

ELECTORATE NAME: Parrith
 SURNAME: LAUNT FIRST NAME: _____
 (Details of relief officer working in the Electorate Office)
 EMPLOYEE NO: _____ OR _____

This form will be used to administer the entitlement and as the authority to pay the relief staff. Day Relief entitlement is utilised. The declaration that an electorate officer has worked engaged at the electorate office will meet the substantiation requirements that the terms of Rates indicated are effective from 14/7/06

Please tick one of the following to indicate the rate of pay for



INDEPENDENT COMMISSION
AGAINST CORRUPTION

Electorate Officer (EO) Claim Form

EMPLOYEE NO: _____

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

- Substantive rate of pay for Job Share EO1
- Substantive rate of pay for Job Share EO2
- Appointee is under 21 years and does not meet the criteria below
- Appointee is under 21 years and does not meet the criteria below
- Appointee is a university graduate with at least one years office experience or a person with four years or more office experience
- Appointee is a university graduate with at least one years office experience and in an on-going manner the following conditions and sporting non-routine correspondence
- Special Salary Scale: will perform under limited or no supervision and in an on-going manner the following conditions and sporting non-routine correspondence

Electorate Officer Grade 1

Salary Scale: \$16.50 per hour, \$19.34 per hour, \$20.68 per hour, \$22.80 per hour, \$28.34 per hour

Electorate Officer Grade 2

Salary Allow Scale: \$12.34 per hour, \$21.23 per hour, \$35.59 per hour

NAME of electorate officer working at Parliament House: Tim Horan

Relief Register Noted: 31/10/06

By: [Signature]

DATE of employment of relief staff in the electorate office:

Day	Date	Name
Mon	24/10	Tim Horan
Tues	25/10	Tim Horan
Wed	26/10	Tim Horan

Relief Electorate Officer: LAUNT

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

Signature: [Signature]

Date: 31/10/06

INVESTIGATION INTO THE SUBMISSION OF FALSE CLAIMS FOR SITTING DAY RELIEF PAYMENTS BY A NSW MP AND MEMBERS OF HER ELECTORATE STAFF

Name: Karyn Paluszana
 Signature: [Signature]
 Date: 28/10/06

Approved: [Signature] 31/10/06
 (Clerk of the Legislative Assembly or Delegate)

**ICAC REPORT
JULY 2010**

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

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Madam President
Mr Speaker

In accordance with section 74 of the *Independent Commission Against Corruption Act 1988* I am pleased to present the Commission's report on its investigation into the submission of false claims for entitlement payments by Karyn Paluzzano MP and members of her electorate staff.

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

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

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

Yours faithfully



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 allegations that Karyn Paluzzano, the NSW Member of Parliament for Penrith and members of her electorate staff, namely Timothy Horan, Jennifer Launt and Kerrie Donlan, made false claims for Sitting Day Relief (SDR) payments.

The SDR entitlement was introduced by Parliament in July 2006 for the purpose of financing the employment by Members of the Legislative Assembly of additional temporary officers for their electorate offices when electorate staff were at Parliament House for sitting days.

As a result of its investigation the Commission has established that in 2006 Mrs Paluzzano and Mr Horan agreed to represent falsely on the SDR claim forms that certain conditions for payment of the entitlement to Ms Launt had been met. Ms Donlan assisted in the implementation of the arrangement by filling out the SDR forms with false details. In return for receiving the benefits of SDR payments of around \$4,200, to which she was not in fact entitled, Ms Launt made herself available to work for Mrs Paluzzano at the Penrith electorate office and attended constituents at their homes, in the company of Mrs Paluzzano, to discuss issues of concern to them. This is a practice known as “door knocking”. In 2007, Mrs Paluzzano engaged three additional staff members and continued falsely to represent that the conditions for payment of the SDR had been met in order to claim around \$3,400 SDR so that they could be paid.

The investigation also examined an allegation that Mrs Paluzzano falsely claimed Electorate Mail-Out Account payments. This allowance is available to Members to fund the cost of printing and distributing correspondence to members of their constituency. The Commission found there was insufficient evidence to support this allegation.

Results

Findings that Mrs Paluzzano, Mr Horan, Ms Launt and Ms Donlan engaged in corrupt conduct in relation to their involvement in obtaining SDR payments are set out in Chapter 2 of the report.

Chapter 2 of the report contains a statement pursuant to section 74A(2) of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) that the Commission is of the opinion that consideration should be given to:

- obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of Mrs Paluzzano for the common law offence of misconduct in public office, offences of obtaining a valuable thing for herself and obtaining money for Ms Launt contrary to section 178BA of the *Crimes Act 1900* (NSW) (“the Crimes Act”) and offences of giving false or misleading evidence to the Commission contrary to section 87(1) of the ICAC Act; and
- taking action against Mr Horan, Ms Launt and Ms Donlan as public officials with a view to dismissing, dispensing with, or otherwise terminating their services.

Chapter 2 of the report also sets out the assistance provided to the Commission by Mr Horan and contains a statement that in recognition of that assistance, 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 Horan for any specified criminal offence.

Chapter 3 sets out the Commission’s corruption prevention response to the conduct disclosed during the investigation.

The Commission has made the following two recommendations to the Clerk of the Legislative Assembly:

Recommendation 1

That the Clerk of the Legislative Assembly:

- a) consider whether and if so, to what extent, door knocking engaged in by electorate officers may constitute or involve “electioneering” or “political campaigning”;
- b) review the range of duties currently performed by electorate officers to determine whether they perform other activities that may involve electioneering or political campaigning; and
- c) prepare written guidelines for Members and electorate officers that clearly define the terms, “electioneering” and “political campaigning”, advise whether the activities identified in paragraphs (a) and (b) of this recommendation are permissible activities for electorate officers to engage in and emphasise that funds provided for the salaries of electorate officers are intended as payment for the performance of those duties described in relevant position descriptions which do not include electioneering or political campaigning.

Recommendation 2

That the Clerk of the Legislative Assembly:

- a) consider whether Parliament’s audit program of Members’ entitlements has the capacity to detect corrupt conduct and; if not,
- b) develop, implement and regularly evaluate a corruption prevention strategy that includes:
 - a comprehensive risk assessment of the corruption risks in relation to the use of Members’ allowances and entitlements

- a corruption risk management plan describing the corruption risks identified and the strategies Parliament will adopt to manage each of these risks
- measures capable of detecting corrupt conduct and non-compliance by Members and electorate office staff.

The recommendations will be communicated to the Clerk of the Legislative Assembly with a request that an implementation plan for the recommendations be provided to the Commission. The Commission will also request progress reports and a final report on the implementation of the recommendations.

These reports will be posted 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 report concerns the Commission's investigation into whether Mrs Paluzzano and members of her staff, namely, Timothy Horan, Jennifer Launt and Kerrie Donlan made, or were involved in the making of, false declarations on SDR claim forms between 30 August 2006 and 28 June 2007.

The Commission also investigated whether Mrs Paluzzano had used money from her Electoral Mail-Out Account to fund the printing and mailing of a letter dated 19 January 2009 that had not been approved by the Clerk of the Legislative Assembly.

How the investigation came about

The Commission's investigation arose out of a complaint received from Mr Horan on 1 February 2010. Mr Horan, who had worked as an electorate officer for Mrs Paluzzano since 2003, reported to the Commission that in 2006 Mrs Paluzzano signed SDR claim forms for Jennifer Launt in which she falsely claimed that Ms Launt had worked at Parliament House as a relief officer when she had not. Mr Horan alleged that Mrs Paluzzano arranged for Ms Launt to 'repay' the days in respect of which she had improperly received payment by working on Ms Paluzzano's election campaign in late 2006 and early 2007. Mr Horan also alleged that Mrs Paluzzano falsely claimed payments from her Electorate Mail-Out Account to cover the cost of producing and distributing correspondence to constituents within the Penrith electorate.

Why the Commission investigated

The matters reported to the Commission were serious and would, if established, constitute corrupt conduct within the meaning of the ICAC Act. The role of a Member of Parliament is wide ranging and demanding. Members are provided various allowances and entitlements to facilitate their activities in this role. However, they are held strictly accountable for their use of public resources and specific mention of a Member's responsibility to apply public funds in a manner consistent with applicable guidelines and rules is made in the *Code of Conduct for Members of Parliament*. This is an instance of the overarching responsibility of

Members of Parliament to maintain the public trust placed in them by performing their duties with honesty and integrity. Mr Horan had alleged that Mrs Paluzzano had knowingly made false declarations in circumstances where her declaration, as a Member of Parliament, was required before public money could be paid to persons engaged to work on her behalf. In these circumstances, the Commission decided that it was in the public interest for it to conduct an investigation for the purpose of establishing whether corrupt conduct had occurred and whether there were any corruption prevention issues which needed to be addressed.

The Commission's role is set out in more detail in the Appendix to this report.

Conduct of the investigation

The Commission's investigation involved obtaining information and documents from the Department of the Legislative Assembly by issuing notices under sections 21 and 22 of the ICAC Act as well as interviewing and obtaining statements from a number of witnesses.

Evidence was taken from six witnesses, including Ms Launt and Mrs Paluzzano, at compulsory examinations. Mrs Paluzzano denied any involvement in falsely claiming SDR payments. However, the Commission had reason to doubt her denial. Ms Launt admitted that she had not worked as a relief officer in respect of some of the days for which she had received SDR payments and other evidence indicated that most of the 2006 SDR claim forms, all of which had been signed by Mrs Paluzzano, falsely represented that Mr Horan had worked at Parliament House on the days stated.

The public inquiry

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

inquiry. In making that determination the Commission had regard to the following considerations:

- The seriousness of the alleged conduct involving the misuse of public resources for personal benefit by a Member of Parliament.
- The public interest in exposing the matter outweighed the public interest in preserving the privacy of the persons concerned in the matter.
- The desirability of publicly exposing the risks and systems failures that may have allowed the conduct to occur.

The Hon David Ipp AO QC, Commissioner, presided at the inquiry and Christine Adamson SC acted as Counsel Assisting the Commission. The public inquiry was conducted over four days, commencing on 3 May 2010 and continuing until 6 May 2010. Mrs Paluzzano and seven other witnesses gave evidence.

At the conclusion of the public inquiry Counsel Assisting the Commission prepared submissions setting out the evidence and what findings and recommendations the Commission could make based on that evidence. These submissions were provided to Mrs Paluzzano and other persons and submissions in response were invited. All submissions in response received by the Commission have been taken into account in preparing this report.

Chapter 2: False claims for Sitting Day Relief

This chapter examines the conduct engaged in by Karyn Paluzzano and members of her staff in falsely claiming the Sitting Day Relief (SDR) entitlement, sets out the Commission's findings and contains a statement required to be made under section 74A(2) of the ICAC Act.

Mrs Paluzzano's election to Parliament and recruitment of electorate staff

In 2003 Mrs Paluzzano was elected as the NSW Member of Parliament for Penrith.

On 29 April 2003, Mrs Paluzzano's first day in Parliament as the Member of Penrith, the *Code of Conduct for Members*, which is applicable to Members of the Legislative Assembly, including Mrs Paluzzano, was adopted as a sessional order in the Legislative Assembly. Clause four of the Code relevantly provided that Members must apply the public resources to which they are granted access according to any guidelines or rules about the use of those resources. The preamble to the Code reminded Members of their responsibility to "maintain the public trust placed in them by performing their duties with honesty and integrity, respecting the law and the institution of Parliament, and using their influence to advance the common good of the people of New South Wales".

Upon her election to Parliament, Mrs Paluzzano was entitled to the services of an Electorate Officer Grade 1 (EO1) and an Electorate Officer Grade 2 (EO2). These officers, who are employed by the Speaker of the Legislative Assembly, provide administrative assistance and other support to Members of Parliament to enable them to fulfil their parliamentary and constituency responsibilities. These officers perform their role at the Member's electorate office, which is the point of contact with the Member of Parliament for constituents and local community groups regarding state government services and responsibilities.

In 2003, Mrs Paluzzano recruited Timothy Horan to the position of EO1. In 2004, he was promoted to the position of EO2 and took over the role of office manager, media advisor and speech writer.

In 2004, Mrs Paluzzano recruited Kerrie Donlan to work three days a week, namely on Monday, Tuesday and Friday, as an EO1. Ms Donlan shared the position with Rhonda Medlen who worked on Wednesday and Thursday of each week.

Jennifer Launt commenced work as a volunteer for Mrs Paluzzano in 2005 when she hosted a morning tea for a community group at Parliament House. Thereafter she gained paid employment in the office relieving Mr Horan, Ms Donlan or Ms Medlen on days they took leave from the office. Ms Launt was appointed to the position of EO1 within Mrs Paluzzano's office on 10 May 2007. Prior to that date she was not a graded Electorate Officer.

The Parliamentary Remuneration Tribunal introduces funding for an additional relief officer within the electorate office

Parliamentary remuneration, in the form of basic salary, additional salary and expense allowances is a matter of statutory entitlement under the *Parliamentary Remuneration Act 1989* (NSW). The Parliamentary Remuneration Tribunal (PRT) is established under this Act and makes annual determinations including determinations on staffing for Members.

Prior to making its determination for 2006 the PRT invited submissions from Members of the Legislative Assembly on additional entitlements and staffing levels. The PRT noted in its determination on 13 July 2006 that the Members of the Legislative Assembly were seeking a third full-time electorate officer in their electorate offices. Members argued, in support of the additional officer, that the workload in electorate offices had significantly increased

over the years. Various Members also submitted to the PRT that it was their practice to bring one electorate officer into Parliament at times when Parliament is sitting. This was said to create an occupational health and safety risk for the officer remaining in the office.

The PRT determined not to provide for a third full-time electorate officer. Instead it provided funding to each Member so that they could employ casual relief staff equivalent to the average number of days that Parliament sat per annum, which at that time was 61 days. The PRT determined, however, that funds would be available only to pay temporary staff who worked in the electorate office when the Member brought one of his or her graded electorate staff to Parliament House on sitting days. This became known as the SDR entitlement.

The Memorandum of 18 August 2006

On 18 August 2006, the Office of the Clerk of the Legislative Assembly faxed a six-page memorandum entitled “Implementation of Parliamentary Remuneration Tribunal Determination 2006 – Staffing” to all electorate offices within NSW including Mrs Paluzzano’s electorate office at Penrith. The memorandum, which was addressed to all Members of the Legislative Assembly and electorate officers, contained draft procedures for implementing the SDR entitlement and invited comment and enquiries from Members. The draft was adopted as an administrative practice by the Speaker of the Legislative Assembly on 29 September 2006. The second page of the memorandum contained an extract of the portion of the PRT’s determination dealing with the introduction of the new entitlement, the SDR. The second page of the memorandum also set out in clear terms the prescriptive conditions of the SDR; that is, payment could be claimed only to fund a temporary officer who relieved at the Member’s electorate office for an electorate officer who worked at Parliament House on a sitting day.

The memorandum specified that proof that the conditions of the SDR entitlement had been met depended upon the Member and relief officer signing a declaration to that effect. The declaration had to be made on a claim and payment form, a pro forma copy of which was attached to the memorandum. The name of the electorate officer who worked at Parliament and the name and dates upon which the temporary officer acted as a relief officer had to be written on the form. The Member was required to declare that the electorate officer nominated on the form worked at Parliament House and was relieved by the temporary officer on the days identified. The relief officer was required to declare that he or she had worked at the electorate office on the days identified on the claim form.

An agreement to falsify claims for the Sitting Day Relief entitlement in 2006 (“the scheme”)

Mrs Paluzzano and Mr Horan

Mr Horan said he collected the memorandum from the fax machine on or about 18 August 2006 and gave it a cursory reading. He said he read enough of the memorandum to alert him to the fact that the new entitlement provided an opportunity to obtain another staff member for the office. He placed the memorandum in Mrs Paluzzano’s reading folder. Mrs Paluzzano said she had no recollection of the memorandum being brought to her attention by any of her staff members.

Mr Horan said that around one week later Mrs Paluzzano suggested to him and Ms Donlan that in connection with the SDR entitlement there might be a different way of doing things. According to Mr Horan, Mrs Paluzzano explained that it would be more beneficial if she did not send an officer to Parliament but made arrangements for that officer to work at the electorate office. Mr Horan agreed with Mrs Paluzzano. He said he welcomed the assistance another staff member could provide the office. They agreed that Ms Launt, who was a capable and efficient worker, was the ideal person to fulfil the role of the third staff member. Mr Horan said that Mrs Paluzzano intended to implement the scheme by arranging for the SDR forms to represent that Ms Launt had accompanied her to Parliament when, in fact, Mrs Paluzzano would attend Parliament alone as was her usual practice.

Ms Medlen overheard Mr Horan and Mrs Paluzzano discuss ways to remunerate Ms Launt through the SDR entitlement, and gave evidence about the conversation at the public inquiry. Ms Medlen said that during the conversation Mrs Paluzzano and Mr Horan discussed arranging for Ms Launt to receive payments for working extra days not based on her employment on those days but on her fictitious employment on sitting days. The substance of this conversation was not disputed by Mrs Paluzzano or Mr Horan.

Mr Horan said it was his understanding that Mrs Paluzzano intended to represent falsely on the SDR claim forms that Ms Launt had worked at Parliament House on sitting days. He said that at the time and until recently he assumed that Ms Launt would be paid under the SDR entitlement if she worked at Parliament House on sitting days.

Mr Horan was mistaken in this regard. In 2006, Ms Launt was not an EO1 or EO2 and in that year engaged in casual relief work only on occasions when Mr Horan, Ms Donlan or Ms Medlen had taken leave from the office. At the time SDR was only available when a relief officer relieved at

the electorate office on a sitting day when an electorate officer accompanied the Member to Parliament. Had Mrs Paluzzano implemented the plan in the manner envisaged by Mr Horan, SDR would not have been paid for Ms Launt. As it turned out, and unbeknown to Mr Horan, Mrs Paluzzano falsely declared on various SDR forms that Mr Horan had worked at Parliament House on sitting days in the latter half of 2006. These forms had been prepared by Ms Donlan to give the appearance that the conditions for payment had been met. On this false basis SDR was paid to Mrs Paluzzano's electorate office.

These circumstances gave rise to a submission made on behalf of Mr Horan that Mrs Paluzzano and Ms Donlan implemented a scheme that was distinct from the one contemplated by Mr Horan and to which he was not a party. The Commission does not accept this submission. Mr Horan was under no illusion that Mrs Paluzzano intended to sign SDR forms that contained false representations that Ms Launt had worked at Parliament House when she had not, and that this did not comply with the determination of the PRT. The Commission is satisfied that Mr Horan had reached an understanding with Mrs Paluzzano that Ms Launt would receive payments to which she was not entitled and that this would be brought about by Mrs Paluzzano deceiving Parliament into believing (falsely) that an officer had attended Parliament when they had not. That Mr Horan may have misapprehended the manner in which the scheme was to be implemented and that others, including Ms Donlan, may have appreciated the need to modify the finer details of the scheme in order to obtain the payments, does not change the fact that Mr Horan was party to an overall common design to obtain the SDR allowance for Ms Launt by the deception described above.

It was also submitted on behalf of Mr Horan that he always intended that Ms Launt would work at the electorate office but not in respect of those days when she received payment from the SDR entitlement. In these circumstances, it was argued, Mr Horan had only contemplated that false statements would be made about where and when Ms Launt worked. This was said to be a lesser deception. However, this submission overlooks the fact that Mr Horan knew, in general terms, that the decision to pay the SDR entitlement was determined by reference to whether an officer worked at Parliament House on a sitting day. Mr Horan knew that Mrs Paluzzano intended to state falsely that a person (Ms Launt) had worked at Parliament House in order to obtain payments on a false basis. False representations about where and when officers worked were at the heart of the deception to which Mr Horan was party. The Commission rejects this submission.

For her part, Mrs Paluzzano denied that she had conceived the plan to falsely claim payments in favour of Ms Launt. According to Mrs Paluzzano, Mr Horan devised the

scheme and proposed that she make false representations on the SDR forms to the effect that the conditions of the SDR entitlement had been met. She said that she approved of the scheme and, in order to implement it, knowingly made false declarations on the SDR forms that an electorate officer had worked at Parliament House on sitting days when they had not. As Mr Horan and Mrs Paluzzano shared an intention to deceive Parliament it is not necessary to determine who proposed the idea.

Mrs Paluzzano and Mr Horan testified that the purpose of the scheme was to ensure that Mrs Paluzzano, without any cost to herself, obtained the paid services of Ms Launt without having to have an electorate officer accompany her to Parliament on sitting days. Both persons said they contemplated that Ms Launt would work at the electorate office on days other than sitting days. The Commission is satisfied that the reason for this was to ensure that Ms Launt and Mrs Paluzzano were available to undertake door knocking duties together on days when Parliament did not sit. Door knocking was a practice regularly engaged in by Mrs Paluzzano with Ms Launt and other staff members, during which they visited constituents at their homes to discuss concerns they held about local issues that affected them. Undertaking door knocking with Ms Launt and at the same time maintaining the presence of two electorate officers at her office allowed Mrs Paluzzano to promote herself as an efficient and hardworking Member.

Ms Donlan and Ms Launt

Mr Horan said that Ms Donlan was present at the conversation during which Mrs Paluzzano proposed the scheme. However, Ms Donlan and Mrs Paluzzano had no such recollection and Ms Medlen said that Ms Donlan was not present at the conversation which she overheard. There was no evidence before the Commission of Ms Launt's involvement in discussions with Mrs Paluzzano or Mr Horan about the scheme. There is insufficient evidence to find that Ms Launt and Ms Donlan were express parties to the scheme agreed upon by Mrs Paluzzano and Mr Horan. However, the Commission is satisfied that as a result of Mrs Paluzzano's decision to implement the scheme, Ms Launt and Ms Donlan engaged in the conduct described below.

The implementation of the scheme

Mrs Paluzzano and Mr Horan

From 29 August 2006 to 23 November 2006, Parliament sat on 27 days.

Mrs Paluzzano claimed SDR payments in respect of 22 of the 27 sitting days. The table below summarises the information recorded on the forms for 2006 which led to the payment of the SDR allowance.

Table 1: Sitting Day Relief Forms for 29 August 2006 to 23 November 2006

All sitting days from 29 August 2006 to 23 November 2006	Electorate officer said to be in Parliament	Relief officer said to be in the Penrith electorate office
August		
Tuesday 29	Nil	Nil
Wednesday 30	Rhonda Medlen	Jennifer Launt
Thursday 31	Nil	Nil
September		
Tuesday 5	Tim Horan	Jennifer Launt
Wednesday 6	Tim Horan	Jennifer Launt
Thursday 7	Tim Horan	Jennifer Launt
Tuesday 19	Tim Horan	Jennifer Launt
Wednesday 20	Tim Horan	Jennifer Launt
Thursday 21	Tim Horan	Jennifer Launt
Tuesday 26	Tim Horan	Joan Goodman
Wednesday 27	Tim Horan	Jennifer Launt
Thursday 28	Tim Horan	Jennifer Launt
October		
Tuesday 17	Kerrie Donlan	Joan Goodman
Wednesday 18	Tim Horan	Jennifer Launt
Thursday 19	Tim Horan	Jennifer Launt
Friday 20	Nil	Nil
Tuesday 24	Tim Horan	Jennifer Launt
Wednesday 25	Tim Horan	Jennifer Launt
Thursday 26	Tim Horan	Jennifer Launt
Friday 27	Nil	Nil
November		
Tuesday 14	Tim Horan	Joan Goodman
Wednesday 15	Tim Horan	Joan Goodman
Thursday 16	Tim Horan	Joan Goodman
Friday 17	Nil	Nil
Tuesday 21	Tim Horan	Jennifer Launt
Wednesday 22	Tim Horan	Jennifer Launt
Thursday 23	Tim Horan	Jennifer Launt

In order to claim the payments, Mrs Paluzzano signed various claim forms on which she declared that Mr Horan had worked at Parliament House on 20 of the 27 sitting days, Rhonda Medlen had worked at Parliament on 30 August 2006 and Ms Launt had relieved at the electorate office for Mr Horan and Ms Medlen on 17 days.

These declarations were false. Mrs Paluzzano said that no-one from the Penrith electorate office attended Parliament with her in the latter half of 2006. Mr Horan could not recall working at Parliament House in the latter half of 2006, although he left open the possibility that he may have attended Parliament on one or two days. In the case of Ms Medlen, she said that she never worked at Parliament House aside from occasions when she hosted community groups at Parliament. Mr Horan was on leave on 30 August 2006, the day on which Ms Donlan is said to have worked at Parliament, and Ms Medlen agreed that she would not have met a community group at Parliament House on that day as it would have left Ms Donlan alone in the electorate office. Ms Launt said she could not recall an occasion when Mr Horan worked at Parliament House and she worked at the electorate office. Ms Launt admitted that she did not work at the electorate office on most of the days claimed on the forms. She said she worked on other days at the direction of Mr Horan and Ms Donlan.

Mrs Paluzzano admitted that she knew the SDR forms were false and misleading when she signed them and the Commission finds accordingly.

It was not disputed that Mrs Paluzzano and Ms Launt, at the direction of Mr Horan, went door knocking on days other than sitting days. Mr Horan said that the door knocking engaged in by Mrs Paluzzano and Ms Launt was a form of electioneering and part of the overall strategy to improve Mrs Paluzzano's prospects of re-election. Mrs Paluzzano said it was a legitimate part of an electorate officer's function to go door knocking with a Member. She and Ms Launt denied that they engaged in campaigning activities on these occasions. Ms Launt acknowledged, however, that the amount of door knocking she undertook with Mrs Paluzzano increased as the March 2007 election approached.

It was beyond the scope of the Commission's investigation to determine whether the activities engaged in by Mrs Paluzzano and Ms Launt on the occasions they went door knocking constituted campaigning. However, the extent to which door knocking of any sort is a legitimate part of an electorate officer's statement of duties and related issues are discussed further in Chapter 3 of this report.

Ms Donlan

Ms Donlan agreed that she wrote on the SDR forms the name of the electorate officer who was said to have worked at Parliament House, the name of the relieving officer who was said to have worked at the electorate office and the sitting days upon which both officers were said to have worked. Ms Donlan then gave the forms to Ms Launt and Mrs Paluzzano for their signature and submitted the forms to the Department of the Legislative Assembly for payment.

The information written on the forms by Ms Donlan was false. She was questioned at the public inquiry about her role in filling out the forms. The Commission is not satisfied that she was a reliable witness. Circumstances which tended to indicate misconduct on her part initially elicited an attempt by Ms Donlan, judged in the light of her subsequent evidence, to minimise her involvement in improper conduct. At other times she attempted to avoid implicating herself altogether by claiming a lapse of memory. Further questioning of Ms Donlan often drew from her greater admissions of involvement in misconduct.

Ms Donlan maintained throughout her evidence that she had been directed by Mr Horan to complete the forms in a false manner. Mr Horan disputed this claim. He said he did not see the SDR forms until after the Commission commenced its investigation. Had Mr Horan directed Ms Donlan in the manner she claimed then he would have necessarily possessed knowledge of the conditions that had to be met before a claim would be paid. Little advantage accrued to Mr Horan from withholding this from the Commission in circumstances where he made admissions sufficient to implicate him in the plan to obtain payments for Ms Launt to which she was not entitled. Furthermore, the Commission considers it is unlikely that Mr Horan would have seen it as in his interest to direct Ms Donlan to complete the forms in a way that focused any subsequent investigative enquiry on him.

While there are compelling reasons why Ms Donlan's evidence about this matter should be rejected, the Commission does not find it necessary to decide this issue. Even accepting the possibility that Ms Donlan had been directed by Mr Horan as to how to complete the forms, this does not assist her. The SDR forms for the latter half of 2006 were completed in a false manner to ensure that the conditions for payment were met. Ms Donlan admitted filling out the forms knowing they contained falsehoods and that they would be relied upon by the Parliamentary administration to determine whether Ms Launt should be paid for SDR.

Ms Donlan said that notwithstanding the fact that she had been instructed by Mr Horan as to how to fill out

the forms, she eventually completed the forms without his direction. She said this was because she suspected a scheme existed which involved representing on the SDR forms that the officer who worked at the electorate office had worked at Parliament House and the officer who worked at Parliament House had relieved at the electorate office. Ms Donlan said she thought that by implementing this scheme they were "bending the rules".

Ms Donlan said that she knew that Mr Horan did not attend Parliament in the latter half of 2006 and agreed that she knew rather than suspected that she was falsely recording on the SDR forms that Mr Horan had worked at Parliament House. Ms Donlan testified that as she was directed by Mr Horan to fill out the forms she did not understand the purpose for doing so at the time. She said, however, that there was a calendar within the office that highlighted sitting days for 2006 and that she relied upon this calendar to ensure a claim was made for SDR in respect of most of the sitting days. The Commission notes that this conduct is not consistent with her evidence that she was acting without knowledge of a purpose. Later in her evidence Ms Donlan agreed that she filled out the SDR forms with false information for the purpose of obtaining payments from Parliament.

Ms Launt

Ms Launt signed various SDR claim forms in which she declared that she had relieved at the electorate office for Ms Medlen, who was working at Parliament on one sitting day, and Mr Horan, who was working at Parliament on 16 sitting days. She was paid around \$4,200. The Commission is satisfied that her declarations were false, for the reasons already discussed.

Ms Launt said she did not appreciate the falsity of her declarations at the time she signed the forms. She said that what she did appreciate at that time, however, was the fact that she had declared falsely on many of the forms that she had worked on specific days at the office when she had not. Ms Launt said that on many occasions she did not work at all on the days claimed on the forms but worked on other days at the direction of Mr Horan and Ms Donlan. Ms Launt said that, as she knew the forms were false by reason of the fact that she had not worked on the days claimed, she did not scrutinise the forms with any care and did not really appreciate that the other information recorded on them concerning the identity of the electorate officer working at Parliament was also false.

Ms Launt said that she kept a note of the days in respect of which she had been paid but had not worked. This was to assist her in keeping track of the days she owed Mrs Paluzzano. Ms Launt said that, conscious of the improper

circumstances in which she was paid, she was diligent in ensuring that she worked on other days which were equivalent in number to the days for which she had been paid. She said she discussed how many days were owing to Mrs Paluzzano with Mr Horan and Ms Donlan and that each was involved in directing her as to which days she should attend for work, which were generally the busiest.

There was no evidence before the Commission that Ms Launt knew of the agreement entered into between Mrs Paluzzano and Mr Horan. The Commission is satisfied that Ms Launt was generally a credible witness and accepts that at the relevant time she was not knowingly participating in the scheme agreed upon by Mrs Paluzzano and Mr Horan. Nevertheless, Ms Launt acknowledged and the Commission finds that she declared falsely on many of the SDR forms that she had worked as a relief officer on specific days when she had not.

False claims for SDR are submitted in 2007

Mrs Paluzzano was re-elected as the Member for Penrith at the March 2007 election. The code of conduct applicable to Mrs Paluzzano, the *Code of Conduct for Members of Parliament*, was adopted by the Legislative Assembly as a sessional order on 8 May 2007, being the first day of the first session following the 2007 state election. Relevantly, the code of conduct did not differ from the code adopted following the 2003 state election.

Sitting Day Relief entitlement provisions remained unaltered after the March 2007 election. On 30 August 2007 the PRT determined that it would adjust the conditions of the SDR entitlement so that Members could obtain the assistance of relief officers on any days that met their convenience. This meant that the nexus between parliamentary sitting days and the employment of additional staff was abandoned.

Staff changes took effect at the Penrith electorate office in early 2007. On 10 May 2007, Ms Launt replaced Ms Medlen and was appointed as an EO1. This meant that on or after 10 May 2007 Mrs Paluzzano could engage an SDR officer to work at the Penrith electorate office provided Ms Launt worked at Parliament House on a sitting day. The same held true when Ms Donlan and Mr Horan worked at Parliament House on sitting days. Ms Launt shared the position with Ms Donlan and worked Thursdays and Fridays. Ms Donlan worked Mondays to Wednesdays. Mr Horan continued as the EO2.

Mrs Paluzzano obtained the services of Grace Gumkowski, Melanie Palmer and Keely Horan (Mr Horan's sister) in 2007. These persons were nominated on the SDR forms as

the officers who relieved at the Penrith office for Ms Launt, Ms Donlan or Mr Horan, who were said to have worked at Parliament House on sitting days. The table below summarises the information recorded on the SDR forms for the period under review which led to the payment of the SDR entitlement.

Table 2: Sitting Day Relief Forms for 8 May 2007 to 28 June 2007

All sitting days from 8 May 2007 to 28 June 2007	Electorate officer said to be in Parliament	Relief officer said to be in the Penrith electorate office
May		
Tuesday 8	Kerrie Donlan	Grace Gumkowski
Wednesday 9	Kerrie Donlan	Grace Gumkowski
Thursday 10	Jennifer Launt	Melanie Palmer
Tuesday 29	Kerrie Donlan	Melanie Palmer
Wednesday 30	Jenny Launt	Grace Gumkowski
Thursday 31	Jenny Launt	Melanie Palmer
June		
Friday 1	Jenny Launt	Melanie Palmer
Tuesday 5	Kerrie Donlan	Melanie Palmer
Wednesday 6	Kerrie Donlan	Jenny Launt
Thursday 7	Jenny Launt	Melanie Palmer
Friday 8	Jenny Launt	Melanie Palmer
Tuesday 19	Kerrie Donlan	Jenny Launt
Wednesday 20	Tim Horan	Keely Horan
Thursday 21	Jenny Launt	Keely Horan
Friday 22	Jenny Launt	Melanie Palmer
Tuesday 26	Jenny Launt	Melanie Palmer
Wednesday 27	Jenny Launt	Melanie Palmer
Thursday 28	Jenny Launt	Keely Horan

Claims for SDR were made in respect of all sitting days between 8 May 2007 and 28 June 2007, the last sitting day before the PRT delivered its annual determination for 2007.

It was not disputed that for the most part Ms Gumkowski, Ms Palmer and Ms Horan worked at Parliament House on the days claimed for employment on the 2007 SDR forms, and the Commission finds accordingly. Mrs Paluzzano said that, except for one SDR form dated 6 June 2007 which contained a forgery of her signature, she knowingly made

false declarations on the forms. The Commission is satisfied that over the period in question Mrs Paluzzano falsely represented that Ms Gumkowski, Ms Palmer and Ms Horan worked at the electorate office and that Ms Donlan, Ms Launt and Mr Horan worked at Parliament House in order to comply with the PRT determination. The Commission is also satisfied that Mrs Paluzzano continued with the arrangement to falsely claim the SDR entitlement in 2007 because Ms Donlan, Mr Horan and Ms Launt preferred to work at the electorate office. Furthermore, it was more efficient for Mrs Paluzzano, who generally attended Parliament on her own, to have her most experienced electorate officers at the Penrith office where they had access to files and could continue with electorate office work.

Ms Gumkowski said she was directed to work at Parliament House on two consecutive days in May 2007 by Ms Donlan. On the first day, being 8 May 2007, she said she travelled to Parliament House with Mrs Paluzzano and spent much of her time setting up Mrs Paluzzano's parliamentary office. Ms Gumkowski said that Ms Donlan gave her a form to complete in respect of her two days' work at Parliament. The form indicated that Ms Donlan had worked at Parliament on 8 and 9 May 2007. Ms Gumkowski said she was responsible for writing on the form that Ms Donlan had worked at Parliament on 8 May 2007. She said she returned the form to Ms Donlan after she had completed it. This evidence was not challenged by Ms Donlan. Ms Gumkowski said she could not say who had written on the form that Ms Donlan had worked at Parliament on 9 May 2010. Ms Gumkowski said that she did not read the SDR form closely before she signed it and was unaware it contained false representations that Ms Donlan had worked at Parliament and that she (Ms Gumkowski) had relieved at the electorate office. There is no other available evidence to suggest that Ms Gumkowski appreciated that what she was doing was wrong and the Commission makes no adverse finding against her.

Ms Palmer said that while she could not recall her whereabouts on specific days she more frequently worked at Parliament House than the Penrith electorate office. Ms Palmer estimated that she attended Parliament as a relief officer on around 10 occasions. Ms Palmer said she completed many of the SDR forms and left them in Mrs Paluzzano's folder for her signature. She said she did not read the forms and thought at the time that there was nothing significant about where a relief officer worked. She said this explained why, on many occasions, she had written on the form that a graded electorate officer had attended Parliament when, in fact, she had. Ms Palmer said she did not appreciate what she was doing was wrong. There is no evidence available to the Commission to suggest otherwise and the Commission makes no adverse finding against her.

Ms Horan also worked at Parliament House and recorded on the SDR form that she had done so. An examination of the form indicates, however, that her name had been crossed out as the officer at Parliament and substituted with Ms Launt's name. Substitution of Ms Launt's name on the form was intended to ensure that the claim form met the conditions of the entitlement and that Ms Horan received a payment for working at Parliament House to which she was not entitled. Ms Horan could not explain how this occurred and Ms Donlan denied altering the form. The Commission makes no finding in relation to this issue. There is no evidence that Ms Horan knew that she was not entitled to receive an SDR payment for working at Parliament House and the Commission makes no adverse finding against her.

Ms Launt said that it was more likely that she first attended Parliament on 7 June 2007 when she collected a security pass for entry to Parliament House. She said it was more likely that she worked at the electorate office and that Ms Palmer or Ms Gumkowski worked at Parliament House during the period in 2007 under investigation. Ms Launt did not sign any of the SDR forms in the period under review and the Commission makes no adverse finding against her in respect of this period.

Ms Donlan admitted that she wrote what purports to be Ms Launt's signature on the form dated 6 June 2007. She suggested, however, that Ms Launt had given her permission to do so. Ms Donlan denied forging Mrs Paluzzano's signature on the document. However, she said she completed the other details on the form including recording herself as the person who worked at Parliament House. Ms Gumkowski said that she was not aware of Ms Donlan attending Parliament House when she worked for Mrs Paluzzano, that Ms Donlan preferred to work in the electorate office and that Ms Donlan had said that she did not feel comfortable working at Parliament House. This evidence was not challenged by Ms Donlan and the Commission is satisfied that Ms Donlan did not work at Parliament House on the sitting days as claimed in the SDR forms.

Ms Donlan acknowledged that she was the custodian of the SDR forms and arranged for them to be submitted to Parliament for payment. She also said that she ensured a claim was made for each available sitting day. The Commission is satisfied and so finds that Ms Donlan knew that most of the SDR forms she submitted to Parliament for payment in the period under review in 2007 contained false representations to the effect that she and other electorate officers worked at Parliament House and that the relief officers nominated on the forms worked at the Penrith electorate office.

Corrupt conduct

Section 8(1) and 8(2) of the ICAC Act provides that a corrupt conduct finding may be made in relation to the conduct of public officials and 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 a public official or any public authority.

Mrs Paluzzano was, at all material times, a Member of the Legislative Assembly and a public official as defined in the ICAC Act. As employees of the Speaker of the Legislative Assembly, Mr Horan, Ms Launt and Ms Donlan are public officials as defined in the ICAC Act.

Three steps are involved in determining whether or not corrupt conduct has occurred in a particular matter.

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

The second is to determine whether the conduct, which has been found as a matter of fact, comes within the terms of sections 8(1) or 8(2) of the ICAC Act. A corrupt conduct finding may be made in circumstances where persons conspire to engage in conduct that would be corrupt conduct under section 8(1) or 8(2) of the ICAC Act.

The third and final step is to determine whether the conduct also satisfies the requirements of section 9 of the ICAC Act.

Karyn Paluzzano

Karyn Paluzzano acted corruptly in: agreeing with Mr Horan to engage in conduct that involved deceiving Parliament into believing (falsely) that an officer had worked at Parliament House on sitting days, when they had not, for the purpose of obtaining SDR payments for Ms Launt to which she was not entitled; and her conduct in making false declarations on SDR forms to obtain SDR payments for Ms Launt, Ms Gumkowski, Ms Palmer and Ms Horan to which they were not entitled.

This is because her conduct:

- adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of official functions by Ms

Launt, Ms Donlan and Mr Horan (that is, those functions connected with making declarations on claim forms in the case of Ms Launt, preparing forms for signature in the case of Ms Donlan, and in the case of Mr Horan deploying staff consistent with the purpose for which they were remunerated) and therefore comes within section 8(1)(a) of the ICAC Act;

- constituted or involved the dishonest or partial exercise by Mrs Paluzzano of her official functions and therefore comes within section 8(1)(b) of the ICAC Act;
- constituted or involved a breach of public trust on the part of Mrs Paluzzano and therefore comes within section 8(1) (c) of the ICAC Act; and
- adversely affected, or could have adversely affected, either directly or indirectly, the exercise of official functions by Ms Launt, Ms Donlan, Mr Horan and Parliament (that is, those functions connected with determining an application for payment for SDR) and could involve official misconduct or fraud and therefore comes within sections 8(2)(a) and 8(2)(e) of the ICAC Act.

Such conduct could also, for the purposes of section 9(1) (a) of the ICAC Act, constitute or involve the following criminal offences on the part of Mrs Paluzzano:

- conspiring to commit the common law offence of misconduct in public office;
- the common law offence of misconduct in public office;
- obtaining a valuable thing (the services of Ms Launt) for herself contrary to section 178BA of the Crimes Act; and
- obtaining money for Ms Launt contrary to section 178BA of the Crimes Act.

Mrs Paluzzano correctly acknowledged that her conduct constituted a substantial breach of clause four of the code of conduct applicable to Members of the Legislative Assembly. It could not seriously be argued to the contrary. The Commission is satisfied that for the purpose of section 9(1)(d) of the ICAC Act, Mrs Paluzzano's conduct could constitute or involve a substantial breach of clause 4 of the codes of conduct adopted by the Legislative Assembly on 29 April 2003 and 8 May 2007.

Timothy Horan

Timothy Horan acted corruptly in agreeing with Mrs Paluzzano to engage in conduct that involved deceiving Parliament into believing (falsely) that an officer had

worked at Parliament House on sitting days when they had not for the purpose of obtaining SDR payments for Ms Launt to which she was not entitled and his conduct in directing Ms Launt to work for Mrs Paluzzano.

This is because his conduct:

- adversely affected, or could have adversely affected, either directly or indirectly, the honest or impartial exercise of official functions by Mrs Paluzzano, Ms Launt and Ms Donlan (that is, those functions connected with making declarations on claim forms in the case of Mrs Paluzzano and Ms Launt and preparing forms for signature in the case of Ms Donlan) and therefore comes within section 8(1)(a) of the ICAC Act; and
- adversely affected, either directly or indirectly, the exercise of official functions by Mrs Paluzzano, Ms Launt, Ms Donlan and Parliament (that is, those functions connected with determining an application for payment for SDR) and could involve official misconduct or fraud and therefore comes within sections 8(2)(a) and 8(2)(e) of the ICAC Act.

Such conduct could also, for the purposes of section 9(1)(a) of the ICAC Act, constitute or involve the following criminal offences on the part of Mr Horan:

- conspiring to commit the common law offence of misconduct in public office;
- conspiring to commit the offence of obtaining a valuable thing for Mrs Paluzzano contrary to section 178BA of the Crimes Act; and
- conspiring to commit the offence of obtaining money for Ms Launt contrary to section 178BA of the Crimes Act.

For the purpose of section 9(1)(c) of the ICAC Act, Mr Horan's conduct could constitute or involve reasonable grounds for dismissing, dispensing with, or otherwise terminating his services.

Kerrie Donlan

Kerrie Donlan acted corruptly in knowingly preparing false SDR claim forms for the signature of Mrs Paluzzano and Ms Launt and knowingly submitting false SDR forms to the Parliament for payment.

This is because her conduct:

- adversely affected, either directly or indirectly, the honest or impartial exercise of official functions by Mrs Paluzzano, Ms Launt and Mr Horan (that is, those functions connected with making

declarations on claim forms in the case of Mrs Paluzzano and Ms Launt and in the case of Mr Horan deploying staff consistent with the purpose for which they were remunerated) and therefore comes within section 8(1)(a) of the ICAC Act;

- constituted or involved the dishonest or partial exercise by Ms Donlan of her official functions and therefore comes within section 8(1)(b) of the ICAC Act; and
- adversely affected, either directly or indirectly, the exercise of official functions by Mrs Paluzzano, Ms Launt, Mr Horan and Parliament (that is, those functions connected with determining an application for payment for SDR) and could involve official misconduct or fraud and therefore comes within sections 8(2)(a) and 8(2)(e) of the ICAC Act.

Such conduct could also, for the purposes of section 9(1)(a) of the ICAC Act, constitute or involve the following criminal offences on the part of Ms Donlan:

- the common law offence of misconduct in public office;
- the offence of obtaining a valuable thing for Mrs Paluzzano contrary to section 178BA of the Crimes Act; and
- the offence of obtaining money for Ms Launt contrary to section 178BA of the Crimes Act.

For the purpose of section 9(1)(c) of the ICAC Act, Ms Donlan's conduct could constitute or involve reasonable grounds for dismissing, dispensing with, or otherwise terminating her services.

Jennifer Launt

Jennifer Launt acted corruptly in making false declarations on SDR claim forms that she had worked at the electorate office on specific days when she had not. This is because her conduct:

- adversely affected, either directly or indirectly, the honest or impartial exercise of official functions by Mrs Paluzzano, Ms Donlan and Mr Horan (that is, those functions connected with making declarations on claim forms in the case of Mrs Paluzzano, submitting forms for payment in the case of Ms Donlan and in the case of Mr Horan deploying staff consistent with the purpose for which they were remunerated) and therefore comes within section 8(1)(a) of the ICAC Act;
- constituted or involved the dishonest or partial exercise by Ms Launt of her official functions and therefore comes within section 8(1)(b) of the ICAC Act; and

- adversely affected, either directly or indirectly, the exercise of official functions by Mrs Paluzzano, Ms Launt, Ms Donlan, Mr Horan and Parliament (that is, those functions connected with determining an application for payment for SDR) and could involve official misconduct or fraud and therefore comes within sections 8(2)(a) and 8(2)(e) of the ICAC Act.

Such conduct could also, for the purposes of section 9(1)(a) of the ICAC Act, constitute or involve the following criminal offences on the part of Ms Launt:

- the common law offence of misconduct in public office; and
- the offence of obtaining money for herself contrary to section 178BA of the Crimes Act.

For the purpose of section 9(1)(c) of the ICAC Act, Ms Launt's conduct could constitute or involve reasonable grounds for dismissing, dispensing with, or otherwise terminating her services.

Electorate Mail-Out Account

Mr Horan alleged that Mrs Paluzzano recovered the cost of sending letters to her constituents by misrepresenting to the Department of the Legislative Assembly that they were letters which had been approved for payment from her Electorate Mail-Out Account (EMO Account) when they had not. Members may apply for reimbursement of the cost of printing and sending such letters from the EMO Account, provided the Clerk of the Legislative Assembly approves the letter in advance of the mail out.

Mr Horan alleged that Mrs Paluzzano funded the cost of writing to constituents on 19 January 2009 from her EMO Account without applying to the Clerk of the Legislative Assembly for approval beforehand. However, Mr Horan's evidence in relation to this issue was unsatisfactory as he could not rule out the possibility that Mrs Paluzzano had paid for the letter herself. Mrs Paluzzano denied engaging in any improper conduct in relation to the use of her EMO Account. There is insufficient evidence to substantiate this allegation and no finding of corrupt conduct can be made in regard to it.

Section 74A(2) statement

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

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

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

The Commission is satisfied that Mrs Paluzzano, Mr Horan, Ms Donlan and Ms Launt come within the definition of 'affected person'.

Karyn Paluzzano

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

However, in the course of the investigation the Commission has obtained other evidence that would be admissible in the prosecution of Mrs Paluzzano. In particular, the evidence of Mr Horan, Ms Launt, Ms Donlan, Ms Gumkowski, Ms Palmer and Ms Horan is admissible against Mrs Paluzzano.

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 Mrs Paluzzano for the following offences:

- the common law offence of misconduct in public office;
- obtaining a valuable thing for herself contrary to section 178BA of the *Crimes Act 1900* (NSW); and
- obtaining money for Ms Launt contrary to section 178BA of the *Crimes Act 1900* (NSW).

Mrs Paluzzano gave evidence before the Commission at a compulsory examination on 16 April 2010. During the course of her evidence, she denied that she had knowingly been a party to any improper conduct in relation to claiming money for persons employed in her office and at another point in her evidence said that it was the practice of her office to have someone accompany her each day she

went to Parliament from 30 August 2006. Mrs Paluzzano admitted during her evidence at the public inquiry that these answers were deliberately false.

The Commission, therefore, is also of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mrs Paluzzano for offences under section 87 of the ICAC Act of giving false or misleading evidence in relation to her evidence before the Commission on 16 April 2010 that:

- she was not knowingly party to any improper conduct in relation to claiming monies either for her office or for any employee; and
- to her knowledge it was the practice of her office to have someone accompany her each day she went to Parliament from 30 August 2006.

Timothy Horan, Kerrie Donlan and Jennifer Launt

Mr Horan gave evidence following a declaration made pursuant to section 38 of the ICAC Act. The effect of that declaration is that his evidence cannot be used against him in any subsequent criminal prosecution, except a prosecution for an offence under the ICAC Act. However, other evidence would be available to the DPP, most notably the evidence of Ms Medlen, who overheard a conversation between Mr Horan and Mrs Paluzzano during which they discussed the scheme, and to a lesser extent the evidence of Ms Launt who was directed by Mr Horan to work for Mrs Paluzzano on non-sitting days.

It was submitted on behalf of Mr Horan that in recognition of the assistance provided to the Commission by Mr Horan, the Commission should decline to give consideration to obtaining the advice of the DPP with respect to the prosecution of him or the taking of action against him with a view to dismissing his services. The Commission is satisfied that Mr Horan provided invaluable information to the Commission as a whistleblower. It is true to say that without his assistance, which continued throughout the Commission's investigation, the misconduct described in this chapter would not have been exposed.

Mr Horan reported his concerns about Mrs Paluzzano to the Commission in circumstances where he and Mrs Paluzzano had become disaffected. Immediately prior to his disclosure to the Commission, Mr Horan felt aggrieved by Mrs Paluzzano's handling of work-related issues concerning him and it is not unreasonable to conclude that his reasons for coming forward included a desire to satisfy a personal interest. Nevertheless, the content of Mr Horan's report of corrupt conduct concerned matters which were very much in the public interest. The Commission is of the view

that whistleblowers like Mr Horan should be encouraged to report serious allegations of misconduct. In these circumstances and in recognition of the assistance provided by Mr Horan, 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 Horan for any specified criminal offence.

The Commission is, however, of the opinion that consideration should be given to the taking of action against Mr Horan with a view to dismissing, dispensing with the services of or otherwise terminating his services on the grounds that he engaged in the misconduct described in this chapter. This is because the Commission has found that Mr Horan was inextricably involved in the misconduct the subject of his disclosure to the Commission. By entering into an agreement with Mrs Paluzzano about the scheme, Mr Horan encouraged her to implement it. By directing Ms Launt to undertake door knocking with Mrs Paluzzano, Mr Horan helped to realise the goal of obtaining the paid services of Ms Launt in favour of Mrs Paluzzano. The Commission is satisfied that Mr Horan's involvement in the misconduct was greater than that of Ms Launt or Ms Donlan. In these circumstances, the Commission is not persuaded that it should decline to form an opinion that consideration be given to the taking of action against Mr Horan with a view to dismissing his services.

Ms Launt and Ms Donlan gave evidence following declarations made pursuant to section 38 of the ICAC Act. The effect of those declarations is that their evidence cannot be used against them in a subsequent criminal prosecution, except a prosecution for an offence under the ICAC Act.

The Commission is satisfied that there is insufficient admissible evidence available against Ms Launt or Ms Donlan and is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Launt or Ms Donlan for any specified criminal offence. However, the Commission is of the opinion that consideration should be given to the taking of action against Ms Launt and Ms Donlan with a view to dismissing, dispensing with the services of or otherwise terminating their services on the grounds that they engaged in the misconduct described in this chapter.

Chapter 3: Corruption prevention

This chapter discusses two issues that emerged during the Commission's investigation. The first part of this chapter focuses on Ms Launt's involvement in door knocking and recommends that Parliament consider whether an electorate officer who engages in such activity is involved in the prohibited conduct of electioneering or political campaigning. The second part of this chapter identifies that Parliament had few measures in place in 2006 capable of detecting the misconduct engaged in by Mrs Paluzzano and others, acknowledges the recent changes introduced by Parliament to improve the management of Members' entitlements and recommends that Parliament examine those changes to ensure that they are capable of detecting corrupt conduct.

Guidance about campaigning, electioneering and door knocking

Mr Horan said he was attracted to the idea of exploiting the SDR entitlement because it meant he could deploy Ms Launt, as an extra paid staff member, to undertake campaign work in the form of door knocking for which he would otherwise have had to find volunteers. He said that an additional staff member increased Mrs Paluzzano's prospect of re-election which, in turn, meant that he would retain his position as the senior electorate officer.

The Commission has not found it necessary to make findings of fact about the nature of the door knocking activities engaged in by Mrs Paluzzano and Ms Launt in the lead up to the March 2007 election. However, the door knocking engaged in by Ms Launt and Mrs Paluzzano, which according to Ms Launt increased as the March 2007 election approached, was bound up with the misconduct described in chapter 2. Evidence given by Mr Horan, referred to above, raises a suspicion that the door knocking was part of a strategy calculated to secure Mrs Paluzzano's re-election. This suspicion is supported by evidence given by Ms Launt. While Ms Launt did not equate door knocking with campaigning in 2006, she said she was

politically naive at the time and acknowledged that, upon reflection, Mr Horan may have organised the timing and location of her door knocking with Mrs Paluzzano in accordance with a political strategy.

Had Ms Launt looked to Parliament for advice in 2006 as to whether door knocking was an acceptable practice to engage in as a relief electorate officer, she would have received little assistance. Parliament prohibits electorate officers, including relief electorate officers, from engaging in activities of a direct electioneering or political campaigning nature during their employment. This prohibition is found in the descriptions of duties applicable to electorate officers dated May 2006, the *Code of Conduct for Members' staff* dated June 2006 and a memorandum sent to electorate officers by the Clerk of the Legislative Assembly in May 2006 as part of an information sheet describing the duties and responsibilities of officers in the lead up to the state election in March 2007. These documents do not attempt to define the terms, "electioneering", or "political campaigning" or provide examples of the prohibited activities. Most if not all Members and electorate officers, however, would understand that by the use of these terms Parliament intended to prohibit electorate officers from engaging in activities that promoted the candidacy of the Member with a view to securing his or her re-election. Problems may arise, however, where electorate officers are engaged in activities which, while consistent with their role in providing support to the parliamentary role of the Member, directly or indirectly promote the political aspirations of the Members. As Ms Launt said during her evidence at the public inquiry, "I suppose everything you do in the office is with a view to put Karyn in a good light and get people to vote for you".

Door knocking is one such activity that potentially presents a difficulty for electorate officers. It is arguable that door knocking engaged in by an electorate officer (in company with the Member), during which the concerns of constituents are addressed or information is provided to constituents about the services offered by the Member and staff at the electorate office, is consistent

with an electorate officer's duties. However, it is also a demonstration by the Member to his or her constituents that he or she is active within the local community, accessible to the electorate and willing to connect with constituents. Political candidates engage in door knocking, which is a common election strategy, because they hope it will create these sorts of positive images in the minds of voters. Cultivating these perceptions by door knocking in the lead-up to an election may have a favourable impact on a Member's candidacy, and if engaged by an electorate officer, at the direction of the Member, may constitute electioneering, regardless of the fact that blatant forms of campaigning are not undertaken.

The Department of the Legislative Assembly has advised the Commission that it was unaware that electorate officers engaged in door knocking in 2006 and the issue as to whether door knocking by electorate officers constitutes "political campaigning" or "electioneering" has yet to be considered. The Commission is of the view that the terms, "political campaigning" and "electioneering" require careful explication so that Members and electorate officers are guided as to whether door knocking, and any other activities performed by electorate officers that may fall into a similar category, are permissible activities for electorate officers to engage in during election campaigns or at any time.

Recommendation 1

That the Clerk of the Legislative Assembly:

- a) **consider whether and if so, to what extent, door knocking engaged in by electorate officers may constitute or involve "electioneering" or "political campaigning";**
- b) **review the range of duties currently performed by electorate officers to determine whether they perform other activities that may involve electioneering or political campaigning; and**

- c) **prepare written guidelines for Members and electorate officers that clearly define the terms, "electioneering" and "political campaigning", advise whether the activities identified in paragraphs (a) and (b) of this recommendation are permissible activities for electorate officers to engage in and emphasise that funds provided for the salaries of electorate officers are intended as payment for the performance of those duties described in relevant position descriptions which do not include electioneering or political campaigning.**

Detection by Parliament

False claims for SDR would have gone unnoticed had it not been for Mr Horan's disclosure to the Commission on 1 February 2010. In 2006, Parliament had few, if any, measures in place to detect the misconduct identified in this report. Administrative officers within the Department of the Legislative Assembly did conduct checks of the SDR forms. However, these checks were designed to ensure that the SDR claim form complied with the PRT determination and the administrative guidelines issued by Parliament. No use was made of other leave forms relating to staff at the Penrith electorate office as a means of checking whether the representations on the SDR forms were true. For example, an SDR claim form submitted by Ms Donlan to Parliament indicated (falsely) that Mr Horan had worked at Parliament on 21 September 2006. A leave form for Mr Horan was also submitted to Parliament around the same time indicating (correctly) he was on sick leave on 21 September 2006.

The *Code of Conduct for Members' staff* advised electorate officers that they could make disclosures to the Clerk of the Legislative Assembly, the ICAC and other investigative agencies about corrupt conduct and other forms of misconduct. However, it is noteworthy that Ms Launt said she gave the code of conduct a cursory reading and Ms Medlen said she was not aware of the code of the conduct

at all. Furthermore, the fact Ms Launt's and Ms Medlen's continued employment at Mrs Paluzzano's electorate office depended upon Mrs Paluzzano's re-election operated as a disincentive to Ms Launt and Ms Medlen to report any concerns they may have had about Mrs Paluzzano's conduct. In these circumstances, Parliament needed more stringent measures in place to detect misconduct.

The Commission has been advised by Parliament that in 2008 it requested IAB Services to conduct a review of the management of Members' entitlements. This review found that the practice of having Parliamentary administrative officers check Members' claim forms for compliance with applicable PRT determinations and Parliamentary guidelines was largely inefficient. Recognising that the onus is on the Member to show that expenditure of allowances relates to Parliamentary duties, the report recommended that scrutiny of claim forms to determine compliance with applicable PRT determinations and Parliamentary guidelines should be replaced by an audit program, administered by Parliament, consisting of:

- an external audit of the administration of Members' entitlements by the NSW Audit Office as required by the PRT Determinations;
- an internal audit of individual Members' use of entitlements with each Member being audited at least once every four years; and
- random internal audits covering a sample of all allowances and entitlements in any given year.

The Commission has been advised that Parliament has accepted the recommendations and is in the process of implementing them. As part of the process of implementation, Parliament advises that it is developing an education and training program for Members and their staff regarding the new administrative arrangements and audit program. Parliament anticipates that these training programs will involve temporary staff and include components dealing with the code of conduct, fraud and corruption awareness and protected disclosures.

Parliament's new strategy for scrutinising the use of entitlements is entirely audit-focused. It is the Commission's

experience that audit programs are often not designed to or capable of detecting corrupt conduct.

Recommendation 2

That the Clerk of the Legislative Assembly:

- a) consider whether Parliament's audit program of Members' entitlements has the capacity to detect corrupt conduct and; if not,
- b) develop, implement and regularly evaluate a corruption prevention strategy that includes:
 - a comprehensive risk assessment of the corruption risks in relation to the use of Members' allowances and entitlements
 - a corruption risk management plan describing the corruption risks identified and the strategies Parliament will adopt to manage each of these risks
 - measures capable of detecting corrupt conduct and non-compliance by Members and electorate office staff.

Appendix: The role of the Commission

The *Independent Commission Against Corruption Act 1988* ("the ICAC Act") is concerned with the honest and impartial exercise of official powers and functions in, and in connection with, the public sector of New South Wales, and the protection of information or material acquired in the course of performing official functions. It provides mechanisms which are designed to expose and prevent the dishonest or partial exercise of such official powers and functions and the misuse of information or material. In furtherance of the objectives of the ICAC Act, the Commission may investigate allegations or complaints of corrupt conduct, or conduct liable to encourage or cause the occurrence of corrupt conduct. It may then report on the investigation and, when appropriate, make recommendations as to any action which the Commission believes should be taken or considered.

The Commission can also investigate the conduct of persons who are not public officials but whose conduct adversely affects or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority. The Commission may make findings of fact and form opinions based on those facts as to whether any particular person, even though not a public official, has engaged in corrupt conduct.

The ICAC Act applies to public authorities and public officials as defined in section 3 of the ICAC Act.

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

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

The principal functions of the Commission, as specified in section 13 of the ICAC Act, include investigating any circumstances which in the Commission's opinion imply that corrupt conduct, or conduct liable to allow or encourage corrupt conduct, or conduct connected with corrupt conduct, may have occurred, and co-operating 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.



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