

ICAC

INDEPENDENT COMMISSION
AGAINST CORRUPTION



**INVESTIGATION INTO
THE ACCEPTANCE OF
CORRUPT BENEFITS BY
A CITY OF CANADA BAY
COUNCIL EMPLOYEE**

**ICAC REPORT
DECEMBER 2010**

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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 receipt of corrupt benefits by an employee of the City of Canada Bay Council.

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 the conduct of Hedley Peter Higgs, an employee of the City of Canada Bay Council (“the CCBC”). The investigation primarily concerned allegations that Mr Higgs obtained corrupt benefits from CCBC contractors in return for ensuring they were given CCBC work.

The contractors were Ozzie Pools and Concrete Pty Ltd, which changed its name to Jet Civil Pty Ltd on 1 July 2008, a company owned by Thomas David Turner, and Ezy Bobcat Pty Ltd, a company owned by Ahmad Hraichie.

Results

The Commission finds that Mr Higgs engaged in corrupt conduct in relation to:

- arranging for Mr Turner to do free work at his house sometime between 2004 and 2005, in 2007 and in 2009, and accepting the gift of a Quintrex 470 Top Ender boat and trailer (worth \$32,155) in 2008 from Mr Turner, as rewards for having previously favoured Mr Turner’s company in relation to the awarding of CCBC work to that company and in the expectation that Mr Higgs would continue to do so
- soliciting \$6,000 from Mr Hraichie and receiving at least \$4,000 from him in return for disclosing to him how much he should quote to win the CCBC contract for work on the Wareemba Village project, and accepting other payments from Mr Hraichie relating to other CCBC work.

The Commission also finds that Mr Turner engaged in corrupt conduct in relation to providing benefits to Mr Higgs.

No finding of corrupt conduct is made against Mr Hraichie.

The report contains 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 Higgs for offences of:

- receiving corrupt rewards from Mr Turner and Mr Hraichie, contrary to section 249B(1) of the *Crimes Act 1900*
- giving false and misleading evidence, contrary to section 87(1) of the ICAC Act
- fabricating a document with the intent to mislead the Commission, contrary to section 88(3) of the ICAC Act.

As Mr Higgs resigned from the CCBC sometime after the public inquiry, the issue of taking disciplinary action against him does not arise.

The report contains statements pursuant to section 74A(2) of the ICAC Act that the Commission is of the opinion that the advice of the DPP should be obtained with respect to the prosecution of Mr Turner for offences of:

- giving a corrupt benefit to Mr Higgs, contrary to section 249B(2) of the *Crimes Act 1900*
- giving false and misleading evidence, contrary to section 87(1) of the ICAC Act
- fabricating a document with the intent to mislead the Commission, contrary to section 88(3) of the ICAC Act.

Corruption prevention

Chapter 4 sets out the Commission’s corruption prevention response to the conduct disclosed during the investigation. It contains the following recommendations:

Recommendation 1

That City of Canada Bay Council (CCBC) staff be prohibited from using preferred or regular CCBC contractors to carry out private works, except in exceptional circumstances. In these circumstances, approval is to be granted by a senior manager.

Recommendation 2

That the CCBC develops methods to:

- a. compel staff to justify their selection of preferred civil contractors
- b. compel the creation of regular records concerning contractor performance and availability.

Recommendation 3

That the CCBC, as far as is feasible, ensures the function of rating contractor performance and availability is independent of the function of allocating work.

Recommendation 4

That the CCBC provides code of conduct and complaint process briefings to new contractors, and conducts regular compulsory briefings with existing contractors.

Recommendation 5

That the CCBC Audit and Risk Committee identifies high risk positions and, where practicable, rotates managers or places acting managers from outside the area into those positions on a regular basis.

As part of the performance of its statutory functions, the Commission will monitor the implementation of the recommendations made in this report. The recommendations will be communicated to the CCBC, with a request that a plan for their implementation be provided to the Commission. The Commission will also request a progress report 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 chapter sets out background information concerning the investigation and those principally involved.

How the investigation came about

On 13 May 2009, Mr Hraichie met with the CCBC Mayor and General Manager. At the meeting, he alleged that CCBC contractors had made corrupt payments to a CCBC officer. He did not mention any names at that stage. He was asked to put his allegations in writing, and he did so later that day in a typed note.

The first issue he raised in the note concerned the circumstances in which his company, Ezy Bobcat, had missed out on the opportunity to apply to be one of the CCBC's preferred civil contractors. Mr Hraichie was overseas when applications were sought. He claimed that he had been informed by another contractor that Mr Higgs had wanted to exclude Mr Hraichie's company so that Mr Higgs' friend, Mr Turner, could get more CCBC work. Mr Hraichie also claimed that Mr Turner had previously paid Mr Higgs in return for getting CCBC work.

Mr Hraichie also claimed that in early 2008, Mr Higgs told him the CCBC's budget for excavation and removal of waste on the Wareemba Village project so that Mr Hraichie could successfully quote to do that work. He claimed that, in return, Mr Higgs asked for \$2,000 for each of the three stages of the project. Mr Hraichie claimed he paid Mr Higgs \$6,000. He also claimed that other contractors, whom he did not name, had made payments to Mr Higgs.

The allegations were reported to the Commission on 2 June 2009 by Gary Sawyer, the CCBC's General Manager.

Why the Commission investigated

The allegations reported to the Commission were serious and would, if established, constitute corrupt conduct within the meaning of the ICAC Act.

Given the limited powers of the CCBC to investigate the allegations, the Commission decided it was in the public interest for it to conduct an investigation. The purpose of the investigation was to establish whether corrupt conduct had occurred, the extent of any such corrupt conduct, and whether there were any corruption prevention issues that needed to be addressed.

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

Conduct of the investigation

Mr Hraichie gave evidence at a compulsory examination on 9 July 2009 in which he confirmed the allegations he had made to the CCBC's Mayor. He claimed that he had started to make payments to Mr Higgs, in either late 1997 or early 1998, of \$50 for each day of CCBC work in order to continue to get CCBC work. He said that Mr Higgs had not asked for payment but he had been told by other contractors that he should pay Mr Higgs if he wanted CCBC work.

The Commission conducted four further compulsory examinations. These took place between 18 June and 8 July 2010. Mr Higgs and Mr Turner gave evidence. Both denied that Mr Higgs ever sought or received any benefits from Mr Turner in return for ensuring Mr Turner's company received CCBC work. Mr Higgs also denied soliciting or receiving payments from Mr Hraichie.

As part of its investigation, the Commission obtained information and documents from various sources by issuing notices under sections 21 and 22 of the ICAC Act. These sections, respectively, require public officials to provide statements of information, and public officials and others to

produce specified documents. One purpose of issuing these notices was to investigate Mr Higgs' financial position.

As a result, it was discovered that Mr Higgs had paid off a \$340,000 home mortgage in a little over four years, at a time when the combined income of Mr and Mrs Higgs was insufficient to account for such a rapid and substantial repayment. The investigation examined whether this apparently unexplained wealth was the result of corrupt payments that Mr Higgs had received from CCBC contractors.

The public inquiry

The Commission reviewed the information that had been gathered and the evidence given at the compulsory examinations. After taking this material into account, 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 considered the following:

- the desirability of establishing whether Mr Higgs was receiving corrupt benefits from CCBC contractors, and, if so, the extent of such conduct
- the desirability of publicly exposing any system failures and procedural inadequacies
- the public interest in exposing the matter outweighed the public interest in preserving the privacy of the persons concerned in the matter.

The public inquiry was conducted over four days between 19 and 22 July 2010. Evidence was taken from 13 witnesses. The Hon David Ipp AO QC, Commissioner, presided at the inquiry, and Greg Curtin acted as Counsel Assisting the Commission.

At the conclusion of the public inquiry, submissions were prepared setting out the evidence, and what findings and recommendations the Commission could make based on that evidence. These submissions were provided to Mr Higgs, Mr Turner and other relevant persons, and the

submissions received by the Commission in response have been taken into account in preparing this report.

The people

Hedley Peter Higgs


In January 1995, Mr Higgs commenced employment as a works assistant with Drummoyne Municipal Council. In 2000, Drummoyne Municipal Council and Concord Municipal Council amalgamated to become the CCBC. On 14 April 2008, Mr Higgs was promoted to Manager, City Services. In this position, Mr Higgs was responsible for coordinating and managing tenders and contractors for CCBC work.

Throughout his employment with the CCBC, Mr Higgs had frequent contact with CCBC's preferred civil contractors. In 1996, as a result of a tender process, the CCBC established a preferred civil contractors list. A further tender process was conducted in 2005, and another was underway in 2009 when Mr Hraichie made his allegations. Until about 2009, most CCBC work, irrespective of value, was awarded to preferred civil contractors. Although three quotes were meant to be obtained before awarding work, this requirement was not always met. Mr Higgs was involved in engaging preferred civil contractors to undertake CCBC work, and in overseeing that work.

Apart from working for the CCBC, Mr Higgs also worked part-time for TAFE, undertook paid football refereeing work, and worked as a consultant painter. Apart from his part-time TAFE employment, Mr Higgs did not disclose his other secondary employment to the CCBC.

Thomas David Turner

Mr Turner is a concreter by trade. He first worked for the CCBC when he was the owner of Ozzie Pools and Concrete Pty Ltd ("Ozzie Pools"), which changed its name to Jet Civil Pty Ltd ("Jet Civil") on 1 July 2008. The majority of the work done by Mr Turner's company came from the CCBC, and involved excavation of and



concreting for roads, footpaths, kerbs and gutters. Mr Turner claimed that his relationship with Mr Higgs was purely a business relationship.

Ozzie Pools and Jet Civil were CCBC preferred civil contractors.

Ahmad Hraichie

Mr Hraichie was the owner of Ezy Bobcat Pty Ltd (“Ezy Bobcat”). In 1997, Ezy Bobcat commenced work for the Drummoyne Municipal Council, before it amalgamated with Concord Municipal Council in 2000 to become the CCBC. Ezy Bobcat did work for the CCBC from the time of the amalgamation until the Wareemba Village job in 2008.

Chapter 2: Mr Higgs and Mr Turner

The majority of work that Mr Turner's company received was from the CCBC. Between May 2007 and June 2010, Mr Turner's company was the highest paid, in gross terms, of the CCBC's preferred civil contractors. His company earned \$4,581,304.77 in that period, which was \$481,255 more than the next highest paid preferred civil contractor.

Both Mr Higgs and Mr Turner steadfastly denied that Mr Turner ever gave Mr Higgs any money or other benefit, in return for Mr Higgs favouring Mr Turner's company in relation to CCBC work.

Mr Higgs engaged Mr Turner's company from time to time to perform work for the CCBC, and/or approved payment of invoices. On other occasions, he was part of the decision-making process that led to the awarding of CCBC work to Mr Turner's company.

He agreed that he had a preference for engaging Mr Turner's company to do CCBC work. He said that his preference arose because of the quality of the work performed by Mr Turner and Mr Turner's ability to deliver on time. He agreed, however, that he also had concerns about Mr Turner's ability to complete some work on time, delays in starting some jobs, and Mr Turner's use of signage and barricading.

Mr Higgs' recommendation to award CCBC work to Jet Civil for the Kokoda Track project is an example of the favouritism shown by Mr Higgs to Mr Turner.

The Kokoda Track project

In November 2009, the CCBC became involved in a project to construct a pathway for the Kokoda Trust, which was to be called the Kokoda Track. Due to its expertise in completing similar work, it was agreed that the CCBC would manage the project, and engage one of its preferred civil contractors to carry out the work. CCBC officers involved in the project were at all times acting in their capacity as CCBC officers.

In December 2009, Manoj Kumar, the CCBC's Manager of Maintenance, obtained quotes from five contractors for

work on the project. Among the quotes received was one from Jet Civil for \$257,527.60, including GST. Mr Kumar created a spreadsheet, listing each quote for comparison, which he then gave to Mr Higgs.

Sometime between 11 December 2009 and 15 December 2009, Mr Higgs drafted and signed a recommendation to award the project to Jet Civil. He did so despite another contractor's quote being \$40,000 cheaper than Jet Civil's quote. In the recommendation he made and signed, Mr Higgs referred to the cheaper contractor's quote as "excessively low", the apparent lack of any site inspection by that contractor and possible risks arising from the contractor submitting claims for variations (which would involve an increase in the cost of the project).

Mr Kumar, who reported to Mr Higgs, was also required to sign the recommendation. Mr Kumar said that it had already been signed by Mr Higgs when Mr Higgs gave it to him. Mr Kumar said that he told Mr Higgs that the other contractor was cheaper, could do the job, and was as good as Jet Civil. He said Mr Higgs told him that Jet Civil was a local contractor who had previously done similar work and that the cheaper contractor had not inspected the site when site inspections were arranged. Mr Kumar believed the cheaper contractor could do the job and believed that the contractor would have inspected the site at another time. Mr Kumar said that he signed the recommendation because it had already been signed by Mr Higgs, who was senior to him. The Commission accepts Mr Kumar's evidence about this issue.

Mr Higgs maintained that Mr Turner was the better contractor for that job. He said that the cheaper contractor had not inspected the project site at the time the CCBC had arranged for site inspections and, therefore, could not have appreciated the full scope of the project. No attempt, however, was made by Mr Higgs to ascertain from the cheaper contractor whether he had seen the site. Mr Higgs said he was concerned that the contractor had specified his standard rates, and, if awarded the contract, would have had to submit price variations.

While Mr Higgs was concerned that the cheaper contractor might need to submit variations, which would increase the cost of the project, the cost of the project increased despite being awarded to Jet Civil. The Commission obtained documentation from the CCBC showing that Jet Civil was paid \$100,635 in variations on the project. At the time of the public inquiry, there was a further \$9,546 in variations that the CCBC had not yet paid to Jet Civil. It appears, however, that some of the variations were due to changes requested by the Kokoda Trust. It is not clear if any variations were due to requests made by Jet Civil.

The Commission is satisfied that Mr Higgs improperly favoured Jet Civil to ensure it received the contract for the Kokoda Track project.

At the time that Mr Higgs was arranging for Jet Civil to be awarded the Kokoda Track project, he was using Jet Civil to construct a driveway at his house. The driveway work was performed on 11 December 2009. Despite being required to do so by the CCBC's code of conduct, Mr Higgs did not declare any conflict of interest at the time he recommended Jet Civil be awarded the contract. There was also evidence that Mr Turner did private work for Mr Higgs on other occasions.

Jet Civil's work at Mr Higgs' house

The evidence ultimately established that between 2004 and December 2009, Mr Turner's company did three lots of private work for Mr Higgs at his home. Both Mr Higgs and Mr Turner claimed that Mr Higgs paid for this work.

The evidence given by Mr Higgs and Mr Turner concerning when work was done, the circumstances surrounding the creation of an invoice purporting to relate to payment of work undertaken in December 2009, and the time the invoice was received by Mr Higgs, demonstrates their lack of credibility as witnesses.

On 11 March 2010, when interviewed by Commission investigators, Mr Higgs was asked about work done on his house. He nominated a number of home improvements

but did not say anything about work done by Mr Turner or Jet Civil.

On 24 March 2010, Mr Turner was interviewed by Commission investigators. During the interview, he said he did not know where Mr Higgs lived, and that he had never done any work at Mr Higgs' house.

The December 2009 work

On 19 May 2010, Mr Higgs' solicitor wrote to the Commission with regard to work conducted on Mr Higgs' house. Included in the letter was a copy of an invoice (numbered 1094a) dated 15 December 2009 from Jet Civil, in the amount of \$3,000, for the excavation and construction of a driveway at Mr Higgs' house. Handwriting on the bottom right hand corner of the invoice was made with different writing implements, giving the impression that it was done at different times. The first handwritten notation indicated a payment for \$1,200, the next handwritten notation indicated a payment for \$1,000, and the final handwritten notation indicated a payment for \$800.

The Commission's examination of Jet Civil invoices showed that invoice 1094a was unique in that it had the letter "a" after the number. A document obtained from Jet Civil listed invoices in sequential order, and did not include invoice 1094a. This indicated the possibility that invoice 1094a was created at a date later than the purported date of 15 December 2009.

The Commission arranged for Mr Turner's office computer to be forensically examined. This established that invoice 1094a was created on 27 April 2010.

At his compulsory examination on 18 June 2010, Mr Higgs said that Jet Civil did the driveway work in December 2009, that he made three separate cash payments to Mr Turner of \$1,200, \$1,000 and \$800, and that he was given invoice 1094a around the time he made the final payment in December 2009. He said that he had not mentioned this work to Commission investigators when he was interviewed on 11 March 2010 because

he was “scared” and concerned that there would be “the inference that I’ve done something illegal”. Mr Turner gave evidence in a compulsory examination on 29 June 2010, during which he said that he had not been truthful in his March interview. He said that he had constructed a driveway at Mr Higgs’ house in December 2009, for which he had received payment. He said that the reason he had lied when interviewed was because he, “...just thought it might’ve ... could’ve been a conflict of interest...”.

He said that invoice 1094a related to the driveway work, and that it was given to Mr Higgs prior to Christmas 2009. He could offer no explanation why the invoice had an “a” after the number. When it was put to him that the invoice was created in April 2010, he conceded that that could be correct.

At the public inquiry, Mr Higgs said that he paid for the work in three instalments, and claimed that Mr Turner gave him a piece of paper prior to Christmas 2009 by way of receipt, which he threw away because he had paid cash and did not want a receipt. He had not disclosed the existence of any such document to the Commission in his compulsory examination.

Mr Higgs agreed that he asked Mr Turner for a document evidencing payment, after he was interviewed by Commission investigators on 11 March 2010, so that he could proffer it to the Commission as proof of payment. He admitted receiving invoice 1094a in April 2010. He claimed that in his compulsory examination he had been confused when he told the Commission he had received invoice 1094a before Christmas 2009. Mr Higgs agreed, however, that he knew when giving evidence in his compulsory examination that his evidence reinforced the impression that invoice 1094a was correctly dated.

The Commission rejects any assertion by Mr Higgs that he was confused when he gave evidence at his compulsory examination on this issue. The Commission is satisfied that at his compulsory examination Mr Higgs deliberately sought to convey that the tax invoice had been given to him before Christmas 2009, and that it was a contemporaneous document evidencing that Mr Turner had billed Mr Higgs for the work Mr Turner had done on his driveway.

At the public inquiry, Mr Turner initially claimed he had given Mr Higgs a different document prior to Christmas 2009, which indicated he had received payment for the driveway work. He later said that he did not think he had given Mr Higgs any document before Christmas 2009, and could not be sure if he gave Mr Higgs a receipt in December 2009 after Mr Higgs made the last payment or just told him that payments were complete.

He said that invoice 1094a was created in 2010, at Mr Higgs’ request, after Mr Higgs became aware of the

Commission’s investigation. Mr Turner asked his wife, Birgitt Turner, to create invoice 1094a and told her what information to include in it. Mr Turner claimed that he had been confused when he gave evidence at his compulsory examination concerning invoice 1094a. The Commission rejects this explanation. Mr Turner did not express or show any confusion when giving evidence at his compulsory examination on this issue, and did not express any doubt about providing invoice 1094a to Mr Higgs in 2009.

Mrs Turner gave evidence, which was not contradicted, that Mr Turner asked her to:

- create tax invoice 1094a in 2010
- date it December 2009
- print off two copies, one for Mr Higgs and the other to be kept as part of Jet Civil’s records
- make three handwritten notations on the copy for Mr Higgs, indicating that Mr Higgs made three separate payments
- make it look like the three payments had been made at three different times.

Mrs Turner said her husband told her Mr Higgs wanted the invoice. She understood Mr Higgs had paid for the work but she did not receive any payments directly from Mr Higgs and it is clear from the evidence that her understanding is based on what she was told by Mr Turner.

The Commission is satisfied that Mr Turner arranged for invoice 1094a to be created, at Mr Higgs’ request, for the purpose of representing it as a contemporaneous document evidencing that the work Mr Turner did for Mr Higgs in December 2009 had been properly billed to Mr Higgs at that time, and paid for by Mr Higgs. The Commission is satisfied that Mr Higgs and Mr Turner sought to use invoice 1094a for that purpose when they gave evidence at their compulsory examinations.

There is no reliable evidence that Mr Turner sought payment for or was paid for the December 2009 work. It would be expected that if Mr Turner intended to charge Mr Higgs for the work he would have issued a contemporaneous invoice. The Commission’s examination of Jet Civil’s invoices established that no such invoice was issued. In all the circumstances, the Commission is satisfied that there was an arrangement between Mr Higgs and Mr Turner, whereby Mr Turner did the December 2009 work at Mr Higgs’ house at no cost to Mr Higgs, as a reward for Mr Higgs having previously favoured Mr Turner’s company in relation to CCBC work and in the expectation he would continue to do so.

Other work

Both Mr Higgs and Mr Turner claimed in their compulsory examinations that the only work undertaken by Mr Turner at Mr Higgs' house was the work done in December 2009. The Commission, however, led other evidence, referred to below, that indicated other work was performed in 2007. In addition, Mr Higgs also identified further work when he gave evidence at the public inquiry.

Concrete Pty Ltd ("Concrete") was one of Mr Turner's suppliers. That company generally recorded telephone conversations with its customers for staff training purposes. One such call between Mr Turner and a Concrete employee was recorded on 14 February 2007. The Commission obtained a copy of the recording.

During the conversation, Mr Turner ordered concrete for different jobs. In doing so, he provided addresses for the jobs so that the concrete could be delivered directly to the relevant site. Mr Higgs' home address was one of the addresses given by Mr Turner. After providing this address, Mr Turner went on to say, "it's just going to be a fave. One, two metres at max". This suggested that Mr Turner was providing services to Mr Higgs free of charge.

At the public inquiry, Mr Higgs was asked about the private work Mr Turner did for him. He initially said that Mr Turner had done work at his house in 2004/2005 and December 2009. The 2004/2005 work involved the purchase of concrete to pour a concrete slab in Mr Higgs' backyard. He said that he had not disclosed this work in his compulsory examination because, "it was of such a minor nature".

It was only when it was put to him that Mr Turner had also done concreting work at his house in 2007 that Mr Higgs disclosed details of that work. He said that it involved laying a concrete slab for a shed.

Mr Higgs maintained he paid for all the work that Mr Turner did at his house but he had no invoices for the 2004/2005 work or the 2007 work. There were no bank records of any payments made by Mr Higgs, as he claimed he paid cash for both jobs. There were no receipts evidencing any payments.

Mr Turner's conversation of 14 February 2007 with the Concrete employee was played to Mr Turner at the public inquiry. He denied that he was intending to convey in the conversation that he was doing the work for free.

After hearing Mr Higgs' evidence at the public inquiry, Mr Turner said that he had also done work for Mr Higgs in about 2005. He claimed that he had not recalled the 2005 and 2007 work when he gave evidence at his compulsory examination.

Although both Mr Higgs and Mr Turner claimed that the 2004/2005 work and the 2007 work was paid for by Mr Higgs, neither were truthful witnesses and the Commission does not accept their evidence on this issue. No invoices or receipts were provided to the Commission to show that Mr Turner had billed Mr Higgs for any of this work or that he had received any payment from Mr Higgs for any of the work. What Mr Turner told the Concrete employee on 14 February 2007 is consistent with him doing the 2007 work for free. The Commission is satisfied that Mr Turner did not seek or receive payment for the work he did at the Higgs' house. The Commission is satisfied that there was an arrangement between Mr Higgs and Mr Turner, whereby Mr Turner did the 2004/2005 work and the 2007 work at Mr Higgs' house at no cost to Mr Higgs, as a reward for Mr Higgs having previously favoured Mr Turner's company in relation to CCBC work, and in the expectation that he would continue to do so.

The Quintrex boat

In July 2008, Mr Turner placed an order with Hunts Marine Pty Ltd ("Hunts Marine") for the purchase of two boats: a 590 Freedom Cruiser valued at \$50,366, and a Quintrex 470 Top Ender, which was purchased together with a trailer for \$32,155.

The Commission investigated whether the Quintrex boat was a gift from Mr Turner to Mr Higgs, and, if so, whether it was intended as a reward for Mr Higgs having favoured, and continuing to favour, Mr Turner's company in relation to CCBC work. Both Mr Turner and Mr Higgs denied the Quintrex boat and trailer were bought by Mr Turner for Mr Higgs.

Arranging the purchase of the Quintrex boat

Alan Bondar was the Hunts Marine salesman who dealt with Mr Turner and Mr Higgs. He told the Commission that Mr Turner rang him on 16 July 2008 and told him that he was in the market for a new 590 Freedom Cruiser, and was also looking for a boat for an employee or a mate. Mr Bondar made a notation of the call on the Hunts Marine computer database. The notation referred to Mr Turner mentioning that he had a mate who was looking for a 470 Top Ender boat. Mr Turner said that he could not recall telling Mr Bondar that he was looking for a boat for a mate.

Mr Bondar said that both Mr Turner and Mr Higgs attended Hunts Marine on 17 July 2008, and that Mr Turner made it clear that he was buying the Quintrex boat for Mr Higgs.

Mr Bondar said that Mr Turner told him that his "mate" would personalise the Quintrex boat. This involved Mr

Bondar going through a catalogue with Mr Higgs to identify additional requirements. A canopy, an all-over cover and a bait board were selected by Mr Higgs. Mr Bondar said he subsequently received a telephone call from Mr Higgs who also requested a cover for the outboard motor. All these were supplied at an additional cost. Mr Higgs' involvement in selecting additional items for the boat is consistent with the boat being provided for his private use.

Mr Bondar said that Mr Turner paid the \$100 holding deposit for each boat but requested the receipt for the Quintrex boat be made out in Mr Higgs' name. Mr Bondar told the Commission that Mr Turner told him to put the documentation for the Quintrex boat in Mr Higgs' name. Mr Bondar recalled that Mr Turner collected the 590 Freedom Cruiser but that Mr Higgs collected the Quintrex boat.

Mr Bondar was an independent and credible witness. It is noteworthy that he was not cross-examined by either counsel for Mr Higgs or Mr Turner. His evidence that the Quintrex boat was purchased for Mr Higgs is supported by the documentation for the purchase of the boat that was completed in Mr Higgs' name. The purchasing and sales documentation for the 590 Freedom Cruiser was made out in Mr Turner's name.

The documentation for the Quintrex boat, which was in Mr Higgs' name, included the:

- Hunts Marine purchase order, dated 17 July 2008 and signed by Mr Higgs
- Hunts Marine stock transfer sheet
- Hunts Marine final receipt, dated 14 August 2008
- Hunts Marine tax invoice, dated 22 August 2008
- Hunts Marine computer warranty record for the boat and accompanying trailer, created on 22 August 2008
- Hunts Marine Customer Satisfaction and Information Checklist, dated 23 August 2008 and signed by Mr Higgs
- Yamaha outboard motor warranty registration, dated 23 August 2008, which was signed by Mr Higgs in three places as the "customer", and which also contains his residential address.

The registration for the boat and its trailer, however, was in Mr Turner's name. This was necessary, as Mr Turner needed to finance the purchase of both boats through financial institutions. The finance was arranged through Robert Barrie, who provided a statement to the Commission and gave evidence in the public inquiry. Mr Barrie said he had, "a very strong recollection of the

events". He said that Mr Turner told him he wanted to finance the Quintrex boat for an employee. Finance was arranged, with repayments to come out of Mr Turner's account. Although Mr Turner denied he told Mr Barrie he wanted the Quintrex boat for an employee, the Commission regards Mr Barrie as an independent and credible witness, and accepts his evidence.

At his June 2010 compulsory examination and at the public inquiry, Mr Higgs said that he had accompanied Mr Turner to Hunts Marine in order to help him negotiate the purchase of both boats. Both were for Mr Turner. The only explanations Mr Higgs had for signing documents was, "because I would've actually negotiated the deal", and to expedite the purchase process. These are not satisfactory explanations, and are rejected by the Commission.

At his June compulsory examination, Mr Turner said that he took Mr Higgs to Hunts Marine with him because Mr Higgs knew about boats and he wanted Mr Higgs' advice. He said he purchased both boats but could not explain why the warranty was in Mr Higgs' name. He claimed that the holding deposit for the Quintrex boat was in Mr Higgs' name because Mr Higgs had paid that deposit. He said he had subsequently repaid Mr Higgs. In fact, the holding deposit was paid using Mr Turner's Visa card. When this was pointed out to him, he could offer no explanation as to why the holding deposit receipt was in Mr Higgs' name.

At the public inquiry, Mr Turner claimed he could not recall whether Mr Higgs went with him to Hunts Marine, why the documentation for the Quintrex boat was made out in Mr Higgs' name or why Mr Higgs had signed documents for that boat.

Other evidence of ownership

In addition to what had occurred at Hunts Marine and the completion of documentation for the Quintrex boat in Mr Higgs' name, there was also evidence that Mr Higgs had subsequent possession of the Quintrex boat, that Mr Higgs had represented it was his boat, and that he sought to hide from the Commission the fact that he had possession of the boat.

Mr Higgs was interviewed by Commission investigators on 11 March 2010. At that time, the investigators observed the Quintrex boat at his home. The next day, Mr Higgs was observed by Commission investigators removing the boat from his premises and taking it to the property of another CCBC contractor, 80 kilometres outside Sydney. This was some 65 kilometres further to travel than if he had taken the boat to Mr Turner's premises at Silverwater. Cardboard was taped over the

trailer registration plate to prevent the registration number from being seen.

Mr Higgs subsequently denied he had deliberately placed the cardboard over the registration to obscure it. The Commission rejects his denial. The Commission is satisfied that Mr Higgs sought to deliberately obscure the trailer registration so that, if he were observed by Commission investigators, they would not be able to see the registration details to check registered owner details, and thereby connect the boat to Mr Turner.

The Commission lawfully intercepted a telephone conversation between Mr Higgs and Mr Turner on 24 April 2010. During the call, Mr Higgs referred to making, "...a mercenary fucking dash to fucking hide it...". Mr Higgs admitted he had wanted to hide the boat from the Commission.

At his compulsory examination, Mr Higgs insisted that he had Mr Turner's boat on his premises only for a period of approximately six months, up to March 2010. This was because Mr Turner did not have space to keep it securely at his residences. He said that he used the boat on only one occasion.

At the public inquiry, Mr Higgs gave varying and contradictory evidence concerning the number of occasions that the Quintrex boat was at his premises, and whether or not Mr Turner was with him when the boat was collected from Hunts Marine. This evidence also demonstrated his unreliability as a witness. He first claimed the Quintrex boat was at his premises on two occasions but then proceeded to nominate three occasions. These three occasions were twice in 2008 (approximately two to three weeks after the boat was purchased, and approximately three days in November) and between about September 2009 and 12 March 2010.

Mr Higgs initially claimed that he had collected the boat from Hunts Marine and taken it to Mr Turner's premises at Silverwater. He then agreed that it was taken to his house, not to Mr Turner's premises. He initially claimed that Mr Turner was with him when he collected the boat from Hunts Marine. When it was put to him that Mr Turner was not present, he agreed, but then later claimed that he was.

The Quintrex boat was collected from Hunts Marine on 23 August 2008. Photographic evidence shows it was at Mr Higgs' house on that day. When executing a search warrant at Mr Higgs' house, the Commission seized a CD containing three photographic images of Mr Higgs and his two children posing with the boat at his house. Forensic examination of the CD established that the photographic images were created between 11:17 am and 11:18 am on 23 August 2008. Mr Higgs agreed the images were taken on that day. He also identified his wife's handwriting on a

document, indicating the pictures were of "Pete's Boat, a Quintrex".

At his compulsory examination, Mr Turner said he collected the Quintrex boat, and took it to his premises at Concord. He said that in either October or November 2009 he asked Mr Higgs to mind the Quintrex boat because he had run out of room to keep it. He said that Mr Higgs had the boat between then and June 2010. He emphatically denied that Mr Higgs had the boat at his house any time prior to October or November 2009.

At the public inquiry, however, Mr Turner said that he collected the Quintrex boat from Hunts Marine and either took it to his premises at Silverwater or to Mr Higgs' premises. He said it might have been taken to Mr Higgs' house because Mr Higgs lived close to a boat ramp and they intended to do "some trial runs with getting the boat in and out of the water".

Mr Turner told the Commission that he believed the Quintrex boat was left at Mr Higgs' house for approximately one or two weeks in order to complete the trials. He said that Mr Higgs had subsequently borrowed it twice but could not recall when this occurred. He said that he later took the Quintrex boat to Mr Higgs' house because he was having storage problems. He agreed that it was permanently at Mr Higgs' house from about September 2009 to 12 March 2010. He denied that he had intentionally lied during his compulsory examination when he had denied that Mr Higgs had the Quintrex boat at his home prior to October or November 2009.

Mr Higgs told other people that the boat was his. At the public inquiry, he said, "I've told my, my family and friends and [a] few guys down at the boat ramp. I was bragging about it. And a couple of people at work".

Tim Clancy, the CCBC's Manager, Assets, provided a statement to the Commission in which he referred to conversations he had had with Mr Higgs. In one conversation, Mr Higgs told him that he was intending to purchase a Quintrex-style boat and trailer. In another, he told him that he had purchased a boat. The Commission accepts Mr Clancy's evidence.

There is other evidence consistent with Mr Higgs treating the boat as his own.

In June 2009, Mr Higgs organised for the boat to be serviced. At the public inquiry, Mr Higgs initially said that he paid for the service from his own funds. Shortly thereafter, however, he claimed that Mr Turner had paid. The receipt was made out to Mr Higgs. He claimed this was because the person writing the receipt knew him. The Commission rejects this assertion. The Commission is satisfied that Mr Higgs paid for the service from his own funds.

In July 2009, Mr Higgs reported to police the theft of expensive fishing equipment from the boat, which at that time was on his premises. This was not one of the times that Mr Higgs had nominated to the Commission that the Quintrex boat had been at his premises. When it was put to him that the boat was on his premises in July 2009, he agreed, but said it was only there for three to four days. When reporting the theft to the police, he had said that the boat belonged to him. At the public inquiry, he said that he had lied to the police about owning the boat.

Mr Higgs also paid for the renewal of registration for the boat trailer in August 2009. The registration was renewed by him using the internet. He said Mr Turner gave him the papers so that he could renew the registration. His renewal of the registration is consistent with the Quintrex boat and trailer being in his permanent possession. Mr Turner said he could not recall taking any steps to renew the registration but said that if it was renewed by Mr Higgs it would have been because Mr Higgs had possession of the boat at the time of the renewal.

The purchase documentation for the Quintrex boat was made out in Mr Higgs' name, even though the boat was financed by Mr Turner. According to Mr Bondar, whose evidence the Commission accepts, Mr Turner made it clear he was purchasing the Quintrex boat for Mr Higgs.

The Commission is satisfied that the Quintrex boat and trailer were initially taken to, and subsequently kept at, Mr Higgs' house, and used by him. He paid for its servicing and trailer registration, and represented to others that it belonged to him. The Commission is satisfied that Mr Turner purchased the Quintrex boat for Mr Higgs, and that Mr Higgs accepted the boat and kept possession of it. Neither Mr Higgs nor Mr Turner described themselves as being close personal friends. Mr Turner described their relationship as purely professional. Any personal friendship they may have had was clearly an insufficient basis on which to explain why Mr Turner would purchase a valuable boat and trailer for Mr Higgs. The Commission is satisfied that the boat was provided as a reward for Mr Higgs having previously favoured Mr Turner's company in relation to the awarding of CCBC work, and in the expectation that he would continue to do so.

Failure to declare conflicts of interest

At no time did Mr Higgs disclose to the CCBC that Mr Turner or his company had been engaged by him to do private work for him. Mr Higgs also neglected to disclose that Mr Turner had purchased a valuable boat that he used. The carrying out of private work for Mr Higgs by Mr Turner, a CCBC contractor, and the provision of the boat, created conflicts of interest for Mr Higgs in relation to his

dealings with Mr Turner on behalf of the CCBC. Under the CCBC code of conduct, Mr Higgs was required to disclose any conflict of interest.

Mr Higgs admitted to having read the CCBC code of conduct, and having signed declarations to that effect. He signed disclosure returns on 9 February 2007, 8 August 2007, 21 July 2008 and 28 July 2009, in which he made no mention of any conflict of interest arising from his dealings with Mr Turner.

Mr Higgs knew about the importance of declaring a conflict of interest. He said that, as a result of the obligation imposed upon him by the code of conduct, he felt he had to declare to his employer that a CCBC contractor had given him four meat pies. It follows that if Mr Higgs saw fit to disclose the receipt of four meat pies, then he would have been aware of the importance of disclosing to the CCBC the private works done by Mr Turner at his home and the provision of the boat.

The Commission is satisfied that Mr Higgs was aware that engaging Mr Turner and his company to do private work for him, and allowing Mr Turner to provide him with a valuable boat, created conflicts of interest in relation to the performance of his duties at the CCBC. These duties involved dealing with Mr Turner and his company in relation to CCBC work, including arranging for work to be awarded to that company. The Commission is satisfied that Mr Higgs deliberately failed to declare these conflicts of interest, and that this failure was attributed to Mr Higgs receiving these benefits in return for favouring Mr Turner's company in relation to the awarding of CCBC work.

Corrupt conduct

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, 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.

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

Corrupt conduct is defined in sections 8 and 9 of the ICAC Act. These sections are set out in Appendix 2.

By arranging for Mr Turner to do free private work at his house in 2004/2005, 2007 and December 2009, as a reward for having previously favoured Mr Turner's

company in relation to the awarding of CCBC work, and in the expectation that he would continue to do so, Mr Higgs engaged in corrupt conduct. This is because such conduct could adversely affect the honest or impartial exercise of his official functions as a public official employed by the CCBC, and therefore comes within section 8(1)(a) of the ICAC Act. It is also conduct that constitutes or involves a breach of public trust, and therefore comes within section 8(1)(c) of the ICAC Act. For the purposes of section 9 of the ICAC Act, such conduct could involve criminal offences of corruptly receive a benefit contrary to section 249B of the *Crimes Act 1900* or the common law offence of misconduct in public office, and could also involve a disciplinary offence or grounds for dismissal on the basis of misconduct.

Mr Higgs engaged in corrupt conduct by accepting the gift of a Quintrex 470 Top Ender boat and trailer worth \$32,155 from Mr Turner in 2008, as a reward for having previously favoured Mr Turner's company in relation to the awarding of CCBC work, and in the expectation that he would continue to do so. This is because such conduct could adversely affect the honest or impartial exercise of his official functions as a public official employed by the CCBC, and therefore comes within section 8(1)(a) of the ICAC Act. It is also conduct that constitutes or involves a breach of public trust, and therefore comes within section 8(1)(c) of the ICAC Act. For the purposes of section 9 of the ICAC Act, such conduct could involve criminal offences of corruptly receive a benefit contrary to section 249B of the *Crimes Act 1900* or the common law offence of misconduct in public office, and could also involve a disciplinary offence or grounds for dismissal on the basis of misconduct.

Mr Turner engaged in corrupt conduct by undertaking private work at Mr Higgs house in 2004/2005, 2007 and December 2009 without charge, as a reward for Mr Higgs having previously favoured Mr Turner's company in relation to the awarding of CCBC work, and in the expectation that he would continue to do so. This is because such conduct could adversely affect the honest or impartial exercise of Mr Higgs' official functions as a public official employed by the CCBC, and therefore comes within section 8(1)(a) of the ICAC Act. For the purposes of section 9 of the ICAC Act, such conduct could involve a criminal offence of corruptly giving a benefit, contrary to section 249B of the *Crimes Act 1900*.

By giving Mr Higgs, a CCBC employee, a valuable boat and trailer as a reward for having previously favoured Mr Turner's company in relation to the awarding of CCBC work and in the expectation that he would continue to do so, Mr Turner engaged in corrupt conduct. This is because such conduct could adversely affect the honest or impartial exercise of Mr Higgs' official functions as a public official employed by the CCBC, and therefore comes

within section 8(1)(a) of the ICAC Act. For the purposes of section 9 of the ICAC Act, such conduct could involve a criminal offence of corruptly giving a benefit, contrary to section 249B of the *Crimes Act 1900*.

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

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

The Commission is satisfied that Mr Higgs and Mr Turner are "affected" persons.

Mr Higgs

Mr Higgs 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. There is, however, other evidence that is available, including CCBC records of his involvement in awarding work to Mr Turner's company, Mr Bondar's evidence, and the records relating to Mr Higgs' ownership of the Quintrex boat.

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 Higgs for an offence of receiving a corrupt reward (the Quintrex boat and trailer) from Mr Turner, contrary to section 249B(1)(a) of the *Crimes Act 1900*, an offence of fabricating a document (invoice 1094a), contrary to section 88(3) of the ICAC Act, and offences of giving false or misleading evidence to the Commission, contrary to section 87(1) of the ICAC Act, in relation to the following evidence:

1. his evidence in his compulsory examination that the only private work Mr Turner did at his home was in December 2009
2. his evidence in his compulsory examination that he received invoice 1094a in December 2009
3. his evidence in his compulsory examination that he had the Quintrex boat for only six months, up to March 2010.

The Commission is of the opinion that there is insufficient admissible evidence to recommend that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Higgs for offences of receiving a corrupt reward in relation to the free work Mr Turner performed at his house in 2004/2005, 2007 and December 2009.

As Mr Higgs resigned from the CCBC during the investigation, the issue of disciplinary proceedings does not arise.

Mr Turner

Mr Turner also gave evidence following a declaration made pursuant to section 38 of the ICAC Act.

In the course of its investigation, the Commission obtained other evidence that would be admissible in the prosecution of Mr Turner, including CCBC records of Mr Higgs' involvement in awarding work to Mr Turner's company, evidence relating to the purchase of the Quintrex boat, Mr Bondar's evidence, and Mr Barrie's evidence. Mr Turner's evidence concerning the creation of tax invoice 1094a would be admissible in a prosecution for an offence under the ICAC Act. In addition, the forensic evidence concerning the creation of the invoice would also be available.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Turner for an offence of giving a

corrupt benefit (the Quintrex boat) to Mr Higgs, contrary to section 249B(2)(a) of the *Crimes Act 1900*, an offence of wilfully making a false statement to a Commission investigator, contrary to section 80(c) of the ICAC Act in relation to denying he had done any private work for Mr Higgs when interviewed by Commission investigators in March 2010, and an offence of fabricating a document (invoice 1094a), contrary to section 88(3) of the ICAC Act.

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 Turner for offences of giving false evidence, contrary to section 87(1) of the ICAC Act in relation to the following evidence:

1. his evidence in his compulsory examination that the only private work he did at Mr Higgs' home was in December 2009
2. his evidence in his compulsory examination that he gave Mr Higgs invoice 1094a prior to Christmas 2009
3. his evidence in his compulsory examination, in which he denied Mr Higgs had the Quintrex boat any time prior to October or November 2009.

The Commission is of the opinion that there is insufficient admissible evidence to recommend that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Turner for offences of giving a corrupt reward in relation to the free work he performed at Mr Higgs' house in 2004/2005, 2007 and December 2009.

Chapter 3: Mr Higgs and Mr Hraichie

Mr Hraichie owned Ezy Bobcat, a company that did work for the CCBC. The work he received from the CCBC was not constant, but when his bobcat was needed, someone from the CCBC would call and arrange for his attendance to do the work.

Available CCBC records show that between 2003 and May 2009 Ezy Bobcat was engaged to do a number of jobs for the CCBC. The records show that CCBC officers, other than Mr Higgs, allocated the work to Ezy Bobcat. In 2005, Mr Higgs approved payment of an Ezy Bobcat invoice. On all other occasions, however, invoices were approved by other CCBC officers.

The fact that Mr Higgs did not appear on CCBC documentation, as allocating work or approving payment, does not mean that he was not involved in the relevant projects. Mr Kumar, who reported to Mr Higgs and appears on some of the documentation as allocating work to Ezy Bobcat and/or approving payment, explained that Mr Higgs had a role in those projects and he had to “crosscheck” with Mr Higgs before engaging a contractor. He said that Mr Higgs attended worksites, spoke with the contractors and generally checked their work. Mr Higgs agreed that he attended worksites and spoke with CCBC contractors, even though he was not the project coordinator for the particular project.

Mr Hraichie gave evidence in a compulsory examination and at the public inquiry. His evidence on both occasions was consistent.

Evidence of payments to Mr Higgs

Mr Hraichie told the Commission that the first council job in which he came into contact with Mr Higgs was in approximately 1997, when doing work for Drummoyne Municipal Council. He said that Mr Higgs did not ask him for money but other contractors told him that Mr Higgs was greedy, and that he should pay Mr Higgs if he wanted to continue to get council work.

As a consequence of what he was told by other contractors, Mr Hraichie said that for each day he worked for council, he usually put \$50 in cash inside an invoice, and either left the invoice in Mr Higgs’ car at the worksite or handed it to Mr Higgs. On the days that he did not do this, he kept track of missed payments, and included them in the next invoice he gave to Mr Higgs. He said that this occurred over a 10-year period.

Mr Hraichie said that Mr Higgs never spoke to him about the money. He said, however, that Mr Higgs told him to increase his hourly rate by \$10 because Mr Hraichie was too cheap. Mr Hraichie explained that he was normally paid a minimum of six hours per day for the jobs he did for council. The \$10 increase in his hourly rate covered the money he paid to Mr Higgs.

Mr Hraichie said he made the payments because, “I was young and just finished school, started my own business, [and] needed the work”.

Mr Hraichie readily conceded that he had reported his allegations because he was upset with Mr Higgs over not being made aware of the CCBC’s invitation to tender for preferred civil contractors. He said he was upset that Mr Higgs had not done anything to assist him to be included in the tender, despite having paid him money over a 10-year period. He agreed that he had had two other disputes with Mr Higgs over payment of his invoices. He also said that he had not reported the allegations earlier as he, “was still involved with the excavation work”. He provided consistent evidence at both his compulsory examination and at the public inquiry. There is no credible reason for him to fabricate evidence against Mr Higgs, particularly when that evidence implicates him in corrupt conduct and criminal offences.

Mr Higgs denied receiving money from Mr Hraichie or any other CCBC contractor. He also denied telling Mr Hraichie to increase his hourly rate by \$10.

Mr Higgs was not a credible witness, and the Commission rejects his denials.

The Commission identified a number of discrepancies in Mr Higgs' finances that indicated substantial income from unknown sources.

Mr Higgs' finances

In June 2004, Mr and Mrs Higgs purchased a house, which they part-financed through a \$300,000 mortgage. They repaid the mortgage over a period of about four years and two months.

In the financial reporting periods of 2004–05 and 2005–06, Mr and Mrs Higgs' combined, declared net income was \$84,572 and \$79,716 respectively. In 2004–05, however, their total mortgage repayment was \$116,588; \$32,016 more than their combined, declared net income. In 2005–06, their total mortgage repayment was \$102,826; \$23,110 more than their combined, declared net income. Their total mortgage repayments for the financial periods of 2006–07 and 2007–08 was \$44,528 and \$61,957 respectively; \$46,584 and \$38,614 (respectively) less than Mr and Mrs Higgs' combined income for those years.

From April 2004 to (at least) June 2008, cash deposits were made into accounts held by Mr and Mrs Higgs that are not related to any declared taxable income. The following table illustrates the amounts involved:

Period	Cash deposits
April 2004 to June 2004	\$18,100
July 2004 to June 2005	\$22,000
July 2005 to June 2006	\$45,500
July 2006 to June 2007	\$7,050
July 2007 to June 2008	\$29,300
TOTAL	\$121,950

From July 2004 to May 2005, there were a number of other deposits made, totalling \$54,800. The banking records for these did not indicate whether the deposits were made in cash or by cheque.

From December 2005 to August 2006, there were a number of "voucher-less" transactions. No further details are known about these transactions.

At the time of the public inquiry, there were approximately \$15,000 worth of transactions, made in cash and/or by cheque, that the Commission did not have details for, generally, because this information could not be found by Mr Higgs' bank. This amount has not been included in calculating the amount of cash deposits.

In addition to repaying the home mortgage, Mr Higgs also spent money on a number of improvements to the house. These included erection of a pergola, installation of a new hot water system, installation of a new kitchen, and conversion of the garage into a room.

In 2007, Mr and Mrs Higgs purchased a Yaris vehicle for Mrs Higgs. Part of the purchase payments included a \$2,000 cash payment, a \$6,000 bank cheque and a further cash payment of \$5,000. It was not evident from the banking records of Mr and Mrs Higgs where they had obtained these extra funds.

Mr Higgs said that his ability to pay off the home mortgage came from the added income from his part-time employment with TAFE, his football refereeing and painting consultancy business, some of which was obtained through his TAFE students. He did not declare his income from refereeing or painting to the Australian Tax Office. He said further funds came from money his mother gave to him, money he had borrowed from his brother, \$3,500 in cash that was found under the house, and gambling wins he had made since 2005 totalling between \$3,000 and \$4,000.

Mr Higgs did not work for TAFE in the financial reporting periods of 2004–05 and 2005–06. Therefore, when mortgage repayments far exceeded Mr and Mrs Higgs' joint income, there was no income at the time from that source or from painting work obtained through his TAFE students.

When interviewed by Commission investigators on 11 March 2010, Mr Higgs estimated his income from the painting consultancy business to be between \$9,000 and \$20,000 per annum. He also said that he made between \$3,000 and \$4,000 per annum from refereeing football games. As none of this income was declared, it could not be verified by the Commission.

Mr Higgs was not a truthful witness, and the Commission rejects his evidence as to the amount of income he received from his painting consultancy business and refereeing work.

During his interview on 11 March 2010, he said that his mother had given him, "\$3,000, \$2,000, \$5,000, depends on the mood she's in". He said that she had not helped fund his house purchase or mortgage but had provided money, "to help out with the kids and bits and pieces...". This implied that financial assistance from his mother was not extensive.

Following the interview, Mr Higgs was served with a notice under section 21 of the ICAC Act, requiring him to provide a list of payments that he had received from his mother from 2005. In his response, he nominated 11 payments totalling \$103,800. He claimed that this included one payment of \$20,000, and other payments totalling \$30,000 made by his mother, "when visiting throughout the

years". He provided banking details of all payments, except for those making up the \$30,000.

The Commission checked the banking details provided by Mr Higgs. The details of two transactions could not be confirmed. These related to a \$25,000 payment and a \$1,000 payment. The banking details of the remaining transactions showed that the monies were received by Mr Higgs either prior to July 2004 or, in one case, in August 2008. These funds, therefore, do not explain his ability to repay his home mortgage so quickly or the large amount of cash deposits made into the bank accounts of Mr and Mrs Higgs.

Judith Higgs, Mr Higgs' mother, gave evidence at the public inquiry that she had assisted her son financially by giving him sums of cash from time to time. She recalled giving him lump sum amounts of \$20,000 and \$25,000.

She provided a cheque book containing a cheque butt dated 16 May 2004, which related to the \$20,000 payment. She said that this payment was to assist Mr Higgs to purchase his house. As the house was purchased in mid-2004, it is likely the money was used for this purpose. This payment is the \$20,000 identified by Mr Higgs in his response to the section 21 notice.

Judith Higgs could not recall when she made the \$25,000 payment, except that it was made after the \$20,000 payment. She could not recall whether the \$25,000 payment was made in cash or by cheque. Although she provided the Commission with her bank books, there was no evidence of a single \$25,000 withdrawal. There were other withdrawals for large amounts, however, and she said that she also kept large amounts of cash on hand. She said the \$25,000 payment was made to assist Mr Higgs in repaying his mortgage. Even if such a payment were made, however, it could not, of itself, account for the rapidity of the repayment of the Higgs' mortgage.

Judith Higgs said that she saw Mr Higgs about three to four times a year, and on some, but not all, occasions gave him cash of between \$1,000 and \$2,000. Even taking these figures at their highest, and assuming Mr Higgs received about \$8,000 in cash per annum from his mother between 2004 and June 2008, these amounts, even in conjunction with the lump sum gift of \$25,000, would not account for the rapidity with which the mortgage was repaid or the large amount of cash deposits made into the accounts of Mr and Mrs Higgs.

In his response to the section 21 notice, Mr Higgs claimed that his brother had transferred amounts into his account of \$4,000 on 24 June 2008 and \$7,000 on 3 October 2008. Both transfers were made well after the repayment of the Higgs' mortgage. Only the \$4,000 payment made in June 2008 is relevant to the cash deposits made into the Higgs' bank accounts between April 2004 and June 2008.

Mr Higgs also claimed that his brother had provided additional sums of about \$18,000 "over a period of years". He did not produce any records to verify this amount, and in the absence of such records, the Commission does not accept that Mr Higgs was given such an amount by his brother. The Commission also notes that, although Mr Higgs was given the opportunity to have his brother called to give evidence at the public inquiry, he did not avail himself of that opportunity.

In the absence of any independent verification, the Commission does not accept Mr Higgs' claim that he found \$3,500 under his house or had gambling wins of between \$3,000 and \$4,000.

The evidence establishes that Mr Higgs received some financial assistance from his mother. This, however, accounts only in part for his ability to repay his mortgage so quickly and some of the otherwise unexplained cash deposits. While Mr Higgs may have received some additional funds from other sources nominated by him, the Commission does not accept that any such income was, even when combined with whatever funds he received from his mother, sufficient to explain either the rapidity with which he was able to repay his house mortgage or the large amount of cash deposits made into the bank accounts of Mr and Mrs Higgs between April 2004 and June 2008.

The discrepancies between Mr and Mrs Higgs' established income, including money provided by Judith Higgs, and the amount of their mortgage repayments between July 2004 and June 2006, and the unexplained amounts of cash deposits made into their bank accounts, indicate that Mr Higgs had access to funds, the source of which he did not disclose to the Commission. The existence of such funds adds credence to Mr Hraichie's allegations that he made cash payments to Mr Higgs over a number of years.

The Wareemba Village project

Mr Hraichie told the Commission that Mr Higgs had told him what to quote for the excavation and waste removal work associated with the CCBC Wareemba Village project so that Mr Hraichie's quote would be the cheapest and that he would, therefore, be awarded that work. In return for this information, Mr Higgs had told Mr Hraichie that he wanted \$2,000 for each of the three stages of the project. Mr Hraichie agreed to this arrangement. He was duly awarded the relevant project work.

According to Mr Hraichie, the arrangement for effecting payment was that Mr Higgs would drive to a pre-arranged destination, alight from his car and go for a walk, leaving the car unlocked. Mr Hraichie would then place cash on the passenger seat of Mr Higgs' car.

Mr Hraichie said that he made payments in this way on two occasions, each time paying \$2,000 in cash. These payments covered the first two stages of the project. He said he gave the final payment of \$2,000 to his partner to give to Mr Higgs. The Commission could not locate Mr Hraichie's partner to ascertain whether he gave the money to Mr Higgs. In these circumstances, there is doubt as to whether or not the third payment was given to Mr Higgs.

Mr Higgs denied telling Mr Hraichie how much to quote for the project, asking Mr Hraichie for money in relation to the Wareemba Village project or receiving any money from him in relation to that project. He agreed, however, that he attended the site and that he had spoken with Mr Hraichie at the site from time to time.

The Commission rejects Mr Higgs' denials that he sought and received money from Mr Hraichie in respect to the Wareemba Village project, and accepts Mr Hraichie's evidence.

The Commission is satisfied that Mr Higgs solicited \$6,000 from Mr Hraichie, and received at least \$4,000 from Mr Hraichie in return for providing information to Mr Hraichie as to how much he should quote for work on the Wareemba Village project in order to ensure that he was awarded a contract for that work by the CCBC. The Commission is also satisfied that Mr Hraichie made other payments to Mr Higgs, which Mr Higgs accepted; however the total amount of those other payments cannot be determined.

Corrupt conduct

Mr Higgs engaged in corrupt conduct by soliciting \$6,000 from Mr Hraichie and accepting at least \$4,000 from him in return for disclosing to Mr Hraichie how much he should quote to win a CCBC contract for work on the Wareemba Village project, and in accepting other payments from Mr Hraichie in relation to other CCBC work. This is because such conduct could adversely affect the honest or impartial exercise of his official functions as a public official employed by the CCBC, and, therefore, comes within section 8(1)(a) of the ICAC Act. It is also conduct that constitutes or involves a breach of public trust, and therefore comes within section 8(1)(c) of the ICAC Act. For the purposes of section 9 of the ICAC Act, such conduct could involve criminal offences of corruptly receive a benefit contrary to section 249B of the *Crimes Act 1900* or the common law offence of misconduct in public office, and could also involve a disciplinary offence or grounds for dismissal on the basis of misconduct.

The Commission is satisfied that without Mr Hraichie's allegations, which led to the Commission undertaking the investigation, and the evidence he gave, the corrupt conduct engaged in by Mr Higgs and Mr Turner would not

have been exposed. It is likely that such conduct would have continued. It is in the interests of the Commission, and the community at large, that persons such as Mr Hraichie, who have information about corruption but who may themselves be implicated in such conduct, are encouraged to provide information and give evidence to the Commission.

The Commission is satisfied that Mr Hraichie gave truthful evidence, and sought to assist the Commission. In these circumstances, the Commission has decided to exercise its discretion not to make a finding of corrupt conduct against Mr Hraichie.

Section 74A(2) statement

The Commission is satisfied that Mr Higgs and Mr Hraichie are "affected" persons for the purposes of section 74A(2) of the ICAC Act.

Mr Higgs

Mr Higgs made no admissions about receiving any payments from Mr Hraichie. Mr Hraichie's evidence, however, would be available to be used against Mr Higgs. In these circumstances, 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 Higgs for criminal offences of receiving a corrupt reward from Mr Hraichie, contrary to section 249B(1)(a) of the *Crimes Act 1900*.

Mr Hraichie

The Commission is of the view that whistleblowers, such as Mr Hraichie, should be encouraged to report serious allegations of corruption. In these circumstances, and in recognition of the assistance provided by Mr Hraichie, 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 Hraichie for any specified criminal offence.

Chapter 4: Corruption prevention

Introduction

Over an extended period of employment at the CCBC, Mr Higgs had moved into a situation in which he had long-term relationships with some contractors, and substantial discretion over, and involvement in, the allocation of work to contractors. He also operated within an organisational design that was unlikely to detect or break up corrupt dealings. The combination of inappropriate relationships, high levels of discretion, and a perceived low risk of detection provided the right conditions for corrupt behaviour to occur.

Contractor friends

Long-term interactions between a supplier and an individual in an agency can develop over time into relationships that benefit both parties. Sometimes these relationships develop naturally, and at other times there is grooming by one party. Grooming often begins with small gifts and benefits, and grows over time with even larger gifts and benefits, slowly drawing the other party into a corrupt relationship.

Mr Higgs had a long-term working relationship with Mr Turner. As a CCBC employee who had moved up the ranks over an extended period of time, Mr Higgs had frequent contact with CCBC contractors. Mr Turner had also fostered this relationship through private work done at Mr Higgs' home, and the purchase of the Quintrex boat and trailer for Mr Higgs.

Most agencies seek to control improper conduct through straightforward bans, and through limits and declarations applied to gifts and benefits offered during the exercise of official functions. Suppliers are regularly informed that they cannot offer gifts and benefits to staff.

Mr Higgs may not have been alone in engaging the services of CCBC contractors to do private work. He told the Commission:

I am like many other people in CCBC, I have engaged and paid contractors that work under CCBC . . . Everyone, even the inspectors who carry out the interviews, there's

other people in the organisation who have engaged contractors and paid for them, there's nothing wrong with engaging a contractor and paying him.

The Commission believes practices that allow or encourage the development of long-term relationships, private relationships or grooming of staff by contractors is a risk. The private engagement of agency contractors by agency staff is such a practice. In his evidence, the CCBC's General Manager, Gary Sawyer, expressed the view that staff should disclose private dealings with CCBC contractors, even if work is done at market rates. The Commission does not see why agency staff should hire agency contractors for private work in any but exceptional circumstances. While the Commission recognises that such a limitation may create difficulties in remote locations in which there may be few contractors in some fields, this does not apply to the CCBC.

Recommendation 1

That City of Canada Bay Council (CCBC) staff be prohibited from using preferred or regular CCBC contractors to carry out private works, except in exceptional circumstances. In these circumstances, approval is to be granted by a senior manager.

The final say in work allocation

Over the 13 years, from the date Mr Higgs joined Drummoyne Municipal Council to his promotion to Manager of City Services at the CCBC, he accrued discretionary power, information access, and positional and expert power. As a result, Mr Higgs was able to direct work to favoured contractors, such as Mr Turner, and provide confidential information to assist Mr Hraichie.

Mr Hraichie said that Mr Higgs was his main point of contact and used his discretion to have "the last say on everything, whether we worked or we didn't". Mr Higgs used his access to information to provide Mr Hraichie with what he needed to bid in order to win work on the Wareemba Village project.

When Mr Higgs did not have the discretion or information needed to act alone, he was able to use his positional power and expertise within the organisation to obtain the necessary additional approvals. This is demonstrated by the evidence concerning Mr Higgs' involvement in arranging for the Kokoda Track project to be awarded to Mr Turner's company, and Mr Kumar's evidence that he had to "crosscheck" with Mr Higgs before engaging a contractor.

Mr Higgs chose to recommend Jet Civil for the Kokoda Track project contract, even though, in his words, "I was not in charge of the project, Manoj Kumar was in charge of the project". Mr Kumar, despite not agreeing with Mr Higgs' assessment, signed his name to the recommendation.

Flawed controls

Where an organisation creates such a position of valuable discretion and access to information and power, it would be expected to also create a framework of controls and checks appropriate to the risk. The CCBC had established a panel of preferred civil contractors, termed the "Operational Tender", which mitigated risks associated with power and discretion to some extent by ensuring separation of duties. In particular, the initial act of establishing the panel, and the subsequent act of drawing upon it, can easily be separated.

Ezy Bobcat was not on the CCBC's panel. Mr Hraichie gave evidence that Mr Higgs told him to "bump up your rate an extra \$10 an hour" in order to finance the corrupt payment of approximately \$50 per day. In this way, the payments to Mr Higgs, according to Mr Hraichie, "wasn't really coming out of my pockets", but rather were coming out of the pockets of ratepayers.

Had Ezy Bobcat been on the Operational Tender list (as the result of an initial competitive process), it would not have been possible for Ezy Bobcat to increase its rates by \$10 per hour, at least not without having to provide an explanation or exposing itself to the risk of competition.

The Commission understands that the CCBC is including plant hire into the Operational Tender, and bundling small jobs to be awarded to preferred contractors, effectively reducing the number of invoices for payments between \$1,000 and \$10,000. John Osland, CCBC's Director of Technical Services, said that for contracts "over 50 to 70 [thousand] ... bids would need to go in the tender box". The Commission, therefore, makes no recommendations on matters in relation to the panel.

However, panels should not be viewed as a panacea for corruption risks. There is, generally, rigour in the admission of a contractor to a panel but the process of choosing amongst the qualified contractors is consequently less rigorous. As a result, it can be harder to detect patterns

favouring certain suppliers as criteria for choosing a supplier. As a safeguard, Mr Osland now receives regular reports setting out how much work contractors receive.

The CCBC's relevant procurement policy further tightens control of the panel by directing that performance and availability be central criteria in work allocation. The policy reads:

Should Council accept contractors with similar schedule of rates, the evaluating office will select at random subject to availability & performance.

Mr Higgs told the Commission that he had a preference for using Mr Turner for the CCBC work, "Because of his quality, his effectiveness and his ability to deliver on time and programs", and because, "he always delivered". Mr Osland held the view that Jet Civil was reliable and available.

Mr Higgs said that contractors other than Mr Turner "haven't got the capacity to actually do the larger projects or are not interested in quoting the larger projects". He also expressed the view that "Manoj [Kumar] has had issues with [another contractor] in the past, about his availability for projects". This claim was disputed by Mr Kumar. These assertions should be supported by contemporaneous documentation that records details about supplier performance.

Regardless of Mr Turner's actual performance, which was good by most accounts, the functioning of the policy relies on objective information about performance and availability. Corruption risks are minimised by the integrity of information about contractor performance and availability.

The CCBC does not, as a matter of custom or policy, maintain records that support performance and availability claims. The CCBC used a procurement software product known as "TransASX". According to the CCBC's procurement policy, for classes of procurement involving the provision of written quotations, delegated procurement officers are expected to list the, "criteria on which the suppliers was [sic] chosen in the "Notes" section of TransASX". In practice, however, compliance with this particular aspect of the policy was not always achieved, and CCBC management could not easily determine whether work done by CCBC preferred civil contractors is awarded fairly and in line with the policy.

Recommendation 2

That the CCBC develops methods to:

- (a) **compel staff to justify their selection of preferred civil contractors**

- (b) **compel the creation of regular records concerning contractor performance and availability.**

Recommendation 3

That the CCBC, as far as is feasible, ensures the function of rating contractor performance and availability is independent of the function of allocating work.

Even with the changes recommended by the Commission and being undertaken by the CCBC to better control the Operational Tender, risks may remain. The Commission understands from Mr Osland that the CCBC has established an Audit and Risk Committee, and will call for tenders for contracts over \$150,000. These appear to be prudent steps to further manage the panel's risk and, therefore, the Commission makes no recommendations in these matters.

A sense of security

Mr Higgs may well have felt secure in receiving money and other benefits in return for the allocation of work – he knew Mr Turner and Mr Hraichie for a substantial length of time, he knew the system of checks that were in place, and he had effective control of work allocation.

Such a sense of security would have been reduced if the CCBC had encouraged suppliers to report unethical behaviour. During his evidence, Mr Osland agreed that additional training in code of conduct or ethics might be of assistance to contractors. He thought that smaller contractors, in particular, were vulnerable to improper practices. Had Mr Hraichie had the benefit of such training, he may have been impelled to resist paying Mr Higgs. The possibility that such training could lead to a complaint or confrontation might have had a deterrent effect on Mr Higgs.

Mr Osland stated that “maybe we should have a compulsory briefing, a regular compulsory briefing for our contractors” regarding conduct issues. The Commission agrees with this approach.

Recommendation 4

That the CCBC provides code of conduct and complaint process briefings to new contractors, and conducts regular compulsory briefings with existing contractors.

Mr Higgs' sense of security would have been further reduced if he knew another manager might review his actions. A program of manager rotation can have a variety of advantages for an organisation, over and above casting

a new set of eyes onto the situation. Where specialised skills make this impossible, it may be practicable to place a different manager into an acting role during holidays and other absences of the full-time manager. Rotation of managers can significantly increase both the fear and the reality that corrupt relationships will be discovered.

Recommendation 5

That the CCBC Audit and Risk Committee identifies high risk positions and, where practicable, rotates managers or places acting managers from outside the area into those positions on a regular basis.

Appendix 1: The role of the Commission

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

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

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

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

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

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

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

Appendix 2: Sections 8 and 9 of the ICAC Act

Sections 8 and 9 of the ICAC Act provide as follows:

8 General nature of corrupt conduct

- (1) Corrupt conduct is:
- (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or
 - (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
 - (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
 - (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.
- (2) Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:
- (a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),
 - (b) bribery,
 - (c) blackmail,
 - (d) obtaining or offering secret commissions,
 - (e) fraud,
 - (f) theft,
 - (g) perverting the course of justice,
 - (h) embezzlement,
 - (i) election bribery,
 - (j) election funding offences,
 - (k) election fraud,
 - (l) treating,
 - (m) tax evasion,
 - (n) revenue evasion,
 - (o) currency violations,
 - (p) illegal drug dealings,
 - (q) illegal gambling,
 - (r) obtaining financial benefit by vice engaged in by others,
 - (s) bankruptcy and company violations,
 - (t) harbouring criminals,
 - (u) forgery,
 - (v) treason or other offences against the Sovereign,
 - (w) homicide or violence,
 - (x) matters of the same or a similar nature to any listed above,
 - (y) any conspiracy or attempt in relation to any of the above.
- (3) Conduct may amount to corrupt conduct under this section even though it occurred before the commencement of this subsection, and it does not matter that some or all of the effects or other ingredients necessary to establish such corrupt conduct occurred before that commencement and that any person or persons involved are no longer public officials.
- (4) Conduct committed by or in relation to a person who was not or is not a public official may amount to

corrupt conduct under this section with respect to the exercise of his or her official functions after becoming a public official.

- (5) Conduct may amount to corrupt conduct under this section even though it occurred outside the State or outside Australia, and matters listed in subsection (2) refer to:
- (a) matters arising in the State or matters arising under the law of the State, or
 - (b) matters arising outside the State or outside Australia or matters arising under the law of the Commonwealth or under any other law.
- (6) The specific mention of a kind of conduct in a provision of this section shall not be regarded as limiting the scope of any other provision of this section.

9 Limitation on nature of corrupt conduct

- (1) Despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve:
- (a) a criminal offence, or
 - (b) a disciplinary offence, or
 - (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or
 - (d) in the case of conduct of a Minister of the Crown or a member of a House of Parliament—a substantial breach of an applicable code of conduct.
- (2) It does not matter that proceedings or action for such an offence can no longer be brought or continued, or that action for such dismissal, dispensing or other termination can no longer be taken.
- (3) For the purposes of this section:

applicable code of conduct means, in relation to:

- (a) a Minister of the Crown—a ministerial code of conduct prescribed or adopted for the purposes of this section by the regulations, or
- (b) a member of the Legislative Council or of the Legislative Assembly (including a Minister of the Crown)—a code of conduct adopted for the purposes of this section by resolution of the House concerned.

criminal offence means a criminal offence under the law of the State or under any other law relevant to the conduct in question.

disciplinary offence includes any misconduct, irregularity, neglect of duty, breach of discipline or other matter that

constitutes or may constitute grounds for disciplinary action under any law.

- (4) Subject to subsection (5), conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in section 8 is not excluded by this section if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.
- (5) Without otherwise limiting the matters that it can under section 74A (1) include in a report under section 74, the Commission is not authorised to include a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection (4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from this Act) and the Commission identifies that law in the report.
- (6) A reference to a disciplinary offence in this section and sections 74A and 74B includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440 (5) of the *Local Government Act 1993*, but does not include a reference to any other breach of such a requirement.



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