other correctional officers. This was particularly the case with "sweepers" – inmates who undertook daily cleaning and assisted in keeping the Activities Centre in good order.

Although an employee of CSNSW, Mr Te-Hira had no lawful authority, within the meaning of that term in the Summary Offences Act, to take any items into correctional centres for inmates.

Mr Te-Hira is a public official for the purposes of the ICAC Act, as he is a person in the service of CSNSW, a public authority.

Chapter 2: Mr Te-Hira and Omar Zahed

The allegations

This chapter deals with allegations that in 2012 Mr Te-Hira trafficked items, including shoes, steroids and other contraband, into the MSPC for delivery to inmate Omar Zahed in return for money and other benefits.

It also deals with the allegation that Mr Zahed and his sister, Asmahen Zahed, provided Mr Te-Hira with money and other benefits in return for his delivering the contraband items to Mr Zahed.

How the allegations involve corrupt conduct

If Mr Te-Hira delivered contraband items to Mr Zahed in a correctional facility in return for payment or other benefit, his conduct could amount to corrupt conduct within the meaning of the ICAC Act. This is because his conduct could adversely affect, either directly or indirectly, the honest or impartial exercise of Mr Te-Hira's official functions and therefore comes under section 8(1)(a) of the ICAC Act. It is also conduct that constitutes or involves the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and could constitute or involve a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affects, or could adversely affect, either directly or indirectly, the exercise of Mr Te-Hira's official functions and could involve official misconduct within the meaning of section 8(2)(a) of the ICAC Act. For the purpose of section 9(1)(a) of the ICAC Act, it is also conduct that could constitute or involve a criminal offence of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act, and a criminal offence of delivering or attempting to deliver anything to an inmate or bringing or attempting to bring anything into a place of detention under section 27E(2) of the Summary Offences Act. Such conduct is also conduct that could constitute or involve a disciplinary offence of misconduct for the purpose of section 9(1)(b) of the ICAC Act.

The alleged conduct of Mr Zahed and Ms Zahed, in assisting Mr Te-Hira to traffic items into the MSPC for Mr Zahed in return for payment or other benefit, is conduct that adversely affects, or could adversely affect, either directly or indirectly, the honest or impartial exercise of Mr Te-Hira's official functions under section 8(1)(a) of the ICAC Act. For the purpose of section 9(1)(a) of the ICAC Act, such conduct could constitute or involve a criminal offence of corruptly giving a reward or offering an inducement contrary to section 249B(2) of the Crimes Act, an offence under section 249F of the Crimes Act of aiding, abetting, counselling or procuring the commission by Mr Te-Hira of an offence under section 249B of the Crimes Act, or an offence of aiding, abetting, counselling or procuring the commission by Mr Te-Hira of an offence of delivering or attempting to deliver anything to an inmate or of bringing or attempting to bring anything into a place of detention without lawful authority under section 27E(2) of the Summary Offences Act.

Mr Te-Hira's admissions

Before examining in detail Mr Te-Hira's dealings with Mr Zahed and Ms Zahed, it is instructive to set out the general admissions made by Mr Te-Hira.

Mr Te-Hira told the Commission that he knew that there were strict rules about what correctional officers could bring in and out of the MSPC. He knew that items sourced by an inmate outside the prison, including drugs, steroids, mobile telephones, SIM cards, mobile telephone chargers and shoes, were contraband. Further, he knew it was a criminal offence for an inmate to have possession of a mobile telephone or for a person to bring unauthorised items, including mobile telephones, into a prison. He was also aware of the existence of numerous policies issued by CSNSW that regulated the conduct of correctional officers, including policies on contact with offenders and conflict of interest.

He admitted that, despite this knowledge and in breach of relevant CSNSW policies, he brought contraband, including food, clothing, shoes, mail, mobile telephones, chargers, SIM cards, steroids and a plunger for steroid injection, into the MSPC over the six-month period preceding the public inquiry for two inmates, Mr Zahed and Prisoner X. He recalled taking in shoes, food and steroids for Mr Zahed and taking in food, protein powder and possibly a telephone for Prisoner X; however, he could not recall what other items he trafficked into the MSPC specifically for each of these two inmates.

Mr Te-Hira also admitted that he received cash payments and other benefits in return for trafficking the contraband items for Mr Zahed. He said that he knew that it was dishonest and wrong to take contraband into the gaol and to receive payments and other benefits as a reward for doing so.

Mr Te-Hira told the Commission that his trafficking activities began some time after he commenced as an activities officer at the MSPC. He said he started engaging in these activities, despite knowing that if he were caught he could lose his job and risk being convicted of a criminal offence, because he “got too close to them, to the offenders, and just went from there”.

He admitted to using three different mobile telephones in the course of these activities to reduce the likelihood of an entire chain of messages or calls being intercepted by authorities.

Money

The Commission undertook a detailed analysis of payments into and out of four bank accounts in which Mr Te-Hira has an interest. This analysis showed that cash withdrawals were only rarely made from these accounts, with relatively small amounts between \$20 and \$100 being withdrawn about once a fortnight on average during the period January to July 2012. It was suggested to Mr Te-Hira that this was because he had cash that he had received for delivering contraband to inmates at the MSPC available to him to spend. He agreed that this was possibly the case.

As a result of the search warrant executed by the Commission on 16 August 2012, cash in the total amount of \$9,500 was found in the boot of Mr Te-Hira’s car. Mr Te-Hira admitted at his compulsory examination on 20 August 2012 that about \$6,000 out of this money came from inmates in return for his supplying them with contraband goods. He claimed the remainder of the money was given to him by his family. At the public inquiry, however, he claimed that he could not recall how much out of the \$9,500 was payment for trafficking contraband into the MSPC,

although it could have been \$6,000, as he did not add up the payments he received from trafficking. He tried to suggest that as much as \$4,000 might have been family money and that the \$9,500 also included further money he had earned from odd jobs, such as refereeing and building work.

Mr Te-Hira gave forthright and convincing evidence at his compulsory examination. His evidence at the public inquiry, however, was characterised by claims of failing memory and an obvious reluctance to make full admissions. Accordingly, in all the circumstances, the Commission is satisfied that the evidence Mr Te-Hira gave at his compulsory examination is the truth, and that a minimum of \$6,000 out of the \$9,500 found in his car on 16 August 2012 represents money he received for trafficking contraband into the MSPC.

The following sections of this chapter discuss in detail the three specific occasions for which there is evidence that Mr Te-Hira trafficked contraband goods into the MSPC for delivery to Mr Zahed and received a payment or other benefit as a reward for such services.

Mr Te-Hira’s conduct in relation to inmate Prisoner X is dealt with in chapter 3 of this report.

Omar Zahed

Mr Zahed was an inmate at the MSPC in June 2012. It was alleged that Mr Te-Hira smuggled contraband items, such as shoes and steroids, into the MSPC for Mr Zahed following meetings on 13 and 27 June 2012 with Mr Zahed’s sister, Asmahen Zahed, also known as Azzie Zahed, from whom Mr Te-Hira received payments in cash and shoes in return for his services. It was also alleged that Mr Te-Hira had a stereo and DVD system installed in his car in June 2012 by Xtreme Car Audio Blacktown (“Xtreme Car Audio”), and that Mr Zahed arranged for payment of part of the cost of this work in return for Mr Te-Hira providing him with contraband goods.

Arrangement with Mr Zahed

Mr Te-Hira told the Commission that he believed he was approached by Mr Zahed in relation to providing him with contraband goods but could not recall the details, other than that he was supposed to pick up the goods from somebody.

Mr Zahed admitted that he had an agreement with Mr Te-Hira whereby Mr Te-Hira would provide him with contraband goods sourced from Mr Zahed’s sister. Mr Zahed was a sweeper at the MSPC and approached Mr Te-Hira about trafficking contraband goods for him because he developed “a good

connection” with Mr Te-Hira in the course of his work. As a sweeper, Mr Zahed had direct contact with Mr Te-Hira with little or no supervision, and also had a fair degree of freedom of movement around the MSPC’s Activities Centre. Mr Zahed attended the Activities Centre every day and was not searched before returning to his cell at the end of the day.

Mr Zahed admitted he was aware that he was not permitted to have contraband goods, including mobile telephones, steroids and shoes, and that Mr Te-Hira was not authorised to bring contraband items into the correctional facility.

The Commission is satisfied that, around June 2012, Mr Zahed and Mr Te-Hira entered into an agreement whereby Mr Te-Hira would obtain contraband goods from Ms Zahed, traffic them into the MSPC and subsequently deliver them to Mr Zahed.

First meeting with Ms Zahed on 13 June 2012

Evidence of lawfully intercepted calls to, and from, Mr Te-Hira showed that he sent a text message to telephone service 0420 718 812 on 5 June 2012, saying “Morning this is Omar mate if you need to call me ring this number or 0406 789 233”. Ms Zahed said the number to which this message was sent may have been her old telephone number. This number was listed as the number for “Azzie Zahed” in a SIM card found with one of Mr Te-Hira’s mobile telephones, as well as being listed as the number for “Zahed Omar Sis Azzie” in the contact list on another mobile telephone used by him. It was also listed as the number for “ZAHED ASMAHEM [sic]”, described as Omar Zahed’s sister, on Mr Zahed’s permitted contact list maintained by CSNSW. On the basis of this evidence and the evidence of the text messages and telephone calls referred to below, the Commission is satisfied that 0420 718 812 was Ms Zahed’s telephone number during June 2012.

Evidence from lawfully intercepted telephone calls and messages also showed that between 5 and 13 June 2012, Mr Te-Hira sent and received text messages to and from 0420 718 812, arranging to meet Ms Zahed at 7.30 pm on 13 June 2012 at Summer Hill shopping village.

Mr Te-Hira agreed that Ms Zahed’s contact details appear in the contact list in two of his three mobile telephones, and that he himself must have put these details in his telephones. He said he could not deny, but did not specifically recall, the exchange of messages between himself and Ms Zahed referred to above.

Mr Te-Hira admitted meeting with Ms Zahed at Summer Hill, although he could not recall the date on which this occurred. Surveillance film recorded by Commission officers at Summer Hill shopping village on 13 June 2012 shows Mr Te-Hira entering the front passenger seat of a black Mazda and alighting a short time later holding a plastic bag and cash. He told the Commission that he received both the bag and cash from the person in the black Mazda, whom he believed to be Ms Zahed. His belief was based on his contact with Ms Zahed through text messages prior to the meeting. Mr Te-Hira agreed that the bag contained two pairs of shoes, one pair of which was to be provided to Mr Zahed and one pair of which he kept for himself as a reward.

This evidence is consistent with Ms Zahed’s. She admitted that she was in the black Mazda and had a meeting with a prison officer on 13 June 2012. She gave the prison officer one pair of shoes to be provided to her brother, Mr Zahed, in gaol, and another pair to be kept by the prison officer as a reward for delivering the shoes to her brother. She knew at the time that there were strict rules against taking goods into prison. She claimed she did not know the prison officer’s name, but conceded that she contacted him for the purpose of delivering shoes to Mr Zahed, and that the prison officer’s contact number was stored in her mobile telephone under “Screw2”. “Screw” is a slang word referring to a correctional officer.

Mr Te-Hira told the Commission that he delivered the pair of shoes given to him by Ms Zahed to Mr Zahed. This was done by putting the shoes inside the standard issue clear plastic bag that correctional officers are allowed to carry into the MSPC with books or papers on either side of the shoes to hide them. Mr Zahed confirmed that he received a pair of shoes from Mr Te-Hira on or about 14 June 2012, which he knew had been delivered by his sister Ms Zahed to Mr Te-Hira and then brought into gaol for him.

Mr Te-Hira said that he could not recall whether the shoes he delivered to Mr Zahed contained other contraband items such as a mobile telephone or steroids. Ms Zahed denied that the shoes contained any other items.

The Commission is satisfied that Mr Te-Hira trafficked a pair of shoes, provided to him by Ms Zahed at their meeting on 13 June 2012 at Summer Hill, into the MSPC and delivered them to Mr Zahed on or about 14 June 2012. The Commission is also satisfied that Mr Te-Hira kept one pair of the shoes that he received from Ms Zahed on 13 June 2012 as a reward for trafficking

and delivering the other pair of shoes to Mr Zahed at the MSPC.

Did Mr Te-Hira also receive cash?

Mr Zahed told the Commission that he instructed Ms Zahed to give Mr Te-Hira some cash, as well as a pair of shoes, as a reward for providing Mr Zahed with the shoes. Mr Zahed and Mr Te-Hira both claimed there was no prior agreement between them about Mr Te-Hira receiving money for trafficking contraband.

Ms Zahed told the Commission that she did not recall giving Mr Te-Hira cash at their meeting on 13 June 2012, but it was possible that she had done so, in which case the amount would have been a couple of hundred dollars. She said this money would have been given to Mr Te-Hira as a reward for taking the shoes to Mr Zahed. She admitted that she was paying Mr Te-Hira to do a favour for her brother in breach of the rules Mr Te-Hira was bound to obey as a correctional officer. She attempted to dissociate herself from responsibility by saying that she was “just the delivery girl”.

Mr Te-Hira admitted receiving cash from Ms Zahed at this meeting. The surveillance footage taken on that day shows him holding cash after getting out of the black Mazda. Mr Te-Hira said the amount of the cash he was given was “maybe a hundred, hundreds”. He admitted that he kept this money for himself to spend as he saw fit, although he may have spent a part of it on takeaway food for Mr Zahed. This evidence is consistent with the evidence of Mr Zahed that, on at least one occasion, he asked Ms Zahed to give Mr Te-Hira some money so that Mr Te-Hira could buy some food for him.

The Commission is satisfied that at least \$100 was handed to Mr Te-Hira by Ms Zahed at their meeting on 13 June 2012, with the intention that Mr Te-Hira would keep at least part of the money for himself as a reward for taking shoes into the MSPC for Mr Zahed. The Commission is satisfied that Mr Te-Hira kept at least part of the money for himself, and that part of the money may have been used to buy food for Mr Zahed, which was then smuggled into the MSPC.

Second meeting with Ms Zahed on 27 June 2012

Evidence from lawfully intercepted telephone calls and messages showed that there was a further exchange of text messages between Mr Te-Hira and Ms Zahed on 25 and 26 June 2012. The purpose of this exchange was to arrange another meeting so that Ms Zahed could provide Mr Te-Hira with further items for him to take into the MSPC for Mr Zahed. This evidence was not challenged by Mr Te-Hira or Ms Zahed.

Mr Te-Hira, however, was reluctant to provide frank answers to questions relating to this second meeting, repeatedly answering questions with the words “possibly” or “maybe”. It was only when he heard a lawfully intercepted telephone conversation between Ms Zahed and him on 27 June 2012 that he admitted meeting with her on that date. During the conversation, Mr Te-Hira and Ms Zahed discuss what type of shoes Ms Zahed should obtain for her brother and for Mr Te-Hira and the time and location of their proposed meeting. The meeting occurred in a car park at Summer Hill.

Mr Te-Hira and Ms Zahed both admitted that, at this meeting, Ms Zahed handed Mr Te-Hira bags that contained two pairs of shoes Ms Zahed had purchased. One pair was to be taken into the MSPC and delivered to Mr Zahed, and the other pair was for Mr Te-Hira. Mr Te-Hira said he took the shoes intended for Mr Zahed into the MSPC sometime after this meeting by, once again, concealing them in his bag with books or papers. He gave them to Mr Zahed when no one else was around. He said he could not recall what other items he had been given by Ms Zahed on this occasion.

Mr Zahed admitted receiving another pair of shoes on or about 28 June 2012 from Mr Te-Hira and that payment in the form of a pair of shoes was made to Mr Te-Hira in return for this service.

What rewards were received by Mr Te-Hira?

Mr Te-Hira told the Commission that he may also have been given some cash by Ms Zahed at their meeting on 27 June 2012. He claimed he had no specific recollection of this occurring. He suggested the possibility that the money he received from Ms Zahed on 13 June 2012 may have covered his services on both occasions. Ms Zahed also said that she could not recall giving Mr Te-Hira cash at their meeting on 27 June 2012. Mr Zahed said he could not recall if a cash payment was made to Mr Te-Hira on this occasion.

Mr Te-Hira claimed that the shoes he received from Ms Zahed on 27 June 2012 and kept for his own use were not a form of payment as a reward or inducement for him to take contraband items into gaol for Mr Zahed, but rather “a gift” from Ms Zahed as a gesture of kindness. He conceded, however, that he accepted the shoes from Ms Zahed in return for taking the other pair of shoes into the MSPC for Mr Zahed. Ms Zahed agreed that she gave Mr Te-Hira the shoes to keep for himself in return for his taking the other pair of shoes to her brother.

The Commission is satisfied that, at their meeting on 27 June 2012 at Summer Hill, Ms Zahed provided Mr Te-Hira with one pair of shoes to be trafficked into the MSPC by Mr Te-Hira and delivered to Mr Zahed, and a further pair of shoes to be kept by Mr Te-Hira for his own use. The

Commission is also satisfied that Mr Te-Hira subsequently trafficked the pair of shoes intended for Mr Zahed into the MSPC and delivered them to Mr Zahed on or about 28 June 2012. The Commission is further satisfied that the shoes kept by Mr Te-Hira were provided to him by Ms Zahed and kept by Mr Te-Hira as a reward for trafficking shoes into the MSPC and delivering them to Mr Zahed. The Commission is not satisfied, however, that any cash payment was made to Mr Te-Hira by Ms Zahed at their meeting on 27 June 2012.

“Things are curry”

On 3 July 2012, CSNSW conducted a raid at the MSPC which resulted in a number of contraband items, including mobile telephones, being found and seized. Evidence of intercepted telephone communications indicated that, on the evening of 3 July 2012, Mr Te-Hira sent a text message to Ms Zahed saying, “Hey things are curry change card”. In the Commission’s view, this message meant things are “hot” or difficult, and Mr Te-Hira intended Ms Zahed to contact him on a different telephone number from that point onwards. Mr Te-Hira denied this was the case. He could not, however, provide the Commission with any other explanation about why he sent Ms Zahed this text message.

Xtreme Car Audio Blacktown

The Commission had evidence that, at some time prior to 15 June 2012, inmate Alfred Fonua (also known as Alfie) had arranged for a stereo and DVD system to be installed into Mr Te-Hira’s car at Xtreme Car Audio. There was evidence to the effect that Mr Zahed paid for part of this work in return for Mr Te-Hira providing him with steroids.

The benefit

Mr Te-Hira agreed that he had a car stereo and DVD system fitted into his car on 23 June 2012 by Xtreme Car Audio, and that this work was arranged for him by Mr Fonua.

Xtreme Car Audio issued an invoice to Mr Te-Hira for \$1,550 on 23 June 2012. Its records indicate that a deposit or payment of that amount may have been made before 23 June 2012.

Mr Te-Hira explained that he had been told by Mr Fonua that about \$500 had been paid for a stereo and DVD system to be installed in Mr Te-Hira’s car at Xtreme Car Audio at Blacktown. Mr Te-Hira claimed that he did not know if it was Mr Fonua himself or another inmate who paid the \$500. The payment only covered the cost of a basic stereo and DVD system. Mr Te-Hira wanted an upgraded stereo and DVD system fitted into his car. He

said this required him to pay Xtreme Car Audio a further \$1,550, and that he paid this amount himself in cash on 23 June 2012.

During a lawfully intercepted telephone conversation between Mr Te-Hira and his wife on 24 June 2012, she asked him how much the work to his car cost. He replied that he did not know. Mr Te-Hira disagreed that this response meant that he did not know the cost and said that he simply did not want to tell his wife how much it cost.

Mr Zahed told the Commission that he was asked by Mr Fonua to “drop off” about \$500 or \$600 to his “mate’s place”, Xtreme Car Audio, as a favour to Mr Fonua. He said he then arranged for a friend to make this payment to Xtreme Car Audio on or about 23 June 2012.

Although there is evidence of \$1,600 having been withdrawn from one of Ms Zahed’s bank accounts on 22 June 2012, about which she claimed to have no recollection, there is no direct evidence to establish that it was Ms Zahed who made the payment of \$1,550 to Xtreme Car Audio.

Mr Zahed maintained that his sister had nothing to do with this matter, and Ms Zahed told the Commission that she had never heard of Xtreme Car Audio or made a payment to a car business in Blacktown.

Jason Arici is the director and shareholder of Xtreme Car Audio Pimp Your Ride Pty Ltd trading as Xtreme Car Audio Blacktown. He told the Commission that in about mid-June 2012, he was contacted by a friend in gaol called Alfred whom he knew as Alfie. Alfie told him: “I’m going to send a friend down, can you look after him, please?”. Alfie did not give Mr Arici the name of this friend, but in due course Mr Arici was contacted by Mr Te-Hira, who identified himself as “Alfie’s mate” via a text message on 15 June 2012 about booking his car in to have a car stereo and DVD system fitted.

Mr Arici said Alfie did not mention anything about payment for the work to be done to Mr Te-Hira’s car. Mr Arici’s accounting records show an entry for \$1,550 on 23 June 2012 (the day Mr Te-Hira brought his car in for the first time) listed under the heading “credit”. Mr Arici, however, insisted this amount was not in fact a credit, but represented payment actually made for the work done to Mr Te-Hira’s car on the day it was brought in to his shop. Mr Arici agreed that there is also a notation saying “Paid” next to the booking for Mr Te-Hira’s car in the bookings diary of his business, but said this did not mean that the payment for the job was made at the time it was booked in prior to the work being done. He was unable to say what it did mean. In any event, he said he had no personal knowledge of any payment having been made before the work to Mr Te-Hira’s car was done.

There is insufficient evidence to establish exactly how much money was paid by Mr Zahed to Xtreme Car Audio as a contribution towards the cost of the stereo and DVD system installed in Mr Te-Hira's car or when and how this payment was made. There is also insufficient evidence to confirm whether Mr Te-Hira in fact paid, as he claims, \$1,550 out of his own pocket in addition to the \$500 Mr Te-Hira understood had been paid by Mr Fonua or another inmate, or whether he paid only the balance of the \$1,550 that remained after the \$500 had been applied towards the cost of the work.

The Commission is satisfied, however, that Mr Te-Hira received a benefit of at least \$500 towards the cost of a car stereo and DVD system installed in his vehicle by Xtreme Car Audio on 23 June 2012, and that at the time he knew the money came from either Mr Fonua or another inmate.

The favour

Mr Te-Hira told the Commission that he could not remember what, if anything, he was required to do in return for the payment made by Mr Fonua or another inmate for the car stereo and DVD system. He said, however, that it "may have had something to do with what I may have brought in". He conceded that it was possible he was to bring in some steroids for Mr Zahed. Mr Te-Hira acknowledged that, in any event, he knew that he would be required to do something for Mr Fonua or the inmate who made the payment of \$500 in return, and that accepting the payment was wrong.

Mr Zahed denied that Mr Te-Hira provided him with anything in return for the payment he arranged to be made to Xtreme Car Audio. He denied having any discussions with Mr Te-Hira about this matter. He told the Commission that he made the payment to Xtreme Car Audio as a favour to Mr Fonua because they were mates in gaol, and said that Mr Fonua did not tell him why he wanted the payment.

There is insufficient evidence to support a finding that Mr Te-Hira trafficked steroids into the MSPC for Mr Zahed in return for this particular payment, notwithstanding Mr Te-Hira's admission that he had trafficked steroids into the MSPC on unspecified occasions. The Commission, however, is satisfied that Mr Te-Hira accepted the benefit on the basis that he would exercise his official functions in favour of Mr Fonua, Mr Zahed or another inmate associated with Mr Fonua or Mr Zahed.

Corrupt conduct findings

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 sections 8 and 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 on the balance of probabilities. The Commission then determines whether those facts come within the terms of sections 8(1) or 8(2) of the ICAC Act. If they do, the Commission then considers section 9 and the jurisdictional requirements of section 13(3A) of the ICAC Act. In the case of subsection 9(1)(a), the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence. In the case of subsection 9(1)(b), the Commission considers whether, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a disciplinary offence.

Karaha Pene Te-Hira

The Commission finds that Mr Te-Hira engaged in corrupt conduct by:

- i. trafficking contraband, including food, clothing, shoes, mail, mobile telephones, chargers, SIM cards, steroids and a plunger for steroid injection, into the MSPC for inmates Mr Zahed and Prisoner X over a six-month period in 2012
- ii. trafficking a pair of shoes, which he delivered to Mr Zahed on or around 14 June 2012, into the MSPC, in return for cash and a pair of shoes
- iii. trafficking a pair of shoes, which he delivered to Mr Zahed on or around 28 June 2012, into the MSPC, in return for a pair of shoes
- iv. accepting a benefit of at least \$500 towards the cost of having a car stereo and DVD system installed into his car by Xtreme Car Audio on 23 June 2012, a payment of which he knew came from either Mr Fonua or

another inmate, on the understanding that he would exercise his official functions in favour of Mr Fonua or Mr Zahed or another inmate associated with Mr Fonua or Mr Zahed.

This is because, in each instance outlined above, Mr Te-Hira's conduct adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constituted or involved the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constituted or involved a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct that adversely affected, or could have adversely affected, either directly or indirectly, the exercise of his official functions and that could involve official misconduct within the meaning of section 8(2)(a) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found concerning Mr Te-Hira's receipt of cash, shoes and financial benefits as a reward for having shown or as an inducement to show favourable treatment to inmates as specified 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 on which such a tribunal would find that Mr Te-Hira has committed the criminal offence of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act. The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found concerning Mr Te-Hira's trafficking of the contraband items specified 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 on which such a tribunal would find that Mr Te-Hira has committed the criminal offence of delivering or attempting to deliver anything to an inmate or bringing or attempting to bring anything into a place of detention under section 27E(2) of the Summary Offences Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Te-Hira has, by trafficking contraband goods into gaol and by accepting payments in cash and kind as specified above as a reward or inducement for such activities, committed disciplinary offences involving a substantial breach of an applicable code of conduct.

Omar Zahed

The Commission finds that Mr Zahed, by arranging for his sister, Ms Zahed, to provide Mr Te-Hira with shoes for delivery to himself in the MSPC and to reward Mr Te-Hira with shoes and cash in return, as specified above, engaged in corrupt conduct within the meaning of the ICAC Act. This is because it is conduct that adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of Mr Te-Hira's official functions under section 8(1)(a) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Zahed has committed criminal offences under section 249F of the Crimes Act of aiding, abetting, counselling or procuring the commission by Mr Te-Hira of the offence of corruptly receiving a reward under section 249B(1) of the Crimes Act, or that Mr Zahed has committed the criminal offence of aiding, abetting, counselling or procuring the commission by Mr Te-Hira of the offence of delivering or attempting to deliver anything to an inmate or bringing or attempting to bring anything into a place of detention under section 27E(2) of the Summary Offences Act.

The Commission is not satisfied that Mr Zahed's conduct in making the payment to Xtreme Car Audio was corrupt conduct for the purposes of the ICAC Act. This is because there is no evidence that Mr Zahed knew that the payment was for the benefit of Mr Te-Hira, and there is therefore no basis for concluding that Mr Zahed intended the payment to influence Mr Te-Hira's official functions.

Asmahen Zahed

The Commission finds that Ms Zahed, by providing a pair of shoes and cash on 13 June 2012 and a pair of shoes on 27 June 2012 to Mr Te-Hira in return for his delivering shoes to Mr Zahed in the MSPC, engaged in corrupt conduct within the meaning of the ICAC Act. This is because it is conduct that adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of Mr Te-Hira's official functions under section 8(1)(a) of the ICAC Act.

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

counselling or procuring the commission by Mr Te-Hira of the offence of delivering or attempting to deliver anything to an inmate or bringing or attempting to bring anything into a place of detention under section 27E(2) of the Summary Offences Act.

Section 74A(2) statements

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

- a. obtaining the advice of the DPP with respect to the prosecution of the person for a specified criminal offence
- b. the taking of action against the person for a specified disciplinary offence
- c. the taking of action against the person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

An “affected” person is defined in section 74A(3) of the ICAC Act as a person against whom, in the Commission’s opinion, substantial allegations have been made in the course of or in connection with the investigation.

For the purposes of this chapter, Mr Te-Hira, Mr Zahed and Ms Zahed are affected persons.

Karaha Pene Te-Hira

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 Te-Hira for criminal offences of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act, in relation to:

- his receipt of the cash payment and a pair of shoes on 13 June 2012 from Ms Zahed in return for trafficking shoes into the MSPC for Mr Zahed
- his receipt of a pair of shoes on 27 June 2012 from Ms Zahed in return for trafficking shoes into the MSPC for Mr Zahed
- his acceptance for his own benefit of the payment of a minimum amount of \$500 arranged by Mr Fonua and paid by Mr Zahed to Xtreme Car Audio on an unspecified date, on the understanding that Mr Te-Hira would show favour to Mr Fonua, Mr Zahed or another inmate associated with Mr Fonua or Mr Zahed.

Although Mr Te-Hira gave evidence under objection at the public inquiry, there is evidence of lawfully intercepted telephone calls and text messages and surveillance video footage available, and statements could also be obtained from Mr Zahed, Ms Zahed and Mr Arici to assist in the prosecution of Mr Te-Hira for the above offences.

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 Te-Hira for any criminal offence under section 27E(2) of the Summary Offences Act in relation to his trafficking of any contraband goods for Mr Zahed, as proceedings for this offence must be commenced not later than six months from the date on which the offence was alleged to have been committed, and this period has now expired.

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

Omar Zahed

Mr Zahed gave evidence under objection at the public inquiry. The Commission is of the view that there is insufficient admissible evidence to recommend that consideration be given to a prosecution against Mr Zahed for an offence under section 249F of the Crimes Act of aiding, abetting, counselling or procuring the commission by Mr Te-Hira of the offence of corruptly receiving a reward under section 249B(1) of the Crimes Act.

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Zahed for the offence of aiding, abetting, counselling or procuring the commission by Mr Te-Hira of the offence under section 27E(2) of the Summary Offences Act. This is because proceedings for this offence must be commenced not later than six months from the date on which the offence was alleged to have been committed, and this period has now expired.

Asmahen Zahed

Although Ms Zahed gave evidence under objection at the public inquiry, there is some evidence of lawfully intercepted telephone calls and text messages and surveillance video footage available. In all the circumstances, however, the Commission is of the opinion that there is insufficient admissible evidence to recommend that consideration be given to a prosecution against Ms Zahed for an offence of corruptly offering a reward under section 249B(2) of the Crimes Act.

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Zahed for any criminal offence under section 27E(2) of the Summary Offences Act, as proceedings for such an offence must be commenced not later than six months from the date on which the offence was alleged to have been committed, and this period has now expired.

Chapter 3: Mr Te-Hira and inmate Prisoner X

This chapter deals with an allegation that on a number of occasions in 2012, Mr Te-Hira delivered contraband goods to Prisoner X in the MSPC in return for goods and payments provided to Mr Te-Hira through Prisoner X's sister, Prisoner X's mother and Prisoner X's friend, George Kamoschos.

Such conduct on the part of Mr Te-Hira, Prisoner X, Prisoner X's sister, Prisoner X's mother and Mr Kamoschos could constitute or involve corrupt conduct for the same reasons as set out in chapter 2 in relation to the conduct examined in that chapter.

The admissions

Mr Te-Hira admitted having contact with Prisoner X's sister and a male friend of Prisoner X whom he knew only as "George" (identified during this investigation as Mr Kamoschos). He also admitted obtaining contraband items from these persons and later trafficking these items into the MSPC for delivery to Prisoner X over a six-month period in 2012. He denied that he had any contact or dealings with Prisoner X's mother.

Prisoner X's sister admitted meeting Mr Te-Hira on two occasions, in April 2012 and on 21 June 2012, at which meetings she provided him with contraband goods to be trafficked into the MSPC and delivered to Prisoner X. She also admitted giving Mr Te-Hira an envelope containing cash at the meeting in April 2012.

Mr Kamoschos admitted meeting with Mr Te-Hira on two occasions, on 21 June 2012 and 28 June 2012, and providing him with contraband goods to deliver to Prisoner X. Mr Kamoschos denied making any cash payments to Mr Te-Hira.

The following sections of this chapter discuss in detail the three specific occasions on which Mr Te-Hira met with Prisoner X's sister and/or Mr Kamoschos.

Meeting with Prisoner X's sister in April 2012

Mr Te-Hira accepted that he may have met with Prisoner X's sister at a car wash near South Sydney Juniors Club in about April 2012 in order to collect shoes and some personal items, including a razor and tweezers, which he was to take into the MSPC for Prisoner X. He also conceded that he may have received a cash payment on this occasion.

Prisoner X's sister admitted that she had meetings with a man to whom she gave certain items to be passed on to her brother in gaol. She told the Commission that she had her first meeting with this man in about April 2012 at a car wash near South Sydney Juniors Club. Prior to this meeting, Prisoner X had instructed her to expect a message from someone and then to go and meet the person. She was contacted by a person who she subsequently came to know as Mr Te-Hira. She then arranged a meeting with him in April 2012 via text messages.

She took a box to the meeting. The box contained shoes that she purchased herself, tweezers, a shaving razor and an envelope with cash. She maintained that she did not put the envelope of cash in the box herself and did not know who put it there or for what reason, nor how much money was contained in the envelope, other than that she saw at least one \$50 note in it and that it appeared that there were further notes in the envelope. She said Mr Te-Hira approached her at the car wash, and she gave him the box and left. She did not recall having any conversations with Mr Te-Hira at the meeting. She told the Commission that

she did not know Mr Te-Hira's name or that he was a prison officer at the time, nor did she know what he was going to do with the box.

Having regard to the personal nature of the items in the box, and the fact that she met with Mr Te-Hira and delivered the box at the specific request of her brother, the Commission is satisfied that she must have known when she handed the goods to Mr Te-Hira that he would deliver or arrange delivery of the items in the box to Prisoner X in the MSPC.

The Commission is satisfied that at the meeting in April 2012, Prisoner X's sister provided Mr Te-Hira with the contraband items specified above with the intention that they be trafficked into the MSPC by Mr Te-Hira and subsequently delivered to Prisoner X (although not necessarily directly by Mr Te-Hira himself). The Commission is further satisfied that at this meeting, Prisoner X's sister provided Mr Te-Hira with an envelope containing cash in an amount exceeding \$50 for Mr Te-Hira to keep as a reward for trafficking the contraband items and arranging for their delivery to Prisoner X.

Given Mr Te-Hira's general admission that he trafficked items into the MSPC for Prisoner X and having regard to the above payment he received for doing so, the Commission is satisfied that Mr Te-Hira delivered or arranged delivery of the items to Prisoner X.

Meeting with Prisoner X's sister and Mr Kamoschos on 21 June 2012

Mr Te-Hira admitted meeting with Prisoner X's sister and "George" at the Camperdown Hotel on 21 June 2012. This meeting followed an exchange of text messages on

19 and 21 June 2012 between Mr Te-Hira and Prisoner X's sister, and between Mr Te-Hira and the mobile telephone service 0416 509 498 whose user identified himself/herself in a text message sent to Mr Te-Hira on 19 June 2012 by saying, "Hi it's Georges [sic] Mum".

Mr Te-Hira claimed not to know who "Georges [sic] Mum" was, and denied it was Mr Kamoschos. Mr Kamoschos expressed some doubt as to whether he had identified himself as "Georges [sic] Mum", but accepted that he was the person who sent the message. The Commission is satisfied that "Georges [sic] Mum" and Mr Kamoschos are one and the same person, having regard to Mr Kamoschos' acceptance that he sent the message and that 0416 509 498 was the telephone number he used until about June 2012, the nature of the numerous text messages exchanged between Mr Te-Hira and this number preceding the meetings between Mr Te-Hira and Mr Kamoschos, and the meetings that subsequently took place on 21 and 28 June 2012 in accordance with the specific arrangements agreed to in the exchanged messages as discussed below.

Mr Te-Hira admitted he was given a black plastic bag at the meeting on 21 June 2012. He said he could not remember what was in the bag but he understood that he was to deliver the contents of the bag to Prisoner X in the MSPC. He did not recall how he took the items into the MSPC or whether he delivered them to Prisoner X directly or through another inmate. Given Mr Te-Hira's general admission that he delivered contraband goods to Prisoner X and that he received the goods on 21 June 2012 for that purpose, the Commission is satisfied that he provided the goods he received on that date to Prisoner X.

Mr Te-Hira told the Commission that the bag may also have contained some cash, the amount of which he

could not remember, as a payment for his services. He said he may have used part of this money to buy food to take in to Prisoner X but he would have kept the majority of the cash for himself.

Prisoner X's sister accepted that there was a series of text messages exchanged between herself and Mr Te-Hira prior to the meeting on 21 June 2012 discussing arrangements for the meeting, although she did not have a specific recollection of each of the messages.

Prisoner X's sister told the Commission that she went to the meeting with Mr Kamoschos, although they travelled to the meeting in separate cars. When they got out of their cars at the Camperdown Hotel, Mr Kamoschos handed her a black plastic bag. She gave the bag to Mr Te-Hira. She denied giving Mr Te-Hira any cash on this occasion, nor did she see Mr Kamoschos give him any.

She claimed she did not know what the bag contained or what Mr Te-Hira was going to do with the bag. She conceded that since she was delivering the items to Mr Te-Hira at her brother's request, she assumed that whatever was inside the black plastic bag was somehow going to be delivered by Mr Te-Hira, directly or indirectly, to Prisoner X in gaol. She also admitted that she knew there were strict rules about what prisoners could have in gaol, and that anything that they obtained from outside the gaol was considered contraband.

Mr Kamoschos told the Commission that prior to meeting Mr Te-Hira for the first time, he was asked by Prisoner X to "meet up with a mate" and accompany Prisoner X's sister to the meeting for her protection. He said Prisoner X did not tell him who the mate was, and he, Mr Kamoschos, did not know the purpose of the meeting, other than that Prisoner X's sister was going to give the person a bag containing an item.

Mr Kamoschos also agreed that Prisoner X's sister gave him a telephone number for him to contact for the purpose of arranging a meeting with the person Prisoner X wanted him to meet, and that he sent some text messages for this purpose. He told the Commission, however, that he could not recall the numbers between which the messages were exchanged or the exact content of the messages.

Mr Kamoschos admitted going to the meeting at Camperdown Hotel on 21 June 2012 in the company of Prisoner X's sister. He told the Commission that at the time he believed Mr Te-Hira was a mate of Prisoner X and that he did not know he was a prison officer.

Mr Kamoschos said it was Prisoner X's sister who had brought the bag to the meeting. He told the Commission that he could not recall whether it was Prisoner X's sister or himself who later handed the bag to Mr Te-Hira. In the Commission's view, it is not necessary to establish

which one of them in fact brought the bag to the meeting or physically handed it to Mr Te-Hira. The Commission is satisfied that they both attended the meeting with Mr Te-Hira on 21 June 2012 and took part in handing over the bag to Mr Te-Hira.

Mr Kamoschos told the Commission that he did not know what was in the bag, who arranged for it to be obtained, or for whom the contents of the bag were intended. He assumed there was something in the bag that was going to Prisoner X, since Prisoner X had asked him to attend the meeting in the first place. He suspected it was "something dodgy". He believed it might have been a mobile telephone to be smuggled into gaol for Prisoner X because Prisoner X had previously told him that he, Prisoner X, might be able to get a mobile telephone into prison. Mr Kamoschos said he did not know if the bag contained any cash, but no cash was handed over to Mr Te-Hira on this occasion by either himself or Prisoner X's sister.

The text messages exchanged between Mr Te-Hira and Mr Kamoschos during the period 22 to 28 June 2012 make a reference to "bottles", suggesting that the contents of the bag given to Mr Te-Hira on 21 June 2012 may have included some bottles. Mr Te-Hira told the Commission that he could not recall whether the bag included bottles and, if it did, what the bottles contained.

There is insufficient evidence for the Commission to identify what items were contained in the bag given to Mr Te-Hira on 21 June 2012 or to be satisfied that it contained bottles.

There is also insufficient evidence to conclude that Mr Te-Hira was given a cash payment on 21 June 2012. Even if the bag given to Mr Te-Hira contained cash, there is insufficient evidence to support a finding that either Mr Kamoschos or Prisoner X's sister knew this at the time of the meeting.

The Commission is satisfied that a meeting between Mr Te-Hira, Prisoner X's sister and Mr Kamoschos took place at Camperdown Hotel on 21 June 2012, during which Mr Te-Hira was provided with a black plastic bag that contained contraband goods for Mr Te-Hira to traffic into the MSPC, and that Mr Te-Hira subsequently delivered the goods to Prisoner X.

Meeting with Mr Kamoschos on 28 June 2012

Text messages sent on 22, 26, 27 and 28 June 2012 indicate that arrangements for another meeting were discussed between Mr Te-Hira and Mr Kamoschos. Mr Kamoschos accepted that he exchanged further text messages with Mr Te-Hira during the period between their first meeting on 21 June 2012 and their second and,

according to his memory, their last meeting which took place on 28 June 2012, although he did not have a specific recollection of these messages.

Mr Kamoschos told the Commission that the day after his meeting with Mr Te-Hira on 21 June 2012, an unknown male called him and told him that he needed to get back a bottle “from the guy you met last night”, which led him to arrange a further meeting with Mr Te-Hira. Mr Kamoschos said he did not know what was contained in the bottle.

On 22 June 2012, Mr Kamoschos sent the following text message to one of Mr Te-Hira’s mobile telephones:

Hi friend. I need to come see you as per our discussion last night. Will you be available anytime tonight or tomorrow morning?

On 24 June 2012, Mr Kamoschos sent Mr Te-Hira a further text message as follows:

Hi mate. I spoke to my mate today. I can come see you when your [sic] free to finalise and take back the extra. Let me know when your [sic] free and i can come wherever. Thanks.

Mr Kamoschos explained that “my mate” was a reference to Prisoner X, and that “the extra” was the bottle that he had been told by the unknown male to get back from Mr Te-Hira.

Mr Te-Hira responded to Mr Kamoschos’ message via a text message on 26 June 2012, proposing a meeting on the evening of Thursday, 28 June 2012 at “uni no. 1 oval”.

Mr Kamoschos told the Commission that he received a telephone call from Prisoner X on 26 June 2012, in which Prisoner X instructed him to take back some mobile telephones from Mr Te-Hira and to give him some other mobile telephones.

On 27 June 2012, Mr Kamoschos sent Mr Te-Hira a message confirming the meeting and then a further message as follows:

Are you sweet to bring the 2 bottles and 1 of the other things as well tomorrow. I need to swap them out with you for different ones. And will fix up the rest outstanding as well. Thanks mate.

Mr Kamoschos explained that his message was telling Mr Te-Hira to give him two bottles and a mobile telephone and, in return, he would give Mr Te-Hira two mobile telephones being the “rest outstanding” referred to. This interpretation of the above text message, however, seems unlikely to be correct, since “the rest outstanding” is followed by “as well”, which implies that it must be something in addition to the items referred to as “different ones” in the text message.

In any event, Mr Kamoschos told the Commission that he could not recall taking anything back from Mr Te-Hira to give to somebody else or to keep for himself.

Mr Te-Hira declined to explain what the above messages meant, claiming a lapse in his memory. He agreed, however, that he possibly did have a further meeting with Mr Kamoschos on the evening of 28 June 2012 at the University of Sydney. The meeting followed an exchange of text messages from 22 to 28 June 2012 in which they discussed where and at what time the meeting should take place. Mr Te-Hira claimed to have no recollection of the details of the meeting, and said he could not remember if he gave anything to Mr Kamoschos and, if so, what it was or what Mr Kamoschos gave him.

Mr Kamoschos was certain that he gave Mr Te-Hira two HTC mobile telephones he had purchased from Mo’s Mobiles at Top Ryde shopping centre on 21 June 2012. These telephones, together with a third mobile telephone and several telephone chargers and SIM cards, were discovered inside the MSPC at the same location during a raid conducted by CSNSW’s State Emergency Unit on 3 July 2012. This raised the possibility that all these items could have been purchased by Mr Kamoschos and subsequently provided to Mr Te-Hira, who then smuggled them into the MSPC for the purpose of delivering them to Prisoner X.

Mr Kamoschos told the Commission that he could not recall what else, apart from the two HTC mobile telephones, he may have purchased from Mo’s Mobiles. Records obtained from Vodafone Pty Ltd show that four of the SIM cards found at the raid were purchased from Mo’s Mobiles and are subscribed to a person called John Smith with an address in Bourke. The name and address appear to be fictitious. There is no evidence to support a finding that it was Mr Kamoschos who provided this name and address to Mo’s Mobiles, and Mr Kamoschos himself denied providing any names or addresses when he made his purchase on 21 June 2012.

In these circumstances, and in the absence of documentary evidence identifying the true purchaser of the relevant mobile telephones and SIM cards, the Commission is satisfied only that Mr Kamoschos purchased the two mobile telephones that were later provided to Mr Te-Hira.

Mr Kamoschos told the Commission that he thought at least one of the two mobile telephones was going to be delivered to Prisoner X, although he still did not know that Mr Te-Hira was a prison officer and did not know exactly how such a delivery was going to be arranged.

Mr Te-Hira told the Commission that he could have received a HTC mobile telephone and a Samsung mobile telephone with some SIM cards from Mr Kamoschos

at this meeting. He said he possibly delivered them to Prisoner X, and may have trafficked the telephones into the MSPC by concealing them in shoes.

Given the lack of certainty in Mr Te-Hira's evidence, in contrast to Mr Kamoschos' clear evidence that he purchased and provided Mr Te-Hira with two HTC mobile telephones, the Commission prefers Mr Kamoschos' evidence in this regard. Accordingly, the Commission is satisfied that Mr Te-Hira was provided with two HTC mobile telephones, not one HTC mobile telephone and one Samsung mobile telephone, at the meeting on 28 June 2012.

Having regard to the discovery of the two HTC mobile telephones during the raid by CSNSW on 3 July 2012, the Commission is satisfied that they were trafficked into the MSPC for delivery to Prisoner X by Mr Te-Hira sometime after his meeting with Mr Kamoschos on 28 June 2012.

Mr Kamoschos maintained that he could not recall giving Mr Te-Hira anything apart from the two telephones. Mr Te-Hira conceded that he may also have been given some cash by Mr Kamoschos, which he kept for himself as his payment for taking the risk of delivering contraband items to Prisoner X.

Given Mr Kamoschos' inability to recall providing Mr Te-Hira with cash, and the lack of a clear admission on Mr Te-Hira's part to having accepted payment of cash from Mr Kamoschos, the Commission cannot be satisfied that cash was in fact handed to Mr Te-Hira on this occasion.

Evidence of Prisoner X's mother

There was a lawfully intercepted telephone conversation between Prisoner X and Prisoner X's mother on 16 June 2012, only a few days before the meeting between Mr Te-Hira, Mr Kamoschos and Prisoner X's sister at the Camperdown Hotel on 21 June 2012. During this conversation, Prisoner X asked his mother to do something that was unspecified but described by him as being more important to him than anything he had ever asked for.

This conversation suggested that Prisoner X may have asked his mother to make a payment to Mr Te-Hira for delivering contraband goods to him in gaol. Prisoner X's mother explained, however, that what she was asked to do by Prisoner X had nothing to do with paying anyone any money, but may have involved her approaching a potential witness for Prisoner X's trial and persuading this person to give evidence at the trial, which she believed would help her son's case.

Prisoner X's mother told the Commission that her daughter, Prisoner X's sister, never told her about her meeting with Mr Te-Hira in April 2012, nor had Prisoner X told her that he had asked his sister to meet anybody on his behalf. She

also denied putting cash in the envelope which Prisoner X's sister said was inside the box that she delivered to Mr Te-Hira at their meeting in April 2012.

There is insufficient evidence to establish that Prisoner X's mother had any involvement in or knowledge of the subsequent meetings that took place between Mr Te-Hira, Prisoner X's sister and/or Mr Kamoschos, including the meeting on 21 June 2012. Prisoner X's mother agreed that there may have been an exchange of several telephone calls and text messages between herself and Mr Kamoschos on 19 and 20 June 2012, however, she did not recall any text messages exchanged between herself and Mr Kamoschos after he left her house with her daughter on 21 June 2012. She told the Commission that Mr Kamoschos did not say anything to her about the meeting that was to occur at Camperdown Hotel on that day, and she knew only that her daughter was going out with Mr Kamoschos that night. This evidence is consistent with the evidence of Mr Kamoschos, who said he did not recall having any discussion with Prisoner X's mother about the arrangements that had been made for the meeting on 21 June 2012.

Although there appears to have been an increased level of text messages between Prisoner X's mother and Mr Kamoschos, and between her and her daughter, in the days before and after the meeting on 21 June 2012, there is no evidence to support a finding that Prisoner X's mother was involved in procuring the goods taken to Mr Te-Hira for delivery to Prisoner X at that meeting or knew that this meeting was taking place.

There is no evidence suggesting that Prisoner X's mother was aware of the meeting between Mr Te-Hira and Mr Kamoschos at the University of Sydney on 28 June 2012.

In these circumstances, the Commission is not satisfied that Prisoner X's mother was involved in the provision of contraband goods or cash payments to Mr Te-Hira.

Corrupt conduct findings

Karaha Pene Te-Hira

The Commission finds that Mr Te-Hira engaged in corrupt conduct by:

- trafficking one pair of shoes, tweezers and a shaving razor, which he delivered to Prisoner X in April 2012, into the MSPC, in return for a cash payment exceeding \$50
- trafficking unspecified contraband items, which he delivered to Prisoner X in June 2012, into the MSPC

- trafficking two HTC mobile telephones, which he delivered to Prisoner X sometime after 28 June 2012, into the MSPC.

This is because the conduct outlined above adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of his official functions under section 8(1)(a) of the ICAC Act, constituted or involved the dishonest or partial exercise of his official functions within the meaning of section 8(1)(b) of the ICAC Act, and constituted or involved a breach of public trust under section 8(1)(c) of the ICAC Act. Such conduct is also conduct which adversely affected, or could have adversely affected, either directly or indirectly, the exercise of Mr Te-Hira's official functions and that could involve official misconduct within the meaning of section 8(2)(a) of the ICAC Act.

The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found concerning Mr Te-Hira's receipt of cash in April 2012 from Prisoner X's sister as a reward for taking contraband goods into the correctional facility 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 Te-Hira has committed the criminal offence of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act. The Commission is satisfied for the purposes of section 9(1)(a) of the ICAC Act that, if the facts it has found concerning Mr Te-Hira's trafficking of the contraband items specified 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 on which such a tribunal would find that Mr Te-Hira has committed the criminal offence of delivering or attempting to deliver anything to an inmate or bringing or attempting to bring anything into a place of detention under section 27E(2) of the Summary Offences Act.

The Commission is also satisfied for the purposes of section 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Te-Hira has, by trafficking contraband goods into gaol and by accepting payments in cash as specified above as a reward for such activities, committed disciplinary offences involving a substantial breach of an applicable code of conduct.

Prisoner X

Prisoner X was a defendant in an ongoing criminal trial at the time of the public inquiry. As a result, he was not called as a witness to give evidence at the public inquiry and, therefore, not provided with an opportunity to respond to

the allegations made against him. Accordingly, no finding of corrupt conduct is made against Prisoner X.

Prisoner X's sister

Notwithstanding that Prisoner X's sister clearly engaged in actions that had the effect of assisting Mr Te-Hira's activities in trafficking contraband items into the MSPC, the Commission does not find that her conduct was corrupt conduct within the meaning of the ICAC Act. This is because there is no evidence indicating that she knew Mr Te-Hira to be a correctional officer, that is, a public official, and therefore she could not have intended to influence the exercise of Mr Te-Hira's official functions by her actions.

George Kamoschos

Notwithstanding that Mr Kamoschos clearly engaged in actions that had the effect of assisting Mr Te-Hira's activities in trafficking contraband items into the MSPC, the Commission does not find that his conduct discussed above was corrupt conduct within the meaning of the ICAC Act. This is because there is no evidence indicating that he knew Mr Te-Hira to be a correctional officer, that is, a public official, and therefore he could not have intended to influence the exercise of Mr Te-Hira's official functions by his actions.

Prisoner X's mother

There is no evidence indicating that Prisoner X's mother had any knowledge of, or involvement in, the arrangements whereby Mr Te-Hira was to be provided with contraband goods and cash in return for delivering the contraband goods to Prisoner X, or in relation to the three meetings in April 2012 and on 21 and 28 June 2012 when the contraband goods and/or cash were provided to Mr Te-Hira. Accordingly, no finding of corrupt conduct is made against Prisoner X's mother.

Section 74A(2) statements

For the purposes of this chapter, Mr Te-Hira, Prisoner X, Prisoner X's sister, Prisoner X's mother and Mr Kamoschos are affected persons.

Karaha Pene Te-Hira

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Te-Hira for the criminal offence of corruptly receiving a reward contrary to section 249B(1) of the Crimes Act, in relation to his receipt of the cash payment from Prisoner X's sister in April 2012 in return for trafficking one pair of shoes, tweezers and a shaving razor into the MSPC and delivering them to Prisoner X.

Although Mr Te-Hira gave evidence under objection at the public inquiry, there is evidence of lawfully intercepted text messages available, and Mr Kamoschos and Prisoner X's sister could give evidence to assist in the prosecution of Mr Te-Hira for the above offence.

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 Te-Hira for any criminal offence under section 27E(2) of the Summary Offences Act in relation to his trafficking of any contraband goods for Prisoner X, as proceedings for this offence must be commenced not later than six months from the date on which the offence was alleged to have been committed, and this period has now expired.

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

Prisoner X

Prisoner X was not called as a witness to give evidence at the public inquiry and, therefore, not provided with an opportunity to respond to the allegations made against him. Accordingly, 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 Prisoner X for any criminal offences.

Prisoner X's sister

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 Prisoner X's sister for any criminal offence of aiding, abetting, counselling or procuring the commission by Mr Te-Hira of the offence of delivering or attempting to deliver anything to an inmate or bringing

or attempting to bring anything into a place of detention under section 27E(2) of the Summary Offences Act, as proceedings for this offence must be commenced not later than six months from the date on which the offence was alleged to have been committed, and this period has now expired.

George Kamoschos

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 Kamoschos for any criminal offence of aiding, abetting, counselling or procuring the commission by Mr Te-Hira of the offence of delivering or attempting to deliver anything to an inmate or bringing or attempting to bring anything into a place of detention under section 27E(2) of the Summary Offences Act, as proceedings for this offence must be commenced not later than six months from the date on which the offence was alleged to have been committed, and this period has now expired.

Prisoner X's mother

There is no evidence indicating that Prisoner X's mother had any knowledge of, or involvement in, the arrangements whereby Mr Te-Hira was to be provided with contraband goods and cash in return for delivering those goods to Prisoner X, or in relation to the three meetings in April 2012 and on 21 and 28 June 2012 when the contraband goods and/or cash were provided to Mr Te-Hira. The Commission is therefore not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Prisoner X's mother for any criminal offences.

Chapter 4: Corruption prevention

There are many pathways that lead correctional staff to smuggle contraband into a prison. Those who are emotionally weak, lonely, gregarious or needing approval may form close relationships with inmates; others may be excessively trusting and gullible, and able to be led to corrupt behaviour. Staff who are a little lax with the rules can find themselves blackmailed by inmates for past transgressions, and predatory staff may offer to smuggle in return for benefits. The Commission makes recommendations in this chapter to assist with managing such staff.

To a large extent, the security of the prison depends, first, on an effective barrier; the screening and searching of staff as they enter and, second, on detection of staff that pose a risk before corrupt behaviour occurs.

In 2010, the Commission reported on the smuggling of contraband into the John Morony Correctional Centre (refer to footnote 1). The majority of corruption prevention recommendations made in that report addressed aspects of gatehouse screening, including rotation of gatehouse personnel, procedures for responding to metal detection alerts, gatehouse layout changes to force staff to walk through metal detectors and closed-circuit television (CCTV) monitoring of the search area.

The Commission provides up to two years for agencies to implement its recommendations. The current matter occurred less than two years after the 2010 recommendations were made and before the final implementation report from CSNSW had been received by the Commission. The Commission was advised, however, that these recommendations were substantially implemented; why the conduct should reoccur warrants further investigation.

Screening and search procedures – not yet fully implemented

The Commission's 2010 report recommended that:

- gatehouse personnel at security screening points investigate alerts from metal detector machines and screening wands by requiring staff to empty their pockets and remove belts and shoes, and by examining all items
- walk-through metal detector screening machines be located in such a way that staff must walk through at least one when entering and exiting all correctional centres, and that staff be unable to walk around a metal detector screening machine
- at least one CCTV be located in a position where it can record searches of staff as they enter and exit, that film footage be recorded and kept to enable managers to check at regular intervals that staff were properly searched, and that managers make frequent checks of staff searches from this video footage.

The heritage restrictions on development of the Area 1 Gate at the MSPC had prevented a planned upgrade that would have provided walk-through metal detectors, X-ray screening, and CCTV monitoring. As screening by MSPC gatehouse staff was not monitored, there could be no certainty that screening procedure was adhered to by gatehouse staff.

Tracey Mannix, MSPC general manager, gave evidence that, as an activities officer, Mr Te-Hira was able to come and go from the MSPC during the day as his duties required and, although policy and procedure required him to be searched each time he went in and out, she had no certainty as to the adherence to this policy.

When asked about the frequency of hand-held metal detector “wandering”, Mr Te-Hira gave evidence that indicated screening procedures at the gatehouse were not an effective deterrent to smuggling contraband.

Q: Does that [wandering] happen on every occasion on which you pass through or only randomly?

A: Randomly.

Q: How often, on average in any given week, would you say you would have been subjected to the hand-held metal detector?

A: Maybe four days of the week.

It is likely that gate procedures would not have been as lax had monitoring by CCTV been in place. After search warrants were executed on 16 August 2012 and Mr Te-Hira’s conduct had been exposed, Ms Mannix was able to obtain approval for the installation of CCTV surveillance at the screening point of the gate, since CCTV installation alone did not significantly impact on the heritage status of the gate. Her closer monitoring of gatehouse staff screening practices had an immediate impact on gatehouse staff performance.

Q: But you’re confident it’s happening now as a result of the CCTV installed; is that right?

A: Absolutely, and if it’s not happening, and I’m actually watching what’s happening, I go downstairs and get the member of staff recalled back to the gate and searched correctly in accordance with policy.

In its 2010 report, the Commission recommended all alerts from screening devices be investigated. This recommendation was not being followed at the MSPC gatehouse. When asked to describe how gatehouse staff dealt with alarms triggered from a hand-held metal detector, Ms Mannix indicated that staff had a high degree of discretion as to how to react to any positive alarms.

A: Well, the occasions I’ve been there, the staff turned out their pockets. Otherwise, it’s done on face value.

Q: So it really is up to the particular security officer conducting the metal wandering at the time to determine how far to push the issue?

A: Absolutely.

Every officer’s clear plastic bag is also required to be visually searched; books and papers are not permitted in the bags. Yet Mr Te-Hira said that he was able to take contraband shoes through the screening point by putting them in the clear plastic bag with books or papers on either side. It is apparent from this evidence that Mr Te-Hira was able to traffic contraband into the MSPC by blatantly violating the rules about taking in books and papers.

In all likelihood, Mr Te-Hira was not searched because he was liked and trusted. David Cahill, MSPC manager of security and Mr Te-Hira’s supervisor, said of Mr Te-Hira:

I regarded Te-Hira as a very capable officer who was well liked by his peers. On many occasions I saw Te-Hira put his hand up to volunteer to assist with other duties in the centre; I liked that about him and we had a good rapport.

CSNSW is developing the *Public Correctional Centre Operating Standards – Security*, which will incorporate operations performance requirements and Commissioner’s directions into a single manual, including the recommendations arising from the Commission’s 2010 report. A draft was tendered at the public inquiry. Lee Downes, assistant commissioner of security and intelligence at CSNSW, described the draft document as “a concise set of statements about what we require in each of our correctional centres to provide the requisite level of security”.

Section 5 of this document specifies the process for screening all persons entering correctional centres. Sections 6 and 7 of the draft specify operational requirements for correctional centre gates, with 6 addressing those for minimum security and 7 for maximum and medium security. Taken together, the draft provisions prescribe all the operational requirements needed to ensure correctional facility security, including the prevention of contraband trafficking.

If the gatehouse at the MSPC cannot be upgraded to meet the requirements of section 7 of the draft because of its heritage status, an alternate entry point that complies with the standards will need to be considered.

Recommendation 1

That the draft, *Public Correctional Centre Operating Standards – Security*, be further developed by CSNSW and include relevant recommendations made by the Commission in its 2010 report, *Investigation into the smuggling of contraband into the John Morony Correctional Centre*, and those made as a result of this investigation.

CSNSW has indicated its commitment to review and update the draft *Public Correctional Centre Operating Standards – Security*. It has also undertaken to develop a monitoring system to ensure compliance with the standards following their implementation. CSNSW has further undertaken to conduct thematic reviews on aspects of security to ensure systems are functioning well. The Commission supports these actions. Until the standards are formally introduced, CSNSW’s Operational Performance Review Branch will continue to conduct security reviews and use the Daily Security Reporting System to monitor compliance with specified security elements.

Minimising the development of inappropriate relationships

An activities officer is in a situation where friendships can develop with inmates. CSNSW's code of conduct and "contact with offender" policy mandate the reporting by staff of inappropriate relationships by way of a declaration. This guidance, however, is unlikely to have impact on an officer who is unaware that the relationship has become too close or an officer who intentionally conceals an association with an inmate. Cathryn Hellams, acting executive director of professional standards at CSNSW, agrees this process is not adequate.

Q: If an officer is having inappropriate contact with an inmate or members of an inmate's family and they know that it's inappropriate, they're not likely to fill in the declaration, are they?

A: No.

Mr Zahed described the development of friendships between inmates and staff as follows:

We got a good – when you work at the sweepers, you get a good connection between the officers. You're with them every single day, you talk, you work with one another, so you build a bit of a good friendship.

The development of relationships in this way can be avoided to some extent by limiting the time staff spend in such posts. Posts that have a high level of social interaction with inmates carry a higher risk.

Rotation of officers, particularly those in high-risk posts, as is the case for activities officers, reduces the likelihood of an inappropriate relationship reaching the point of corruption or illegal behaviour. Ms Hellams acknowledged that, "rotation has staff development as well as corruption prevention benefits".

Industrial issues, however, have prevented the implementation of a formal rotation policy across CSNSW. Ms Hellams gave further evidence in this regard, as follows.

Q: Are the industrial issues that you refer to there the only reasons why there is no across-the-board rotation policy in Corrective Services?

A: I understand that it's one of the principal reasons.

She also indicated that CSNSW is of the view that efforts will be made to implement a rotation policy.

We have talked to the PSA [Public Service Association]... the union executive on numerous occasions about more formal rotation practices and building those into our rostering guidelines. It has been resisted both from the membership as well as the

executive, who reflect their membership's views. We continue to talk. Next year – well, it's actually due now – we have some award negotiations, and it will certainly be one of the things on the agenda to talk about.

Recommendation 2

That CSNSW implements a post rotation system for roles where familiarity can impact on officer behaviour; for example, roles that involve security screening and extensive interaction with inmates.

CSNSW proposes to implement an approach that balances efficient correctional management and corruption prevention imperatives, whereby one-third of staff are rotated on a biannual basis and gate posts are subject to mandatory rotation every six months. CSNSW advises that it will also maintain a register of staff rotations to ensure the balanced approach is maintained into the future. The Commission supports these actions.

Responding to red flags: empowering managers to deal with staff risks

It is not uncommon for officers to generate warning signs prior to corrupt or illegal behaviour. Some officers may appear to management as vulnerable to approaches by inmates and others may be seen as overly familiar toward inmates long before a relationship has led to wrongdoing. Ms Mannix had formed an opinion that Mr Te-Hira's personality was vulnerable to manipulation approximately 18 months prior to the exposure of his conduct. In order to monitor the situation, she "watched, observed and listened to what was being said around the centre".

There was evidence available that Mr Te-Hira's relationship with the sweepers was becoming too close. Mr Zahed gave evidence that he would ask Mr Te-Hira to get him meat and eggs because he was not allowed them and that "we used to eat together and stuff".

Sharing food at a table not only indicates a level of intimacy but also a shared status. Ms Mannix was asked whether such behaviour was overly familiar and warranted closer attention. Ms Mannix responded:

A: My personal opinion is, yes, that's getting too familiar.

Q: Did you ever hear reports of that behaviour occurring in relation to Mr Te-Hira?

A: Not sitting down and having meals with inmates, no.

Ms Mannix had few options to act on her longstanding concerns. Professional Standards at CSNSW operates a Risk Assessment Committee (RAC) that provides

assistance to managers where evidence is available to indicate that minor misconduct has occurred. This system, however, is unable to address more general management concerns about a staff member. Ms Mannix was asked during the Commission's inquiry whether she had referred officers she considered to be high risk to the RAC.

I've used the Risk Assessment Committee numerous times, but usually you have to have, I guess, your evidence substantiated before you can actually – before it actually progresses through the Risk Assessment Committee. I mean, I couldn't relay information just on gut feeling. For the risk assessment to take any further action, they need more solid evidence.

The concerns Ms Mannix had about the risk Mr Te-Hira posed did not allow her to refer him to the RAC. She was also unable to place him on a performance management plan. In short, there were no effective early intervention strategies available to managers like Ms Mannix that would mitigate the perceived risk posed by vulnerable officers.

Ultimately, the information that did come to Ms Mannix led her to suspect that Mr Te-Hira was smuggling contraband. Having formed this suspicion, but having no direct evidence, the only avenue open to her was to report the suspicion to the Corrections Intelligence Group at CSNSW. The matter was referred to Investigations and then subsequently to the Commission.

In response to the Commission's 2010 recommendation that a system be developed for early intervention, an Early Intervention System (EIS) is now under development. Ms Hellams described the EIS as a way "for managers to be able to input information about behaviours that they're identifying or observing with staff that could be a concern".

Ms Downes gave the following evidence:

...one of the things that I was really looking forward to with that [the EIS] was the fact that, from my understanding, my general managers would be able to scrutinise the records of their staff and see what was happening with them, but also that there would be a record or a pattern of behaviour that would be built up over a number of years of a staff member.

The EIS will work in the way Ms Downes anticipates only if comprehensive information is made available to managers, including concerns held by all relevant managers for a given staff member over time. At a minimum, this system would include management observations, staff disclosures, HR records, performance review information, minor incidents and misconduct.

The EIS database will also need to be supported by a policy and procedure that provides guidance about identifying risk factors and intervening appropriately. Systems that support

managerial intervention with staff considered to pose a risk to security also need to be provided.

Recommendation 3

That the Early Intervention System (EIS) currently being developed by CSNSW includes, at a minimum, management observations, staff disclosures, HR records, performance review information, minor incidents and misconduct.

The EIS is ultimately no more than a record-keeping system. Its effectiveness will depend on the quality of the information entered and the ability of managers to act on patterns and concerns that become apparent. It is not clear that managers have full knowledge of the risks associated with staff personalities and behaviours needed to make the system work. Ms Downes commented:

I also think that if we had... greater training, in identifying the sorts of risk factors that there are for our staff and where to go when that happens, I think that would also help.

Even with quality information, the EIS alone does not resolve the problem faced by personnel like Ms Mannix in managing staff like Mr Te-Hira. Across the NSW public sector, management concerns can be raised in conversations between managers and staff within a performance management system. CSNSW, however, does not have a performance management system in place and therefore has no formal forum for managers to discuss concerns with staff. This state of affairs makes it unnecessarily difficult for a manager to raise concerns with a staff member.

Union resistance is a central reason for performance management not having been implemented across CSNSW. Ms Hellams explained that:

I understand that the reasons are that performance management policies generally have a negative connotation and that they're purely punitive or disciplinary in nature rather than of a benefit for managers and staff to have a conversation about their performance, to identify areas of development, of improvement, give feedback about what they're doing well and what they can work with. And that's fairly consistent, I think, across all workplaces. That has been the principal reason in Corrective Services, as I understand it.

Recommendation 4

That CSNSW implements a performance management system.

From both a legal and interpersonal perspective, it is difficult for a manager to raise concerns with a staff

member that he or she is considered a risk. Regardless of whether a formal performance management system is implemented, dealing with high-risk staff therefore requires managers to have the requisite knowledge, ability and support.

Recommendation 5

That CSNSW educates managers on risk factors and supports managerial preventative intervention with regard to staff considered a potential security risk.

CSNSW has commenced reform initiatives, such as “Corrective Services NSW into the future” and “Let the leaders lead”. These are focused on removing the regional office layer of management and devolving operational, financial and administrative decision-making to correctional centre general managers and community offender managers. Under the new arrangements, correctional centre general managers and community offender managers will be responsible for implementing reforms (such as reforms linked to culture change, continuous improvement, governance and performance management) with support from Custodial Corrections and Community Corrections at CSNSW.

Extensive support services and professional development will be provided to equip managers for these roles.

These recommendations are made pursuant to section 13(3)(b) of the ICAC Act and, as required by section 111E of the ICAC Act, will be furnished to CSNSW and the Minister for Justice.

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

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

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

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 section 3 of the ICAC Act.

The Commission was created in response to community and Parliamentary concerns about corruption which had been revealed in, inter alia, various parts of the public service, causing a consequent downturn in community confidence in the integrity of that service. It is recognised that corruption in the public service not only undermines confidence in the bureaucracy but also has a detrimental effect on the confidence of the community in the processes of democratic government, at least at the level of government in which that corruption occurs. It is also recognised that corruption commonly indicates and promotes inefficiency, produces waste and could lead to loss of revenue.

The role of the Commission is to act as an agent for changing the situation which has been revealed. Its work involves identifying and bringing to attention conduct which is corrupt. Having done so, or better still in the course of so doing, the Commission can prompt the relevant public authority to recognise the need for reform or change, and then assist that public authority (and others with similar vulnerabilities) to bring about the necessary changes or reforms in procedures and systems, and, importantly, promote an ethical culture, an ethos of probity.

The principal functions of the Commission, as specified in section 13 of the ICAC Act, include investigating any circumstances which in the Commission's opinion imply that corrupt conduct, or conduct liable to allow or encourage corrupt conduct, or conduct connected with corrupt conduct, may have occurred, and cooperating with public authorities and public officials in reviewing practices and procedures to reduce the likelihood of the occurrence of corrupt conduct.

The Commission may form and express an opinion as to whether consideration should or should not be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of a person for a specified criminal offence. It may also state whether it is of the opinion that consideration should be given to the taking of action against a person for a specified disciplinary offence or the taking of action against a public official on specified grounds with a view to dismissing, dispensing with the services of, or otherwise terminating the services of the public official.

Appendix 2: Making corrupt conduct findings

Corrupt conduct is defined in section 7 of the ICAC Act as any conduct which falls within the description of corrupt conduct in either or both sections 8(1) or 8(2) and which is not excluded by section 9 of the ICAC Act.

Section 8 defines the general nature of corrupt conduct. Subsection 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.*

Subsection 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.

Subsection 9(1) provides that, despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve:

- a. *a criminal offence, or*
- b. *a disciplinary offence, or*

- c. *reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or*
- d. *in the case of conduct of a Minister of the Crown or a Member of a House of Parliament – a substantial breach of an applicable code of conduct.*

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 section 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.

Subsection 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 section 8 is not excluded by section 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.

Subsection 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 subsection 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 sections 8(1) or 8(2) of the ICAC Act. If they do, the Commission then considers section 9 and the

jurisdictional requirements of section 13(3A) and, in the case of a Minister of the Crown or a member of a House of Parliament, the jurisdictional requirements of subsection 9(5). In the case of subsection 9(1)(a) and subsection 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 subsections 9(1)(b), 9(1)(c) and 9(1)(d) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

A finding of corrupt conduct against an individual is a serious matter. It may affect the individual personally, professionally or in employment, as well as in family and social relationships. In addition, there are limited instances where judicial review will be available. These are generally limited to grounds for prerogative relief based upon jurisdictional error, denial of procedural fairness, failing to take into account a relevant consideration or taking into account an irrelevant consideration and acting in breach of the ordinary principles governing the exercise of discretion. This situation highlights the need to exercise care in making findings of corrupt conduct.

In Australia there are only two standards of proof: one relating to criminal matters, the other to civil matters. Commission investigations, including hearings, are not criminal in their nature. Hearings are neither trials nor committals. Rather, the Commission is similar in standing to a Royal Commission and its investigations and hearings have most of the characteristics associated with a Royal Commission. The standard of proof in Royal Commissions is the civil standard, that is, on the balance of probabilities. This requires only reasonable satisfaction as opposed to satisfaction beyond reasonable doubt, as is required in criminal matters. The civil standard is the standard which has been applied consistently in the Commission when making factual findings. However, because of the seriousness of the findings which may be made, it is important to bear in mind what was said by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362:

...reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or fact to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect

the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

This formulation is, as the High Court pointed out in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171, to be understood:

...as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct.

See also *Rejcek v McElroy* (1965) 112 CLR 517, the *Report of the Royal Commission of inquiry into matters in relation to electoral redistribution, Queensland, 1977* (McGregor J) and the *Report of the Royal Commission into An Attempt to Bribe a Member of the House of Assembly, and Other Matters* (Hon W Carter QC, Tasmania, 1991).

Findings of fact and corrupt conduct set out in this report have been made applying the principles detailed in this Appendix.



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