

I·C·A·C

INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES



**INVESTIGATION INTO THE
AWARDING OF ROADS AND
TRAFFIC AUTHORITY AND
ROADS AND MARITIME
SERVICES CONTRACTS
(OPERATION PARAGON)**

**ICAC REPORT
MARCH 2023**



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ICAC

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Mr President
Mr Speaker

In accordance with s 74 of the *Independent Commission Against Corruption Act 1988* (the ICAC Act) I am pleased to present the Commission's report on its investigation into the awarding of Roads and Traffic Authority and Roads and Maritime Services contracts.

The former Chief Commissioner, the Hon Peter Hall KC, presided at the public inquiry held in aid of this investigation.

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

Yours sincerely



The Hon John Hatzistergos AM
Chief Commissioner

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Significant persons in this report

Please note no findings of corrupt conduct were made against Martin Duchesne, Nabil Habbouche and Ghazi Sangari.

Name(s)	Contextual information
Alameddine, Hassan	<p>Alias: Harry Alameddine</p> <p>RTA/RMS contractor through Areva Corp Pty Ltd from 6 September 2007 until 20 June 2013, Seina Group Pty Ltd and Efficient Project Management and Deliveries Pty Ltd.</p>
Alexander, Ashley	<p>RMS contractor through AA Steel Piping Pty Ltd (AA Steel).</p> <p>Married to Sandra Alexander.</p>
Alexander, Sandra	<p>RMS contractor through AA Steel.</p> <p>Married to Ashley Alexander. Cousin of Craig Steyn.</p>
Chahine, Chahid	<p>Alias/nickname: "Hoody"</p> <p>RTA/RMS contractor through Complete Building Fitout Pty Ltd and CBF Projects Pty Ltd.</p> <p>Other companies Mr Chahine jointly controlled with Mr Hadid were Euro Civil and Maintenance Pty Ltd, OzCorp Civil Pty Ltd, Euro Projects Pty Ltd and Built Engineering Pty Ltd.</p>
Dubois, Alexandre	<p>Born: Hassan Habbouche.</p> <p>RTA/RMS contract employee and later RMS employee between 7 August 2009 and 17 October 2019.</p> <p>Also controlled Grendizer Pty Ltd.</p> <p>Cousin of Nabil Habbouche.</p>
Duchesne, Eric Louis Martin	<p>Aliases/nickname: Martin Duchesne, "Uncle Marty".</p> <p>RTA/RMS contractor through M&M Inspections Pty Ltd.</p>

Name(s)	Contextual information
Goldberg, John	<p>Born: Hussein Taha.</p> <p>Alias: Adam Malas</p> <p>RMS contractor through MJ Wilsons Pty Ltd. Mr Goldberg, as Adam Malas, also controlled Wilkins Corp Pty Ltd and Areva Corp from 20 June 2013 until it was wound up.</p> <p>Brother of Towfik Taha.</p>
Habbouche, Nabil	<p>Mr Habbouche controlled Sydney Metro Building Services Pty Ltd.</p> <p>Cousin of Alexandre Dubois.</p>
Hadid, Barrak	<p>Alias/nickname: Barry Haden and “Baz”.</p> <p>RMS contractor through Euro Civil. Mr Hadid also controlled another RMS contractor company, OzCorp Civil, through his wife.</p> <p>Other companies jointly controlled by Mr Hadid with Mr Chahine were Euro Civil, Euro Projects and Built Engineering.</p> <p>Business associate of Mr Chahine.</p>
Masters, Steven	RMS contractor through his sole trader business S A Masters Electrical Services.
Nachabe, Abdula	RTA/RMS contractor through A&A Structural Solutions Pty Ltd. Abdula Nachabe also jointly controlled Senai Steel Pty Ltd with his brother, Gamele Nachabe.
Nachabe, Gamele	<p>Alias: Jim Nachabe</p> <p>RTA/RMS contractor through Senai Steel. Gamele Nachabe also jointly controlled Senai Steel with his brother, Abdula Nachabe.</p>
Najjarin, Bilal	RTA/RMS contractor through BMN Electrical Services Pty Ltd.

Name(s)	Contextual information
Rahme, Joseph	RTA/RMS contractor through Lancomm Pty Ltd. Mr Rahme also controlled J & C Maintenance Pty Ltd.
Rifai, Talal	Alias: Allan Rifai RTA contractor through Ultimate Demolition Excavation Group Pty Ltd.
Sangari, Ghazi	RTA/RMS contractor through GEC Consulting Pty Ltd.
Steyn, Craig	RTA/RMS employee between 16 March 2009 and 6 December 2019. Mr Steyn controlled Peter Manuel Services Pty Ltd. Cousin of Sandra Alexander.
Taha, Towfik	Aliases: Terry Taha and Zac Malas RTA/RMS contractor through TTS Group Investments Pty Ltd and MWK Developments Pty Ltd. Brother of John Goldberg.

Figure 1: Operation Paragon relationship flow chart

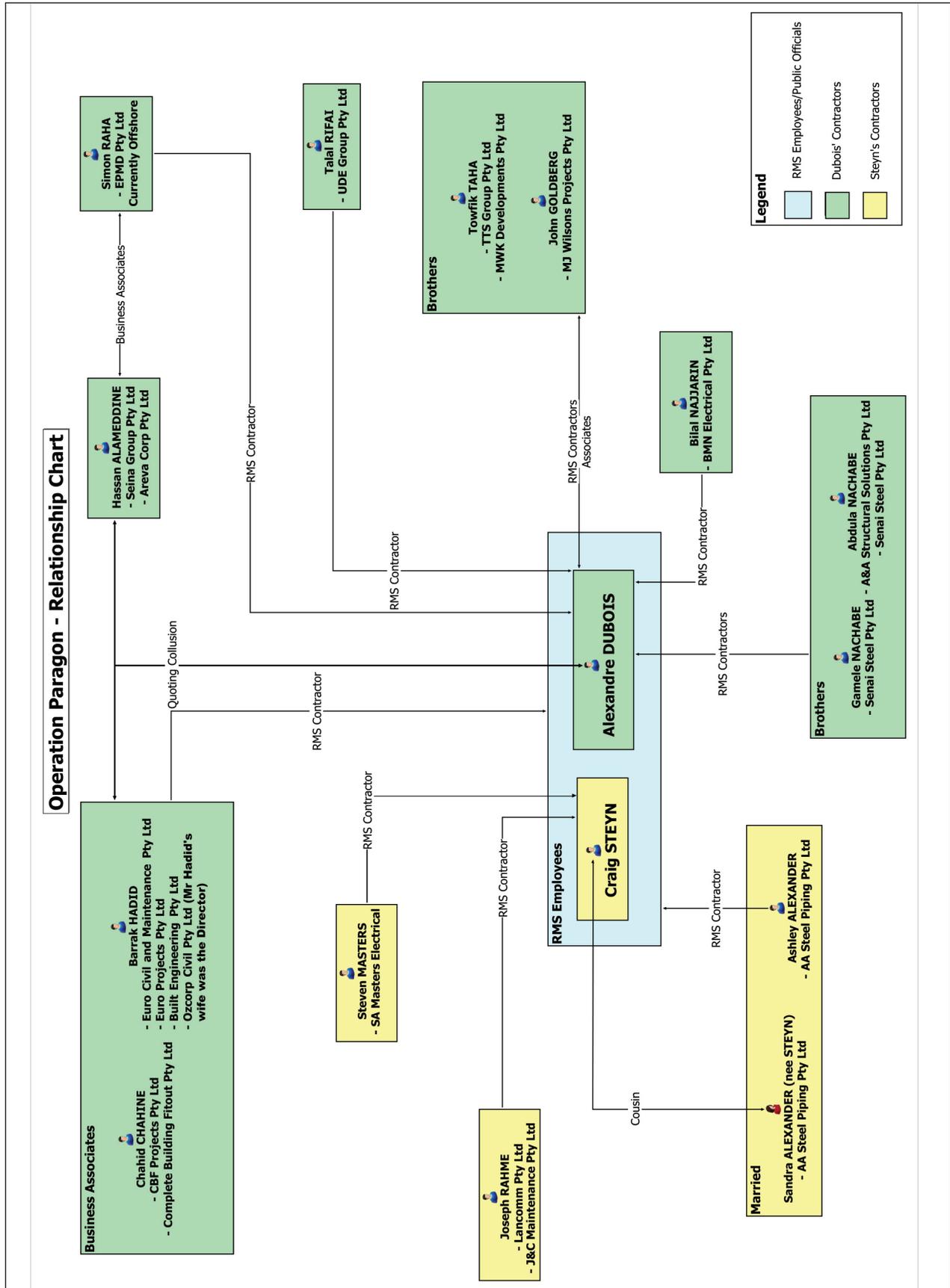
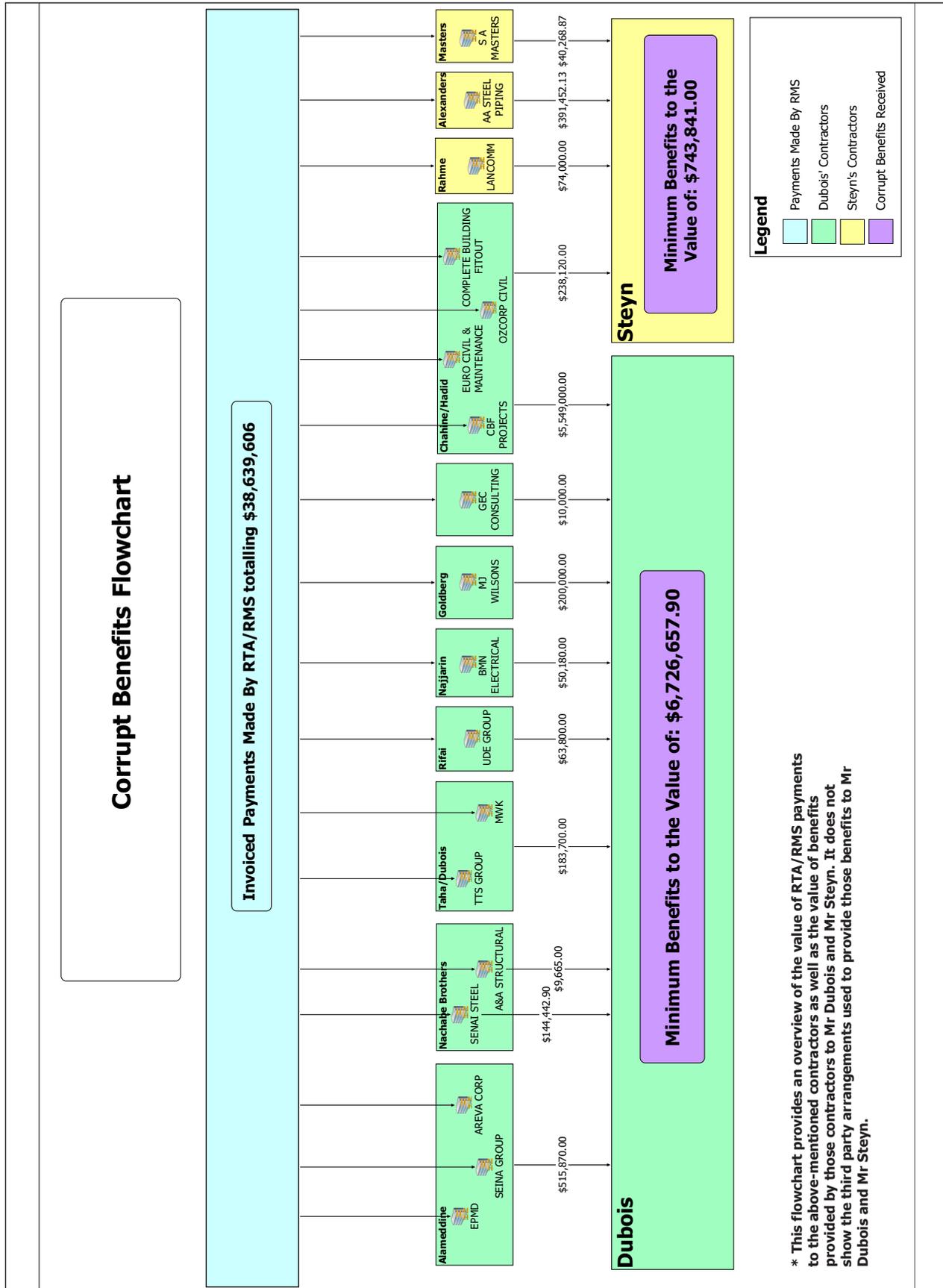


Figure 2: RMS Payment and benefits flowchart to contractors



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Summary of investigation and results

This investigation by the NSW Independent Commission Against Corruption (“the Commission”) examined whether, between 2009 and June 2019, Roads and Traffic Authority (RTA) and then Roads and Maritime Services (RMS) employees Alexandre Dubois and Craig Steyn partially and/or dishonestly exercised their official functions by awarding RTA/RMS contracts in return for benefits.

As a result of the investigation, separate NSW Supreme Court proceedings were commenced against Mr Dubois, by the NSW Crime Commission, and Mr Steyn, by Transport for NSW (TfNSW), that resulted in the recovery of:

- \$3.94 million from Mr Dubois
- \$745,000 from Mr Steyn.

In total, both public authorities collectively recovered \$4.685 million from Mr Dubois and Mr Steyn.

Corrupt conduct findings

Mr Dubois

The Commission found that Mr Dubois engaged in serious corrupt conduct by:

- between about mid-2010 and mid-2019, misusing his public official position with the RTA/RMS to arrange for the awarding of approximately \$21 million worth of RTA/RMS work to companies owned or controlled by Chahid Chahine and Barrak Hadid, namely, Complete Building Fitout Pty Ltd, CBF Projects Pty Ltd, Euro Civil and Maintenance Pty Ltd (“Euro Civil”) and OzCorp Civil Pty Ltd, in return for benefits from Mr Hadid and Mr Chahine totalling no less than \$5.549 million (chapter 2)

- between April 2011 and November 2012, misusing his public official position with the RTA/RMS to arrange for the awarding of approximately \$1.468 million worth of RTA/RMS work to TTS Group Investments Pty Ltd, a company owned and controlled by Towfik Taha, and for the awarding of RTA/RMS work to MWK Developments Pty Ltd (which received \$224,000 worth of work), a company jointly controlled by Mr Dubois and Mr Taha, in return for payments from Mr Taha totalling no less than \$183,700 (chapter 3)
- between March 2011 and July 2011, misusing his public official position with the RTA to award \$213,400 worth of RTA work to Ultimate Demolition Excavation Group Pty Ltd (“UDE Group”), a company owned by Talal Rifai, in return for a payment from Mr Rifai totalling \$63,800 (chapter 4)
- between May 2010 and June 2011, misusing his public official position with the RTA to award \$219,340 worth of RTA work to BMN Electrical Services Pty Ltd (“BMN Electrical”), a company owned by Bilal Najjarin, in return for payments by Mr Najjarin totalling \$50,180 (chapter 5)
- in July 2011, receiving \$9,665 from Abdula Nachabe in return for misusing his public official position with the RTA to assist Abdula Nachabe’s company, A&A Structural Solutions Pty Ltd (“A&A Structural”), to gain the RTA contract for the inspection of gantries at various sites for which A&A Structural was paid \$98,632.50 (including GST) (chapter 6)
- between 25 July 2011 and 12 October 2012, receiving \$144,442.90 from Senai Steel Pty Ltd, a company owned by Abdula Nachabe and Gamele Nachabe, in return for misusing his public official position with the RTA/RMS to arrange

the awarding of \$618,507.55 worth of RTA/RMS work, namely the rectification works in respect of Safe-T-Cam sites located at Tomingley, Dundee, Boggabilla and Broken Hill, to Senai Steel (chapter 6)

- between 21 September 2011 and 18 June 2019, misusing his public official position with the RTA/RMS to arrange for the awarding of approximately \$11,017,116 worth of RTA/RMS work to Areva Corp Pty Ltd, Seina Group Pty Ltd and Efficient Project Management and Deliveries Pty Ltd (EPMD), companies owned or controlled by Hassan Alameddine, in return for personal benefits of at least \$515,870 plus substantial cash payments (chapter 7)
- between February 2013 and April 2014, misusing his public official position with the RMS to arrange for the awarding of \$1,089,935 of RMS work to MJ Wilsons Pty Ltd, a company controlled by John Goldberg, in return for cash payments of approximately \$200,000 from Mr Goldberg (chapter 8)
- between November 2011 and December 2014, misusing his public official position with the RTA/RMS by requesting Ghazi Sangari to make two payments to him each of \$5,000 as a reward for awarding \$361,262 worth of RTA work to GEC Consulting Pty Ltd (“GEC”), a company owned by Mr Sangari (chapter 10)
- between about December 2012 and December 2018, misusing his public official position with the RMS to recommend the awarding of substantial RMS work to companies owned or controlled by Mr Chahine and Mr Hadid, namely, CBF Projects, Euro Civil and OzCorp Civil, in return for benefits provided to or on behalf of Mr Steyn from Mr Hadid and Mr Chahine to the value of approximately \$238,121 (chapter 14).

Mr Steyn

The Commission found that Mr Steyn engaged in serious corrupt conduct by:

- between about December 2011 and June 2018, misusing his public official position with the RMS to arrange for the awarding of approximately \$702,240 of RMS work to Lancomm Pty Ltd, a company controlled by Joseph Rahme, in return for benefits to the value of approximately \$74,000 (chapter 11)
- between about February 2013 and March 2019, misusing his public official position with the RMS to arrange for the awarding of approximately \$1,627,172.97 of RMS work to AA Steel Piping Pty Ltd (“AA Steel”), a company controlled by Ashley and Sandra Alexander, in return for benefits to the value of at least \$391,452.13 (chapter 12)
- between about December 2016 and June 2019, misusing his public official position with the RMS to arrange for the awarding of a significant amount of RMS work to S A Masters Electrical Services (“S A Masters”), a business controlled by Steven Masters, in return for benefits to the value of no less than \$40,268.87 (chapter 13)
- between about December 2012 and December 2018, misusing his public official position with the RMS to allow the awarding of substantial RMS work to companies owned or controlled by Mr Chahine and Mr Hadid, namely, CBF Projects, Euro Civil and OzCorp Civil, in return for benefits from Mr Hadid and Mr Chahine to the value of approximately \$238,121 (chapter 14).

Mr Chahine

The Commission found that Mr Chahine engaged in serious corrupt conduct by:

- between about mid-2010 and mid-2019, in concert with Mr Hadid, providing benefits to the value of at least \$5.549 million to Mr Dubois, and on behalf of Mr Dubois, as a reward for Mr Dubois misusing his public official position with the RTA/RMS to award approximately \$21 million worth of RTA/RMS work to companies owned or controlled by Mr Chahine and Mr Hadid, namely, Complete Building Fitout, CBF Projects, Euro Civil and OzCorp Civil (chapter 2)
- between about December 2012 and November 2017, in concert with Mr Hadid and Mr Dubois, providing benefits to the value of approximately \$114,121 to and on behalf of Mr Steyn, by way of payment of goods and services associated with construction at Mr Steyn's house, in return for Mr Steyn misusing his public official position with the RMS to allow the awarding of work to companies owned or controlled by him and Mr Hadid, namely, CBF Projects, Euro Civil and OzCorp Civil (chapter 14).

Mr Hadid

The Commission found that Mr Hadid engaged in serious corrupt conduct by:

- between about mid-2010 and mid-2019, in concert with Mr Chahine, providing benefits to the value of at least \$5.549 million to Mr Dubois, and on behalf of Mr Dubois, as a reward for Mr Dubois misusing his public official position with the RTA/RMS to award approximately \$21 million worth of work to companies owned or controlled by Mr Chahine and Mr Hadid, namely, Complete Building Fitout, CBF Projects, Euro Civil and OzCorp Civil (chapter 2)
- between about December 2012 and December 2018, providing benefits to and on behalf of Mr Steyn to the value of approximately \$238,121 (being approximately \$114,121 provided in concert with Mr Chahine by way of payment for goods and services associated with the construction of Mr Steyn's house and \$124,000 for the purchase of a white Mercedes C63 for Mr Steyn's use), in return for Mr Steyn misusing his public official position with the RMS to allow the awarding of substantial work to companies owned or controlled by him and Mr Chahine, namely, CBF Projects, Euro Civil and OzCorp Civil (chapter 14).

Mr Taha

The Commission found that Mr Taha engaged in serious corrupt conduct by:

- between April 2011 and November 2012, paying at least \$183,700 to Mr Dubois, as a reward for Mr Dubois misusing his public official position with the RTA/RMS, to award approximately \$1.468 million worth of RTA/RMS work to his company, TTS Group, and to MWK Developments (which received \$224,000 of RTA/RMS work), a company jointly controlled by him and Mr Dubois (chapter 3).

Mr Rifai

The Commission found that Mr Rifai engaged in serious corrupt conduct by:

- in July 2011, paying \$63,800 to Mr Dubois as a reward for Mr Dubois misusing his public official position with the RTA to award \$213,400 worth of RTA work to Mr Rifai's company, UDE Group (chapter 4).

Mr Najjarin

The Commission found that Mr Najjarin engaged in serious corrupt conduct by:

- in June 2011, paying \$50,180 to Mr Dubois as a reward for Mr Dubois misusing his public official position with the RTA to award \$219,340 worth of RTA work to Mr Najjarin's company, BMN Electrical, between 2010 and 2011 (chapter 5).

Abdula Nachabe

The Commission found that Abdula Nachabe engaged in serious corrupt conduct by:

- between January 2011 and July 2011, paying \$9,665 to Mr Dubois as a reward for Mr Dubois misusing his public official position with the RTA to award \$98,632.50 of RTA work to A&A Structural, a company owned and controlled by Abdula Nachabe (chapter 6)
- between 7 February 2011 and 12 October 2012, paying \$144,442.90 to Mr Dubois (being \$13,200 on his own account and \$131,242.90 in concert with Gamele Nachabe) as a reward for Mr Dubois misusing his public official position with the RTA/RMS to award, between 5 April 2011 and 12 October 2012, approximately \$618,507.55 worth of RTA/RMS work, to Senai Steel, a company owned and controlled by him and Gamele Nachabe (chapter 6).

Gamele Nachabe

The Commission found that Gamele Nachabe engaged in serious corrupt conduct by:

- between 23 January 2012 and 12 October 2012, in concert with Abdula Nachabe, paying \$131,242.90 to Mr Dubois as a reward for Mr Dubois misusing his public official position with the RMS to award, between 10 October 2011 and 12 October 2012, approximately \$496,847.55 worth of RMS work to Senai Steel, a company owned and controlled by him and Abdula Nachabe (chapter 6).

Hassan Alameddine

The Commission found that Hassan Alameddine engaged in serious corrupt conduct by:

- between 21 September 2011 and 18 June 2019, making significant cash and/or cheque payments of no less than \$515,870, in addition to substantial cash payments, to Mr Dubois and on behalf of Mr Dubois as a reward for Mr Dubois misusing his public official position with the RTA/RMS, to award, between 21 September 2011 and 18 June 2019, approximately \$11,017,116 worth of work to Areva Corp, Seina Group and EPMD, companies owned or controlled by Hassan Alameddine (chapter 7).

Mr Goldberg

The Commission found that Mr Goldberg engaged in serious corrupt conduct by:

- between 22 February 2013 and 29 July 2013, making cash payments of approximately \$200,000 to Mr Dubois as a reward for Mr Dubois misusing his public official position with the RMS to arrange for the awarding of \$1,089,935 worth of RMS work to MJ Wilsons, a company under Mr Goldberg's control (chapter 8).

Mr Rahme

The Commission found that Mr Rahme engaged in serious corrupt conduct by:

- between approximately December 2011 and June 2018, providing benefits to the value of approximately \$74,000 to Mr Steyn as a reward for Mr Steyn misusing his public official position with the RMS to arrange for the awarding of approximately \$702,240 worth of RMS work to

Lancomm, a company controlled by Mr Rahme (chapter 11).

Mr Alexander

The Commission found that Mr Alexander engaged in serious corrupt conduct by:

- between about February 2013 and March 2019, in concert with Mrs Alexander, providing benefits to the value of at least \$391,452.13 to Mr Steyn, and on behalf of Mr Steyn, as a reward for Mr Steyn misusing his public official position with the RMS to award approximately \$1,627,172.97 worth of RMS work to AA Steel, a company owned and controlled by Mr Alexander and Mrs Alexander (chapter 12).

Mrs Alexander

The Commission found that Mrs Alexander engaged in serious corrupt conduct by:

- between about February 2013 and March 2019, in concert with Mr Alexander, providing benefits to the value of at least \$391,452.13 to Mr Steyn, and on behalf of Mr Steyn, as a reward for Mr Steyn misusing his public official position with the RMS to award approximately \$1,627,172.97 worth of RMS work to AA Steel, a company owned and controlled by Mrs Alexander and Mr Alexander (chapter 12).

Mr Masters

The Commission found that Mr Masters engaged in serious corrupt conduct by:

- between approximately December 2016 and June 2019, providing benefits to the value of no less than \$40,268.87 to Mr Steyn as a reward for Mr Steyn misusing his public official position with the RMS to arrange for the awarding of a significant amount of RMS work to S A Masters, a company controlled by Mr Masters (chapter 13).

Section 74A(2) statements

Statements are made in this report pursuant to s 74A(2) of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act") that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the following persons:

Alexandre Dubois

- for offences under s 249B(1)(a) of the *Crimes Act 1900* (“the Crimes Act”) of, between June 2010 and June 2019, corruptly soliciting and receiving benefits, as an inducement or reward for using his position to award contracts to Complete Building Fitout, CBF Projects, Euro Civil and OzCorp Civil (chapter 2)
- for an offence under s 249B(1)(a) of the Crimes Act of, between April 2011 and November 2012, corruptly soliciting and receiving benefits, on account of using his position to award contracts to TTS Group and MWK Developments (chapter 3)
- for an offence under s 192E(1)(b) of the Crimes Act of, in relation to his conduct between November 2012 and July 2013, engaging in a deception to dishonestly obtain a financial advantage from the RMS through the awarding of RMS contracts to MWK Developments (chapter 3)
- for an offence under s 249C(1) of the Crimes Act of, in relation to his conduct between April 2011 and July 2013, being the agent of both the RTA/RMS, giving to the RTA/RMS documents, namely, quotes and invoices from both TTS Group and MWK Developments, which were false or misleading in a material respect with the intent to defraud the RTA/RMS (chapter 3)
- for an offence under s 192G(b) of the Crimes Act of, in relation to his conduct on about 6 April 2011, dishonestly publishing a statement, namely, a tender evaluation report, being false or misleading in a material respect, with the intention of obtaining a financial advantage (chapter 3)
- for an offence under s 249B(2)(a) of the Crimes Act of, between March 2011 and July 2011, corruptly soliciting or receiving a benefit as an inducement or reward for showing favour to a company controlled by Mr Rifai, in relation to the affairs or business of the RTA (chapter 4)
- for an offence under s 249B(1)(a) of the Crimes Act of, between May 2010 and June 2011, corruptly receiving benefits as a reward for using his position in the RTA to award contracts to BMN Electrical (chapter 5)
- for offences under s 249B(1)(a) of the Crimes Act of, between January 2011 and October 2012, corruptly soliciting and receiving benefits, on account of using his position in the RTA/RMS, as

a reward for causing the awarding of contracts to A&A Structural and Senai Steel (chapter 6)

- for offences under s 249B(1)(a) of the Crimes Act of, between September 2011 and June 2019, corruptly soliciting and receiving benefits, on account of using his position in the RTA/RMS, to award contracts to Areva Corp, Seina Group and EPMD (chapter 7)
- for an offence under s 249B(1)(a) of the Crimes Act of, between January 2013 and April 2014, corruptly soliciting and receiving benefits, on account of using his position in the RMS to award contracts to MJ Wilsons (chapter 8)
- for offences under s 249C(1) of the Crimes Act of, between January 2013 and March 2014, using documents, namely, quotes and invoices on behalf of MJ Wilsons, which were false or misleading in a material respect with the intent to defraud the RMS (chapter 8)
- for an offence under s 249C(1) of the Crimes Act of using a document, namely, a letter dated 7 April 2014 purportedly from Mark Abraham, which was false or misleading in a material respect with the intent to defraud the RMS (chapter 8)
- for an offence under s 192E(1)(b) of the Crimes Act of, between January 2013 and April 2014, conspiring with, or aiding and abetting, Mr Goldberg in the commission of deception to dishonestly obtain a financial advantage through the awarding of contracts to MJ Wilsons (chapter 8)
- for offences under s 249B(1)(a) of the Crimes Act of, between December 2012 and December 2018, aiding and abetting Mr Steyn in corruptly soliciting and receiving benefits, on account of using his position to award contracts to CBF Projects, Euro Civil and OzCorp Civil (chapter 14)

Craig Steyn

- for offences under s 249B(1) of the Crimes Act in relation to the benefits he solicited and received from Mr Rahme on account of using his position in the RMS to arrange for the awarding of RMS contracts to Lancomm (chapter 11)
- for offences under s 249B(1)(a) of the Crimes Act of, between February 2013 and June 2019, corruptly soliciting and receiving benefits, on account of using his position to award contracts to AA Steel (chapter 12)

- for two offences under s 87 of the ICAC Act of giving false and misleading evidence when he said during his compulsory examination on 9 September 2020:
 - that he borrowed \$100,000 from the Alexanders from their contributions to the cost of works on his home of which he repaid \$20,000 (chapter 12)
 - that he never received payments from contractors (chapter 12)
- for offences under s 249B(1) of the Crimes Act of, between December 2016 and June 2019, corruptly soliciting and receiving benefits from Mr Masters on account of using his position in the RMS to arrange for the awarding of RMS contracts to S A Masters (chapter 13)
- for offences under s 249B(1)(a) of the Crimes Act of, between December 2012 and December 2018, corruptly soliciting and receiving benefits, on account of using his position to award contracts to CBF Projects, Euro Civil and OzCorp Civil (chapter 14)

Chahid Chahine

- for offences under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between June 2010 and June 2019, corruptly giving a benefit to Mr Dubois on account of Mr Dubois showing favour to Mr Chahine, Mr Hadid and companies under their control, namely, Complete Building Fitout, CBF Projects, Euro Civil and OzCorp Civil (collectively “their companies”) in relation to the affairs or business of the RTA/RMS, or the receipt of or expectation of which would tend to influence Mr Dubois to show favour to Mr Chahine and Mr Hadid and their companies in relation to the affairs or business of the RTA/RMS (chapter 2)
- for an offence under s 193B(1)(a) of the Crimes Act of, between December 2012 and September 2013, conspiring with, or aiding and abetting, Mr Goldberg and Mr Hadid in knowingly dealing with proceeds of crime, namely, that Mr Goldberg received illicit payments into the Wilkins Corp Pty Ltd bank accounts from the CBF Projects account, an account controlled by Mr Chahine and Mr Hadid, for the purpose of those proceeds being provided by Mr Goldberg to Mr Dubois (chapter 8)
- for offences under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between December 2012 and November 2017, corruptly giving a benefit to Mr Steyn on account of Mr Steyn showing

favour to Mr Hadid, Mr Chahine and their companies in relation to the affairs or business of the RMS, or the receipt of or expectation of which would tend to influence Mr Steyn to show favour to Mr Chahine and Mr Hadid and their companies in relation to the affairs or business of the RMS (chapter 14)

Barrak Hadid

- for offences under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between June 2010 and June 2019, corruptly giving a benefit to Mr Dubois on account of Mr Dubois showing favour to Mr Hadid, Mr Chahine and their companies in relation to the affairs or business of the RTA/RMS, or the receipt of or expectation of which would tend to influence Mr Dubois to show favour to Mr Hadid and Mr Chahine and their companies in relation to the affairs or business of the RTA/RMS (chapter 2)
- for an offence under s 193B(1)(a) of the Crimes Act of, between December 2012 and September 2013, conspiring with, or aiding and abetting, Mr Goldberg and Mr Chahine in knowingly dealing with proceeds of crime, namely, that Mr Goldberg received illicit payments into the Wilkins Corp bank accounts from the CBF Projects account, an account controlled by Mr Chahine and Mr Hadid, for the purpose of those proceeds being provided by Mr Goldberg to Mr Dubois (chapter 8)
- for offences under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between December 2012 and December 2018, corruptly giving a benefit to Mr Steyn on account of Mr Steyn showing favour to Mr Hadid, Mr Chahine and their companies in relation to the affairs or business of the RMS, or the receipt of or expectation of which would tend to influence Mr Steyn to show favour to Mr Hadid and Mr Chahine and their companies in relation to the affairs or business of the RMS (chapter 14)

Towfik Taha

- for offences under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between April 2011 and November 2012, corruptly giving a benefit to Mr Dubois on account of Mr Dubois showing favour to Mr Taha and TTS Group and MWK Developments, companies under his control or joint control, in relation to the affairs or business of the RTA/RMS, or the receipt of or expectation of which would tend to influence Mr Dubois

to show favour to Mr Taha and TTS Group in relation to the affairs or business of the RTA/RMS (chapter 3)

- for an offence under s 193B(1)(b) of the Crimes Act of, between May 2011 and November 2012, dealing with proceeds of crime knowing that it was proceeds of crime and intending to conceal proceeds of crime, in that Mr Taha created the MWK Developments bank accounts under his name for the purpose of allowing Mr Dubois access to illicit payments made into that account by other RTA/RMS contractors (chapter 3)
- for an offence under s 87 of the ICAC Act of giving false and misleading evidence when he said during his compulsory examination on 2 December 2020 that he never provided a “kickback” to Mr Dubois (chapter 3)

Talal Rifai

- for an offence under s 249B(2)(a) of the Crimes Act of, between March 2011 and July 2011, corruptly giving a benefit to Mr Dubois on account of Mr Dubois showing favour to Mr Rifai and UDE Group in relation to the affairs or business of the RTA (chapter 4)

Bilal Najjarin

- for an offence under s 249(B)(2)(a) of the Crimes Act of, between May 2010 and June 2011, corruptly giving benefits to Mr Dubois on account of Mr Dubois showing favour to Mr Najjarin and BMN Electrical in relation to the affairs or business of the RTA (chapter 5)

Abdula Nachabe

- for offences under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between January 2011 and October 2012, corruptly giving benefits, on account of Mr Dubois showing favour to Abdula Nachabe, Gamele Nachabe, A&A Structural and Senai Steel in relation to the affairs or business of the RTA/RMS, or receipt of or expectation of which would tend to influence Mr Dubois to show favour to Abdula Nachabe, Gamele Nachabe and A&A Structural and Senai Steel in relation to the affairs or business of the RTA/RMS (chapter 6)

Gamele Nachabe

- for an offence under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between January 2012 and October 2012, corruptly giving benefits, on account of Mr Dubois showing favour to Gamele Nachabe, Abdula Nachabe and Senai Steel in relation to the affairs or business of the RTA, or receipt of or expectation of which would tend to influence Mr Dubois to show favour to Gamele Nachabe, Abdula Nachabe and Senai Steel in relation to the affairs or business of the RTA (chapter 6)

Hassan Alameddine

- for offences under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between September 2011 and June 2019, corruptly giving a benefit to Mr Dubois on account of Mr Dubois showing favour to Hassan Alameddine and companies under his control in relation to the affairs or business of the RTA/RMS, or the receipt of or expectation of which would tend to influence Mr Dubois to show favour to Hassan Alameddine and his companies in relation to the affairs or business of the RTA/RMS (chapter 7)
- an offence under s 193B(1)(a) of the Crimes Act of, between January 2013 and May 2013, conspiring with, or aiding and abetting, Mr Goldberg in knowingly dealing with proceeds of crime, namely, that Mr Goldberg received illicit payments into the Ibrahim Transport Pty Ltd bank accounts from Hassan Alameddine’s Areva Corp bank account for the purpose of those proceeds being provided by Mr Goldberg to Mr Dubois (chapter 8)

John Goldberg

- for offences under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between January 2013 and April 2014, corruptly giving benefits to Mr Dubois on account of Mr Dubois showing favour to Mr Goldberg and MJ Wilsons in relation to the affairs or business of the RMS, or the receipt of or expectation of which would tend to influence Mr Dubois to show favour to Mr Goldberg and MJ Wilsons in relation to the affairs or business of the RMS (chapter 8)
- for an offence under s 192E(1)(b) of the Crimes Act of, between January 2013 and April 2014, conspiring with, or aiding and abetting, Mr Dubois in the commission of deception to dishonestly obtain a financial advantage through the awarding of contracts to MJ Wilsons (chapter 8)

- for an offence under s 193B(1)(a) of the Crimes Act of, between December 2012 and September 2013, conspiring with, or aiding and abetting, Mr Hadid and Mr Chahine in knowingly dealing with proceeds of crime, namely that Mr Goldberg received illicit payments into the Wilkins Corp bank accounts from CBF Projects and withdrew those proceeds and provided them to Mr Dubois (chapter 8)
- for an offence under s 193B(1)(a) of the Crimes Act of, between January 2013 and May 2013, conspiring with, or aiding and abetting, Hassan Alameddine in knowingly dealing with proceeds of crime, namely that Mr Goldberg received illicit payments into the Ibrahim Transport bank accounts from Hassan Alameddine's Areva Corp bank account and withdrew those proceeds and provided them to Mr Dubois (chapter 8)
- for two offences under s 87 of the ICAC Act for giving false and misleading evidence when he said during his compulsory examination on 1 December 2020:
 - that he had no knowledge that Mr Dubois awarded RMS contracts in return for “kickbacks” (chapter 8)
 - that the first time he heard Mr Dubois was giving RMS contracts for “kickbacks” was when he was giving evidence during that hearing (chapter 8)

Ashley Alexander

- for offences under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between February 2013 and June 2019, corruptly giving a benefit to Mr Steyn on account of Mr Steyn showing favour to Mr Alexander and Mrs Alexander and their company, AA Steel, in relation to the affairs or business of the RTA/RMS, or the receipt of or expectation of which would tend to influence Mr Steyn to show favour to Mr Alexander and Mrs Alexander and AA Steel in relation to the affairs or business of the RTA/RMS (chapter 12)
- for an offence under s 87 of the ICAC Act of giving false and misleading evidence when he said during his compulsory examination on 13 October 2020 that the payments he and AA Steel made to Mr Steyn were a loan (chapter 12)

Sandra Alexander

- for offences under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between February 2013 and June 2019, corruptly giving a benefit to Mr Steyn on account of Mr Steyn showing favour to Mr Alexander and Mrs Alexander and their company, AA Steel, in relation to the affairs or business of the RTA/RMS, or the receipt of or expectation of which would tend to influence Mr Steyn to show favour to Mr Alexander and Mrs Alexander and AA Steel in relation to the affairs or business of the RTA/RMS (chapter 12)

Steven Masters

- for offences under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between December 2016 and June 2019, corruptly giving a benefit to Mr Steyn on account of Mr Steyn showing favour to Mr Masters and his business, S A Masters, in relation to the affairs or business of the RMS, or the receipt of or expectation of which would tend to influence Mr Steyn to show favour to Mr Masters and S A Masters in relation to the affairs or business of the RMS (chapter 13).

Corruption prevention

Chapter 17 of this report sets out the Commission's review of the corruption risks identified during its investigation. The corrupt conduct found in the investigation occurred throughout each of the planning, sourcing and managing phases of the NSW Government Procurement Framework.

Frequently, during the planning phase both need and market analysis were missing or inadequate; procurement strategies were not prepared; and procurement activities were approved by individuals lacking requisite delegation authority.

During the sourcing phase, Mr Dubois and Mr Steyn repeatedly ignored proper procedure, failed to adequately approach the market and adopted biased and inadequate selection processes. On some occasions, correct practices were undermined by order splitting.

In the managing phase, poor contract management processes were followed by Mr Dubois and Mr Steyn which were characterised by failure to properly verify work, use of unauthorised subcontractors and inadequate performance management.

Spanning all three procurement phases, the investigation also found insufficient procurement competence; limited

assurance and accountability; and inadequate record management.

In addition, the investigation revealed issues with the broader control framework that were conducive to the corrupt conduct found such as:

- inadequate responses to reported conflicts of interest
- limited staff management
- cultural issues within the relevant division
- poor management of change affecting the relevant operational unit
- chaotic budget management
- insufficient support for suppliers making complaints
- a lack of management accountability.

Accordingly, the Commission makes the following nine recommendations:

Recommendation 1

That TfNSW reviews its processes surrounding construction procurement to ensure that planning of minor works:

- is based on a meaningful analysis of need
- properly considers relevant market(s), including the existence of relevant panels of suppliers or prequalification schemes
- is guided by an appropriately detailed procurement strategy, with controls to avoid the splitting of work
- is only conducted in accordance with its delegation framework.

Recommendation 2

That TfNSW ensures that it has a robust supplier due diligence framework that includes:

- routinely obtaining full ASIC records of new suppliers
- routinely conducting internet searches on new suppliers
- further due diligence checks being conducted on a risk-basis
- due diligence checks being conducted by an individual who is not involved in selecting the supplier

- processes to follow up supplier red flags in a meaningful manner.

Recommendation 3

That TfNSW strengthens its controls surrounding subcontractors and makes any necessary enhancements to ensure that it monitors the role of subcontractors throughout the construction procurement process.

Recommendation 4

That TfNSW develops and implements a plan to:

- assess the procurement competence of relevant TfNSW employees and contractors who perform procurement activities, making allowance for the fact that different activities may require different competencies, and rectify any competency deficits
- adopt mechanisms to ensure that staff with new procurement responsibilities are competent.

Recommendation 5

That TfNSW reviews its governance of procurement information to ensure that accurate and completed records are kept.

Recommendation 6

That TfNSW reviews supervision of staff involved in procurement processes to ensure that managers are alert to, and aware of, red flags of misconduct, and act upon them appropriately.

Recommendation 7

That TfNSW strengthens its governance of change management processes to ensure that the following are addressed:

- potential structural weaknesses that might arise
- the effect of change on supplier markets, including knowledge of potential suppliers
- adequacy of supervisor and management handovers that may be required when accountabilities change (whether these relate to oversight of an individual or a function).

Recommendation 8

That TfNSW reviews its infrastructure programs to ensure that the new policy/framework requirements for construction procurements (regardless of asset value) include an appropriate level of assurance and compliance

mechanisms to address the systemic risks identified in this investigation.

Recommendation 9

That TfNSW strengthens its complaints management and contracts management systems to ensure that:

- there is clear and easy access for suppliers to report suspected corrupt conduct by TfNSW employees, including their designated TfNSW project and/or contract manager
- adequate processes exist to manage allegations of corrupt conduct raised by suppliers.

These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E of the ICAC Act, will be furnished to TfNSW and the responsible minister.

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

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

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

Recommendation that this report be made public

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

Chapter 1: Background

This chapter sets out some background information about the investigation by the NSW Independent Commission Against Corruption (“the Commission”) into whether, between 2009 and June 2019, Roads and Traffic Authority (RTA) and later Roads and Maritime Services (RMS) employees Alexandre Dubois and Craig Steyn partially and/or dishonestly exercised their official functions by awarding RTA/RMS contracts to companies in return for benefits.

How the investigation came about

On 7 May 2018, an anonymous caller contacted the Transport for NSW (TfNSW) hotline and reported that Mr Dubois was awarding average speed safety camera contracts to friends of his, and that three or four of the companies quoting for the work were owned by the same persons. The caller also indicated that Mr Dubois was significantly inflating the prices of these contracts.

Mr Dubois was a project manager of heavy vehicles programs within the Compliance Operations Branch of TfNSW’s Compliance and Regulatory Services Division.

After receiving this report, TfNSW conducted covert enquiries by accessing online procurement and contract records. Those enquiries identified that, since late-2012, Mr Dubois was directly or indirectly involved in engaging one of the companies identified in the report to undertake approximately \$10 million worth of work.

On 22 May 2018, Ken Kanofski, chief executive of the then RMS, which is now a part of TfNSW, reported this allegation to the Commission pursuant to s 11 of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”). This section of the ICAC Act requires the principal officer of a public authority to report to the Commission any matter that the person suspects on reasonable grounds concerns or may concern corrupt conduct.

Why the Commission investigated

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

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

The role of the Commission is explained in more detail in Appendix 1.

The s 11 report to the Commission concerned breaches of procurement rules by a public official within TfNSW, and involved contracts of significant value.

Conduct of the investigation

On 31 May 2018, after assessing the matter, the Commission determined to conduct a preliminary investigation. On 27 September 2018, the Commission decided to escalate the matter to a full investigation, owing to the serious conduct involving breaches in procurement practices and the large number of contracts awarded to contractors associated with Mr Dubois.

On 19 March 2019, the Commission expanded the scope of the investigation to include Mr Dubois’ colleague, Craig Steyn, who was the heavy vehicle maintenance and average speed camera program manager. This was because the Commission discovered during the investigation that Mr Steyn was also involved in receiving benefits in return for awarding contracts. At this stage of the investigation, the Commission quantified that TfNSW and its predecessor public entities had made payments of

\$7,245,770 to seven contractors. Some of the contracting companies were owned by the same persons, suggesting a subversion of the procurement process. The Commission also ascertained that, between May 2012 and March 2018, Mr Dubois made cash deposits amounting to at least \$1.39 million to accounts under his control. An analysis of relevant contractor bank accounts indicated that significant cash withdrawals were made during the same period.

By the eve of the commencement of the public inquiry, the Commission had collected evidence that, between 2009 and June 2019, Mr Dubois and Mr Steyn's conduct may have involved the awarding of \$41,023,677.77 of RTA/RMS project-work contracts to 15 companies in return for benefits. Ultimately, the Commission has concluded that Mr Dubois and Mr Steyn's corrupt conduct involved the awarding of at least \$38,639,606 during the same period.

During the course of the investigation, the Commission:

- obtained two stored telecommunications warrants under s 116 of the *Telecommunications (Interception and Access) Act 1997* (Cth)
- executed search warrants on nine premises including the residences of Mr Dubois, Mr Steyn and relevant contractors
- obtained documents from various sources by issuing 195 notices under s 22 of the ICAC Act requiring the production of documents
- interviewed and/or took statements from numerous persons
- conducted physical surveillance on persons of interest
- conducted 23 compulsory examinations
- forensically examined laptops, tablets and mobile telephones seized during search warrants and extracted thousands of relevant messages and

emails between the witnesses over the period under investigation.

A number of persons of interest, when confronted with and asked to comment on RMS and other electronic and banking documentary evidence obtained by the Commission, made significant admissions regarding their involvement in the allegation.

The public inquiry

The Commission reviewed the information obtained during its investigation and after considering each of the factors set out in s 31(2) of the ICAC Act, determined that it was in the public interest to hold a public inquiry. In making that determination, among the other matters specified in s 31(2) of the ICAC Act, the Commission had regard to the following:

- there was compelling evidence indicating a strong likelihood of corrupt conduct by Mr Dubois, Mr Steyn and various contractors
- the large amount of public money involved
- the benefit in raising awareness of the systemic failures of TfNSW, and its predecessor public authorities, in failing to detect the corrupt conduct and in effect allowing the conduct to continue over a prolonged period, with a view to identifying improvements to ensure similar conduct does not recur in the future
- considering all the above, the public interest in exposing the serious corrupt conduct outweighed the privacy of the persons of interest.

Then Chief Commissioner the Hon Peter Hall KC presided at the public inquiry. Jason Downing SC and Caroline Spruce acted as Counsel Assisting the Commission. The public inquiry commenced on 10 May 2021 and continued over a total of 51 days as follows:

- 10 May 2021 – 23 June 2021
- 6 December 2021 – 9 December 2021
- 21 March 2022 – 22 March 2022
- 29 March 2022.

A total of 21 witnesses gave evidence.

At the conclusion of the public inquiry, Counsel Assisting prepared detailed written submissions setting out the evidence, and the findings and recommendations they contended the Commission could make based on the evidence. These submissions were provided to all the relevant parties on 11 May 2022. The relevant parties were given an opportunity to respond to Counsel Assistings' submissions. The last submissions in response were received on 29 June 2022. All submissions have been considered in preparing this report. Further information is provided in Appendix 3.

The RTA, the RMS and Transport for NSW

Throughout the period under investigation, the RTA/RMS were public authorities for the purposes of the ICAC Act, as they were statutory bodies representing the Crown by virtue of s 3 of the ICAC Act.

As at 2009, the RTA was a corporation established under s 46(1) of the *Transport Administration Act 1988*. Under s 46(2), the RTA had functions under legislation concerning roads and motor vehicles, and was “for the purposes of any Act, a statutory body representing the Crown”.

The RMS was established on 1 November 2011 under s 46 of the *Transport Administration Act 1988* to replace the RTA. The RMS ceased to exist as a legal entity with effect from 1 December 2019, pursuant to the *Transport Administration Amendment (RMS Dissolution) Act 2019*, when its functions, assets, rights, and liabilities were transferred to TfNSW. At all relevant times for the purposes of the matters investigated by the Commission, the RTA, RMS and TfNSW were public authorities for the purposes of the ICAC Act and their employees were public officials for the purposes of the ICAC Act, as is currently TfNSW and its employees.

The Compliance and Enforcement Branch, the Compliance and Regulatory Division and the Heavy Vehicle Programs Unit

During 2009, the RTA's functions concerning services and projects relating to compliance and enforcement of road rules and regulations sat within the Compliance and

Enforcement Branch (“the CEB”). The CEB included a Camera Enforcement Branch, which was part of the CEB Licensing, Registration and Freight Directorate. The Camera Enforcement Branch was responsible for camera programs across the state, which comprised the Safe-T-Cam (STC) program and the Point-to-Point (P2P) program.

When the RMS replaced the RTA, CEB had become known as the Compliance Operations Branch (“the COB”). The COB sat within the Safety and Compliance Division of the RMS. Relevantly, after the RTA became the RMS in 2011, one of the responsibilities of the COB was the delivery of heavy vehicle programs.

One of RMS' functions was to enforce heavy vehicle compliance with road transport laws in relation to roadworthiness and safety. Heavy vehicles (defined under the *Road Transport Act 2013* as any motor vehicle or trailer weighing more than 4.5 tonnes) pose special risks to road infrastructure and to the more than 5 million drivers using roads in NSW who may interact with them.

On 10 February 2014, the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW) came into effect. Apart from Western Australia and the Northern Territory, the legislation was adopted nationally and mirrored in NSW. The object of the legislation was to establish a national scheme to promote public safety by managing the impact of heavy vehicles on the environment, road infrastructure and public amenity. Other objects included promoting industry productivity and efficiency in the road transport of goods and passengers by heavy vehicles, as well as promoting safe and efficient business practices.

As a result of the above legislation, the Heavy Vehicle Programs Unit (“the HVP Unit”) was created. This sat within the Compliance and Regulatory Services Division (CARS). The HVP Unit's principal purpose was to deliver and operate regulatory systems and infrastructure to manage heavy vehicle compliance.

The HVP Unit had various programs for ensuring the safe use of roads by heavy vehicles. These included an established network of heavy vehicle safety stations (HVSSs) spread across NSW, at which heavy vehicles were required to present for inspection for compliance with safety and roadworthiness standards. The HVSSs were interchangeably known as heavy vehicle checking stations (HVCSs). At HVCSs, RMS inspectors checked heavy vehicle compliance with road safety rules at both scheduled and random times, at fixed roadside sites around the state. Similarly, heavy vehicle inspection stations (HVISs) formed a part of the HVSS network. HVISs were road bays where heavy vehicles could be stopped and inspected to ensure that the vehicle met safety and roadworthiness standards. The HVP Unit was

responsible for the building and maintenance of HVCSs, which sometimes required significant civil project works to be undertaken. Other programs, such as STC and P2P, were also incorporated into the purview of the HVP Unit.

Principal persons of interest

Alexandre Dubois

Born Hassan Habbouche, Mr Dubois commenced work with the RTA on 7 August 2009 as a contractor. He initially worked as a project engineer or project manager in the Intelligent Transport Systems Projects Unit (“the ITSP Unit”) attached to the Engineering Technology Branch. It was in this unit that Mr Dubois first began a project management role assisting with the heavy vehicle and STC programs.

By 16 December 2010, the RTA had engaged him as a contractor through Australian Technology Group Pty Ltd, a company he had incorporated, to provide project management services for the RTA. He subsequently joined the CEB as a technical project manager within the Project Delivery and Installation Division.

On 8 December 2012, Mr Dubois was engaged by the RMS as an incorporated contractor through his company, Davencorp Pty Ltd, to provide project management services to the RMS.

Through to March 2014, Mr Dubois continued working in a project manager capacity within CEB, when he was appointed as a heavy vehicle maintenance and program officer within the COB.

Notwithstanding Mr Dubois’ contractor status, he was a public official for the purposes of s 3 of the ICAC Act as he was acting on, engaged by or on behalf of a public authority in performing project management services for the RTA/RMS.

On 31 March 2014, Mr Dubois was offered direct employment with the RMS for two years as a heavy vehicle maintenance program officer, reporting to Samer Soliman, head of the HVP Unit. He accepted the offer. By 31 March 2016, Mr Dubois was again offered direct employment and he continued to report to Mr Soliman until Mr Soliman’s employment was terminated on 26 February 2019 in relation to his conduct exposed in another Commission investigation, Operation Ember, which was examined in the Commission’s May 2022 report, *Investigation into the awarding of contracts by employees of the former NSW Roads and Maritime Services*. Subsequently, Mr Dubois reported to Saurav Sarkar.

Apart from having responsibility for the construction and maintenance of the HVCSs, Mr Dubois’ main areas

of responsibility were overseeing the maintenance and installation of the STC program and The Infrared Traffic Logger (TIRTL) program throughout the state.

TIRTLs are devices that trigger the function of STCs but also measure speed, determine lanes and differentiate between light and heavy vehicles. When Mr Dubois first commenced work at the ITSP unit within the RTA, the TIRTL program and the STC program were not connected. However, later the TIRTL program was rolled out in conjunction with the STC program to improve the accuracy of the system.

Consequent to the Commission’s investigation, Mr Dubois’ employment was suspended on 18 June 2019 and terminated on 17 October 2019.

Craig Steyn

Mr Steyn commenced employment with the RTA on 16 March 2009 as a technical project manager at the Camera Enforcement Branch within the Licensing, Registration and Freight Directorate. On 26 March 2014, the RMS appointed Mr Steyn to the position of heavy vehicle maintenance and program officer in the COB. Mr Steyn was embedded within the HVP Unit with Mr Soliman as his supervisor until the latter was replaced by Mr Sarkar.

Mr Steyn’s main area of responsibility was overseeing the maintenance and installation of the average speed camera program, better known as the P2P program across the state. P2P involved the set-up of two cameras some distance apart. The cameras then recorded a vehicle going through each point and calculated the average speed of the vehicle over that distance, which could lead to fines being levied if the vehicle were travelling over the speed limit.

Consequent to the Commission’s investigation, Mr Steyn’s employment was terminated on 6 December 2019.

Relevant RTA, RMS and TfNSW policies and procedures

Broadly speaking, the following systems, policies and procedures governed the way Mr Dubois and Mr Steyn allocated RTA, RMS and TfNSW project work contracts:

- the CM21 contract management system
- the procurement and engineering contracts manuals
- the delegations manual.

The CM21 contract management system

The CM21 contract management system (CM21) was employed by the RTA, RMS and TfNSW and is a mandatory business process for construction-related contracts. The CM21 system required RTA, RMS and TfNSW project managers who engaged new contractors to enter and effectively register that company's information. The CM21 request forms required the following information to be filled:

- the business owner and the company's name
- company address
- telephone number
- Australian Business Number (ABN)
- Australian Company Number (ACN)

The CM21 information was subsequently used to populate other important documents to advance the procurement process, such as purchase orders. There was no requirement in this form for Mr Dubois or Mr Steyn to declare conflicts of interest. Further, as will be made clear in this report, no meaningful due diligence was ever conducted by the Finance Unit or, later, the Transport Shared Services (TSS) Unit into these newly-created vendors.

The Procurement Manual and the Engineering Contracts Manual

With the restructure from the RTA to the RMS, most procurements were managed in a decentralised environment. According to Mr Soliman, (their then supervisor at the HVP Unit), both Mr Dubois and Mr Steyn were subject to procurement thresholds as outlined by the RMS Procurement Manual. The thresholds centred around the estimated contract value of the project for construction-related expenditure. Depending on the contract value, these thresholds required Mr Dubois and Mr Steyn to obtain a certain number of quotes from contractors before a contractor could be selected for scheduled project work or place a submission of the project out to public tender.

This four-tiered expenditure process in relation to construction procurement was based on the RMS Procurement Manual which stipulated that, for small jobs that amounted to \$5,000 (inclusive of GST), no quote was required before engaging a contractor. The second tier applied for jobs where the contract value was between more than \$5,000 and \$50,000 (inclusive of GST). In those circumstances, the project manager could award the contract by obtaining one written quote. The third tier applied in circumstances where jobs were valued between \$50,001 and \$250,000 (inclusive of

GST). In those circumstances, the project manager was required to obtain three competing quotes. The final tier applied to jobs valued above \$250,000 (inclusive of GST), which required the project manager to publish the job to go out to public tender. Under the RTA, these procurement thresholds excluded GST, but this changed to include GST with the RMS restructure.

The Procurement Manual specifically prohibited contract splitting, namely, reducing the value of a contract by dividing the project into smaller contracts to by-pass a more stringent procurement threshold, or to split the value of a contract to bypass a supervisory or more senior delegation approval limit. An example of contract splitting would be dividing a \$280,000 job into two smaller valued jobs, effectively bringing both smaller jobs below the \$250,000 threshold required for submitting a job to public tender.

As this report will reveal, there were instances where Mr Dubois and Mr Steyn breached the procurement protocols applicable at the time through submitting prices for jobs *excluding* GST, rather than *including* GST, thereby applying the wrong procurement tier requirements for that particular job.

Unless otherwise stated, all references in this report to prices submitted or purportedly submitted by contractors are exclusive of GST.

The Procurement Manual had its limitations with regards to construction-related procurement and was not the only manual that Mr Dubois and Mr Steyn should have been using. The Procurement Manual advises the reader:

At appropriate stages through the Procurement Lifecycle, this manual directs users to other manuals and resources including the Organisation Delegations Manual and Engineering Contracts Manual. The Engineering Contracts Manual details additional activities for Construction Industry related contracts.

Construction Industry includes all organised activities related to construction, demolition, dismantling, alteration, extension, restoration, repair, maintenance, installation, building, landscaping, civil engineering, process engineering, heavy engineering and construction work in mining. This includes professional services related to Construction Industry contracts.

For further advice about the appropriate application of Construction Industry contracts, including Professional Services, contact the Commercial Services Branch, Technical and Project Services Division.

Throughout the relevant period both Mr Dubois, Mr Steyn and their superiors did not heed the requirements of the Engineering Contracts Manual in the purview of their work. The Engineering Contracts Manual employed the NSW Government Code of Practice for Procurement definitions of construction, defining it as “all organised activities concerned with demolition, building, landscaping, maintenance, civil engineering, process engineering, mining and heavy engineering”. Project works allocated by Mr Dubois and Mr Steyn fell within this definition. At all relevant times during this investigation, Mr Dubois and Mr Steyn did not contact the above-listed services to obtain the necessary guidance.

The Engineering Contracts Manual is more specific as to what contract processes should be applied. For example, if there is more complicated work being sought, then a major contract method should apply. In offering guidance as to whether a major or minor contract applied, the Engineering Contracts Manual states that:

Those contracts requiring the use of the Prequalification Scheme, ie. Roadworks, Bridgeworks, Concrete Paving, Steel Fabrication, Asphalt Paving and other Specialist categories, should be carried out by Major Contract.

A prequalification scheme is defined as a list of prequalified suppliers that have been evaluated against a list of criteria to ensure they meet defined standards, prior to conducting a procurement process.

Project works allocated by Mr Dubois and Mr Steyn fell into this category of the above-mentioned listed works. On review of the above, both Mr Dubois and Mr Steyn should have been using the “Major Contract” method, which required them to adhere to more stringent requirements and seek delegation approval of projects from more senior officials than just their HVP Unit supervisor. Mr Soliman was unaware of whether the Engineering Contracts Manual may have applied to work in which Mr Dubois and Mr Steyn were engaged. The corruption prevention chapter of this report sets out in more detail the issue and the apparent confusion as to what procedures and processes should have applied. However, as will be established in this report, even on their understanding of the application of the procedures in the Procurement Manual, Mr Steyn and Mr Dubois’ conduct amounted to clear and substantial breaches of procedure.

The Delegations Manual

The Delegations Manual was created to enable managers and other employees in TfNSW and its predecessor entities to carry out their responsibilities in an efficient and effective manner. The procedures were designed to ensure decision-making and responsibilities were carried out in

compliance with a range of legislation governing TfNSW and its predecessor entities.

With respect to the exercise of financial delegation, the Delegations Manual was clear that delegated officers were expected to comply with relevant legislation and regulations. According to the Delegations Manual, the exercise of delegation authority was governed by the Code of Conduct and Ethics. The Delegations Manual required that when exercising financial delegation, the monetary limit of authority was not to be evaded by creating smaller multiple transactions when there should be only one transaction. In effect, this mirrored the Procurement Manual’s restrictions on contract splitting.

Subversion of procurement processes

General methodology employed by Mr Dubois

While there was some variation between each project that was awarded by Mr Dubois that was a subject of this investigation, usually Mr Dubois used his project management experience to estimate the value of a project and how much its value could be inflated without attracting undue attention.

Typically, if the contract was slightly greater than \$250,000 (inclusive of GST), which would ordinarily require the job be put to public tender, Mr Dubois would “contract split” the work, dividing the project into smaller jobs each amounting to between \$50,001 and \$249,999 (inclusive of GST).

Mr Dubois manipulated the “three-quote process” to ensure a predetermined outcome. He effectively informed each contractor, often a friend or associate, what price to quote. In many instances, Mr Dubois privately drafted the quote or provided the contractor with the “acceptable price” so that a quote could be sent back to Mr Dubois’ work email. He would then request two contractor vendors to submit dummy quotes for higher amounts. This allowed Mr Dubois to seemingly satisfy the requirement of obtaining three competitive quotes.

Mr Dubois awarded the job to the lowest bidder, ensuring that the price of the successful quoter was high enough to include a component which could be paid back to him and low enough to avoid attracting undue attention. This payment amount was typically a third of the total net profit to be made from the job, but at times amounted to half the total net profit.

Over a period of almost 10 years Mr Dubois accepted benefits through several methods, including:

- cash
- key card access to contractor bank accounts created specifically for his use
- high-end luxury sports vehicles such as Porches and Ferraris.

General methodology employed by Mr Steyn

Given Mr Steyn's contractors mainly provided services within the \$5,001 to \$49,999 (inclusive of GST) range, he did not need to obtain multiple quotes but, rather, one quote. Depending on the contractor, Mr Steyn could operate out of a bucket system. A bucket system was a pre-allocated contractor specific budget that allowed Mr Steyn the flexibility to complete works without having to raise a purchase order every time for smaller jobs. The bucket system was usually allocated to vendors who would provide on-going maintenance-like services.

In return for awarding them RTA/RMS project work, Mr Steyn often asked contractors for benefits. These benefits included:

- gifts such as iPhones, iPads and other items
- free-of-charge or heavily-discounted trade services the contractors rendered in the construction of his home
- the payment of school fees and overseas holiday tickets for Mr Steyn and his wife
- the payment for construction materials used in the construction of Mr Steyn's home
- payments deposited by the contractor through a non-associated third-party company's bank account which would then be withdrawn and provided to Mr Steyn.

With respect to contracts below \$50,000, Mr Steyn would occasionally request the vendor to inflate the quote to incorporate a payment component for himself.

There were also occasions when Mr Steyn requested that a quote and a subsequent invoice be lodged by the contractor although no work was ever rendered. Mr Steyn would then request the RMS Finance Unit to pay that invoice. Once paid by the RMS, the contractor would pay a similar amount to Mr Steyn.

Cooperation between Mr Dubois and Mr Steyn

Mr Dubois and Mr Steyn made significant admissions as to their cooperation and complicity in assisting each other to receive benefits from the contractors with whom they dealt. This cooperation extended to Mr Steyn's involvement in awarding project work contracts through his P2P program contractors such as Chahid Chahine, Barrak Hadid and others in return for benefits. These benefits took the form of:

- significant free-of-charge construction/trade services and purchase of building materials towards the construction of Mr Steyn's residence
- the purchase of a 2016 model white Mercedes Benz C63 for Mr Steyn.

The procurement process was further subverted by Mr Dubois requesting contractors with whom he dealt to create multiple companies. These companies were included in a heavy vehicle maintenance panel which was maintained by Mr Dubois and Mr Steyn. This allowed Mr Dubois and Mr Steyn to award more work to the same contractors and receive more benefits without attracting scrutiny from other employees within TfNSW and its predecessor entities.

Chapter 2: Mr Dubois, Mr Hadid and Mr Chahine

This chapter examines the circumstances surrounding Mr Dubois' association with Mr Hadid and Mr Chahine, and the awarding of RTA/RMS contracts to their companies between 2010 and 2019 to the value of over \$21 million. The companies were Complete Building Fitout Pty Ltd, CBF Projects Pty Ltd, Euro Civil and Maintenance Pty Ltd ("Euro Civil") and OzCorp Civil Pty Ltd.

Friendships between Mr Hadid, Mr Chahine and Mr Dubois

Mr Dubois, Mr Hadid and Mr Chahine knew each other before Mr Dubois commenced work at the RTA.

Mr Hadid and Mr Chahine met during their plastering and construction apprenticeships. Both worked in the same company as gyprockers and plasterers and also worked with Mr Hadid's uncle. Mr Hadid was more advanced in his apprenticeship when they met, as Mr Chahine had just completed high school. Both told the Commission that they struck up a friendship and maintained that friendship by occasionally working together on gyprocking and building jobs despite, for the most part, working for different companies and persons.

Mr Dubois met Mr Hadid through Mr Hadid's cousin. Both Mr Dubois and Mr Hadid's cousin were engineering students attending the University of NSW. Both Mr Dubois and Mr Hadid told the Commission they met each other on a road trip from Sydney to Batemans Bay. Mr Dubois also gave evidence that he briefly met Mr Chahine for the first time on the same road trip. Mr Chahine did not recall that meeting. He told the Commission that he first met Mr Dubois much later when Mr Dubois was an employee at the RTA. However, Mr Hadid recalled that Mr Chahine was present on the road trip.

For a short period between 2001 and 2002, Mr Dubois and Mr Hadid lived in neighbouring unit blocks in

Greenacre where they occasionally crossed paths and spoke to each other. Mr Hadid gave evidence that, after that period, they did not regularly see each other for some time.

In about 2008 or 2009, Mr Hadid again met with Mr Dubois during a funeral where they talked and exchanged details. Following this meeting, Mr Hadid and Mr Dubois met up on several occasions. Mr Hadid learnt that Mr Dubois was involved in project management at the RTA and Mr Dubois learnt that Mr Hadid was working with Mr Chahine at Complete Building Fitout.

Complete Building Fitout

Complete Building Fitout was incorporated on 19 May 2008. Mr Chahine was its sole director and shareholder until its deregistration on 6 October 2013.

Mr Chahine and Mr Hadid told the Commission that Mr Hadid was effectively an equal partner although he was not an officeholder or shareholder in Complete Building Fitout. The Commission is satisfied that Mr Hadid had an equal say in the direction of the company and took profits from the company in the same manner as Mr Chahine. Mr Dubois also told the Commission that he was aware of their arrangement.

Initially, Complete Building Fitout worked largely as a private operator, functioning as a subcontractor for larger entities which were involved in the construction of schools, shopping centres and blocks of units. Some of the work involved gyprocking ceilings, partitioning, fit-out work or civil building-type work.

Between 18 May 2010 and 2 August 2012, Mr Dubois caused Complete Building Fitout to be awarded 17 RTA/RMS contracts with a total value of \$1,679,630.15.

Mr Hadid told the Commission that he first discussed with Mr Dubois the possibility of Complete Building

Fitout doing work for the RTA at a meeting in 2010. For his part, Mr Chahine told the Commission that he was not present at this first meeting but that he was at a second meeting where they all met at Mr Hadid's house. At that meeting Mr Chahine recalled that it was Mr Dubois who "asked us what we do and ... [Mr Dubois] said he's got some small jobs he can have us do, so we said, yeah, we're happy to do them". According to Mr Chahine, Mr Dubois said that Complete Building Fitout would be engaged to undertake concreting and fit-out type works. Mr Hadid recalled that it was Mr Dubois who mentioned that he might be able to provide work for Complete Building Fitout. This evidence is contrary to that of Mr Dubois who generally stated that it was the contractors who approached him for work. Mr Dubois, however, did not have a specific recollection of the conversation that led to Complete Building Fitout getting RTA work. It is unnecessary to resolve this difference.

Mr Hadid and Mr Chahine told the Commission that, when Complete Building Fitout was first awarded project work, they knew that Mr Dubois was working for a public authority, being the RTA.

Mr Hadid and Mr Chahine gave evidence to the effect that, for all contracts obtained by Complete Building Fitout, and successor companies, CBF Projects, Euro Civil and OzCorp Civil, it was Mr Chahine who dealt with email communications and prepared relevant paperwork. However, Mr Hadid was involved in pricing jobs and providing the information which led to the preparation of quotes and invoices.

From 4 May 2010 to 2 August 2012, Mr Dubois caused the awarding of RTA/RMS contracts to Complete Building Fitout. It is common ground that Mr Dubois sought and was provided benefits in return for arranging the awarding of these contracts. Mr Dubois also subverted the RTA/RMS procurement process to ensure Complete Building Fitout was awarded contracts. He did this by creating the appearance of competitive quoting, through dummy quotes and by falsely claiming in internal RTA/RMS documents that best value was being achieved through the awarding of projects to Complete Building Fitout. This modus operandi characterised the projects examined below.

The first awarded project – Bargo, Gundagai and Albury TIRTL works

As previously noted in this report, TIRTLs are devices that trigger the function of STCs but also measure speed, determine lanes, and differentiate between light and heavy vehicles.

Mr Dubois, Mr Hadid and Mr Chahine each agreed that the first projects awarded to Complete Building Fitout related to TIRTL project works at Bargo, Gundagai, Albury and Boggabilla.

Records from TfNSW include a Complete Building Fitout quote relating to the works at Gundagai. It is dated 4 May 2010 and in the amount \$24,650.00. The quote's scope of works detailed the following services:

Retro-fit of new plates to TIRTL at safe T cam sites

Removal of old plates x6

Installation of new plates x6

Re concrete around new safe T cam plates

Provide traffic management to sites.

Another Complete Building Fitout quote is dated 4 May 2010 and is in relation to a "retro-fit of new plates to TIRTL at safe T cam sites... Albury". It is for \$26,220.

On 6 May 2010, the RTA raised purchase orders for Complete Building Fitout to undertake work at Gundagai (\$27,115), Boggabilla (\$30,855), Bargo (\$26,455) and Albury (\$28,842).

Between 31 May 2010 and 12 July 2010, the RTA remitted the GST-inclusive amount of \$113,067 to Complete Building Fitout for these TIRTL works.

Mr Chahine told the Commission that the main technical work was subcontracted to another company, CIC Engineering Pty Ltd (CIC).

The directors of CIC, Colin Campbell and Christopher Patterson, provided statements to the Commission. According to Mr Campbell, CIC was directly engaged by the RTA and the RMS to install, repair and maintain TIRTLs. However, with respect to these jobs, Mr Dubois directed them to supervise Mr Chahine and Mr Hadid. Mr Campbell recalled the following:

I first met Hoody [Mr Chahine] and Baz [Mr Hadid] around June 2010, when it was decided that a modification was required to be made to many of the STC TIRTLs. This work required the replacement of the steel lid of the TIRTL housing and some minor concrete work. Alex [Mr Dubois] asked Chris and I to accompany Baz and Hoody to the Bargo, Gundagai and Albury sites, to supervise the civil works...

Mr Chahine and Mr Hadid accepted they were known respectively as "Hoody" and "Baz".

Mr Campbell and Mr Patterson considered that Mr Hadid and Mr Chahine were inexperienced in construction activities but both became more capable over time.

Mr Patterson recalled:

An example of Hoody and Baz's standard of work in the early years was that in February 2013 at Mt White they used electrical tape to connect flexible steel conduits rather than the required steel connectors.

This accords with Mr Dubois' evidence that, while Mr Hadid and Mr Chahine had some general construction experience, they did not have any construction experience concerning roadworks or camera systems.

Mr Dubois gave evidence that, when contractors incorporated a margin in their price that would be paid to him, the resulting price would generally "be competitive so as to not raise eyebrows". The Commission cannot be satisfied as to the accuracy of this evidence in circumstances where Mr Dubois had to employ another set of contractors to supervise Mr Hadid and Mr Chahine's work initially because they did not possess the necessary skill and experience to perform the TIRTL work projects.

Did Mr Dubois receive any benefits for the TIRTL project works?

Counsel Assisting submitted that "it is likely that Mr Dubois asked for and was paid small cash 'kickbacks' of \$2,000 to \$3,000 per TIRTL in respect of the initial jobs in mid-May 2010, involving TIRTL works at Bargo, Gundagai, Boggabilla and Albury".

It is common ground that benefits were provided to Mr Dubois by Mr Chahine and Mr Hadid at a relatively early period of their 10-year association. However, Mr Chahine and Mr Hadid had trouble recalling exactly when the benefits were first provided. Both told the Commission they did not recall Mr Dubois asking for a benefit immediately after work was first awarded.

Mr Dubois initially told the Commission that he received a payment of about \$2,000 "for each TIRTL installed [emphasis added]". However, he later added that the first payment he received was for the Mount White communications room project which was carried out in June 2010.

Mr Chahine told the Commission that he believed the payments provided to Mr Dubois occurred in relation to the award of larger RTA projects by Mr Dubois. Mr Chahine nominated the ninth project, the Mount White expansion lane, as the earliest job for which Mr Dubois received a payment. He thought payments made to Mr Dubois in relation to TIRTL installations first occurred at Taree and Nabiac in 2011.

For his part, Mr Hadid told the Commission that Mr Dubois could have been paid in relation to the Mount

White communications room project, but he was more certain that Mr Dubois was paid during the Mount White break tester and Bell brake tester jobs, the fifth and sixth jobs respectively.

The TIRTL works at Bargo, Gundagai, Boggabilla and Albury were refurbishments rather than installations. This is important as the effect of the evidence from Mr Dubois, Mr Chahine and Mr Hadid was that payments occurred on a per TIRTL *install basis*. Notwithstanding the Bargo, Gundagai, Boggabilla and Albury purchasing orders describing the works as installations of TIRTLs, the road occupancy licence applications, the contemporaneous quotes and invoices from Complete Building Fitout denote these TIRTL structures as already installed. Accordingly, there is insufficient evidence to conclude that Mr Dubois received any payment from this initial work.

The Commission accepts Mr Hadid and Mr Dubois' evidence that the first payment occurred at the time of the Mount White communications room project in 2010.

The Mount White exit lane expansion project

The project works at Mount White North HVCS comprised the expansion of the exit lane and the widening of the U-turn bay at the HVCS north bound F3 Sydney to Newcastle Highway ("the Mount White exit lane expansion project"). The work was awarded to Complete Building Fitout in about April 2011 and completed by 23 May 2011.

On 19 April 2011 and 24 May 2011, Complete Building Fitout issued invoices to the RTA for work on this project. The two invoices totalled \$225,000. The RTA made one GST-inclusive payment of \$49,500 on 26 May 2011 and a further GST-inclusive payment of \$198,000 on 20 June 2011.

Dummy quotes and the false tender evaluation report

During the execution of a search warrant at Mr Dubois' house, the Commission located RTA documents including emails and attachments relating to this project.

These included an email sent on Sunday 20 March 2011 by Mr Dubois using his RTA work email address. It was sent to Mr Chahine's email address, "hoodycbf". In the email, Mr Dubois sought a quote for the tender for the Mount White exit lane expansion project. Attached to the email were tender documents, job specific requirement documentation and other documentation detailing the nature of the works.

Mr Chahine confirmed that the email was sent to his address. He said Mr Dubois told both him and Mr Hadid that they were going to obtain the Mount White job. Mr Chahine also recalled that before the project was awarded, “we [Mr Chahine and Mr Hadid] gave him our cost estimates on what we thought the job was going to cost and then he basically told us ‘quote it at this price’”. As discussed below, the price quoted by Mr Dubois represented an increase from the original price so as to incorporate a margin for himself.

Also located was a tender evaluation report, dated 6 April 2011, relating to the Mount White exit lane expansion project. Mr Dubois confirmed to the Commission that he was the author of the report. The report included a project cost estimate of \$250,000. While Mr Dubois could not specifically remember this report, he told the Commission that an estimate was usually calculated by “either breaking down the components or based on experience and previous quotations or [...obtaining] market value rate”.

The report also stated that the RTA had received three quotes and that a pre-tender meeting between Mr Dubois and the tendering parties had occurred on 1 April 2011 at 10:30 am at 27 Argyle Street, Parramatta, being the then RTA's Parramatta office. The report noted the objective of the meeting was to ensure that the RTA conducted a review of the tenders and obtained best value for the project. The report represented that Mr Dubois and three individuals tendering on behalf of their companies were present at the meeting. According to the report, Mr Chahine of Complete Building Fitout submitted a price of \$225,000, Terry (an alias of Towfik) Taha of TTS Group Investments Pty Ltd submitted a price of \$250,000 and Allan (an alias of Talal) Rifai of BFW Group Pty Ltd (“BFW”) submitted a price of \$260,000. As will be discussed in chapter 3 and chapter 4 respectively, Mr Taha and Mr Rifai were contractors associated with Mr Dubois.

The report stated that the assessment had been carried out in accordance with the guidelines of the Engineering Contracts Manual. The report gave the following performance assessments:

All the tenderers have carried out similar works in the past and have sufficient workers, plant equipment, trucks, resources and extensive experience and competency to carry out the works.

and

The Tender submitted by Complete Building Fitout Pty Ltd is considered suitable and provides value for money. The risk to the RTA is minimal. The total value of works under this contract is \$225,000.

Mr Dubois accepted that the tender report was a fiction to justify the awarding of the contract to Complete

Building Fitout, and that no meeting had occurred. Mr Dubois also told the Commission the prices contained in the report purportedly supplied by Mr Taha and Mr Rifai were dummy quotes.

Mr Chahine, Mr Taha and Mr Rifai each informed the Commission that they never attended any pre-tender meeting for this project.

The Commission is satisfied that Mr Dubois deliberately created the tender evaluation report to facilitate the awarding of the Mount White exit lane expansion project to Complete Building Fitout.

The report was purportedly signed by way of electronic signature, and approved by Mr Dubois and Terry Stuart, sector manager northern infrastructure services.

Mr Stuart provided a statement to the Commission, dated 31 March 2021, in which he recalled:

I never had any input in the [Mount White] tender evaluation ... Alex would advise the Sector Managers of the most suitable tender. I was of the understanding there was a tender committee from the area Alex worked and the committee was chaired by Alex to determine the most suitable tenders.

Who brought up the topic of a benefit being provided for the Mount White exit lane expansion project?

Mr Chahine told the Commission that Mr Dubois asked him and Mr Hadid to “bump” the price up “at the point when we’d [Complete Building Fitout] given him our cost estimates”. He told the Commission that Mr Dubois typically informed them that the margin increase was to cover payment to himself. According to Mr Chahine the effect in relation to the Mount White exit lane expansion project was that “we gave him our cost estimates on what we thought the job was going to cost and then he [Mr Dubois] basically told us, ‘quote it at this price’”. This is consistent with Mr Hadid's evidence that in their early dealings Mr Dubois sought his “cut” or margin from a particular project that he awarded.

Mr Dubois gave evidence at the public inquiry concerning the general nature of his involvement in a scheme to extract personal benefit from the awarding of RTA/RMS contracts:

[Chief Commissioner]: Bearing in mind the matters about which you've been asked questions, do you accept that it was you who devised, established a scheme for dishonestly benefitting from payments or other benefits which essentially were funded through public moneys.

[Mr Dubois]: *In collaboration with the other contractors, it wasn't just myself that---*

[Chief Commissioner]: *I appreciate that.*

[Mr Dubois]: *Yes.*

[Q]: *But you do accept that you were a principal in designing and establishing such a scheme?*

[A]: *I wouldn't say designed, but I was definitely at the, responsible for giving out these contracts and I did the wrong thing and I've already said that multiple times.*

Mr Dubois disputed that it was he who initiated discussions about payments from contractors. He claimed that the contractors initiated such discussions and that they generally nominated the amount. Mr Dubois' evidence on this question was variable. At one stage he suggested that most of the contractors did so. Later he stated that it was impossible to answer because he did not recall each instance. Overall, his evidence to the effect that he was "pressured" by contractors to award them work and that they suggested rewarding him is rejected. The Commission does not accept that Mr Dubois was "under duress" to arrange the awarding of RTA/RMS work to these contractors while he continued to receive significant benefits, for approximately eight years, from the very same contractors he claims pressured him.

As will be discussed in subsequent chapters, it was not uncommon for Mr Dubois to terminate his association with contractors such as Abdula Nachabe, Gamele Nachabe, Bilal Najjarin and Mr Taha if there was any dispute in relation to his payments or anything else not to his liking, thereby denying them further lucrative work. The Commission is satisfied that, when it came to the awarding of RTA/RMS work, the power balance favoured Mr Dubois, making it more likely that he was the one to request payment.

Mr Dubois said he "potentially" received a payment for the Mount White exit lane expansion lane project but claimed he could not be sure. When pressed, he agreed that it "makes sense" that he did so.

The ANZ Bank provided trace documents relating to several MWK Developments Pty Ltd bank accounts. As will be discussed in chapter 3, the MWK Developments bank accounts were controlled by Mr Dubois and were used as a mechanism to filter payments from RTA/RMS contractors to him. The bank tracing documents detail that on 22 June 2011, a cheque for \$73,150 was drawn on the Complete Building Fitout

bank account and deposited into an MWK Developments bank account. Both Mr Hadid and Mr Chahine told the Commission that this was a payment to Mr Dubois in relation to the Mount White exit lane expansion project and possibly other earlier RTA jobs.

Although not specifically addressing this payment, Mr Dubois made admissions that Mr Hadid and Mr Chahine made payments to him using the MWK Developments bank accounts in return for him allocating work to Complete Building Fitout and later CBF Projects.

The Commission is satisfied that Mr Dubois received a payment of \$73,150 for awarding the Mount White exit lane expansion project to Complete Building Fitout. The overall value of benefits received by Mr Dubois is dealt with later in this chapter.

It is not disputed by Mr Chahine, Mr Hadid or Mr Dubois that by 2011, small cash payments of at least \$2,000 and up to \$3,000 were provided to Mr Dubois in relation to the award of TIRTL installation projects at Taree and Nabiac and later installations of TIRTLs.

Mr Dubois told the Commission that, especially in the early days of dishonestly awarding work, the amount he received ranged from 10 to 30 per cent and was once 50 per cent of the profit that a contractor would make from a job.

This evidence accords with Mr Hadid's evidence. He told the Commission: "sometimes ... the [profit] margin was a lot better and sometimes the margin was not so great" for his companies. Mr Hadid also told the Commission that, typically, Mr Dubois closely monitored the job to ensure he received his payment:

[Counsel Assisting]: *And I take it if it happened to be a job where the costs were significant and there was really no margin, you might say to him, "Well, there's nothing left to actually pay in this one."*

[Mr Hadid]: *...I would just tell him this is, this is all we made from it, 'cause he'll, from time to time, ring me to ask me if we've been paid and for me to work out my costs and stuff.*

[Q]: *But I think your evidence was yesterday that when you would go back to him and suggest that perhaps there wasn't much left to make a payment, he wasn't generally very sympathetic, he would insist that he get his cut.*

[A]: *He always, he always got, he always got a kickback.*

Mr Chahine also noted that the amount of payment to Mr Dubois varied from job to job, depending on its size, and that there were times where there was not a lot left over and other times when Mr Dubois made an estimate at an early stage and there was a “big leftover” for his margin.

It is common ground that the payments to Mr Dubois became more regular immediately after the awarding of the Mount White exit lane expansion project, and that Mr Dubois requested that payments to him be provided via cheque deposited to the MWK Developments bank accounts. Relevant banking records demonstrate that, between 22 June 2011 and 3 August 2012, Mr Chahine and Mr Hadid made nine payments totalling \$426,028.30 into MWK Developments bank accounts. It is common ground that these represented payments to Mr Dubois in return for the awarding of RTA/RMS work to Complete Building Fitout.

CBF Projects

On 6 October 2013, Complete Building Fitout was deregistered. It was paid for its last RMS job on 2 August 2012.

On 13 July 2012, CBF Projects was registered with Mr Chahine as the sole director and shareholder. Mr Chahine and Mr Hadid gave evidence to the effect that, despite Mr Chahine being listed as the sole director and shareholder, they were both partners and jointly controlled the company. The Commission accepts this evidence.

Between 1 August 2012 and 4 October 2012, the period during which the MWK Developments arrangement for filtering payments to Mr Dubois was active, Mr Dubois caused CBF Projects to be awarded \$250,400 worth of RMS work.

In about 2012, Mr Dubois was alerted by John Goldberg to the risk of the MWK Developments bank accounts being linked to illicit payments to Mr Dubois and his co-signatory, Mr Taha, who was Mr Goldberg’s brother. Mr Hadid and Mr Chahine told the Commission that Mr Goldberg recommended that they transfer ownership of Complete Building Fitout to him so that he could liquidate their companies. Mr Hadid and Mr Chahine refused to do so.

According to Mr Chahine and Mr Hadid, the warning did not motivate them to change over to CBF Projects; instead, both decided to change to make their new corporate entity sound more professional. Mr Hadid told

the Commission that the name Complete Building Fitout no longer reflected the project work they were engaged in and the name CBF Projects was more appropriate. In this regard, the Commission notes that CBF Projects deposited cheques into the MWK Developments bank accounts on 2 October 2012 for \$75,900 and 10 October 2012 for \$44,000.

CBF Projects was awarded RMS work up until June 2019. As with Complete Building Fitout, CBF Projects incorporated a margin in RMS invoices that would be later paid to Mr Dubois. Between 1 August 2012 and 27 May 2019, Mr Dubois arranged the awarding of \$11,661,546.05 of RMS project work to CBF Projects.

In total, between 22 June 2011 and 10 October 2012, Mr Chahine and Mr Hadid, through both Complete Building Fitout and CBF Projects, made 11 payments totalling \$545,928.30 into MWK Developments bank accounts ending in 4596 and 4577.

The Wilkins Corp Scheme

As will be discussed in chapter 8, with the unravelling of the MWK Developments arrangement, Mr Dubois instructed Mr Chahine that CBF Projects should make payments to him into three bank accounts operated by Wilkins Corp Pty Ltd. Between 14 January 2013 and 11 July 2013, CBF Projects deposited \$627,550 into three Wilkins Corp accounts controlled by Mr Goldberg.

Mr Chahine gave evidence that Mr Dubois instructed him to make these payments “so it’s not traceable”.

It is common ground that the CBF Projects transfers of \$627,550 into the three Wilkins Corp accounts controlled by Mr Goldberg were payments destined for Mr Dubois in connection to his awarding of RMS contracts to CBF Projects. The Commission is satisfied that, on Mr Dubois’ instruction, Mr Chahine and Mr Hadid made payments destined for Mr Dubois from a CBF Projects bank account into the three Wilkins Corp bank accounts, namely, two Suncorp Bank accounts and a Commonwealth Bank account.

As will be discussed in chapter 8, notwithstanding that the CBF Projects payments meant for Mr Dubois were deposited into accounts controlled by Mr Goldberg, the latter contended that some of that money was paid to him by Mr Dubois. This was because, according to Mr Goldberg, Mr Dubois owed him money in relation to the purchase and refurbishment of three cafes they owned in partnership.

Sometime after April 2014, Mr Dubois and Mr Goldberg fell out and ceased their association.

The Euro Projects Scheme

On 23 November 2012, Euro Projects Pty Ltd (“Euro Projects”) was registered with Mr Chahine listed as the sole director, secretary and shareholder. On 2 December 2014, the office holder positions and shareholding passed to Mr Hadid. It is not contested that Mr Hadid and Mr Chahine acted in concert when it came to running the affairs of Euro Projects.

Mr Chahine gave evidence that one of the primary reasons Euro Projects was set up by Mr Chahine and Mr Hadid was to “start construction on our houses so we could separate the cost from the actual company [CBF Projects], so that didn’t interfere with our tax for the company...”. This accords with Mr Hadid’s evidence.

Mr Chahine told the Commission that Mr Dubois knew of the existence of Euro Projects, and asked him and Mr Hadid to use Euro Projects to perform the role that Wilkins Corp had performed in providing payments to him. Similarly, Mr Hadid said that Euro Projects “became a vehicle to pay for Mr Dubois’ kickbacks”.

Mr Dubois told the Commission that, “It was, I remember vaguely that it was a suggestion by Mr Barrak Hadid [to use Euro Projects] as a mechanism that he would use to provide me with the kickbacks”.

Counsel Assisting submitted that the Commission would accept the evidence of Mr Chahine that “Mr Dubois told them that he had fallen out with Mr Goldberg and he therefore wanted a different company controlled by a third party into which kick-backs could be paid...”. The Commission accepts that Mr Dubois did fall out with Mr Goldberg and that a new third-party company was required. However, it is unnecessary to determine who suggested a third-party company be used as, by this stage, Mr Dubois, Mr Chahine and Mr Hadid had all become willing participants in an agreement to provide payments through a third-party company to Mr Dubois in return for him awarding work to Mr Chahine and Mr Hadid.

It is common ground that Mr Chahine used a Euro Projects ANZ Bank account (“the Euro Projects bank account”) as the vehicle through which Mr Dubois accessed his payments. The Commission notes that, in bank account access forms dated 15 April 2013, Mr Chahine ticked the form to allow “Any one to sign”.

Between 13 December 2013 and 1 May 2015, CBF Projects transferred \$1,458,109.66 into the Euro Projects bank account. There is no dispute that these funds went to Mr Dubois.

It was common ground that Mr Dubois was provided two EFTPOS key cards so that he could access the Euro Projects bank account. Bank records show that purchases

to a total value of \$28,261.43 were made using these cards. In addition, the cards were used to make cash withdrawals totalling \$177,042.

Mr Chahine told the Commission that the EFTPOS cards were provided to Mr Dubois and that at some point, due to Mr Dubois’ frequent use of the cards, he asked Mr Chahine to increase the EFTPOS limit from \$1,000 to \$2,000 to save Mr Dubois having to make frequent visits to the bank to withdraw funds.

Mr Chahine told the Commission that Mr Dubois wanted greater access to his money, and he recalled a time when he and Mr Hadid met Mr Dubois at Westfield Parramatta. During the meeting, Mr Hadid and Mr Chahine expressed reluctance about making over-the-counter withdrawals. According to Mr Chahine, Mr Dubois “basically just smashed the table in the middle of the food court and said, ‘I want my fucking money’, basically, and I think Barrak’s [Hadid] just started giving him cash ... to keep the peace”. Mr Hadid confirmed to the Commission that this demand from Mr Dubois occurred as described by Mr Chahine during the time the Euro Projects Scheme operated.

Between 21 November 2014 and 18 May 2015, 18 over-the counter-withdrawals and 76 over-the-counter key card withdrawals were made, in the total sum of \$866,400.

Mr Chahine, Mr Hadid and Mr Dubois agreed that Mr Hadid withdrew the money for Mr Dubois.

The Commission has not been able to obtain bank documentation showing Mr Hadid had authorisation to withdraw money from the Euro Projects account; however, the Commission has obtained a number of bank debit receipts in relation to the below withdrawals where Mr Hadid signed the “Authorised/Customer” field to access the Euro Projects funds. The Commission notes that Mr Hadid became director of Euro Projects on 2 December 2014. On the whole of the evidence, it is inferred that Mr Hadid was able to access the Euro Projects account.

Mr Hadid agreed that the withdrawals he was instructed by Mr Dubois to make were for sums just under \$10,000. The number of withdrawals was significant and required personal attendance at a bank. Mr Hadid told the Commission that, notwithstanding his annoyance at making so many transactions as “It was killing my life”, he kept the withdrawals to amounts under \$10,000 to ensure that the ANZ Bank would not report the transactions to authorities. This evidence accords with Mr Dubois’ evidence that he recalled Mr Hadid withdrawing money for him from the Euro Projects account.

The Commission accepts Mr Chahine and Mr Hadid’s evidence that Mr Dubois made the demand for money as described above.

In addition to the above funds taken from the Euro Projects account, on 8 May 2014 Euro Projects made a payment of \$353,028 towards the purchase of a Porsche 997 with vehicle identification number 76095. Mr Hadid told the Commission that the Porsche 997 was purchased for Mr Dubois. Mr Dubois told the Commission he owned the Porsche 997 although the car was not registered in his name.

The effect of the evidence of Mr Chahine, Mr Hadid and Mr Dubois was that the money deposited from CBF Projects into the Euro Projects account was for Mr Dubois to use as he pleased in return for causing the awarding of RMS project work to CBF Projects.

Euro Civil and OzCorp Civil

By August 2015, Mr Hadid and Mr Chahine controlled two additional companies, Euro Civil and OzCorp Civil. These companies were awarded RMS work by Mr Dubois and Mr Steyn. Mr Steyn's involvement is dealt with in chapter 14.

On 24 March 2015, Euro Civil was registered with Mr Hadid listed as sole director and shareholder. It is common ground that Mr Chahine and Mr Hadid ran the company as a partnership in the same way as they operated Complete Building Fitout and CBF Projects.

On 21 August 2015, Northstar Civil Maintenance Pty Ltd was registered with Mr Hadid's wife listed as sole director and shareholder. The name of the company was changed to OzCorp Civil. It is common ground that, at all material times, Mr Hadid exercised control of the company and, aside from registering and signing the vendor registration forms, his wife had no involvement in the company's affairs. It is not disputed that Mr Chahine and Mr Hadid also ran this company as a partnership.

Mr Dubois initially told the Commission he remembered the discussions that he had with Mr Hadid and Mr Chahine concerning the distribution of RMS projects to additional companies under their control "so we couldn't give all the work to one company". The purpose of creating the additional companies was to avert suspicion within the RMS about the number of contracts that were awarded to CBF Projects. In the public inquiry, Mr Dubois told the Commission he disagreed that he told Mr Chahine and Mr Hadid to set up the companies but rather "it was something that was agreed between the three of us". It is not necessary to resolve this issue. It is sufficient to note that Mr Dubois agreed that the companies should be established.

It is common ground that, between 2015 and the Commission's execution of a search warrant at his home on 18 June 2018, there was a practice where Mr Dubois

was provided with benefits in return for causing the awarding of RMS work by bypassing RMS procurement procedures.

Rather than explore each contract awarded to Euro Civil or OzCorp Civil, the Commission will describe a typical example of how the RMS procurement requirement of obtaining three independent quotes for projects under \$250,000 was subverted and how the cost of work was inflated to incorporate payment to Mr Dubois.

It is common ground that Mr Chahine and Mr Hadid knew they had to keep the project price for each contract under \$250,000 to ensure that the applicable RMS procedure was for Mr Dubois to obtain three independent quotes.

On 4 May 2017 at 8:50 pm, Mr Dubois sent an email to Euro Civil entitled "No Subject-14.EML". The email requested Euro Civil to provide a quote for a project relating to an HVCS located in Daroobalgie in rural NSW on the Newell Highway. The email indicated the work centred on the need to install amenities at the checking station for the RMS heavy vehicle inspectors at the HVCS. The email noted that ideally work would start in May and that the quote should be provided to Mr Dubois by 12 May 2017. The email attachments included photos of the current HVCS, survey plans and engineering plans related to the concrete slab and road line marking plans.

Two minutes after the email was sent to Euro Civil, Mr Dubois sent an email to CBF Projects. Aside from the subject heading including the title "Daroobalgie HVIS [sic]", the email content and attachments were identical to those on the email that had been sent to Euro Civil.

One minute later, Mr Dubois sent an email to OzCorp Civil. Aside from the subject heading "Daroobalgie HVIS [sic]", the email content and attachments were identical to those on the email that Mr Dubois had sent to Euro Civil.

The Daroobalgie job was delayed, and Mr Dubois reissued the request for quotations (RFQs) on 15 December 2017.

On 15 December 2017, Mr Dubois emailed himself but also blind copied Euro Civil, CBF Projects and OzCorp Civil. In addition, Mr Dubois blind copied two other RMS contractors, Efficient Project Management and Deliveries Pty Ltd (EPMD) and Seina Group Pty Ltd. It is common ground that those two entities were operated and controlled by Hassan Alameddine. The creation of these entities is discussed in chapter 7. Mr Dubois knew that the email was going to three different companies controlled by Mr Chahine and Mr Hadid and two companies controlled by Hassan Alameddine.

In essence, the email was a reissued RFQ that Mr Dubois sent in May 2017 for installation of amenities at the Daroobalgie HVCS site. In the body of the email, Mr Dubois required that all companies submit a quote by 21 December 2017. An RMS brief was attached setting out the scope and requirements of the work. In addition to requesting a lump sum fee estimate, the scope of works stated that the tasks to be undertaken included but were not limited to:

- transportation of amenities to site
- installation of septic pump tanks
- provision of utility surveys
- excavation for council water supply
- excavation and dumping of 15 metres of flexible pavement to a depth of 350 millimetres
- formwork, provision of steel and concreting 13 metres long by 6 metres wide to a depth of 250 millimetres
- line marking of areas around the newly-installed concrete pad in addition to the installation of a 5-metre by 5-metre stop sign at both north and south bound sites prior to the weighbridge
- installation of two stop signs with posts
- cleaning of the area.

During his evidence at the public inquiry, Mr Chahine was shown a Euro Civil quote for this project dated 19 December 2017 for \$218,750. He said that he wrote the quote, but he provided quotes such as this one to Mr Dubois for review before they were submitted to the RMS. This accords with Mr Dubois' evidence that "I would have maybe proofread them or gone over them with the guys, yeah". During the execution of several search warrants, the Commission obtained and forensically downloaded Mr Chahine's mobile telephone. Although not related to this project, there were several images contained in WhatsApp chat messages between Mr Chahine and Mr Dubois of quotes from all three companies that had been sent by Mr Chahine to Mr Dubois' telephone. Mr Chahine confirmed those images were sent so that Mr Dubois could check whether the quote was to his satisfaction before it was officially sent to Mr Dubois' RMS email address.

Mr Chahine gave evidence that, usually, Euro Civil would have come up with a price that covered the company's costs and profit. The profit margin for Mr Chahine and Mr Hadid would typically be 30 per cent. Mr Chahine accepted that he would add a 30 per cent profit margin on top of his genuine costs. Mr Dubois agreed that he would have had a "kickback paid from that job".

Mr Hadid agreed that there would have been discussions between him, Mr Chahine and Mr Dubois as to which of their three companies should get the job and ultimately what price the successful company should quote.

On 21 December 2017, Mr Dubois submitted an RMS contract creation form dated 21 December 2017, accepting the Euro Civil quote for \$218,750 for the project. The contract title was "Concrete, Civil works on Newell Highway". This was approved by Mr Dubois' supervisor, Mr Soliman, on the same day.

Mr Chahine and Mr Hadid told the Commission that they knew Euro Civil would be the successful bidder, given Euro Civil submitted the lowest quote from their three companies.

On 20 February 2018, a "Barry Haden" from Euro Civil, using an "info@" Euro Civil email address, emailed Mr Dubois attaching an invoice for \$180,000 in relation to the Daroobalgie project. This invoice represented the first request for partial payment.

On 26 February 2018, "Barry Haden" from Euro Civil, using the "info@" Euro Civil email address, emailed Mr Dubois attaching a second invoice for \$38,750 in relation to the Daroobalgie project. This represented the final payment of the \$218,750 quoted for the project.

The name "Barry Haden" was an anglicised name used for Barrak Hadid, who was listed as the director of the company.

Between 19 March 2018 and 26 March 2018, the RMS remitted the GST-inclusive amounts in relation to these invoices.

Mr Chahine told the Commission that he and Mr Hadid expressed concern about the quantum of the margin Mr Dubois inserted for his benefit, but the concern was not heeded: "It was just in one ear and out the other you couldn't get through to him. On many occasions me and Barrak [Hadid] just kept telling him, like, "Enough, like, slow down". The Commission notes Mr Dubois' previous evidence that, at one point in time, he would incorporate a 50 per cent margin into the price of a project.

Mr Chahine told the Commission that, at times when Mr Dubois was responsible for projects that were rolled out state-wide, he would inform Mr Chahine that the jobs would be divided in regions or zones. This accords with the objective evidence. The Commission obtained a photo image, dated 24 May 2016, from Mr Chahine's seized telephone. The image was a photograph of a page from a notebook containing writing that showed regional zones with corresponding companies and jobs to be priced. Below the word "Western" was the word "Euro" and the figure "\$225,000", below the word "Sydney" was the

word “CBF” and the figure “\$256,500”, and below the word “Northern” was the word “OzCorp” without any amount. The Commission accepts Mr Chahine’s evidence that at times work was awarded to a company by reference to regions that were determined by Mr Dubois.

The Commission identified at least 23 occasions when companies controlled by Mr Chahine and Mr Hadid effectively bid against themselves to by-pass the RMS procurement requirement for three independent quotes. As a result, \$5,043,360.30 worth of contracts were awarded to companies owned by Mr Chahine and Mr Hadid.

Euro Civil was successful in relation to the awarding of 10 RMS contracts collectively valued at \$2,522,025, in circumstances where OzCorp and CBF Projects bid on the same contract. OzCorp was successful in the relation to the awarding of nine RMS project contracts collectively valued at \$1,763,080, in circumstances where Euro Civil and CBF Projects bid on the same contract. CBF Projects was successful in the relation to the awarding of four RMS project contracts collectively valued at \$758,255.30, in circumstances where Euro Civil and OzCorp bid on the same contract.

Between 2 June 2015 and 12 June 2019, Mr Dubois arranged for the awarding of \$4,745,400 of RMS project works to Euro Civil.

Between 5 October 2015 and 14 December 2019, Mr Dubois arranged for the awarding of \$3,066,800 of RMS project work to OzCorp.

The Built Engineering Scheme

On 9 June 2015, Built Engineering Pty Ltd (“Built Engineering”) was registered by Mr Hadid. He was listed as the sole director and shareholder. Mr Chahine told the Commission that the company was set up “for Alex [Dubois] to get his kickbacks through”.

On 12 June 2015, Mr Hadid opened a Built Engineering bank account with St George Bank. It is common ground that Mr Hadid provided a bank card to enable Mr Dubois to access this account.

On 18 June 2019, Commission officers executed a search warrant on Mr Dubois’ residence. At 1:28 pm Mr Dubois was observed leaving his residence and entering a red Toyota vehicle. At 2:35 pm, while driving the red Toyota, Mr Dubois stopped his car, exited and bent over next to a storm water drain. After Mr Dubois departed, Commission officers recovered pieces of a St George Bank debit card in the name of Barrak Hadid, Built Engineering, from the storm water drain.

In an admission against self-interest, Mr Dubois agreed that he cut up the Built Engineering debit card he had used for some years and threw it in the drain.

Figure 3: The storm water drain from which Commission officers recovered pieces of a St George Bank debit card in the name of Barrak Hadid, Built Engineering



Figure 4: The Built Engineering debit card that Mr Dubois admitted to cutting up and throwing in the drain



The timing of Built Engineering’s incorporation coincided with Mr Hadid and Mr Chahine having ceased the use of the Euro Projects Scheme due to the closure of the bank account by the bank. Mr Chahine confirmed this to be a reason why Built Engineering was formed. Mr Hadid contended that, notwithstanding the curious selection of the name, initially Built Engineering was created “for doing something with classic cars and all that, after speaking to Alex [Dubois] about it for his love of cars and stuff like that, but ultimately it didn’t do anything like that”.

Mr Dubois told the Commission that, “The whole purpose of – from my understanding – from when Barrak [Hadid] told me ... he wanted to set up the Built Engineering company, was to avoid this where they would transfer directly from one, from their contractor company to a facility ... yeah”.

Mr Hadid told the Commission that, with the closure of the MWK Developments arrangement, Mr Dubois “just wanted his kickbacks any way he can, so it’s mainly, mainly like, he just wanted them, he just, any means possible”. He agreed that with the closure of the Euro Projects Scheme, the provision of benefits to Mr Dubois continued and escalated with the Built Engineering Scheme.

Mr Hadid’s evidence is borne out from the objective evidence. The Commission forensically reconstructed how the Built Engineering Scheme operated. This is illustrated in the diagram below. Euro Civil, OzCorp Civil and CBF Projects deposited \$1,616,460, \$161,462 and \$1,139,936.25 respectively into the Built Engineering account. Payments were made by Built Engineering towards the purchase of seven high performance sports vehicles for amounts totalling \$2,303,500, including a \$1,209,500 payment towards a Ferrari F40.

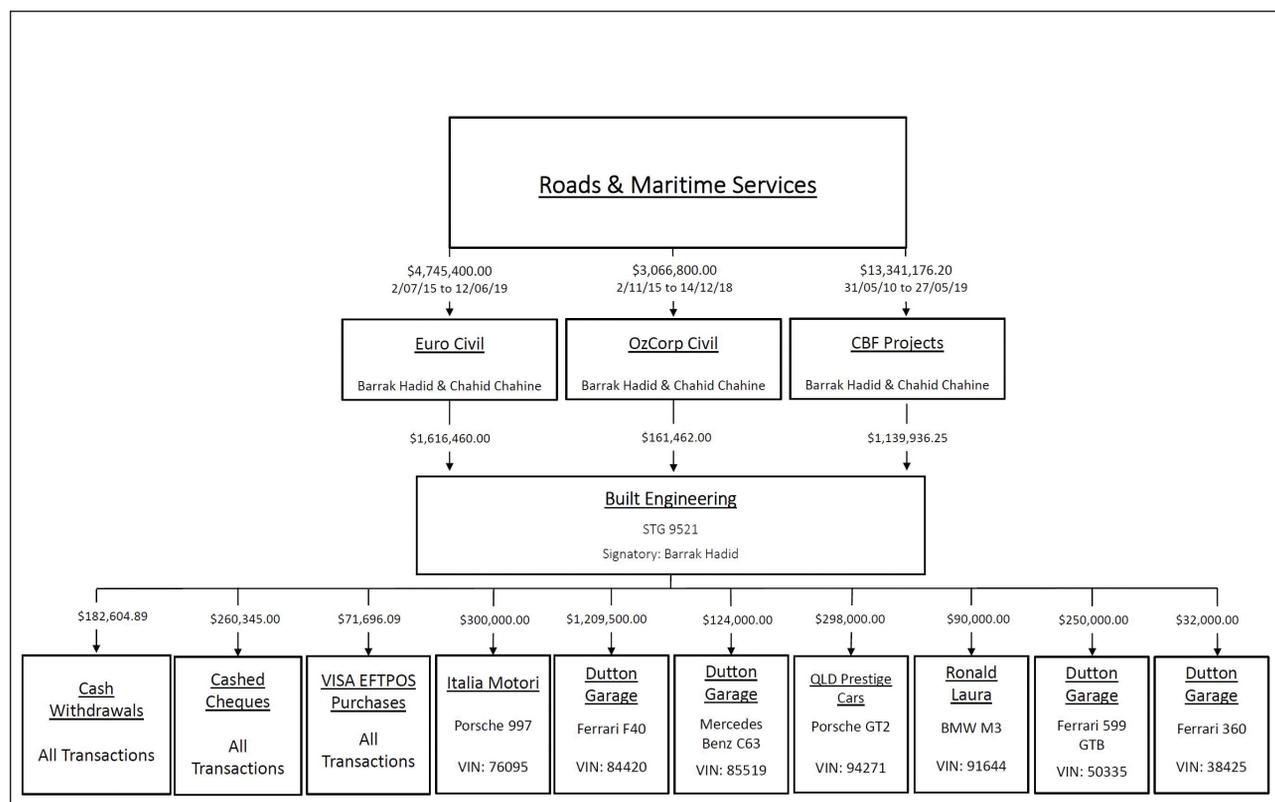
The Commission has identified that Built Engineering was used to purchase seven of the 11 luxury cars purchased by Mr Hadid and Mr Chahine on Mr Dubois’ behalf.

Mr Hadid told the Commission that in relation to the purchase of cars, Mr Dubois “would buy something ... and then I would just make a cheque out to that dealership and he would keep paying it off until, you know, it’s paid off or, yeah, along those lines”. Mr Hadid did concede that he would sometimes attend a dealership that Mr Dubois frequented, namely, Dutton Garage in Melbourne.

While Mr Hadid’s role was more prominent in the management of the Built Engineering Scheme, particularly in relation to the purchase of the cars, Mr Chahine told the Commission of his involvement in the scheme as well: “we just wrote the cheques, put it into the account, and what he done with it, he done. We don’t know what actual vehicles he was purchasing at the time”. Mr Chahine said that as far as he was concerned, “his [Mr Dubois’] kickback went into that account”.

Both Mr Dubois and Mr Hadid told the Commission that there were several ways the vehicles were stored or registered. The Commission heard evidence from Mr Hadid that some of the motor vehicles were never

Figure 5: Diagram representing how the Built Engineering Scheme operated



registered as they were never used by Mr Dubois. According to Mr Hadid, Mr Dubois told him that “I believe that the cars he was buying from Duttons weren’t being registered or anything like that. They were just sitting there.” This accords with Mr Dubois’ evidence where he accepted, in the case of Dutton and other dealerships, that they stored the cars knowing that these purchases that were made on his behalf.

At times, credits were left with a motor vehicle dealership when one car was sold and it was anticipated that the proceeds would be credited against another purchase. This occurred in connection with the purchase of a black Ferrari 559 GTB in relation to which \$21,347 credit was applied to the \$697,500 purchase price.

On other occasions, Mr Hadid would assist with the purchase of the car that was chosen by Mr Dubois. In relation to the repurchase of the Porsche 911 GT2 RS 997, an invoice dated 29 June 2016 from Italia Motori dealership shows that Mr Hadid purchased the vehicle for \$735,000. The invoice shows a break-down of the transaction, which was achieved through an existing \$20,000 deposit, (the origins of which the Commission has been unable to trace) a \$300,000 trade-in of one of Mr Dubois’ previously purchased Porsche 911s and a bank cheque dated 29 June 2016 for \$415,000 in favour of Italia Motori. The bank cheque funds comprised two cash withdrawals on the same day as the bank cheque was drawn. The first \$300,000 cash withdrawal was from the Built Engineering bank account, with the second \$115,000 cash withdrawal originating from the Euro Civil bank account. Mr Hadid gave evidence that all the car purchases in which he assisted related to cars for Mr Dubois.

Mr Dubois told the Commission that some of the vehicles purchased “had been changed into my name or my dealership licence name”. The dealership was Grendizer Pty Ltd. Grendizer was registered by Mr Dubois on 4 July 2016, and he was listed as director, secretary and shareholder. Mr Dubois agreed that he obtained a dealership licence with the intention of operating a motor vehicle trading business, though the trading of motor cars did not occur.

Between 12 June 2015 and 30 June 2019, CBF Projects, Euro Civil and OzCorp Civil made deposits amounting to \$2,917,858.25 into the Built Engineering bank account as payment for Mr Dubois arranging the awarding of RMS project work to companies controlled and operated by Mr Chahine and Mr Hadid.

Estimating how much Mr Dubois received

The Commission is satisfied that the evidence establishes that Mr Chahine and Mr Hadid provided Mr Dubois with the following benefits:

- cheque payments from Complete Building Fitout and CBF Projects that were deposited into the MWK Developments bank accounts, totalling \$545,928.30
- cheque payments from CBF Projects that were deposited into the Wilkins Corp bank accounts, totalling \$627,550
- payments made from CBF Projects into the Euro Project bank account, totalling \$1,458,109.66
- payments from Euro Civil, OzCorp Civil and CBF Projects into the Built Engineering bank account, totalling \$2,917,858.25.

The overall value of the benefits provided by Mr Chahine and Mr Hadid to Mr Dubois was \$5,549,446.21.

Corrupt conduct

Mr Dubois

Between about mid-2010 and mid-2019, Mr Dubois misused his public official position with the RTA/RMS to arrange for the awarding of approximately \$21 million worth of RTA/RMS work to companies owned or controlled by Mr Chahine and Mr Hadid, namely, Complete Building Fitout, CBF Projects, Euro Civil and OzCorp Civil, in return for benefits from Mr Hadid and Mr Chahine totalling no less than \$5.549 million.

This conduct on the part of Mr Dubois was corrupt conduct for the purpose of s 8 of the ICAC Act as it adversely affected the honest and impartial exercise of his official functions (s 8(1)(a)), constituted the dishonest and partial exercise of his official functions (s 8(1)(b)) and involved a breach of public trust (s 8(1)(c)).

Section 249B(1) of the Crimes Act 1900 (“the Crimes Act”) is relevant for the purposes of s 9(1)(a) of the ICAC Act. Section 249B(1) of the Crimes Act provides:

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

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

not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,

the agent is liable to imprisonment for 7 years.

The elements of an offence under s 249B(1)(a) of the Crimes Act are as follows:

- an agent
- corruptly receives or solicits
- from another person
- any benefit
- for the agent or anyone else
- as an inducement or reward
- on account of showing or having shown favour to any person
- in relation to the affairs or business of the agent's principal.

An agent is defined in s 249A of the Crimes Act to include any person employed by any other person in any capacity. For the purposes of s 249B, Mr Dubois was the agent of the RTA/RMS.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Dubois committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to companies controlled by Mr Chahine and Mr Hadid, in relation to the affairs or business of the RTA/RMS. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Dubois had committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to companies controlled by Mr Chahine and Mr Hadid, in relation to the affairs or business of the RTA/RMS. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is further satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act that, if the facts were to be proved on admissible evidence to the requisite standard of proof of the balance of probabilities

and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could find that Mr Dubois committed disciplinary offences giving rise to dismissal, being substantial breaches of the RTA/RMS codes of conduct as he was specifically required:

- not to accept a gift or benefit that was intended to or likely cause him to act in a biased manner
- to refuse gifts, benefits that might influence or have the potential to influence, procurement decisions.

Mr Dubois' conduct therefore comes within s 9(1)(b) and s 9(1)(c) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is also satisfied that, if the facts found were to be proved on admissible evidence to the requisite standard of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Dubois had engaged in conduct that constitutes disciplinary offences of breaching the RTA/RMS codes of conduct in relation to accepting gifts or improper benefits and that such conduct is sufficiently serious to constitute grounds for his dismissal. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that the conduct is serious corrupt conduct because it involved significant planning and the receipt of benefits of substantial value occurring over a protracted period of time.

Mr Chahine

Between about mid-2010 and mid-2019, Mr Chahine, in concert with Mr Hadid, provided benefits to the value of at least \$5.549 million to Mr Dubois, and on behalf of Mr Dubois, as a reward for Mr Dubois misusing his public official position with the RTA/RMS, to award approximately \$21 million worth of RTA/RMS work to companies owned or controlled by Mr Chahine and Mr Hadid, namely, Complete Building Fitout, CBF Projects, Euro Civil and OzCorp Civil.

This conduct on the part of Mr Chahine was corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act as it adversely affected the honest and impartial exercise of Mr Dubois' official functions.

For the purposes of s 9(1)(a) of the ICAC Act, s 249B(2) of the Crimes Act is relevant and provides:

(2) If any person corruptly gives or offers to give to any agent, or to any other person with the consent or at the request of any agent, any benefit—

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

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

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

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

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

the firstmentioned person is liable to imprisonment for 7 years.

The relevant elements of an offence under s 249B(2) of the Crimes Act are as follows:

- a person
- corruptly gives
- to an agent
- with the agent's consent
- any benefit
- as an inducement or reward
- on account of having shown favour to any person in relation to the affairs or business of the agent's principal.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Chahine, in concert with Mr Hadid, committed offences under s 249B(2) of the Crimes Act of corruptly giving benefits.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Chahine had committed offences under s 249B(2) of the Crimes Act of corruptly giving benefits. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that the conduct is serious corrupt conduct because it involved significant planning and the provision of improper benefits of substantial value over a protracted period of time.

Mr Hadid

Between about mid-2010 and mid-2019, Mr Hadid, in concert with Mr Chahine, provided benefits to the value of at least \$5.549 million to Mr Dubois, and on behalf of Mr Dubois, as a reward for Mr Dubois misusing his public official position with the RTA/RMS, to award approximately \$21 million worth of work to companies owned or controlled by Mr Chahine and Mr Hadid, namely, Complete Building Fitout, CBF Projects, Euro Civil and OzCorp Civil.

This conduct on the part of Mr Hadid was corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act as it adversely affected the honest and impartial exercise of Mr Dubois' official functions.

For the purposes of s 9(1)(a) of the ICAC Act, s 249B(2) of the Crimes Act is relevant, the elements of which are set out above.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Hadid, in concert with Mr Chahine, committed offences under s 249B(2) of the Crimes Act of corruptly giving benefits. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Hadid had committed offences under s 249B(2) of the Crimes Act of corruptly giving benefits. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that the conduct is serious corrupt conduct because it involved planning and the provision of improper benefits of substantial value over a protracted period of time.

Section 74A(2) statements

In relation to the conduct dealt with in this chapter, the Commission considers that Mr Dubois, Mr Chahine and Mr Hadid are affected persons.

Alexandre Dubois

Mr Dubois' evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RTA/RMS records, banking records of Complete Building Fitout, CBF Projects, Euro Civil and OzCorp Civil, MWK Developments, Euro Projects, Built Engineering and Wilkins Corp. Other admissible evidence that would be available includes evidence recovered from Mr Dubois' hard drives seized from Mr Dubois' house during the execution of the search warrant – such as emails, electronic documentation relating to Complete Building Fitout, CBF Projects, Euro Civil and OzCorp Civil – and the electronic documentation recovered from Mr Chahine's mobile telephone during the execution of the same search warrant relating to CBF Projects, Euro Civil and OzCorp Civil, and the potential evidence of Hassan Alameddine, Mr Chahine and Mr Hadid.

The Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of Mr Dubois for offences under s 249B(1)(a) of the Crimes Act of, between June 2010 and June 2019, corruptly soliciting and receiving benefits, as an inducement or reward for using his position to award contracts to Complete Building Fitout, CBF Projects, Euro Civil and OzCorp Civil.

As Mr Dubois' employment with the RMS was terminated, the question of whether consideration should be given to the taking of action against him for a disciplinary offence, or the taking of action with a view to his dismissal, does not arise.

Chahid Chahine

Mr Chahine's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RTA/RMS records, banking records of Complete Building Fitout, CBF Projects, Euro Civil and OzCorp Civil, MWK Developments, Euro Projects, Built Engineering and Wilkins Corp. Other admissible evidence that would be available includes evidence recovered from Mr Dubois' hard drives, seized from Mr Dubois' house during the execution of the search warrant, such as emails, electronic documentation relating to Complete Building Fitout, CBF Projects, Euro Civil and OzCorp Civil and the electronic documentation recovered from Mr Chahine's

mobile telephone during the execution of the same search warrant relating to CBF Projects, Euro Civil and OzCorp Civil, and the potential evidence of Mr Hadid, Hassan Alameddine and Mr Dubois.

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 Chahine for offences under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between June 2010 and June 2019, corruptly giving a benefit to Mr Dubois on the account of Mr Dubois showing favour to Mr Chahine, Mr Hadid and companies under their control, namely, Complete Building Fitout, CBF Projects, Euro Civil and OzCorp Civil (collectively "their companies") in relation to the affairs or business of the RTA/RMS, or the receipt of or expectation of which would tend to influence Mr Dubois to show favour to Mr Chahine and Mr Hadid or their companies in relation to the affairs or business of the RTA/RMS.

Barrak Hadid

Mr Hadid's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RTA/RMS records, banking records of Complete Building Fitout, CBF Projects, Euro Civil and OzCorp Civil, MWK Developments, Euro Projects, Built Engineering and Wilkins Corp. Other admissible evidence that would be available includes evidence recovered from Mr Dubois' hard drives seized from Mr Dubois' house during the execution of the search warrant such as emails, electronic documentation relating to Complete Building Fitout, CBF Projects, Euro Civil and OzCorp Civil, and the electronic documentation recovered from Mr Chahine's mobile telephone during the execution of the same search warrant relating to CBF Projects, Euro Civil and OzCorp Civil and the potential evidence of Mr Chahine, Hassan Alameddine and Mr Dubois.

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 Hadid for offences under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between June 2010 and June 2019, corruptly giving a benefit to Mr Dubois for Mr Dubois showing favour to Mr Hadid, Mr Chahine or their companies, as described above, in relation to the affairs or business of the RTA/RMS, or the receipt of or expectation of which would tend to influence Mr Dubois to show favour to Mr Hadid and Mr Chahine or their companies in relation to the affairs or business of the RTA/RMS.

Chapter 3: Mr Dubois and Mr Taha

This chapter examines the circumstances surrounding Mr Dubois' association with Mr Taha and the arranging of the awarding of RTA/RMS contracts to TTS Group and MWK Developments in the total amounts of \$1,467,973.10 and \$224,400 respectively.

Friendship of Mr Taha and Mr Dubois

According to Mr Dubois, he first met Mr Taha through a mutual friend called Sam while studying at university. Mr Taha recalls that they met through their mutual friend, Hassan Alameddine, at a time when Mr Dubois was studying at university. It is unnecessary to determine exactly how Mr Dubois and Mr Taha met, as it is clear from the evidence of both that they met before Mr Dubois was employed at the RTA.

Mr Dubois was familiar with Mr Taha's family. He knew Mr Taha's brothers, Mustafa Taha and Hussein Taha (also known as Adam Malas and John Goldberg). Mr Dubois acknowledged that they were "friends" before and during the period that Mr Taha was an RTA contractor.

After finishing school, Mr Taha studied industrial design at the University of Western Sydney but did not complete his degree. On 20 May 2002, he commenced a tree-logging and landscaping business as a sole trader under the business name Pro Tech Tree Services.

On 13 August 2007, Mr Taha legally changed his name from Towfik Taha to Zac Malas. Mr Dubois knew that Mr Taha had legally changed his name to Zac Malas.

The registration of TTS Group

TTS Group was incorporated on 2 July 2009. Mr Taha, using his legal name of Zac Malas, was the sole director and shareholder until its deregistration on 27 November 2016.

Mr Taha told the Commission that, initially, he intended that the company obtain construction related work such as "excavation, concreting, gardening, landscaping, tree lopping, various jobs, whatever I could get my hands on, a bit of rendering, small jobs". Mr Taha tried to obtain this type of work through advertising and word of mouth despite having no formal training in some of the specialised works listed. Mr Taha agreed that it was only when TTS Group was awarded RTA/RMS work that it started to undertake lucrative work.

The awarding of RTA/RMS works to Mr Taha

Between 11 February 2011 and 23 June 2013, Mr Dubois arranged the awarding of 16 RTA/RMS contracts to TTS Group, totalling \$1,467,973.10.

Throughout the period in which contracts were awarded to TTS Group, Mr Dubois provided assistance to Mr Taha. The assistance extended to creating documents which allowed Mr Dubois to subvert the RTA procurement process. This occurred in three ways: first, by Mr Dubois writing quotes and invoices on behalf of Mr Taha; secondly, through Mr Dubois creating dummy quotes to give the appearance of competitive quoting when arranging the awarding of work to TTS Group; and thirdly, through Mr Dubois falsely claiming in internal RTA documents that RTA objectives of best value for each project were met by awarding the project to TTS Group. By these means, Mr Dubois awarded Mr Taha RTA/RMS work.

This chapter also examines a selection of the projects which demonstrate the circumstances in which TTS Group came to be awarded work. Given the number of projects allocated to TTS Group, and the admissions made by Mr Taha and Mr Dubois with respect to their conduct, it is unnecessary to explore every instance where Mr Dubois ensured TTS Group was allocated RTA/RMS work.

The first awarded project – Galston Gorge landscaping contract

The first contract came about as result of Mr Dubois discussing with Mr Taha the project management work on TIRTLs that Mr Dubois undertook on behalf of the RTA. Mr Taha asked if he could be awarded RTA project work. According to Mr Dubois, he initially refused, citing the specialised nature of the work and that it required the correct skills and paperwork. Mr Dubois told the Commission that despite being aware of Mr Taha's limited experience, he eventually agreed to provide Mr Taha with some work because Mr Taha had "promised that he would ... get up to speed with documentation and do whatever ... he needs to do to be able to do that body of work". Mr Dubois agreed it was open for him to refuse Mr Taha's requests to obtain RTA work. In offering Mr Taha the "opportunity" to work on RTA "work", Mr Dubois "knew [he] had to hold his hand throughout the process" because of Mr Taha's very limited project work experience. Mr Taha agreed that apart from landscaping, he had no previous experience or, at best, limited experience in the type of work Mr Dubois proposed to award him.

On 23 February 2011, Mr Dubois sent an email to Mr Taha's TTS Group email address, requesting a quote for landscaping works at the Galston Gorge camera installation site. Attached to the email was a scope of works.

Mr Taha was shown a TTS quote dated 24 February 2011 for \$47,000. The quote contained a two-page scope of works. Although detailed and in point form, there was no price itemisation for each line item contained in the scope of works. Mr Taha conceded that Mr Dubois assisted him in drafting the scope of works. Mr Taha stated that it "isn't something I would have put together". Mr Taha also stated that he provided a lump sum, rather than a cost breakdown of each line item, because "that's how he [Mr Dubois] would tell me to do it". The Commission accepts Mr Taha's evidence.

The Commission notes that the 24 February 2011 quote was located on an Imation USB drive found during the execution of the search warrant at Mr Dubois' residence. A photocopy of the first page of the 24 February 2011 quote was located within TfNSW holdings with respect to this project. Given the RTA purchase order price matched the 24 February 2011 quote price of \$47,000, the Commission is satisfied that an iteration closely resembling the 24 February 2011 quote was submitted to create the purchase order.

On 28 February 2011, Mr Dubois provided the letter of acceptance to a "Mr Terry Taha" at TTS Group indicating that his quotation dated "26 February 2011" had been successful and that his company had obtained the Galston Gorge landscaping contract. Mr Taha gave evidence that he previously used the name Terry. It is not clear why Mr Dubois chose to use the name "Terry".

On 3 March 2011, in the process of creating TTS Group as an authorised RTA vendor, then acting manager of business development of CEB, Simon Brodie, emailed Mr Dubois querying whether he needed at least one other competing quote to satisfy the RTA procurement process:

Before I approve [the vendor authorisation of TTS Group], I thought it is probably best to verify whether we have obtained more than one quote for the works?

I am guessing there is an obligation upon us as a government organisation to be transparent about our business transactions?

I note the quote is for \$47,000, and I am not aware of any thresholds or any rules around entering into contracts that have not been comparatively priced...

On 3 March 2011, Mr Dubois emailed Mr Brodie and his superior, Paul Hayes, and other RTA personnel referring to the Delegations Manual requirement and attaching

relevant pages. In that email, Mr Dubois correctly outlined that according to the Delegations Manual he was required to obtain only one quote.

The RTA Delegations Manual required one or more quotes for procurement infrastructure valued at \$50,000, excluding GST, and three quotes for projects valued above \$50,001, excluding GST.

Notwithstanding that only one quote was required, Mr Dubois replied in the same email thread that he had obtained another quote for \$56,000. A copy of that quote was obtained by the Commission. The quote, dated 26 February 2011, was purportedly from Mr Hadid of Complete Landscaping Solutions which priced the project at \$56,000. Mr Dubois told the Commission that he created the Complete Landscaping Solutions quote and submitted it as a dummy quote to ensure that it “covered my backside” and to facilitate the approval of the TTS Group quote.

On 11 February 2011, Mr Taha created a TTS Group progress payment invoice in relation to the Galston Gorge project. The progress invoice was in relation to a site visit and the purchase of materials which amounted to \$17,000.

On 14 March 2011, the RTA Contracts and Finance Section of CEB advised Mr Dubois that it could not process the TTS Group invoice because TTS Group was not registered for GST. The Contracts and Finance Section also advised Mr Dubois that the ABN provided on the invoice was incorrect. The ABN on the TTS Group invoice was registered to “Toufik [sic] Taha” instead of Zac Malas or Terry Taha and referred to Mr Taha’s old business, Pro Tech Tree Services. Instead of conducting due diligence into these anomalies, RTA staff requested Mr Dubois to ask TTS Group to resubmit the invoice with the correct details.

On the same day, Mr Dubois forwarded the email to Mr Taha’s private email address.

On 15 March 2011, Mr Taha attempted to correct the situation by sending an email to the RTA Contracts and Finance Section of CEB attaching a reissued invoice. Despite sending this from his TTS Group email, Mr Taha used a Pro Tech Tree Services letterhead for the attached invoice and populated it with near identical information as the previous invoice sent relating to the Galston Gorge job. Curiously, the invoice retained his TTS Group email as the contact address. Mr Dubois informed the Commission that this attempt by Mr Taha created more problems as Pro Tech Tree Services was not a registered RTA vendor.

On 24 March 2011, the RTA received a newly corrected invoice from TTS Group dated 11 February

2011 containing a fresh ABN relating to TTS Group. On the same day, RTA staff from the Contracts and Finance Section of CEB emailed Mr Taha informing him that GST could not be claimed. Consequentially, a further amended invoice was requested.

It is unclear from the evidence how the above GST issue was resolved but, nevertheless, on 28 March 2011, the RTA issued a purchase order for \$47,000, excluding GST. The purchase order enabled funds to be dispersed by the RTA to TTS Group.

On 13 April 2011, a remittance of the progress payment of \$17,000 was made by the RTA to the TTS Group bank account. With that disbursement a balance of \$30,000 remained under the approved purchase order.

On 8 April 2011, Mr Taha issued a final TTS Group invoice amounting to \$29,000. This meant that, in total, Mr Taha had invoiced \$46,000 for this project, being \$1,000 less than the amount quoted by him. On 13 April 2011, he rectified this oversight and submitted a revised invoice for \$30,000. Mr Dubois agreed that either the CEB Contracts and Finance Section or he would have noticed the discrepancy. Mr Dubois expressed frustration about Mr Taha repeatedly providing incorrect invoices so that he had to aid Mr Taha with quotes and invoices: “All in all, I remember ... that the ... paperwork was a mess ... I had to hold their [sic] hand.”

The RTA paid \$47,000 plus GST for the Galston Gorge project. The evidence of Mr Dubois and Mr Taha was that the Galston Gorge works were carried out by TTS Group.

Kankool exit lane expansion and HVCS civil site upgrade works

The project works at Kankool involved the expansion of the exit lane at an HVCS onto the New England Highway and a facility upgrade of the HVCS (“the Kankool HVCS civil site upgrade”).

In his evidence to the Commission, Mr Taha conceded that he did not have the ability or capacity to perform the civil works required for the widening of the exit lane. Mr Taha agreed that he and Mr Dubois talked about him using subcontractors to perform the work, given his relative inexperience.

Between 1 April 2011 and 30 May 2011, TTS Group issued three invoices to the RTA with respect to the Kankool works, amounting to \$395,000, including GST.

It is apparent from the documentation referred to below that, at times, there was confusion between the Kankool exit lane expansion and the Kankool HVCS civil site upgrade jobs.

Dummy quotes found on Mr Dubois' hard drives

On 1 April 2011, TTS Group provided Mr Dubois with a five-page quote with respect to the exit lane expansion job outlining in detail the methodology involved in all the associated tasks. The amount quoted was \$155,000, excluding GST. Mr Taha agreed that he was not involved in writing the detailed quote and that it was probably written by Mr Dubois and sent to him by Mr Dubois for the purpose of the exit lane expansion job. When questioned by Counsel Assisting, Mr Taha was adamant that he would not have written the quote, as the quote referred to Australian Building Standards with which he was not at all familiar. Although Mr Dubois was not asked about the provenance of this quote when he gave evidence at the public inquiry, the Commission accepts Mr Taha's evidence that he did not create the quote and considered the most likely explanation to be that it was created by Mr Dubois.

The Commission located electronic MS-Word document versions of two different quotes concerning the exit lane expansion job. These quotes were found on two hard drives in Mr Dubois' bedroom during the execution of a search warrant at his house.

The first quote purported to be from Rad 1 Civil Pty Ltd (Rad 1) and was for \$205,000. The second quote purported to be from Galaxy Trading Pty Ltd and was also for \$205,000.

Mr Dubois admitted that both were dummy quotes; he had asked for both Mr Goldberg and Mr Taha to quote in respect of the same job.

Mr Taha told the Commission that, to the best of his recollection, the inflation of quotes and provision of payments to Mr Dubois began during the work on the Kankool job, when Mr Dubois informed him "he wanted some money for his time and efforts".

Creation of false tender evaluation reports

The Commission acquired from TfNSW an RTA tender evaluation report authored by Mr Dubois, dated 6 April 2011, relating to the Kankool HVCS civil site upgrade works. In addition to the above-mentioned TTS Group quote, the report referred to two other quotes; one from Complete Building Fitout and the other from a business called Peregrine Corp.

The report detailed a pre-tender meeting between Mr Dubois and the tendering parties which purportedly occurred on 1 April 2011 at 10:00 am at 27 Argyle Street, Parramatta. The objective of the meeting was to ensure that the RTA conducted a review of the tenders and obtained best value for the project. Mr Dubois was present at the meeting, along with and three individuals tendering on behalf of their companies. According to the report,

Terry Taha of TTS Group submitted a price of \$155,000 excluding GST, with Chahid Chahine of Complete Building Fitout submitting the cheapest price of \$154,000 excluding GST and, finally, Peregrine Corp submitting the most expensive price of \$175,000, excluding GST. In an apparent error made by Mr Dubois, the report notes that Michael Radwan of Rad 1 was in attendance instead of an individual representing Peregrine Corp. Mr Dubois stated that the reference to Rad 1 was probably copied from another document. Mr Dubois confirmed that Peregrine Corp was not an RTA contractor and that the company was associated with Mr Chahine's brother.

In any event the report gave the following performance assessment:

... only TTS group was found to have the capability to complete the works within contract period [sic] based on similar works successfully completed for the RTA and availability of resources, Complete Building Fitout was also favourable but were open with their expected finish dates due to a number of contracts that they had recently been awarded within and outside the RTA.

The evaluation report contained two important clauses:

14 Conflict of Interest

We individually declare that there was no actual or potential conflict or incompatibility between my personal or corporate interests and the impartial fulfilment of my duties in carrying out this tender assessment.

15 Adherence to tender procedures

We certify that all aspects of the tender process have been conducted in accordance with tender assessment procedures and there are no deviations from the procedures.

On 6 April 2011, the report was purportedly signed, by way of "electronic signature", and approved by Mr Dubois and Mr Stuart, sector manager northern infrastructure services.

Mr Stuart provided a statement to the Commission, dated 31 March 2021, in which he recalled:

I informed Alex [Mr Dubois], I was reluctant to accept any of the quotes as they looked very unprofessional and not what I would have expected from a company tendering for a construction job with the RTA. However Alex assured me one of the quotes was suitable as the company had previously completed work for the RTA to a high standard. The work required at Kankool was urgent to be completed and I therefore accepted his recommendation and signed a document which I believed was to start the project.

Mr Taha confirmed in evidence that he did not attend any pre-tender meeting.

Mr Dubois agreed that the assessment contained in the report was a false narrative to justify why he awarded the project to TTS Group and that TTS Group had not completed similar works in the past. Mr Dubois agreed the report was a “complete fabrication”.

As with the Kankool HCVS civil site upgrade works, the Commission acquired from TfNSW a tender evaluation report authored by Mr Dubois relating to the Kankool exit lane expansion project. The report was drafted at the same time as the Kankool HCVS civil site upgrade report. The project estimate supplied in this report was \$250,000.

The pre-tender evaluation report detailed a meeting at 10:30 am on 1 April 2011 at the 27 Argyle Street, Parramatta, RTA premises between Mr Dubois, Terry Taha of TTS Group, Shane Chahine of Peregrine Corp and Mr Radwan of Rad I. Once again, the purpose of the meeting was stated as being to enable the RTA to conduct a review of the tenders and obtain best value for the project. According to the report, TTS Group submitted the lowest price of \$205,000, with Rad I submitting a price of \$210,000 and Peregrine Corp submitting a price of \$224,000. In the report, Mr Dubois concluded that the TTS Group tender was best value for money and recommended that TTS Group be selected.

Although Mr Dubois did not give evidence specific about this tender evaluation report, he gave evidence that, typically, the tender evaluation reports were falsely created by him and referred to dummy quotes and meetings that did not occur. As with the previous tender evaluation report relating to the expansion lane, this tender evaluation report contained the same conflict of interest and adherence to tender procedures clauses which on 6 August 2011 was physically signed by Mr Dubois and by Mr Stuart, recommending that TTS Group be awarded the contract.

On 12 April 2011, this tender evaluation report was signed and approved by Mr Dubois’ superior, Tam McCaffery.

Mr Dubois assists in drafting invoices for the Kankool projects

On 10 May 2011 at 1:46 pm, Mr Taha emailed Mr Dubois an MS-Word version of a TTS invoice and wrote “can you please put in 25% for my prodrress [sic] payment”. The invoice, numbered 003, contained the following descriptors:

*Name: Roads & Traffic Authorities
Address: Kankool trucking station
Job: Widening of road*

A scant description of the work performed was also provided in the following terms:

Progress payment:

- *For supplying materials required for road widening such as*
- *Excavator, storm water pipes, site preparation, road base*

Notably the subtotal, GST total and grand total fields were left blank.

The Commission has been unable to locate from TfNSW holdings the completed invoice relating to this project. However, on 25 May 2011, the RTA remitted \$56,375 to the TTS Group bank account, which represented the first of three GST-inclusive payments made in respect of both Kankool jobs.

The Commission infers that an amended invoice 003 for \$56,375, including GST, was facilitated by Mr Dubois for submission to the CEB Contracts and Finance Section. It is unclear whether Mr Dubois directly populated the invoice to be on sent to the CEB Contracts and Finance Section for processing, or whether Mr Taha sent another revised invoice 003 with the totals populated on the advice of Mr Dubois. Given Mr Taha’s lack of skill in drafting invoices, and Mr Dubois’ previous assistance to Mr Taha, it is probable that Mr Dubois nominated the price and approved the invoice for submission to the CEB Contracts and Finance Section.

On 30 May 2011 at 11:46 am, Mr Taha emailed Mr Dubois “Invoice rta 4.doc”. The email was entitled “TTS GROUP PTY LTD – expand exit lane kankool”. The attachment was an MS-Word document of an incomplete TTS Group invoice. The invoice, numbered 004, was dated 19 May 2011. The invoice possessed the identical descriptors to invoice 003. However, for the description of the actual work performed, the invoice detailed the following: “For the completion of all work at the Kankool inspection station”. Again, as with invoice 003, the subtotal, GST total and grand totals were left blank.

On the same day at 12:41 pm, Mr Dubois sent an email to the CEB Contracts and Finance Section attaching an MS-Word document version of invoice 004. This version contained totals populated with amounts as well as a slightly different description of the work performed. The description was amended to: “For completion of all work at the Kankool inspection station, remaining [sic] 75 % remaining.” The subtotal provided for the invoice was \$169,125, including GST. The invoice referenced the subcontract number of 11.2933.0623.2, which was allocated to the expansion lane job from the misdated

purchase order. The amounts requested in the invoice amounted to 75% of the Kankool exit lane expansion.

When asked by Counsel Assisting to explain the amounts left blank from the first version that he sent to Mr Dubois, and how it came to be that the totals were populated in the version that Mr Dubois emailed to RTA contracts, Mr Taha stated he could not remember but that he would “have had to known [sic] the price” that Mr Dubois inserted into the invoice. The Commission is satisfied that Mr Dubois at some point advised Mr Taha of the sum that TTS Group would seek from the RTA. This accords with Mr Dubois’ general evidence that, owing to Mr Taha’s difficulties in drafting quotes and invoices, he had to aid Mr Taha.

On 20 June 2011, the RTA remitted \$169,125 to the TTS Group bank account which represented the second of three GST-inclusive payments in relation to both Kankool jobs.

On 20 June 2011 at 12.02 pm, TTS Group invoices 005, 006 and 007 were emailed to Mr Dubois’ RTA email address from Mr Taha’s TTS Group email. The covering email was entitled “invoices” and contained the message, “I have added the purchase order no. just check and make sure they are correct as there [sic] all the same number”.

Invoice 007 contained the following descriptors:

*Name: Roads & Traffic Authorities
Address: HVIS Kankool
Job: Renovation*

The invoice referenced the subcontract purchase order number of 11.2933.0623.3, allocated to the HVCS civil site upgrade.

The description of the works carried out was scant:

- To prepare site for renovation work
- To do all demolition work at site
- To carry out all work of the renovation work
- To supply all materials re [sic]
- To remove all rubbish of [sic] site.

The amount invoiced was \$165,500, including GST. This calculation was incorrect given the original amount allocated under the purchase order for the HVCS site expansion was \$155,000, excluding GST.

Unsurprisingly, an email was sent at 1:59 pm entitled “invoice” from Mr Taha’s TTS Group email address to Mr Dubois’ RTA email address, attaching an amended invoice 007, with the invoice displaying the corrected GST-inclusive amount of \$170,500.

On 21 July 2011, the RTA remitted \$236,500 to the TTS Group bank account, \$170,500 of which represented the final payment in relation to both Kankool jobs. In total, TTS Group was paid \$395,000, including GST, in relation to the two Kankool projects.

“The lion’s share of the money” – benefits provided by Mr Taha to Mr Dubois

Mr Taha gave evidence in his compulsory examinations on 2 and 3 December 2020 in which he denied ever providing “kickbacks” to Mr Dubois. When giving evidence in the public inquiry, he admitted that evidence was false and that he had known it to be false at the time he gave it.

Mr Taha’s evidence at the public inquiry was that he started providing illicit payments to Mr Dubois from the commencement of his second RTA job, namely, the Kankool projects referred to above. Mr Taha recalled that Mr Dubois said that “he wanted some money for his time and efforts”. Mr Taha took this to mean the time that Mr Dubois took in drafting the quotes and invoices for the Kankool works on behalf of TTS Group.

Mr Taha told the Commission that invoice 004 was inflated by Mr Dubois and incorporated a payment that was later provided to Mr Dubois.

The effect of Mr Taha’s evidence was that the size of payments provided to Mr Dubois varied from job to job depending on the size of the job. He said that he did not know how Mr Dubois arrived at the payment amount for any given job. This broadly accords with Mr Dubois’ evidence. Mr Dubois told the Commission that, especially in the early days when he received benefits, he attached a percentage amount to the profits that the contractor would need to pay him. Typically, the amount was between 10 and 30 per cent, but, at one point, it was 50 per cent of the profit that a contractor made from a job.

Mr Taha told the Commission that often the payments were provided to Mr Dubois either in cash amounts withdrawn from the TTS Group account or in cheques from the TTS Group account paid into the MWK Developments ANZ Bank accounts discussed later in this chapter. Mr Taha agreed with Counsel Assisting that a pattern of behaviour emerged where he made a series of cash withdrawals either from ATMs or by direct bank withdrawals from the TTS Group bank account. Some of the withdrawals were paid to Mr Dubois.

To recount one instance of such behaviour, on 5 January 2012 the RMS remitted \$31,460 into the TTS Group account. In a one-month period, 11 ATM withdrawals were made from the TTS Group account amounting

to \$12,000. Further remittances of \$64,735 and \$51,679.10 from the RMS were deposited respectively on 6 February 2012 and 13 February 2012. These were followed by 37 significant cash withdrawals from the TTS Group account, amounting to \$66,764, between 9 February 2012 and 12 April 2012. These included over-the-counter withdrawals as well as withdrawals from ATMs. Mr Taha's evidence was that some of the money withdrawn would have gone to the payment of subcontractors, and between about 10 and 30 per cent of the RMS payment would have been his profit, but that "the lion's share of the money was going to Mr Dubois" as "his kickback". Mr Dubois did not have a specific recollection with respect to the amounts paid by Mr Taha.

Mr Dubois and the MWK Developments bank accounts

On 30 May 2011, Mr Taha registered MWK Developments. During the process of registering MWK Developments, Mr Taha's first name was spelt as "Toufic" instead of "Toufik," at a time when Mr Taha was using his legal name of Zac Malas. When asked by Counsel Assisting if he used his birth name instead of his legal name to disguise the fact that he was the person operating MWK Developments, Mr Taha replied, "Possible, yes".

On 31 May 2011, Mr Taha opened an MWK Developments bank account, ending in 4569, with the ANZ Bank. Mr Taha again used his birth name and not his legal name, Zac Malas. In addition to Mr Taha, Hassan Habbouche was listed as an authorised third party signatory to the account. Hassan Habbouche is Mr Dubois' birth name. On the same day, Mr Taha also opened a second MWK Developments bank account, ending in 4577, with the ANZ Bank. Likewise, in addition to himself, Mr Taha listed Hassan Habbouche as an authorised third party signatory to the account. According to Mr Taha, one of the reasons for establishing MWK Developments was that it was anticipated that he and Mr Dubois would go into business renovating, developing and selling homes. Mr Dubois told the Commission that it was possible MWK Developments was set up because of discussions between him and Mr Taha. However, Mr Dubois was never an office holder or shareholder of MWK Developments. Mr Taha agreed with Counsel Assisting's proposition that the likely intention was to make Mr Dubois a "silent partner". Both conceded that the bank accounts were soon afterwards used to deposit payments from contractors. Mr Dubois also conceded that he used his birth name instead of his legal name to conceal the fact that it was him using the account.

On 14 June 2011, soon after MWK Developments' registration, Mr Taha emailed dummy quotes to Mr Dubois with respect to an RTA project concerning

the installation of a cantilever at Murulan, a job which TTS Group was ultimately awarded. A similar MWK Developments quote relating to the Marulan job was also found on a hard drive located in Mr Dubois' residence. MWK Developments' involvement as a contracting company will be dealt with in more detail in chapter 8.

On 21 June 2011, the day after the RTA remitted \$169,125 to TTS Group, representing the second payment for the Kankool projects, Mr Taha deposited a \$52,000 cheque from TTS Group into one of the MWK Developments bank accounts. Mr Taha told the Commission that it was Mr Dubois who nominated the amount and that he was "pretty sure" the amount deposited represented a "kickback" to Mr Dubois. Further, Mr Taha recalled that he raised an objection to Mr Dubois telling him, "That's a lot of money" but that Mr Dubois responded by saying "something along the lines, like, without him I couldn't ... have got the job regardless". The Commission accepts this evidence. It accords with Mr Dubois' evidence that his assistance at all stages of the quotation and invoicing process was vital to ensure that TTS Group obtained RTA project work and payment for that work. The Commission notes that \$52,000 represents almost exactly 30 per cent of the RTA remittance deposited into the TTS Group account. It will be recalled that Mr Dubois told the Commission that 30 per cent of the cost of an RTA project was at times the percentage he would receive as payment from a contractor.

Between 21 June 2011 and 10 October 2012, Mr Taha made four payments totalling \$183,700 into MWK Developments ANZ Bank accounts. This includes the \$52,000 referred to above. Mr Taha and Mr Dubois agreed that these payments were "kickbacks" made to Mr Dubois in return for Mr Dubois allocating RTA project work to TTS Group.

Payments into MWK Developments accounts from other contractors

The Commission forensically reconstructed both ANZ Bank MWK Developments accounts. It identified a number of relevant deposits. The first set of deposits was from RTA contractor companies that Mr Dubois was associated with in his capacity as a project manager at the RTA/RMS. The second set of deposits, made between 5 January 2012 and 4 July 2013, related to remittances from the RMS, as result of MWK Developments becoming an RMS contractor, which is discussed later in this chapter.

The first set of deposits was from RTA/RMS contractors, other than TTS Group, and occurred between 22 June 2011 and 15 October 2012. During that period, excluding the remittances from the RMS and TTS Group,

MWK Developments bank accounts received \$1,116,886.20 from seven contractor companies as follows:

- Complete Building Fitout, an entity created and controlled by Mr Chahine and Mr Hadid, deposited \$426,028.30
- CBF Projects, an entity created and controlled by Mr Chahine and Mr Hadid, deposited \$119,900
- Areva Corp Pty Ltd, an entity controlled by Hassan Alameddine, deposited \$302,870
- A&A Structural Solutions Pty Ltd (“A&A Structural”), an entity controlled by Abdula Nachabe, deposited \$9,665
- Senai Steel Pty Ltd, an entity controlled by Abdula Nachabe and Gamele Nachabe, deposited \$144,442.90
- BMN Electrical Services Pty Ltd (“BMN Electrical”), an entity controlled by Mr Najjarin, deposited \$50,180
- Ultimate Demolition Excavation Group Pty Ltd (“UDE Group”), an entity controlled by Mr Rifai, deposited \$63,800.

Apart from Mr Rifai, all the contractors made admissions to the Commission that they knew, or came to know, that the payments they made into the MWK Developments bank accounts were for Mr Dubois’ personal benefit and were not legitimately due to him. Mr Rifai, the director of UDE Group, told the Commission that the payment made by his company to MWK Developments was made to a sub-contracting company and was not a payment to Mr Dubois. As will be explained in chapter 4, the Commission does not accept Mr Rifai’s evidence in this regard.

Mr Dubois told the Commission that the deposits made by the above-listed contractors into the MWK Developments bank accounts were payments in return for him awarding these contractors RTA/RMS project work. The Commission notes these are significant admissions against his interest and accepts Mr Dubois’ evidence in this regard. The evidence also accords with Mr Taha’s evidence that he suspected that funds deposited into the MWK Developments accounts were illicit payments for Mr Dubois made by other RTA contractors.

Figure 6, located at the end of this chapter, is a spreadsheet outlining all the payments, including the payments made by the RMS, into both MWK Developments bank accounts.

Sometime after the last RMS contractor payment was made on 15 October 2012, and following discovery of the scheme by Mr Taha’s brother, Mr Goldberg, the latter

became concerned that the payments exposed Mr Dubois and his brother. Consequently, MWK Developments ceased to be used as a facility for Mr Dubois to receive his payments from other RMS contractors.

Mr Dubois’ use of the MWK Developments bank accounts

Mr Taha told the Commission that apart from one or two occasions, he did not look at the MWK Developments bank statements that were mailed to his address out of respect for Mr Dubois. When questioned by Counsel Assisting about the joint MWK Developments bank accounts, Mr Taha said that Mr Dubois advised him that money entering the accounts “was his [Mr Dubois]”.

In addition to the two joint accounts with Mr Taha, the Commission identified two other MWK Developments bank accounts that Mr Dubois opened solely in his name.

On 28 December 2011, using his birth name Hassan Habbouche, Mr Dubois opened an MWK Developments bank account with the ANZ Bank. He was the sole authorised signatory to the account. On 30 May 2012, again using his birth name Hassan Habbouche, Mr Dubois opened another MWK Developments bank account with the ANZ Bank. He was again the sole authorised signatory to the account. Between 28 December 2011 and 27 August 2012, a total of \$328,689.38 was transferred from the joint MWK Developments accounts opened by Mr Taha to the accounts that Mr Dubois controlled.

The Rolex watch

An ANZ key card belonging to Mr Dubois was linked to one of the MWK Developments joint accounts. Mr Dubois’ Department of Home Affairs travel movement records disclose that on 7 April 2012, he flew to Dubai in the United Arab Emirates (UAE) and returned to Sydney on 18 April 2012. These dates coincided with overseas purchases made on the key card, most notably a 35,500 Saudi Arabian Riyal purchase from Rolex watches, which equated to AUD\$9,127.47. When giving evidence to the Commission, Mr Dubois confirmed that he made the purchase.

The white Porsche 996

Another notable purchase made by Mr Dubois through MWK Developments was a payment totalling \$120,000 towards a 2003 white Porsche 996 (“the white Porsche 996”) from Dutton. Mr Dubois admitted that MWK Developments purchased the white Porsche 996 from Dutton, valuing it at \$125,000.

The Commission has identified one transaction from an MWK Developments bank account that appears to coincide with the purchase of the white Porsche 996.

A bank statement from an MWK Developments account, ending in 5011, discloses a transfer of \$120,028 on 14 August 2012. The Commission obtained tracking documents associated with that transfer. This reveals that the amount of \$120,000 (the total minus the \$28 transfer fee), was transferred by Hassan Habbouche to Dutton Sporting Cars. On 23 August 2012, the white Porsche 996 was registered under the name of MWK Developments Pty Ltd.

Between 23 October 2012 and 6 November 2012, three transfers amounting to \$222,800 were transferred from an MWK Developments account to a Suncorp Bank account associated with Mr Goldberg. These transfers are dealt with in chapter 8.

Fallout between Mr Taha and Mr Dubois

It is common ground that, due to what Mr Taha was told was the poor quality of his work on RMS projects, the relationship soured between Mr Taha and Mr Dubois to the point that Mr Dubois did not award Mr Taha's company any further RMS work from sometime after late-2012.

With the cessation of RMS work, Mr Taha threatened to report Mr Dubois to his supervisor if he was not compensated. The dispute led to an informal mediation between the pair that was set up by Hassan Alameddine, who was aware that Mr Taha was making payments to Mr Dubois. Hassan Alameddine brought in his cousin, whom Mr Dubois described to the Commission as "a religious sheikh figure who ... was like an arbitrator". The mediation resulted in Mr Taha receiving a \$25,000 cash payment and the white Porsche 996 (the same vehicle that MWK Developments had purchased for Mr Dubois some months earlier). Mr Taha and Mr Dubois told the Commission that this was compensation for Mr Taha's loss of future RMS work.

TfNSW registration records for the white Porsche 996 vehicle indicate that registration was transferred to Towfik Taha on 26 November 2012.

On 9 January 2013, TTS Group drew a \$20,000 cheque in favour of Hassan Alameddine's cousin. This was for his mediation services.

Mr Taha did not perform any RMS work after 2012 and in 2013 he moved to South Australia.

However, there is evidence that TTS Group-headed stationery was used to quote one further RMS job, the HVIS Sites Signs installation project concerning Allambie Heights, Barden Ridge, Narrabeen, Gunnedah, Kurnell, Windsor Downs and Linden for \$64,450. The quote was dated 23 May 2013 and located on the Imation USB drive found in Mr Dubois' residence.

A copy of the same quote was attached to an RMS purchase order request form, dated 29 May 2013. It was in TTS Group's favour for \$64,450 for the HVIS Sites Signs installation project and it listed Mr Dubois as the RMS requesting officer.

On 31 May 2013, the RMS contract team emailed Mr Dubois advising the creation of the purchase order for \$64,450 for the HVIS Sites Signs installation project.

The Commission obtained an MS-Word copy of the TTS Group invoice relating to the project, on the same Imation USB drive and a Hitachi hard drive which were located at Mr Dubois' residence. The invoice was addressed to the RMS, was dated 6 June 2013 and was for \$64,450.

When shown the TTS Group documentation relating to the HVIS Sites Signs installation project, Mr Taha stated he did not draft or prepare either the quote or invoice and he did not remember doing any work on that job.

Mr Dubois was not asked about the HVIS Sites Signs installation project or whether any works were performed.

Mr Taha's involvement with MWK Developments as an RTA contractor

This section deals with the extent of Mr Taha's involvement in RMS contracts that were awarded to MWK Developments and whether MWK Developments was paid for work it did not perform.

Between 15 October 2012 and 12 November 2012, MWK Developments was the RMS contractor for three projects. These were the installation of safety rails at the locations at Bulli, Urunga, Valla and Port Macquarie ("the P2P safety rail project"), barrier works at the STC Boggabilla site ("the Boggabilla STC site") and the Dundee STC site works ("the Dundee STC site").

Mr Taha told the Commission that, although he was informed of the process and participated on at least one project, it was Mr Dubois' idea to bid for projects through MWK Developments. Given the evidence emanating from the seizure of hard drives from Mr Dubois' residence (showing documents, quotations and invoices from MWK Developments relating to the above-mentioned three projects as well as the documentation from TfNSW), the Commission accepts this evidence.

The first RMS vendor registration forms submitted on behalf of MWK Developments used Mr Dubois' home address. Mr Taha told the Commission that these documents were submitted without his knowledge and the writing and signature on the documents were not his.

Mr Dubois told the Commission that it is likely that he submitted the registration forms.

Mr Taha vaguely recalled undertaking works relating to safety rails but said that, except for the Port Macquarie location, he did not “believe” he performed the works at the areas listed in the P2P safety rail project.

Although he had no specific recollection, Mr Dubois told the Commission he thought that Mr Taha “wasn’t involved at this point or pushed out,” referring to their fallout. However, the Commission notes that MWK Developments was remitted payment for the job at Port Macquarie and the Boggabilla STC site (barrier work) six weeks before the transfer of the white Porsche 996 to Mr Taha on 26 November 2012. This timing provides latitude for Mr Taha to have received payment before their fallout.

While there is evidence that Mr Taha performed work in relation to the safety rail project at Port Macquarie, the evidence does not permit a conclusion about whether he or MWK Developments performed work at the other P2P locations at Bulli, Urunga and Valla.

Mr Taha told the Commission that he recalled working at the Boggabilla STC site. This could have only occurred through MWK Developments. It is common ground that MWK Developments quoted \$47,000 and that it was awarded the job. There is no evidence to suggest that MWK Developments did not perform work on this site.

On 15 October 2012, the RMS remitted \$155,100 into the MWK Developments account representing combined payment for the P2P safety rail project and the Boggabilla STC site.

Mr Taha agreed he made purchases and withdrawals from the MWK Developments bank account only when MWK Developments performed works on RMS projects and the RMS had paid funds into that account. Accordingly, the Commission is satisfied that Mr Taha received some benefit from work awarded to MWK Developments in which he participated.

Mr Taha told the Commission that he did not remember working at the Dundee site.

At Mr Dubois’ residence, the Commission located an MS-Word document containing an MWK Developments quote dated 28 September 2012 relating to the “Civil works at [the] STC Dundee Site”. The quote detailed the need for asphalt paving and provided a lump sum price of \$63,000.

This quote was also found attached to the request of an RMS purchase order form, in support of MWK Developments undertaking the “Safety T Cam Dundee Civil Works” for \$63,000.

Mr Dubois told the Commission that he thought Mr Goldberg may have been concerned in this work because he recalled that Mr Goldberg was involved in a job that required asphaltting but he could not be certain. The evidence does not enable a finding that Mr Goldberg was involved in any of the projects awarded to MWK Developments.

On 3 October 2012, Mr Dubois was emailed by the RMS CEB Contracts and Finance Section. The attached RMS-issued purchase order was in favour of MWK Developments. The order for “Towfik Malas” of MWK Developments approved the expenditure relating to the Dundee STC site for \$63,000.

Consequently, the Commission is satisfied that Mr Taha did not benefit from the awarding of this job.

On 12 November 2012, a second payment of \$63,000 plus GST was made by the RMS into the MWK Developments bank account.

The Commission is satisfied that Mr Taha worked and benefited from the award of the STC Boggabilla site job for \$51,700, including GST. Notwithstanding his evidence in relation to participation in the safety rail projects at Port Macquarie, the evidence is unclear with respect to his participation at other sites. Taking the limited participation into account, the Commission declines to make a corrupt conduct finding regarding the award of the P2P safety project in respect of Mr Taha.

Corrupt conduct

Mr Dubois

Between April 2011 and November 2012, Mr Dubois misused his public official position with the RTA/RMS to arrange for the awarding of approximately \$1.468 million worth of RTA/RMS work to TTS Group, a company owned and controlled by Mr Taha, and for the awarding of RTA/RMS work to MWK Developments (which received \$224,000 worth of work), a company jointly controlled by Mr Dubois and Mr Taha, in return for payments from Mr Taha totalling no less than \$183,700.

This conduct on the part of Mr Dubois was corrupt conduct for the purpose of s 8 of the ICAC Act as it adversely affected the honest and impartial exercise of his official functions (s 8(1)(a)), constituted the dishonest and partial exercise of his official functions (s 8(1)(b)) and involved a breach of public trust (s 8(1)(c)).

Section 249B(1) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2 of this report.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Dubois committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to companies controlled Mr Taha, in relation to the affairs or business of the RTA/RMS. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Dubois had committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to companies controlled by Mr Taha, in relation to the affairs or business of the RTA/RMS. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is further satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act, that if the facts were to be proved on admissible evidence to the requisite standard of proof of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could find that Mr Dubois committed disciplinary offences, being substantial breaches of the RTA/RMS codes of conduct giving rise to dismissal as he was specifically required:

- not to accept a gift or benefit that was intended to or likely cause him to act in a biased manner
- to refuse gifts, benefits that might influence or have the potential to influence procurement decisions.

Mr Dubois' conduct therefore comes within s 9(1)(b) and s 9(1)(c) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is also satisfied that, if the facts found were to be proved on admissible evidence to the requisite standard of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Dubois had engaged in conduct that constitutes disciplinary offences of breaching the RTA/RMS codes of conduct in relation to accepting gifts or benefits and that such conduct is sufficiently serious to constitute grounds for his dismissal. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that the conduct is serious corrupt conduct because it involved significant planning, and large amounts of money, with the conduct occurring over a significant period of time.

Mr Taha

Between April 2011 and November 2012, Mr Taha paid at least \$183,700 to Mr Dubois, as a reward for Mr Dubois misusing his public official position with the RTA/RMS, to award approximately \$1.468 million worth of RTA/RMS work to his company, TTS Group, and to MWK Developments (which received \$224,000 of RTA/RMS work), a company jointly controlled by him and Mr Dubois.

This conduct on the part of Mr Taha was corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act as it adversely affected the honest and impartial exercise of Mr Dubois' official functions.

Section 249B(2) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Taha committed offences under s 249B(2) of the Crimes Act of corruptly giving benefits. His conduct accordingly comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Taha had committed a criminal offence under s 249B(2) of the Crimes Act of corruptly giving benefits. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that the conduct is serious corrupt conduct because it involved significant planning and the provision of improper benefits of substantial value over a significant period of time.

Section 74A(2) statements

In relation to the conduct dealt with in this chapter, the Commission considers that Mr Dubois and Mr Taha are affected persons.

Alexandre Dubois

Mr Dubois' evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RTA/RMS records, banking records, evidence recovered from Mr Dubois' hard drives such as emails, electronic documentation relating to TTS Group and MWK Developments and the potential evidence of Mr Taha, Mr Goldberg and Hassan Alameddine.

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 Dubois for offences under s 249B(1)(a) of the Crimes Act of, between April 2011 and November 2012, corruptly soliciting and receiving benefits, on account of using his position to award contracts to TTS Group and MWK Developments.

The Commission is also of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Dubois for the following offences:

- contrary to s 192E(1)(b) of the Crimes Act, in relation to his conduct between November 2012 and July 2013, he engaged in a deception to dishonestly obtain a financial advantage from the RMS through the awarding of RMS contracts to MWK Developments
- contrary to s 249C(1) of the Crimes Act, between April 2011 and July 2013, being the agent of the RTA/RMS, he gave to the RTA/RMS documents, namely quotes and invoices from TTS Group and MWK Developments, which were false or misleading in a material respect with the intent to defraud the RTA/RMS
- contrary to s 192G(b) of the Crimes Act, on about 6 April 2011, he dishonestly published a statement, namely a tender evaluation report, that was false or misleading in a material respect, with the intention of obtaining a financial advantage.

As Mr Dubois' employment with the RMS was terminated, the question of whether consideration should be given to the taking of action against him for a disciplinary offence, or the taking of action with a view to his dismissal, does not arise.

Towfik Taha

Mr Taha's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RTA/RMS records, and other admissible evidence recovered from Mr Dubois' hard drives such as emails, electronic documentation relating to TTS Group and MWK Developments and the potential evidence of Mr Dubois, Mr Goldberg and Hassan Alameddine.

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 Taha for:

- an offence under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between April 2011 and November 2012, corruptly giving a benefit to Mr Dubois on account of Mr Dubois showing favour to Mr Taha and TTS Group and MWK Developments, companies under his control or joint control, in relation to the affairs or business of the RTA/RMS, or the receipt of or expectation of which would tend to influence Mr Dubois to show favour to Mr Taha and TTS Group and MWK Developments in relation to the affairs or business of the RTA/RMS
- an offence under s 193B(1)(b) of the Crimes Act that, between May 2011 and November 2012, he dealt with proceeds of crime knowing that it was proceeds of crime and intending to conceal proceeds of crime, in that he created the MWK Developments bank accounts under his name for the purpose of allowing Mr Dubois access to illicit payments made into that account by other RTA/RMS contractors
- an offence under s 87 of the ICAC Act of giving false and misleading evidence when he said during his compulsory examination on 2 December 2020 that he never provided a "kickback" to Mr Dubois.

Figure 6: Spreadsheet outlining all payments, including those made by the RMS, into both MWK Developments bank accounts

MASTER SPREADSHEET									
MWK DEVELOPMENTS PL - ANALYSIS OF MOVEMENT OF FUNDS									
PAYMENTS FROM RMS AND RMS-RELATED VENDORS TO MWK DEVELOPMENTS ACCOUNTS									
PERIOD OF ANALYSIS 31 MAY 2011 TO 6 AUGUST 2013 (ONLY)									
MWK DEVELOPMENT ACCOUNTS CLOSED 6-AUG-13									
INDEX CODE	DATE	ACCOUNT NAME	ACCOUNT NUMBER	SIGNATORIES	BANK DESCRIPTION	RECIPIENT	PAYMENT TO MWK	PAYMENTS TO MWK	
1	21-Jun-11	TTS GROUP INVESTMENTS PL	ANZ BUSINESS CLASSIC ACCOUNT 012-224 4514-75654	ZAC MALAS	DEPOSIT	MWK DEVELOPMENTS ANZ 4569	52,000.00		
2	22-Jun-11	COMPLETE BUILDING FITOUT PL	ANZ BUSINESS EXTRA ACCOUNT 012-257 483446575	CHAHINE / HADID	CARD ENTRY AT WESTFIELD CENTRE COURT BRANCH	MWK DEVELOPMENTS ANZ 4569	73,150.00		
3	22-Jun-11	TTS GROUP INVESTMENTS PL	ANZ BUSINESS CLASSIC ACCOUNT 012-224 4514-75654	ZAC MALAS	CARD ENTRY AT WESTFIELD CENTRE COURT BRANCH	MWK DEVELOPMENTS ANZ 4577	5,200.00		
4	23-Jun-11	BMN ELECTRICAL SERVICES PTY LTD	CBA ACCOUNT 062-334 0107-23188	NAJIARIN	CARD ENTRY AT WESTFIELD CENTRE COURT BRANCH	MWK DEVELOPMENTS ANZ 4569	50,180.00		
5	12-Jul-11	UDE GROUP PTY LTD	WBC ACCOUNT 032-361 352024	RIFAI	DEPOSIT	MWK DEVELOPMENTS ANZ 4569	63,800.00		
6	18-Jul-11	A & A STRUCTURAL SOLUTIONS PL	ANZ BUSINESS CLASSIC ACCOUNT 012-224 452106199	NACHABE	DEPOSIT	MWK DEVELOPMENTS ANZ 4569	9,665.00		
7	25-Jul-11	TTS GROUP INVESTMENTS PL	ANZ BUSINESS CLASSIC ACCOUNT 012-224 4514-75654	ZAC MALAS	DEPOSIT	MWK DEVELOPMENTS ANZ 4569	49,500.00		
8	25-Jul-11	SENAI STEEL PL	STG FREEDOM BUSINESS ACCOUNT 112-879 492093855	NACHABE	DEPOSIT	MWK DEVELOPMENTS ANZ 4569	13,200.00		
9	15-Aug-11	COMPLETE BUILDING FITOUT PL	ANZ BUSINESS EXTRA ACCOUNT 012-257 483446575	CHAHINE / HADID	DEPOSIT	MWK DEVELOPMENTS ANZ 4569	35,750.00		
10	21-Dec-11	SENAI STEEL PL	STG FREEDOM BUSINESS ACCOUNT 112-879 492093855	NACHABE	CARD ENTRY AT MUSWELLBROOK BRANCH	MWK DEVELOPMENTS ANZ 4569	37,564.40		
11	28-Dec-11	COMPLETE BUILDING FITOUT PL	ANZ BUSINESS EXTRA ACCOUNT 012-257 483446575	CHAHINE / HADID	CARD ENTRY AT BANKSTOWN BRANCH	MWK DEVELOPMENTS ANZ 4569	50,000.00		
12	29-Dec-11	COMPLETE BUILDING FITOUT PL	ANZ BUSINESS EXTRA ACCOUNT 012-257 483446575	CHAHINE / HADID	CARD ENTRY AT DARLINGHURST BRANCH	MWK DEVELOPMENTS ANZ 4569	32,165.00		
13	23-Jan-12	SENAI STEEL PL	STG FREEDOM BUSINESS ACCOUNT 112-879 492093855	NACHABE	CARD ENTRY AT REVESBY BRANCH	MWK DEVELOPMENTS ANZ 4569	44,178.50		
14	02-Apr-12	COMPLETE BUILDING FITOUT PL	ANZ BUSINESS EXTRA ACCOUNT 012-257 483446575	CHAHINE / HADID	DEPOSIT	MWK DEVELOPMENTS ANZ 4569	40,975.00		
15	09-May-12	COMPLETE BUILDING FITOUT PL	ANZ BUSINESS EXTRA ACCOUNT 012-257 483446575	CHAHINE / HADID	CARD ENTRY AT PARRAMATTA WESTFIELD BRANCH	MWK DEVELOPMENTS ANZ 4569	66,000.00		
16	22-Jun-12	AREVA CORP PL	CBA CASH INVESTMENT ACCOUNT 062-107 10610044	MALAS / ALAMEDDINE	CARD ENTRY AT WESTFIELD CENTRE COURT BRANCH	MWK DEVELOPMENTS ANZ 4577	143,370.00		
17	29-Jun-12	AREVA CORP PL	CBA CASH INVESTMENT ACCOUNT 062-107 10610044	MALAS / ALAMEDDINE	CARD ENTRY AT WESTFIELD CENTRE COURT BRANCH	MWK DEVELOPMENTS ANZ 4577	49,500.00		
18	11-Jul-12	COMPLETE BUILDING FITOUT PL	ANZ BUSINESS EXTRA ACCOUNT 012-257 483446575	CHAHINE / HADID	CARD ENTRY AT WESTFIELD CENTRE COURT BRANCH	MWK DEVELOPMENTS ANZ 4577	57,200.00		
19	03-Aug-12	COMPLETE BUILDING FITOUT PL	ANZ BUSINESS EXTRA ACCOUNT 012-257 483446575	CHAHINE / HADID	ANZ INTERNET BANKING FUNDS TFER PROGRESSPAY CBPFL	MWK DEVELOPMENTS ANZ 4577	35,394.15		
20	03-Aug-12	COMPLETE BUILDING FITOUT PL	ANZ BUSINESS EXTRA ACCOUNT 012-257 483446575	CHAHINE / HADID	ANZ INTERNET BANKING FUNDS TFER PROGRESSPAY CBPFL	MWK DEVELOPMENTS ANZ 4577	35,394.15		
21	02-Oct-12	C B F PROJECTS PL	ANZ BUSINESS ADVANTAGE ACCOUNT 012-257 186852163	CHAHINE / HADID	CARD ENTRY AT SYDNEY AIRPORT BRANCH	MWK DEVELOPMENTS ANZ 4569	75,900.00		
22	10-Oct-12	C B F PROJECTS PL	ANZ BUSINESS ADVANTAGE ACCOUNT 012-257 186852163	CHAHINE / HADID	DEPOSIT	MWK DEVELOPMENTS ANZ 4569	44,000.00		
23	10-Oct-12	TTS GROUP INVESTMENTS PL	ANZ BUSINESS CLASSIC ACCOUNT 012 224 4514-75654	ZAC MALAS	DEPOSIT	MWK DEVELOPMENTS ANZ 4569	77,000.00		
24	12-Oct-12	SENAI STEEL PL	STG FREEDOM BUSINESS ACCOUNT 112-879 492093855	NACHABE	DEPOSIT	MWK DEVELOPMENTS ANZ 4569	49,500.00		
TOTALS							1,524,986.20		

Chapter 4: Mr Dubois and UDE Group

This chapter examines the circumstances surrounding Mr Dubois' association with Mr Rifai and the awarding of RTA project-work contracts to UDE Group, in the amount of \$213,400.

Credibility and reliability of Mr Rifai

As will be outlined below, Mr Rifai gave evidence that is not accepted as credible considering all the other evidence.

How Mr Dubois and Mr Rifai met

Mr Rifai told the Commission that he first saw Mr Dubois at the Condell Park Bfit Gym, where both exercised. Their interactions were very brief and limited to greetings.

However, in early 2011, both met at an RTA job at Mount White. At the time, Mr Rifai's sole operator business, UDE Group, was engaged as a subcontractor by his then brother-in-law, Mr Chahine. This was to perform excavation works on behalf of Complete Building Fitout for the RTA project relating to the HVCS located at Mount White. Mr Rifai at this time was an experienced excavator who was previously engaged in subcontracting work for the RTA with respect to site clearance by another RTA contractor. As a result, he would have had some familiarity with RTA infrastructure around the state. Mr Dubois told the Commission that, when speaking to Mr Rifai on site, he indicated that he might have work for him, and Mr Rifai provided his business card. This largely accords with Mr Rifai's evidence, with the exception that Mr Rifai did not recall giving Mr Dubois his contact details.

The awarding of the Galston Gorge inspection bay project

On 31 March 2011, UDE Group was registered, with Mr Rifai listed as sole director and sole shareholder.

The RTA works at Galston Gorge ("the gorge") were commissioned following several negative media reports

concerning heavy vehicles traveling through the gorge. One part of the rectification works identified by the RTA required the building of extension bays on either end of the gorge. The bays were designed to measure the length of heavy vehicles and allow for the availability of turn around areas. In addition, early warning camera signs would provide heavy vehicle drivers information to enable them to act and enact preventative measures before entering the over-length camera detection point.

Ten days before UDE Group's registration, on 21 March 2011, Mr Dubois emailed Mr Rifai at "ultimatedemo" attaching an RFQ file entitled "RFQ Vehicle Length Inspection Bays.pdf". The RFQ concerned the extension of the inspection bay at the gorge. The RFQ noted that the works would involve "mild excavation, cleaning, asphaltting, and line-marking". On the same day, Mr Dubois also emailed this RFQ to Mr Taha at TTS Group and Mr Chahine at Complete Building Fitout. Mr Rifai stated that he did not recall receiving the email but subsequently conceded that he did.

Mr Rifai stated that "there may have been" a connection between being awarded RTA work and his incorporation of UDE Group. Mr Dubois agreed that he could have encouraged Mr Rifai to incorporate UDE Group so as to have a professional looking operation to which he could award RTA work. The Commission is satisfied that Mr Rifai registered UDE Group at the behest of Mr Dubois for the purpose of undertaking work for the RTA.

Mr Rifai submitted a quote for the work at Galston Gorge on 31 March 2011. Mr Dubois conceded that it was likely that there had been a discussion in which he informed Mr Rifai that he would be awarded the job. Mr Dubois further conceded that he would have informed Mr Rifai of the price that he should quote and that he would have informed Mr Taha and either Mr Chahine or Mr Hadid that the quotes they submitted would, in effect, be dummy quotes.

Mr Rifai stated that he did not remember Mr Dubois saying words to the effect that other companies would submit dummy quotes. Nor did he recall being advised that others had been requested to quote. Mr Rifai denied that Mr Dubois suggested he quote for the job at \$194,000. He said he did not recall Mr Dubois suggesting that he quote at a particular price, or that he would be awarded the job before having submitted the quote.

The Commission accepts Mr Dubois' evidence, given his admission against interest and (as will be discussed below), the evidence outlining Mr Dubois' involvement in the creation of the false tender evaluation report in relation to this project.

During the execution of a search warrant at Mr Dubois' house, the Commission located RTA documents including emails and attachments relating to this project. These documents were found on a black Hitachi hard drive ("the Hitachi hard drive") inside a bag with a key tag labelled "spare 3" and "Buzz".

There were several electronic documents on the Hitachi hard drive concerning this project: a tender evaluation report, a UDE Group quote, a letter of acceptance and a signed RTA purchase order request.

The tender evaluation report was authored by Mr Dubois. This report was recommended by the road network manager north, who was responsible for the Galston Gorge inspection bay project, and approved by Mr Dubois' superior, Mr McCaffery, on 12 April 2011. The Commission is satisfied that the report was submitted to the RTA by Mr Dubois given the signatures of all the above-mentioned persons on the report.

The tender evaluation report estimated the work would cost \$200,000.

The tender evaluation report referenced three purported bids from BFW Pty Ltd, ADN Pty Ltd and UDE Group. ADN provided the most expensive bid at \$227,000, BFW

provided a bid of \$212,000 and UDE Group provided the lowest bid at \$194,000.

The report asserted that a meeting had occurred at 10:30 am on 1 April 2011 at 27 Argyle Street, Parramatta. As in the case of other contractors where there were similar reports drafted by Mr Dubois, Mr Rifai acknowledged that the meeting "never happened".

Although not specific to this tender evaluation report, Mr Dubois gave evidence conceding that his tender evaluation reports were a fabrication. The report contained the same exact clauses as with other tender evaluation reports dealt with in previous chapters. The Commission is satisfied that Mr Dubois created the report in purported compliance with the RTA procurement process requiring three quotes.

Also located on the Hitachi hard drive was a UDE Group quote dated 31 March 2011 for \$194,000. The Commission notes that this was also the same day UDE Group was registered. The Commission is satisfied that this quote was submitted to the RTA. Also found on the hard drive was a signed and completed RTA purchase order request in favour of UDE Group authorising the expenditure \$194,000. Mr Rifai denied that Mr Dubois provided any assistance drafting the quote. Mr Dubois said it was likely he assisted Mr Rifai with inserting the detail in the quote but that he could not specifically recall if he did. Mr Rifai provided no details as to how the figure of \$194,000 was calculated. Mr Rifai stated that the way he did his quotes was by providing a lump sum. He claimed he did not obtain quotes for work that he proposed to subcontract. This is despite his acknowledgement that the project involved asphaltting and he may not have done jobs of a similar nature.

The Hitachi hard drive contained an RTA letter of acceptance signed by Mr Dubois and dated 13 April 2011.

UDE Group undertook the works, although significant portions not relating to excavation were subcontracted out.

On 13 June 2011, Mr Rifai using his “ultimatedemo” work address, emailed Mr Dubois’ work email address attaching a UDE Group invoice relating to the project in the GST-inclusive amount of \$213,400.

On 16 June 2011, Mr Rifai again emailed Mr Dubois attaching an amended invoice. The only significant change was the inclusion of the UDE Group ABN which had been requested by the RTA.

Mr Rifai gave evidence that the RTA transferred \$213,400 into the UDE Group Westpac Bank account number ending in 2024. The invoice was paid on 7 July 2011.

Benefits provided to Mr Dubois by Mr Rifai

The ANZ Bank provided to the Commission trace documents relating to the MWK Developments bank account. The bank tracing documents detail that on 12 July 2011, a cheque from UDE Group in the sum of \$63,800 was deposited into that account.

In evidence, Mr Dubois agreed that the \$63,800 represented the payment of a benefit from Mr Rifai to him. This is contrary to Mr Rifai’s initial evidence before the public inquiry. He said that the \$63,800 was a legitimate payment to MWK Developments for subcontract works.

However, upon being told of the evidence of Mr Chahine making payments to Mr Dubois through the MWK Developments bank account, Mr Rifai conceded that Mr Dubois requested a payment. Mr Rifai gave evidence that the nature of the request “was more like extortion” and in response he told Mr Dubois “to stick the contract up his arse” and Mr Dubois “didn’t like it”. Mr Rifai told the Commission that, notwithstanding the confrontation with Mr Dubois, he did not pay Mr Dubois \$63,800 as a reward for Mr Dubois awarding him the RTA contract.

The Commission does not accept Mr Rifai’s evidence. First, the documentary evidence along with that of five other contractors is that in 2011-2012, Mr Dubois used MWK Developments as a vehicle through which to receive payment for awarding RTA contracts. The payment of \$63,800 to MWK Developments fits that pattern of behaviour. Secondly, while Mr Rifai maintained that the payment may have been made to MWK Developments as a subcontractor, this is not credible. While there is evidence that MWK Developments performed work for the RTA, this was in the capacity of a contractor, not a subcontractor, and it occurred in September 2012, not in mid-2011. Thirdly, MWK Developments had been established by Mr Taha using the name Zac Malas. Mr Rifai conceded he did not know Mr Taha or Mr Malas.

Of significance is Mr Dubois’ admission that he received a payment from UDE Group in return for awarding RTA work. This admission accords with other requests for payments he made to other contractors that were deposited into the MWK Developments account.

Mr Dubois ceased using Mr Rifai as an RTA contractor

It is common ground that both Mr Rifai and Mr Dubois fell out in relation to the request from Mr Dubois for a payment. As a result of the disagreement, Mr Dubois did not award further work to Mr Rifai.

Corrupt conduct

Mr Dubois

Between March 2011 and July 2011, Mr Dubois misused his public official position with the RTA to award \$213,400 worth of RTA work to UDE Group, a company owned by Mr Rifai, in return for a payment from Mr Rifai totalling \$63,800.

This conduct on the part of Mr Dubois was corrupt conduct for the purpose of s 8 of the ICAC Act as it adversely affected the honest and impartial exercise of his official functions (s 8(1)(a)), constituted the dishonest and partial exercise of his official functions (s 8(1)(b)) and involved a breach of public trust (s 8(1)(c)).

Section 249B(1) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2 of this report.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Dubois committed an offence under s 249B(1) of the Crimes Act of corruptly soliciting or receiving a benefit as an inducement or reward for showing favour to a company controlled by Mr Rifai, in relation to the affairs or business of the RTA. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Dubois had committed an offence under s 249B(1) of the Crimes Act of corruptly soliciting or receiving a benefit as an inducement or

reward for showing favour to a company controlled by Mr Rifai, in relation to the affairs or business of the RTA. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is further satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act, that if the facts were to be proved on admissible evidence to the requisite standard of proof of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could find that Mr Dubois committed a disciplinary offence, being a substantial breach of the RTA code of conduct giving rise to dismissal as he was specifically required to decline a gift or benefit that was intended to or likely cause him to act in a biased manner. Mr Dubois' conduct therefore comes within s 9(1)(b) and s 9(1)(c) of the ICAC Act.

The Commission is also satisfied that, if the facts found were to be proved on admissible evidence to the requisite standard of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Dubois had engaged in conduct that constitutes a disciplinary offence of breaching the RTA code of conduct in relation to accepting gifts or benefits and that such conduct is sufficiently serious to constitute grounds for his dismissal. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because it involved significant planning and the receipt by Mr Dubois of substantial improper payments.

Mr Rifai

In July 2011, Mr Rifai paid \$63,800 to Mr Dubois as a reward for Mr Dubois misusing his public official position with the RTA to award \$213,400 worth of RTA work to Mr Rifai's company, UDE Group.

The conduct was corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act as it adversely affected the honest and impartial exercise of Mr Dubois' official functions. Mr Rifai knew that the benefit he provided to Mr Dubois meant that Mr Dubois would dishonestly arrange for the awarding of work to UDE Group.

Section 249B(2) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of this offence are set out in chapter 2.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proven on admissible evidence to the criminal standard of proof beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which

such a tribunal could reasonably conclude that Mr Rifai had committed offences under s 249B (2) of the Crimes Act of giving corrupt benefits. His conduct accordingly comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Rifai had committed a criminal offence under s 249B(2) of the Crimes Act of giving corrupt benefits. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because it involved the provision of a substantial improper payment.

Section 74A(2) statements

In relation to the conduct dealt with in this chapter, the Commission considers that Mr Dubois and Mr Rifai are affected persons.

Alexandre Dubois

Mr Dubois' evidence was the subject of a declaration under s 38 of the ICAC Act and it cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RTA records, financial records of MWK Developments and emails, as well as electronic documentation recovered from Mr Dubois' hard drives seized from Mr Dubois' house during the execution of the search warrant. These documents include, but are not limited to, UDE Group's quote and invoice relating to the awarded project, the RTA tender evaluation report, emails and other RTA documentation. There is also the tendency evidence of other RTA contractors paying into the MWK Development accounts that assists in establishing the nature of the \$63,800 payment.

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 Dubois for an offence under s 249B(1)(a) of the Crimes Act of, between March 2011 and July 2011, corruptly soliciting and receiving a benefit, as a reward for using his position in the RTA to award a contract to UDE Group.

As Mr Dubois' employment with RMS was terminated, the question of whether consideration should be given to the taking of action against him for a disciplinary offence,



or the taking of action with a view to his dismissal, does not arise.

Talal Rifai

Mr Rifai's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including Mr Dubois' evidence, RTA records, financial records of MWK Developments and emails, as well as electronic documentation recovered from Mr Dubois' hard drives seized from Mr Dubois' house during the execution of the search warrant. These documents include, but are not limited to, UDE Group's quote and invoice relating to the awarded project, the RTA tender evaluation report, emails and other RTA documentation. Mr Dubois' evidence is also admissible in criminal proceedings against Mr Rifai.

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 Rifai for an offence under s 249B(2)(a) of the Crimes Act of, between March 2011 and July 2011, corruptly giving a benefit to Mr Dubois for Mr Dubois showing favour to Mr Rifai and UDE Group in relation to the affairs or business of the RTA.

Chapter 5: Mr Dubois and BMN Electrical

This chapter examines the circumstances surrounding Mr Dubois' association with Mr Najjarin and the awarding of RTA project-work contracts to BMN Electrical totalling \$219,340.

Mr Najjarin's credibility as a witness

Mr Najjarin made admissions against his interest and was for the most part a credible witness. While Mr Najjarin was able to recall some significant events which spanned over a decade, he found it difficult to recall other events.

Friendship between Mr Najjarin and Mr Dubois

Mr Najjarin was distantly related to Mr Dubois through marriage. He told the Commission that, apart from brief childhood meetings, he met Mr Dubois early in 2010 at the Bankstown Train Station Gym. Mr Dubois told the Commission that he wasn't sure whether he had met Mr Najjarin at a gym. Both acknowledged that they knew Mr Habbouche and may have met through him.

In the context of what follows, Mr Dubois and Mr Najjarin must have met in early 2010. This coincides with Mr Najjarin's recollection.

The registration of BMN Electrical

Mr Najjarin commenced his apprenticeship as a general electrician after completing year 12 high school. The apprenticeship was completed in about 2002 or 2003. Mr Najjarin then commenced work as a sole trader through BMN Electrical.

Mr Najjarin told the Commission that his classification as a general electrician meant that his work was largely confined to building interiors rather than external electrical

connections that linked to the main electrical grid. Mr Najjarin said he could only perform outside works in circumstances where he subcontracted the work to a level 1 or level 2 electrician.

On 9 March 2010, BMN Electrical was incorporated with Mr Najjarin listed as the sole director and shareholder until its deregistration on 28 July 2019. Mr Najjarin told the Commission that he decided to incorporate on the advice of his accountant as he was eager to pursue large commercial jobs.

On 8 April 2010, Mr Najjarin opened a BMN Electrical bank account ("the BMN bank account") with the Commonwealth Bank.

Although Mr Dubois awarded RTA work to Mr Najjarin, a little over a month after the BMN bank account was set up, it is not suggested that Mr Najjarin incorporated his company in anticipation of work from Mr Dubois.

The awarding of RTA/RMS projects to BMN Electrical

Between 27 May 2010 and 20 June 2011, Mr Dubois awarded BMN Electrical \$219,340 worth of RTA/RMS project work at Mount White, Jones Island (two projects), Twelve Mile Creek and Twelve Mile Creek/Newcastle.

Mr Najjarin told the Commission that when he met Mr Dubois at the Bankstown Train Station Gym, they both talked about their work and Mr Najjarin told Mr Dubois that he was an electrician. Mr Dubois said that "he ... [was] project managing jobs for the RTA". Mr Najjarin told the Commission the circumstances in which he was offered RTA work:

[RTA work was] *something that I always wanted to get into. And, yeah so he [Mr Dubois] said that "I'm projecting managing, I can get youse work," so it was all good for me. Like, I just, good for business ...*

At that, at the first meeting, ... [Mr Dubois told him] just there's work coming up and this, and he said he'll let me know, and that's it.

Mr Dubois' evidence was that generally it was the contractors who approached him for work, however, he did not "recall" whether he offered RTA work or Mr Najjarin requested work. Whatever be the correct circumstances, the Commission is satisfied that Mr Dubois came to provide RTA work to Mr Najjarin, with Mr Najjarin eagerly accepting the RTA project work as it was more significant than the work in which he or BMN Electrical had been engaged.

Between 3 June 2010 and 20 June 2011, Mr Dubois arranged for BMN Electrical to be awarded five RTA projects, namely, the cabling and wiring at the Mount White HVCS, electrical work related to the running of conduits through Jones Island in accordance with an RTA design plan, the removal and installation of light poles, electrical works related to Jones Island infrastructure and electrical works at Twelve Mile Creek and Newcastle. The sections below deal with two of those projects.

The first awarded project – cabling and wiring at the Mount White HVCS

This 2010 project involved relocating electrical cabling and wiring for the Mount White HVCS ("the Mount White HVCS wiring project"). The job was allocated purchase order number 45102489899. Mr Dubois told the Commission that this project specifically related to the Mount White communications room project for the HVCS that was awarded to Complete Building Fitout.

The Commission notes the sparsity of records kept in relation to this project with both the Commission and TfNSW unable to locate many records. Consequently, no quotes, purchase orders, invoices, emails or other RTA internal documents have been located with respect to this project.

According to Mr Najjarin, Mr Dubois informed him that there was money allocated for electrical services for the Mount White HVCS wiring project. Mr Dubois told the Commission that he spoke to Mr Najjarin about assisting on the project by relocating wires at the Mount White communications room.

In a significant admission against interest Mr Najjarin accepted that, in a discussion leading up to the first job awarded to him, Mr Dubois made it clear that he was to be paid a commission or a cut. Mr Najjarin explained the rationale behind the commission:

I don't remember, like, everything completely, it's, but I remember the jobs that were given to us, like, we were giving him a commission for his work and, you know, being a project manager, he was doing his part. Well, that's all I know, but I didn't really, like I didn't really ask him too many things. I just said I'll do the job. Like, back then I was just, give me the job, I'll do it, whatever it is that's your cut, you get it and that's it, that's his – well, I'm thinking that, like a builder ... when he gives us a job, he gets his cut from whatever, to me he's just a project manager, like, you know what I mean, managing the job.

For his part, Mr Dubois adamantly denied using the word "commission" as a euphemism for a payment when speaking to Mr Najjarin or any other contractor. Mr Dubois told the Commission, "I definitely, definitely didn't use the word commission or kickback". However, Mr Dubois did concede that he may have used the term "cut" when communicating with Mr Najjarin and other contractors as this was "something that was in my vocabulary". Mr Dubois also told the Commission he would have used a word that was the equivalent of "cut" and carried the same meaning. In any event, the Commission is satisfied that Mr Dubois conveyed to Mr Najjarin that he expected to receive a payment in return for arranging the awarding of RTA contracts to Mr Najjarin's company.

On 3 June 2010, the RTA remitted \$29,700 into the BMN Electrical bank account in relation to the Mount White job.

Mr Najjarin told the Commission that he would review the drawings and diagrams for the electrical work and conduct a site visit on the job. He factored the costs of the job and a modest profit margin to ensure that he would not lose money, but otherwise Mr Dubois was responsible for the overall price that BMN Electrical would quote for each job and that enabled Mr Dubois to receive a cut on each job.

The third awarded project—Twelve Mile Creek streetlight pole repairs

During the execution of a search warrant at Mr Dubois' house, the Commission located RTA documents including emails and attachments relating to the Twelve Mile Creek streetlight repair project. These documents were found on a black Touro 500G hard drive ("the Touro hard drive"), a black Hitachi hard drive ("the Hitachi hard drive") and a black Toshiba hard drive ("the Toshiba hard drive").

Located on the Touro hard drive was an email sent on 27 January 2011. The email was sent by an RTA staff member to Mr Dubois requesting that a large overhanging streetlight structure be repaired at Twelve Mile Creek,

north of Newcastle. As a result of the impact to a street light pole, the mounting plate that attached the structure to the concrete base had become distorted and the structure leaned in one direction. Two photos attached to the email showed damage to the light pole.

Located on the Hitachi hard drive was an email sent on 28 January 2011. Mr Dubois forwarded the above email, without populating the body of the email, and the attachment containing the photos to the BMN Electrical email address operated by Mr Najjarin. Mr Najjarin recalled receiving the email.

On the same day, Mr Dubois advised the RTA staff member who had sent the email that he had sent the photos to an “electrical contractor” and that the contractor would get back to him with a quote the next day or the following Monday.

Located on the Hitachi hard drive was an email sent on 4 February 2011. Mr Dubois emailed the same staff member again and further advised that he had been in contact with an electrical contractor who planned to look at the affected street pole in “the next day or two”.

As a general electrician, Mr Najjarin was not qualified to perform works outside buildings. He knew from the outset that he would have to subcontract this job to electricians who possessed the requisite level 2 certification.

Located on the Toshiba hard drive was an email sent on 14 February 2011. Mr Najjarin received an email entitled “Quote #00005751 Highco Electrics Pty Ltd.” Highco Electrics Pty Ltd (“Highco”) was an electrical, voice and data services company. In the body of the email a Highco staff member requested that Mr Najjarin contact them to confirm receipt of his quote. Attached to the email was Quote 5751, dated 14 February 2011, marked for the attention of “Bill Najjakin [sic].” The quote contained a six-point description relating to the supply of material, wiring and installation for a lighting column job located at “Pacific Hwy, Twelve Miles [sic] Creek Newcastle”. The Highco price for the job was \$11,800.

On 15 February 2011, Mr Najjarin used the BMN Electrical email address to forward the Highco email and the attached quote to Mr Dubois’ RTA work email address.

Located on the black Hitachi hard drive was an email from Mr Dubois to Mr Najjarin, dated 21 February 2011, under the subject heading “12 Mile Creek Light Pole installation Request for Quote”. The body of the email was addressed to “BMN” advising of an attachment “Request for Quote for the removal and installation of several light poles at 12 Mile Creek”. The same images earlier provided to Mr Najjarin by Mr Dubois formed a

part of the RFQ documentation. Mr Najjarin confirmed with the Commission that the RFQ came after Mr Dubois had received the Highco quote from him. Mr Dubois told the Commission that, when comparing the Highco quote with the RFQ that “it’s a copy and paste” referencing the near identical information in the two documents.

There is no evidence that another contractor received the RFQ. The Commission is satisfied that Mr Dubois deliberately created the RFQ to facilitate the awarding of the Twelve Mile Creek project to Mr Najjarin’s company.

Located on the black Hitachi hard drive was an email dated 24 February 2011 from Mr Dubois to his supervisor, Mr McCaffery, requesting that he sign a purchase order relating to Twelve Mile Creek. Attached to the email was a document titled “BMN QUOTE TWELVE MILE LIGHT POLE.pdf” and “PO Light Poles.pdf”.

The attached BMN Electrical quote numbered BMN000602 was undated and marked to the attention of “Alex”. Of note, the quote contained the six-point description contained in the Highco quote dated 14 February 2011, but the BMN Electrical price of \$30,400 was more than double that in the Highco quote. It is common ground that the quote was increased to incorporate a profit component for Mr Najjarin and a payment for Mr Dubois.

The other attachment contained a purchase order request form listing BMN Electrical as contractor for the job at Twelve Mile Creek to be done at a cost of \$30,400.

Located on the black Touro hard drive was an email dated 2 March 2011 from Mr Dubois to Mr Najjarin. Mr Dubois forwarded an email from the RTA CEB Contracts and Finance Section dated 1 March 2011, which advised Mr Dubois of the creation of purchase order number 510270923/1 and the allocation of contract number 11.2933.0106. The email also advised that a copy of the purchase order would be sent to him once it was released from the finance manager.

On 14 March 2011, Mr Najjarin emailed Mr Dubois’ RTA work address. The email entitled “TAX INVOICE” contained an attachment “BMN INVOICE 12 Mile Creek.docx”. It was dated 1 March 2011, the same day that the CEB Contracts and Finance Section advised Mr Dubois of the purchase order issuance. The work could not have been performed on the same day the purchase order number was provided, as the purchase order number had only just authorised the expenditure of RTA funds for the project at 5:13 pm that day.

On 15 March 2011, the CEB Contracts and Finance Section emailed to Mr Dubois purchase order 4510270923, listing BMN Electrical for payment of \$30,400 upon the provision of services relating to the

replacement of the Twelve Mile Creek streetlight poles. On 4 April 2011, the RTA remitted \$30,400 plus GST into the BMN Electrical bank account with respect to the Twelve Mile Creek project.

Highco, in fact, performed the works to replace the light poles. The effect of Mr Najjarin's evidence was that he merely "supervised" staff who were more qualified than he to perform the work. Mr Najjarin told the Commission the work he performed was that he "just attended a few visits, just to have a look at the job, and that's it".

The Commission is satisfied that Mr Najjarin/BMN Electrical performed minimal work and that Mr Najjarin attended the Twelve Mile Creek work site only once to "supervise" subcontractors who were more qualified than him. The "supervision" served no real purpose other than to ensure that Highco completed the work.

The effect of Mr Najjarin's evidence with respect to other jobs awarded to his company by Mr Dubois was that he would subcontract out those jobs he was not qualified to perform and charge an increased price to cover his profit and Mr Dubois' commission.

Benefits provided to Mr Dubois by Mr Najjarin

It was common ground that, in return for the five projects awarded by Mr Dubois, Mr Najjarin provided three payments to Mr Dubois. These were in the amounts of \$34,100, \$14,980 and \$1,100. All were made by way of cheques deposited into the MWK Developments bank account on 23 June 2011. As discussed in chapter 3, this bank account was controlled by Mr Dubois and served the purpose of receiving payment from RTA contractors in return for Mr Dubois awarding them work.

Mr Najjarin informed the Commission that Mr Dubois told him the amounts requested by him were "my commission" for getting Mr Najjarin work and managing Mr Najjarin's part of the work. Notwithstanding Mr Dubois' contention in relation to the language he used to request a payment, he did not dispute that he received payments from Mr Najjarin and deposited the cheques into the MWK Developments bank account.

As Counsel Assisting submitted, in the one-year period BMN Electrical performed RTA work, it invoiced \$219,340 and from that sum Mr Dubois extracted \$50,180, or roughly 23 per cent of the total sum invoiced by BMN Electrical.

Mr Dubois ceased using Mr Najjarin/BMN Electrical as an RTA contractor

After banking the three cheques he received from Mr Najjarin, Mr Dubois ceased using BMN Electrical as an RTA contractor. It was Mr Najjarin's evidence that he was told over the telephone by Mr Dubois that there was "no more work" and he assumed that Mr Dubois enlisted another electrician to do RTA work.

Both Mr Najjarin and Mr Dubois told the Commission that there was no fallout between the two over Mr Dubois no longer awarding RTA work to Mr Najjarin/BMN Electrical.

Corrupt conduct

Mr Dubois

Between May 2010 and June 2011, Mr Dubois misused his public official position with the RTA to award \$219,340 worth of RTA work to BMN Electrical, a company owned by Mr Najjarin, in return for payments by Mr Najjarin totalling \$50,180.

This conduct on the part of Mr Dubois was corrupt conduct for the purpose of s 8 of the ICAC Act as it adversely affected the honest and impartial exercise of his official functions (s 8(1)(a)), constituted the dishonest and partial exercise of his official functions (s 8(1)(b)) and involved a breach of public trust (s 8(1)(c)).

Section 249B(1) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2 of this report.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Dubois committed offences under s 249B(1) of the Crimes Act of corruptly soliciting and receiving benefits as an inducement or reward for showing favour to a company controlled by Mr Najjarin, in relation to the affairs or business of the RTA. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Dubois had committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement

or reward for showing favour to a company controlled by Mr Najjarin, in relation to the affairs or business of the RTA. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is further satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act, that if the facts were to be proved on admissible evidence to the requisite standard of proof of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could find that Mr Dubois committed disciplinary offences, being substantial breaches of the RTA/RMS codes of conduct giving rise to dismissal as he was specifically required to decline a gift or benefit that was intended to or likely cause him to act in a biased manner. Mr Dubois' conduct therefore comes within s 9(1)(b) and s 9(1)(c) of the ICAC Act.

The Commission is also satisfied that, if the facts found were to be proved on admissible evidence to the requisite standard of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Dubois had engaged in conduct that constitutes disciplinary offences of breaching of the RTA codes of conduct in relation to accepting gifts or benefits and that such conduct is sufficiently serious to constitute grounds for his dismissal. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that the conduct was serious corrupt conduct because it involved the significant planning and the receipt by Mr Dubois of substantial improper payments.

Mr Najjarin

In June 2011, Mr Najjarin paid \$50,180 to Mr Dubois as a reward for Mr Dubois misusing his public official position with the RTA to award \$219,340 worth of RTA work to Mr Najjarin's company, BMN Electrical, between 2010 and 2011.

This conduct on the part of Mr Najjarin was corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act as it adversely affected the honest and impartial exercise of Mr Dubois' official functions.

Section 249B(2) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2.

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

an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Najjarin committed offences under s 249B(2) of the Crimes Act of giving corrupt benefits. His conduct accordingly comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Najjarin had committed offences under s 249B(2) of the Crimes Act of giving corrupt benefits. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because it involved significant planning and the making of substantial improper payments.

Section 74A(2) statements

Alexandre Dubois

Mr Dubois' evidence was the subject of a s 38 declaration under the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that other admissible evidence would be available, including evidence from Mr Najjarin, RTA records, finance records of MWK Developments and emails, subcontractors' quotes and electronic evidence recovered from Mr Dubois' hard drives seized during the execution of the search warrant.

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 Dubois for an offence under s 249B(1)(a) of the Crimes Act of, between May 2010 and June 2011, corruptly giving benefits as a reward for using his position in the RTA to award contracts to BMN Electrical.

Bilal Najjarin

Mr Najjarin's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including evidence from Mr Dubois, RTA records, financial records of MWK Developments and emails, subcontractors' quotes and electronic evidence recovered from Mr Dubois' hard drives seized during the execution of the search warrant.



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 Najjarin for an offence under s 249(B)(2)(a) of the Crimes Act of, between May 2010 and June 2011, corruptly giving benefits to Mr Dubois on account of Mr Dubois showing favour to Mr Najjarin and BMN Electrical in relation to the affairs or business of the RTA.

Chapter 6: Mr Dubois, A&A Structural and Senai Steel

In about mid-2011, Mr Dubois arranged to award an RTA contract to A&A Structural, a company controlled by Abdula Nachabe, for which that company received \$98,632.50. Between April 2011 and October 2012, Mr Dubois arranged the awarding of five RTA contracts to Senai Steel, another company controlled by Abdula Nachabe and his older brother, Gamele Nachabe, for which that company received \$639,957.55. This chapter examines whether Mr Dubois sought or received any benefit from Abdula Nachabe and Gamele Nachabe in return for arranging the awarding of the contracts.

Abdula Nachabe

Abdula Nachabe is a Bachelor of Civil Engineering and has a master's degree in structural and foundations engineering.

Mr Dubois told the Commission he may have met Abdula Nachabe at a gym they frequented, or he may have been introduced by a "third party". This broadly accords with Abdula Nachabe's evidence that he knew Mr Dubois, as both were patrons of the same gym.

Abdula Nachabe said they first met when he was a student. Between 2008 and 2011, Abdula Nachabe worked as a structural engineer with a large engineering firm. He contacted Mr Dubois, who worked at the RTA, to ascertain whether the RTA had work for the engineering firm.

Mr Dubois agreed that he saw Abdula Nachabe from time to time through the latter's work at the engineering firm and outside work.

In early 2011, Abdula Nachabe's position with the engineering firm was made redundant due to the global financial crisis. He decided to go into business with a colleague. Together, they established A&A Structural. Both were shareholders and directors of the company. The colleague left the company in August 2011.

There was no evidence that he was involved in any improper dealings with Mr Dubois.

How A&A Structural came to be awarded work

The evidence was that A&A Structural was only awarded one RTA contract. In early 2011, it was engaged to inspect gantries at various STC sites.

On 7 February 2011, Mr Dubois emailed his supervisor asking permission to request quotes for the STC sites work. Attached to the email was an RFQ brief. It described the work to be performed as "the Preparation of Condition Assessment Documents including building fabric, structural condition audit, infrastructure services, and recommendations made for any remedial work or further structural analysis to be undertaken to structures and equipment pertaining to 19 STC site locations". The proposal to issue an RFQ was approved.

Mr Dubois told the Commission that Abdula Nachabe had "provided input" into the RFQ brief document. This accords with Abdula Nachabe's evidence. Mr Nachabe emailed Mr Dubois on 11 January 2011, making several suggestions about what should be included in the RFQ brief.

Mr Dubois told the Commission he sought Abdula Nachabe's assistance because "I was going to try my best" to award the contract to A&A Structural.

On 14 February 2011, Mr Dubois sent an email to Abdula Nachabe at A&A Structural attaching an RFQ for the project. The email advised that the quote should be provided to Mr Dubois by close of business on 25 February 2011. Abdula Nachabe sought an extension of time so that he could finalise documentation for the quote.

Mr Dubois told the Commission he obtained quotes from other engineering firms for this work but did so only because he needed to satisfy relevant RTA procurement processes. His intention was always to award the contract to Abdula Nachabe because “I wanted to try and favour him”. One of the quotes he obtained was dated 28 February 2011 and was from Parsons Brinckerhoff. Using his RTA email address, Mr Dubois emailed a copy of that 40-page quote to Abdula Nachabe. He told the Commission he did this to ensure that A&A Structural would be able to provide a competitive quote so that it would get the contract. He conceded it was also his intention that Abdula Nachabe use the information in the quote to assist in preparing his quote. In his evidence, Abdula Nachabe agreed he received a “leg up” as a result of seeing the Parsons Brinckerhoff quote.

As noted above, Mr Dubois used his RTA email to provide the Parsons Brinckerhoff quote to Abdula Nachabe. That email string contained Mr Dubois’ RTA signature block, which listed his role as “Technical Project Manager” for the RTA. Abdula Nachabe accepted that he knew he was dealing with a statutory authority, when he was dealing with the RTA, and that he knew that there was ordinarily an expectation that an “arms-length” process would be employed in a tender process. Abdula Nachabe knew that Mr Dubois had accessed the Parsons Brinckerhoff quote in his capacity as an employee of the RTA.

On 2 March 2011, a day before A&A Structural was registered as a company, Abdula Nachabe emailed Mr Dubois a quote for the work from A&A Structural for \$89,665, plus GST. The quote was backdated to 25 February 2011.

On 6 March 2011, Mr Dubois emailed Abdula Nachabe a letter of acceptance advising that the RTA had accepted A&A Structural’s tender for the contract.

An MS-Word version of a tender evaluation report related to A&A Structural’s tender was found on an Imation USB in Mr Dubois’ residence during the execution of a search warrant. The report, which was dated March 2011, was unsigned but stated that Mr Dubois recommended that A&A Structural be awarded the contract over the larger engineering firms GHD, Sinclair Knight Merz and Parsons Brinckerhoff. In respect of technical skills the report stated that:

A&A and PB [Parsons Brinckerhoff] scored very strongly in management, reporting, scheduling and contract documentation. There were no perceived weaknesses in the overall project team with each discipline containing senior experienced personnel with greater than 15 years’ experience on major projects.

The Commission accepts Counsel Assisting’s submission that the report’s assertion was patently incorrect as, according to the CVs attached in support of their bid, Abdula Nachabe only had three years’ experience and his business partner possessed just over 12 years’ experience.

On the evidence it is unclear whether this version of the tender evaluation report was submitted by Mr Dubois to his superiors at the RTA.

Nonetheless, A&A Structural was awarded the contract. On 6 June 2011, 16 June 2011 and 14 July 2011, the RTA paid that company a total of \$89,665, excluding GST, for its work under the contract.

Did Mr Dubois receive a benefit for the A&A Structural contract?

On 18 July 2011, an A&A Structural cheque for \$9,665 was paid into the MWK Developments bank account. Abdula Nachabe told the Commission this was the “fee” nominated by Mr Dubois.

Abdula Nachabe told the Commission that, while A&A Structural was working on the project and before the final A&A Structural invoice was issued on 27 May 2011, Mr Dubois told him he wanted A&A Structural to pay him a project management fee. He gave the following evidence:

[Counsel Assisting]: What’s your best recollection as to when and where? Was it a face-to-face discussion?

[Abdula Nachabe]: I don’t recall, but I, I sort of remember that the reports were in draft format and sent to him for some time, and we usually, as a protocol, don’t issue final, a final issue until there’s been a review by the client, so that if there’s any concerns, any changes that they would like made in terms of format or, or content, we, we do that, then issue a revision zero, and that took some time before we even got that, you know, approval back from Alex. And during that process it was kind of obviously a bit frustrating because we wanted to just finalise the project, invoice it and then done with it. And I, I recall at that period was when I was told that he wants a project management fee for the amount of effort he’s putting in and, and extra work, and I really didn’t understand it.

...

I mean, and then he just kept on claiming the extra work he does late at night, the amount of effort he needs to put through to get, you know, these budgets approved and these projects approved and, and all this stuff. And he was basically saying, "If it wasn't for me, you wouldn't have the work."

He said that when discussing why he was entitled to a project management fee, Mr Dubois told him that he had obtained quotes from other companies for the work being done by A&A Structural. The transcript records:

[Counsel Assisting]: *Is that when he mentions then to you, putting aside Parsons Brinckerhoff whose quote he'd sent you already?*

[Abdula Nachabe]: *Yes, I had known about that, but at that point I recall clearer now that he did disclose that he could have done the work for a lot cheaper but he opted to go with us trying to have that sort of favour upon us and obviously that was an act of coercion I believe, that that was his sort of negotiation strategy to try to get me to pay him his fee.*

[Q]: *So he, in the course of discussing with you why he's entitled to a project management fee, he mentions the other companies that he got quotes from.*

[A]: *Yes.*

[Q]: *And does he in effect suggest that he was helping you by awarding the contract to your effectively start-up company as opposed to one of the big established engineering firms?*

[A]: *Well, that's, that's the way he put it to me, yeah, I mean he's the one that's helping me and getting me the work and if it wasn't for him I wouldn't have anything, basically.*

According to Abdula Nachabe, Mr Dubois was seeking a "project management fee" for "extra work" the latter

had done. He said Mr Dubois told him he was not an RTA employee but a consultant. However, it is also clear that Abdula Nachabe understood Mr Dubois wanted money because he had arranged for A&A Structural to get the contract despite that company not being the most cost-effective option. He had also benefited from Mr Dubois' improper assistance in providing him with a copy of the Parsons Brinckerhoff quote. Abdula Nachabe understood that the fee was to be paid to Mr Dubois, not to the RTA, and was for Mr Dubois' personal benefit. To the extent that Abdula Nachabe was seeking to suggest that he believed any payment made to Mr Dubois was for Mr Dubois' work as a "consultant", the Commission rejects this. The Commission accepts Counsel Assisting's submission that Abdula Nachabe chose to ignore the fact that Mr Dubois was seeking what was patently a form of secret commission. The Commission is satisfied that the payment was in return for Mr Dubois arranging the awarding of the contract to A&A Structural and that Abdula Nachabe understood that at the time.

In making this finding, the Commission notes that Counsel Assisting submitted that the Commission should find that Abdula Nachabe paid the \$9,665 to Mr Dubois in return for him misusing his public official position to award the contract to A&A Structural. Despite being provided an opportunity to respond to this submission, Abdula Nachabe did not do so.

Mr Dubois told the Commission he did not recall using the term "project management fee" to request payments made by Abdula Nachabe. He also said that, although he had no recollection of the specific payment, the cheque payment made to MWK Developments bank account "would have come as a kickback for sure". Abdula Nachabe had the opportunity to challenge this evidence, but did not do so. The Commission is satisfied that Mr Dubois received \$9,665 in return for assisting A&A Structural to be awarded the RTA contract for the inspection of gantries at various sites.

The Commission finds that Mr Dubois' eagerness to arrange the awarding of the contract to A&A Structural stemmed from his pre-existing relationship with Abdula Nachabe which he could exploit to obtain personal benefit. Abdula Nachabe's evidence is consistent with that of other contractors with whom Mr Dubois had pre-existing relationships and from whom he extracted personal benefits

Senai Steel

Senai Steel was registered as a company on 5 April 2011. Abdula Nachabe and Gamele Nachabe were listed as directors and equal shareholders in the company.

It was common ground that Gamele Nachabe was responsible for the work performed by Senai Steel, including calculating costs, while Abdula Nachabe was responsible for creating the Senai Steel email account, attending to “emails”, “paperwork” relating to the drafting of quotes and invoices, and “all the diligence” and “banking”.

After completing an apprenticeship as a boilermaker, Gamele Nachabe commenced working as a boilermaker and steel fabricator. He worked both as an employee and in his own business. He was made bankrupt after his business was liquidated but had emerged from bankruptcy by the time that Senai Steel was allocated RTA work.

Between 5 April 2011 and 4 October 2012, Senai Steel undertook rectification works at STC gantry sites at Gundagai, Tomingley, Dundee, Boggabilla and Broken Hill. The rectification works had been identified in the A&A Structural site condition reports. Senai Steel was paid a total of \$639,957.55, including GST, for this work.

On 4 April 2011, Abdula Nachabe sent an email to Mr Dubois attaching the first bundle of A&A Structural site condition reports. These reports, dated 1 April 2011 and expressed to be drafts, were provided pursuant to the contract awarded to A&A Structural dealt with above. The email noted “some significant concerns regarding Gundagai (loose connections, and bolt defects), and Bargo (significant deformation of the bridge deck at the walkway)” and advised that it was “critical that these issues be attended to urgently”. The urgent repairs called for a large amount of steel fabrication repair work. Abdula Nachabe told the Commission there were “massive” corrosion issues requiring urgent attention.

Abdula Nachabe informed the Commission that Mr Dubois told him there would be more work because the problems identified in the inspection report also affected other sites and required rectification of the gantry structures.

Mr Dubois told the Commission that Abdula Nachabe may have suggested his brother as a contractor capable of performing the necessary rectification work. This is consistent with Abdula Nachabe’s evidence that, having identified the urgent need for work at the Gundagai site, Mr Dubois asked him for advice as to who could do it and he suggested his brother. His evidence was that he then discussed the matter with his brother. Gamele Nachabe told the Commission his brother told him that “there could be a chance where they [the RTA] might be talking in the future if they were wanting any rectification work done”.

The Gundagai job

On 5 April 2011, a day after Abdula Nachabe had submitted the bundle of draft A&A Structural site condition reports, Mr Dubois sent an email to “Jim”

at Senai Steel attaching a copy of the report for the Gundagai site. In the email, Mr Dubois requested a quote to repair the gantry at Gundagai and advised that the works were to commence between 11 and 20 April 2011.

On 8 April 2011, Abdula Nachabe sent an email to Mr Dubois in response. The email signature block was in the name of “Jim Chamsine”, who purported to be the managing director of Senai Steel. Attached to the email was a quote for the Gundagai gantry repair from Senai Steel for \$19,500.

It is common ground that “Chamsine” was Gamele Nachabe’s wife’s maiden name and that Gamele Nachabe used the anglicised first name of “Jim”. Gamele Nachabe told the Commission that he never went by the name Jim Chamsine and was not aware of the email. Abdula Nachabe told the Commission that it was likely that he sent the email and that he used the name Jim Chamsine to prevent the RTA from searching his brother’s name and discovering he had been declared bankrupt “which potentially would have negatively impacted the opportunity of ... working with the RTA”.

The Commission finds that the name “Jim Chamsine” was employed by Abdula Nachabe to disguise the connection between himself and his brother, as Senai Steel sought to perform work identified by the A&A Structural inspection report. Gamele Nachabe had emerged from bankruptcy and he was on the ASIC record as a director of Senai Steel.

On 18 April 2011, Mr Dubois raised a purchase order request for the Gundagai works for \$19,500 in favour of Senai Steel. This request was approved two days later. On 16 June 2011, the RTA paid Senai Steel \$19,500 for the works carried out at Gundagai.

Abdula Nachabe gave the following evidence as to the process followed for the work awarded to Senai Steel:

[Counsel Assisting]: And with each job, was it the same process, that you’d get a request for quote, your brother would then prepare, or he would cost the job based on the A&A report and a physical inspection that the two of you attended on?

[Abdula Nachabe]: Yes. I think the only one we didn’t inspect physically prior to quoting was Broken Hill because of the distance and plus because we had already had the prior knowledge of executing three or four gantries prior to that one, we kind of knew what to expect.

- [Q]: *So in that case there was no physical inspection.*
- [A]: *Not prior to quoting, of course.*
- [Q]: *And then you prepared each of the quotes, I take it?*
- [A]: *Yes.*
- [Q]: *Based on that information from your brother.*
- [A]: *Yes.*
- [Q]: *And then you would then do the emailing submitting them to Mr Dubois.*
- [A]: *Yes.*
- [Q]: *And over time then he would confirm that the job had been accepted.*
- [A]: *Yes.*
- [Q]: *There would be a purchase order generated?*
- [A]: *Correct.*
- [Q]: *And ultimately invoices rendered and paid.*
- [A]: *Correct.*

There is no evidence that Mr Dubois received any payment from Senai Steel in relation to its work at the Gundagai site.

The other Senai Steel jobs

On 27 May 2011, Senai Steel submitted a preliminary quote to the RMS for \$70,200 for the Tomingley STC rectification work. On 1 June 2011, Senai Steel submitted a revised quote for \$112,400 for the Tomingley rectification works, which included two additional tasks. A purchase order in Senai Steel's favour was created on 9 June 2011. It completed the work during June and submitted its invoice on 20 June 2011. The invoice was for \$110,600. Gamele Nachabe, whose evidence on this point is accepted, explained that the reduction was because some foundations did not need to be replaced. The invoice was paid on 13 July 2011.

On 17 August 2011, Abdula Nachabe submitted a Senai Steel quote for \$133,874.15 for the Boggabilla STC rectification work. The RTA purchase order was created on 10 October 2011, and was for \$161,611.77.

Senai Steel submitted an invoice on 20 December 2011 for \$186,617.80. It appears that the increase over the amount in the purchase order was due to adverse weather conditions adding to the time it took to complete the work. The invoice was paid on 12 January 2012.

Also on 17 August 2011, Abdula Nachabe submitted a Senai Steel quote for \$127,462.35 for the Dundee STC rectification work. The RTA purchase order, which was created on 10 October 2011, was for \$174,036.39. Senai Steel submitted an invoice on 18 November 2011 for \$161,611.77. The invoice was paid on 15 December 2011.

On 13 July 2012, Senai Steel submitted a quote for \$137,100 for the Broken Hill STC rectification work. The purchase order, which was created by the RMS on 13 August 2012, was for \$182,100. Senai Steel submitted two invoices. The first, submitted 3 August 2012 (before the purchase order was created), was for \$78,650. The second, dated 6 September 2012, was for \$103,450. The invoices were paid on 30 August 2012 and 4 October 2012 respectively.

The total of the other work awarded to Senai Steel is \$618,507.55, including GST.

The use of A&A Structural dummy quotes

As noted above, Senai Steel submitted quotes for work at the Tomingley, Boggabilla, Dundee and Broken Hill sites. Quotes for work at those sites were also submitted by A&A Structural. In each case the latter's quotes were higher. In the case of the Tomingley site, the A&A Structural quote was for \$137,500 as opposed to the revised Senai Steel quote for \$112,400. In the case of the Boggabilla site, the A&A Structural quote was for \$156,118.51 as opposed to the Senai Steel quote for \$133,874.15. The A&A Structural quote for the Dundee site was \$140,821.25 as opposed to the Senai Steel quote of \$127,462.35. With respect to the Broken Hill site, the A&A Structural quote was for \$173,400 as opposed to the Senai Steel quote for \$137,100. Not surprisingly, Senai Steel was awarded each of the contracts.

The Commission considered whether the A&A Structural quotes were genuine or whether they were dummy quotes provided for the purpose of ensuring Senai Steel was awarded the contracts.

The evidence demonstrates that Mr Dubois frequently obtained dummy quotes from contractors to satisfy his obligation to obtain competitive quotes and to give the false impression that there was genuine competition for work he allocated. In the case of Senai Steel, Mr Dubois told the Commission that he improperly assisted in awarding work to that company by sourcing dummy quotes from A&A Structural.

Abdula Nachabe denied that the A&A Structural quotes for this work were dummy quotes.

He accepted that Mr Dubois asked him to provide quotes from both Senai Steel and A&A Structural and that he prepared the Senai Steel and A&A Structural quotes for each of the jobs. He told the Commission that the A&A Structural quotes were a product of two options discussed with Mr Dubois. The first option was for A&A Structural to project manage the contractors that are procured or hired. The second option was a “turnkey” based contract where A&A Structural would perform the entire project including the procurement process.

Despite being presented with an opportunity to do so, Abdula Nachabe did not put to Mr Dubois that the A&A quotes were genuine and reflected those options. Nor was Abdula Nachabe’s version canvassed in submission.

With respect to the A&A Structural quote for the Tomingley work, Abdula Nachabe claimed the quote was higher because it was based on A&A Structural project managing and subcontracting the work.

In an apparent explanation as to why the quotes from A&A Structural were for higher amounts than those from Senai Steel, Abdula Nachabe told the Commission that Mr Dubois rejected both options he had discussed with him and insisted that Senai Steel perform the work, but that Abdula Nachabe manage his brother.

The Commission finds that the A&A Structural quote did not reflect a margin for project management. The quote outlined what A&A Structural, as the contractor, would do. It made no mention of project managing another contractor. Similarly, the A & A Structural quotes for the Boggabilla, Dundee and Broken Hill sites did not identify any project management component.

Two features of the A&A Structural quotes suggest that the quotes were not genuine. First, with respect to the quotes for the Tomingley, Dundee, Boggabilla, and Broken Hill work, Abdula Nachabe inserted his then business partner’s electronic signature without his knowledge instead of his own electronic signature. Secondly, instead of setting out the A&A Structural email address in the quote, Abdula Nachabe listed his personal email address; the prefix of the email address was his surname spelt backwards, avoiding the ready identification of him as the person operating the email address.

Abdula Nachabe provided an explanation with respect to each feature.

As to the first feature, he said that, with respect to the Tomingley quote, he mistakenly inserted his business partner’s electronic signature. The Commission does not accept this evidence because use of his business partner’s

electronic signature on each A&A Structural quote is not consistent with such use being a mistake.

As to the second feature, Abdula Nachabe sought to explain the use of his personal email address rather than his work email address as the result of inadvertence. However, this does not explain why he attached the quotes and emailed them to Mr Dubois from the same personal address at the same time that he was using his A&A Structural email address.

The Commission accepts the submission of Counsel Assisting that the above features are consistent with Abdula Nachabe having some discomfort in what he was submitting.

Despite his insistence that the A&A Structural quotes were genuine, Abdula Nachabe agreed that, at or around the time of requesting a quote from A&A Structural and Senai Steel for the Tomingley rectification works, Mr Dubois advised him that he needed to make up the numbers of quotes before he could award the contract. He agreed that he understood that Mr Dubois needed dummy quotes, although he claimed Mr Dubois had not used those explicit words.

The Commission is satisfied that, at the time he submitted the A&A Structural quotes for work on the Tomingley, Boggabilla, Dundee and Broken Hill sites, Abdula Nachabe knew that they were dummy quotes and submitted them with the intention that Senai Steel would be awarded the work.

There is no cogent evidence before the Commission that Gamele Nachabe knew of the submission of the above dummy quotes by A&A Structural.

Benefits provided to Mr Dubois for Senai Steel work

There was evidence that, in return for arranging the awarding of work to Senai Steel, Mr Dubois sought and received personal payments. Abdula Nachabe and Gamele Nachabe described these payments as “project management fees” that Mr Dubois requested from them.

It is common ground that, between 25 July 2011 and 12 October 2012, Abdula Nachabe, on behalf of Senai Steel, made payments to Mr Dubois through an MWK Developments bank account . The payments were made by way of four cheques totalling \$144,442.90, which were paid into the MWK Developments account on the following dates:

- 25 July 2011 in the amount of \$13,200
- 21 December 2011 in the amount of \$37,564.40

- 23 January 2012 in the amount of \$44,178.50
- 12 October 2012 in the amount of \$49,500.

Mr Dubois did not contest that these payments were in return for him arranging the awarding to Senai Steel of RTA/RMS work. He gave evidence they reflected payments to him for the awarding of the rectification works at the Tomingley, Dundee, Boggabilla and Broken Hill sites respectively. His evidence was that he sought and received payments from both Nachabe brothers but, due to the passage of time, he could not recall particular occasions.

As Abdula and Gamele Nachabe told the Commission that the cheque payments were in response to Mr Dubois requesting “project management fees”, it is necessary to examine the circumstances in which each of the payments was made.

The \$13,200 payment

Abdula Nachabe agreed that the 25 July 2011 payment of \$13,200 to MWK Developments was made at Mr Dubois’ request. He said the payment was made after the Tomingley rectification works had been undertaken by Senai Steel and that Mr Dubois nominated the amount and sought the payment as his “project management consultancy fee”.

Abdula Nachabe said Mr Dubois told him he was not an RTA employee but rather a contractor. He claimed Mr Dubois also told him he was generally responsible for obtaining the work and dealing with the RTA. While Abdula Nachabe claimed he understood the fee paid by A&A Structural had been for work Mr Dubois said he had undertaken, he knew Mr Dubois did not do any work including “project management” for Senai Steel. Abdula Nachabe conceded that he had “more than a suspicion” that the “fee” was an illicit payment. Indeed, he agreed that by the time that ... he had a “fairly strong conviction” that what Mr Dubois was asking for was a “kickback”. Abdula Nachabe told the Commission he was “reluctant” to pay the sum of \$13,200 because he was “getting hit up to pay” Mr Dubois when the latter was “was not particularly doing much”.

While the Commission accepts there may have been some reluctance on Abdula Nachabe’s part to make the payment, he nevertheless made it. He had previously paid Mr Dubois \$9,665 as a reward for Mr Dubois providing A&A Structural with RTA work and he had participated in the submission of dummy quotes. He knew no project management work was undertaken by Mr Dubois and he had “more than a suspicion” that the payment sought was an improper one. This informs his state of mind at the time. In all the circumstances, the Commission is satisfied that at the time he made the payment, Abdula Nachabe

knew that it was a reward for Mr Dubois having arranged for Senai Steel to secure the Tomingley site work.

The evidence does not establish that Gamele Nachabe knew that the \$13,200 payment made to Mr Dubois in respect of the Tomingley site works was improper.

The other payments

The purchase order for the Dundee site, in favour of Senai Steel, was created on 10 October 2011 in the sum of \$161,111.77. Mr Dubois was listed as the RTA contact person. The purchase order for the Boggabilla site in favour of Senai Steel was created on the same day. It was for \$174,036.39. Mr Dubois was also listed as the RTA contact person.

In his evidence to the Commission, Mr Dubois was asked why the purchase orders were for amounts greater than those quoted by Senai Steel. He did not accept that he regularly manipulated purchase orders to increase the price but conceded he might have done so from time to time. Manipulation of a purchase order could be effected only by RTA staff responsible for the relevant project. Given Mr Dubois’ role in each project, and that he was nominated as the contact person for each project, the Commission is satisfied that he was responsible for increasing the purchase order amounts.

Abdula Nachabe and Gamele Nachabe told the Commission that the purchase orders were increased without their knowledge and they were surprised when Mr Dubois informed them that he was now directly incorporating his “project management fees” into the purchase order price, as reflected by the price increase of the purchase order. The Commission accepts this evidence as it has been unable to locate any revised Senai Steel quotes from TfNSW records that reflect any genuine price increases.

Abdula Nachabe told the Commission that Mr Dubois was “seeking a project management fee from me and then obviously he’s turned around and clearly just upped the PO [purchase order] on his end and said, well, now it’s allocated to the project, just pay it to me”. According to him, in the same conversation, Mr Dubois said that he wanted project management fees of \$37,564.40 in relation to the Dundee work and \$44,178.50 in relation to the Boggabilla work.

Abdula Nachabe informed the Commission that he told his brother that Mr Dubois had increased the amounts of the purchase orders. He said his brother was taken “by surprise” but they resolved to continue working and to confront Mr Dubois about the nature of the project management fee and why Mr Dubois directly incorporated it into the purchase orders.

The confrontation occurred at the Boggabilla site where he and Gamele Nachabe met Mr Dubois.

Gamele Nachabe told the Commission that, when Mr Dubois was asked about inflating the purchase order to incorporate his fee, Mr Dubois told the brothers that:

“It’s a bill, that’s my management costs. You don’t know what I have to put up with to get this far with this kind of work. I’ve got more documentations that when you guys finish, basically with the new cameras, new setups, he was explaining about the systems and the way it works.” he was going into details about... something that he had to deal with and it had nothing to do with us [Senai Steel].

Gamele Nachabe told the Commission that, when he pressed as to why Mr Dubois did not seek his fee from the RTA, he did not receive a satisfactory response:

[Counsel Assisting]: *And was the position you reached that while you were a bit suspicious about what was going on, you wanted to get paid and you agreed that you would pay his management fees?*

[Gamele Nachabe] *Well, basically the other question that was raised to Alex is that why he couldn’t take his particular involvement with the RTA direct being the company that he is. And he, and he couldn’t provide that information and that’s what—*

[Q]: *So he hadn’t satisfied you with what he’d said?*

[A]: *Correct. He hasn’t satisfied me in any way.*

[Q]: *But notwithstanding that, despite him not satisfying you, ultimately, it’s the case, isn’t it, that payments were made in respect of – that is management fees were paid out of the works that were done and billed in respect of Dundee and Boggabilla?*

[A]: *Correct, correct.*

Senai Steel received payment for the Dundee work on 15 December 2011. As noted above, on 21 December 2011, Senai Steel deposited \$37,564.40 into the MWK Developments account. Senai Steel received payment for the Boggabilla work on 12 January 2012.

On 23 January 2012, it deposited \$44,178.50 into the MWK Developments account.

Given Abdula Nachabe’s knowledge concerning the purpose of the payments sought by Mr Dubois, the Commission is satisfied that he knew that the deposits into the MWK Developments account were by way of reward for Mr Dubois arranging for Senai Steel to be awarded contracts.

The Commission is also satisfied that Gamele Nachabe knew the payments were by way of reward for Mr Dubois arranging for Senai Steel to be awarded the contracts. After the Boggabilla meeting with Mr Dubois, he knew that Mr Dubois was improperly seeking a project management fee directly by inflating RTA purchase orders. Also, the payments made to Mr Dubois were made in circumstances where he knew that Mr Dubois would not directly involve his “consulting company”. The payments were made after Gamele Nachabe became aware that Mr Dubois undertook no project management services.

Despite being provided the opportunity to respond to Counsel Assisting’s submission, Gamele Nachabe did not dispute that the payments were, to his knowledge, a wrongful payment to Mr Dubois in reward for the allocation of work.

No attempt was made by Gamele Nachabe or his brother to report Mr Dubois’ request to the RTA. It was also open for them to bill the original price for their jobs, but this was not done.

It is not clear when the Boggabilla rectification works took place or when the associated Boggabilla meeting took place. However, the Commission is satisfied that the meeting probably occurred shortly before 21 December 2011 when the Senai Steel invoice for the Boggabilla rectification works was submitted. On the preceding day, Abdula Nachabe drew a Senai Steel cheque to MWK Developments on account of Mr Dubois’ fee for the STC Dundee rectification works.

According to Gamele Nachabe, after reluctantly paying Mr Dubois his fee for the Boggabilla STC site, he and his brother stopped accepting RTA work because of the fees Mr Dubois sought. However, Gamele Nachabe said that after meeting with Mr Dubois, Mr Dubois promised to place Senai Steel on a panel to make the allocation of work easier and advised him he would no longer be requesting a fee from Senai Steel.

On 12 July 2012, Mr Dubois sent an email to Senai Steel attaching a request for tender with respect to rectification works at the Broken Hill STC site. The following day, Senai Steel emailed Mr Dubois a quote for “the rectification works of the Broken Hill Safe T Cam site” for \$137,100.

On 13 August 2012 Mr Dubois, who was now in the newly-created RMS, inflated the RMS purchase order for this work to \$182,100. The Commission is satisfied this was done by Mr Dubois to incorporate a fee for arranging the awarding of the contract to Senai Steel.

According to the evidence of Abdula Nachabe and Gamele Nachabe, it was Mr Dubois who nominated the amount of \$49,500 that was to be paid to him. Abdula Nachabe told the Commission he again discussed the payment with his brother and how Mr Dubois explained his fees to the RMS. They resolved to sit down with Mr Dubois and ask him to justify his fee; if he was unable to do so, they would cease working with him.

In an admission against self-interest, Gamele Nachabe told the Commission that Senai Steel submitted two progress payment invoices for an amount that incorporated Mr Dubois' margin.

On 12 October 2012, Abdula Nachabe drew a cheque in favour of MWK Developments in the amount of \$49,500 and it was deposited by Mr Dubois into the MWK Developments account.

Given the previous findings, the Commission is satisfied that Abdula Nachabe and Gamele Nachabe knew the 12 October 2012 payment to Mr Dubois was a payment for Mr Dubois arranging the awarding of work to Senai Steel.

It is common ground that, from late-2012, no further work was awarded by Mr Dubois to A&A Structural or Senai Steel as the Nachabe brothers had refused to make any further payments to him.

Quantum of benefits received by Mr Dubois

As the Commission has found above, on 18 July 2011 Mr Dubois received a \$9,665 cheque payment from Abdula Nachabe as a reward for arranging the awarding of RTA work to A&A Structural for inspection of gantries at various STC sites.

On 25 July 2011, Mr Dubois received a \$13,200 cheque payment from Abdula Nachabe in relation to the awarding of the STC rectification works at Tomingley to Senai Steel. Gamele Nachabe was not aware of the dishonest nature of that payment.

Between 21 December 2011 and 12 October 2012, with the agreement of Gamele Nachabe, Abdula Nachabe paid Mr Dubois three cheques totalling \$131,242.90 for the awarding of the rectification works at STC sites in Boggabilla, Dundee and Broken Hill.

In total, the amounts received by Mr Dubois in return for arranging the awarding of RTA/RMS work to A&A Structural and Senai Steel was \$154,107.90.

Corrupt conduct

Mr Dubois

In July 2011, Mr Dubois received \$9,665 from Abdula Nachabe in return for misusing his public official position with the RTA to assist Abdula Nachabe's company, A&A Structural, to gain the RTA contract for the inspection of gantries at various sites for which A&A Structural was paid \$98,632.50 (including GST).

This conduct on the part of Mr Dubois was corrupt conduct for the purpose of s 8 of the ICAC Act as it adversely affected the honest and impartial exercise of his official functions (s 8(1)(a)), constituted the dishonest and partial exercise of his official functions (s 8(1)(b)) and involved a breach of public trust (s 8(1)(c)).

Section 249B(1) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2 of this report.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Dubois committed an offence under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to a company controlled by Abdula Nachabe, in relation to the affairs or business of the RTA. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Dubois had committed an offence under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to a company controlled by Abdula Nachabe, in relation to the affairs or business of the RTA. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is further satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act, that if the facts were to be proved on admissible evidence to the requisite standard of proof of the balance of probabilities and accepted by an appropriate tribunal, there would

be grounds on which such a tribunal could find that Mr Dubois committed a disciplinary offence being a substantial breach of the RTA code of conduct giving rise to dismissal as he was specifically required to not to accept a gift or benefit that was intended to or likely cause him to act in a biased manner. Mr Dubois' conduct therefore comes within s 9(1)(b) and s 9(1)(c) of the ICAC Act.

The Commission is also satisfied that, if the facts found were to be proved on admissible evidence to the requisite standard of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Dubois had engaged in conduct that constitutes a disciplinary offence of breaching the RTA code of conduct in relation to accepting gifts or benefits and that such conduct is sufficiently serious to constitute grounds for his dismissal. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that the conduct is serious corrupt conduct because it involved significant planning and the receipt of a significant improper payment.

Between 25 July 2011 and 12 October 2012, Mr Dubois received \$144,442.90 from Senai Steel, a company owned by Abdula Nachabe and Gamele Nachabe, in return for misusing his public official position with the RTA/RMS to arrange the awarding of \$618,507.55 worth of RTA/RMS work, namely, the rectification works in respect of STC sites located at Tomingley, Dundee, Boggabilla and Broken Hill, to Senai Steel.

This conduct on the part of Mr Dubois was corrupt conduct for the purpose of s 8 of the ICAC Act as it adversely affected the honest and impartial exercise of his official functions (s 8(1)(a)), constituted the dishonest and partial exercise of his official functions (s 8(1)(b)) and involved a breach of public trust (s 8(1)(c)).

Section 249B(1) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2 of this report.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Dubois committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to a company controlled by Abdula Nachabe and Gamele Nachabe, in relation to the affairs or business of the RTA/RMS. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Dubois had committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to a company controlled by Abdula Nachabe and Gamele Nachabe, in relation to the affairs or business of the RTA/RMS. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is further satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act, that if the facts were to be proved on admissible evidence to the requisite standard of proof of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could find that Mr Dubois committed disciplinary offences, being substantial breaches of the RTA/RMS codes of conduct giving rise to dismissal as he was specifically required:

- not to accept a gift or benefit that was intended to or likely cause him to act in a biased manner
- to refuse gifts, benefits that might influence or have the potential to influence procurement decisions.

Mr Dubois' conduct therefore comes within s 9(1)(b) and s 9(1)(c) of the ICAC Act.

The Commission is also satisfied that, if the facts found were to be proved on admissible evidence to the requisite standard of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Dubois had engaged in conduct that constitutes disciplinary offences of breaching the RTA/RMS codes of conduct in relation to accepting gifts or benefits and that such conduct is sufficiently serious to constitute grounds for his dismissal. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that the conduct was serious corrupt conduct because it involved the receipt of significant amounts of improper payments and significant planning, all of which occurred over a period of time.

Abdula Nachabe

Between January 2011 and July 2011, Abdula Nachabe paid \$9,665 to Mr Dubois as a reward for Mr Dubois misusing his public official position with the RTA to award \$98,632.50 of RTA work to A&A Structural, a company owned and controlled by Abdula Nachabe.

This conduct on the part of Abdula Nachabe was corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act as it adversely affected the honest and impartial exercise of Mr Dubois' official functions.

Section 249B(2) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Abdula Nachabe committed an offence under s 249B(2) of the Crimes Act of giving corrupt benefits. His conduct accordingly comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Abdula Nachabe had committed offences under s 249B(2) of the Crimes Act. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because it involved significant planning and a significant amount of improper payments.

Between 7 February 2011 and 12 October 2012, Abdula Nachabe paid \$144,442.90 to Mr Dubois (being \$13,200 on his own account and \$131,242.90 in concert with Gamele Nachabe) as a reward for Mr Dubois misusing his public official position with the RTA/RMS to award, between 5 April 2011 and 12 October 2012, approximately \$618,507.55 worth of RTA/RMS work to Senai Steel, a company owned and controlled by him and Gamele Nachabe.

This conduct on the part of Abdula Nachabe was corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act as it adversely affected the honest and impartial exercise of Mr Dubois' official functions.

Section 249B(2) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which

such a tribunal could reasonably conclude that Abdula Nachabe, in concert with Gamele Nachabe, committed offences under s 249B(2) of the Crimes Act of giving corrupt benefits. His conduct accordingly comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Abdula Nachabe had committed offences under s 249B(2) of the Crimes Act. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because it involved significant planning, substantial amounts of money and contracts awarded over a period of more than a year.

Gamele Nachabe

Between 23 January 2012 and 12 October 2012, Gamele Nachabe, in concert with Abdula Nachabe, paid \$131,242.90 to Mr Dubois as a reward for Mr Dubois misusing his public official position with the RMS to award, between 10 October 2011 and 12 October 2012, approximately \$496,847.55 worth of RMS work to Senai Steel, a company owned and controlled by him and Abdula Nachabe.

This conduct on the part of Gamele Nachabe was corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act as it adversely affected the honest and impartial exercise of Mr Dubois' official functions.

Section 249B(2) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Gamele Nachabe, in concert with Abdula Nachabe, committed offences under s 249B(2) of the Crimes Act of giving corrupt benefits. His conduct accordingly comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which

such a tribunal would find that Gamele Nachabe had committed offences under s 249B(2) of the Crimes Act of giving corrupt benefits. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because it involved substantial improper payments.

Section 74A(2) statements

The Commission is satisfied that, in respect of the matters covered in this chapter, Mr Dubois, Abdula Nachabe and Gamele Nachabe are affected persons.

Alexandre Dubois

Mr Dubois' evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that other admissible evidence would be available, including RTA/RMS records, banking records and evidence recovered from Mr Dubois' hard drives such as emails, electronic documentation relating to A&A Structural and Senai Steel and, potentially, the evidence of Abdula Nachabe and Gamele Nachabe.

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 Dubois for offences against s 249B(1)(a) of the Crimes Act of, between January 2011 and October 2012, corruptly soliciting and receiving benefits, through using his position in the RTA/RMS to cause the awarding of contracts to A&A Structural and Senai Steel.

As Mr Dubois' employment with the RMS was terminated, the question of whether consideration should be given to the taking of action against him for a disciplinary offence, or the taking of action with a view to his dismissal, does not arise.

Abdula Nachabe

Abdula Nachabe's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that other admissible evidence would be available, including RTA/RMS records, banking records and evidence recovered from Mr Dubois' hard drives such as emails and electronic documentation relating to A&A Structural and Senai Steel and, potentially, the evidence of Mr Dubois and Gamele Nachabe.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Abdula Nachabe for offences under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between January 2011 and October 2012, corruptly giving benefits, on account of Mr Dubois showing favour to Abdula Nachabe, Gamele Nachabe, A&A Structural and Senai Steel in relation to the affairs or business of the RTA/RMS, or receipt of or expectation of which would tend to influence Mr Dubois to show favour to Abdula Nachabe, Gamele Nachabe and A&A Structural and Senai Steel in relation to the affairs or business of the RTA/RMS.

Gamele Nachabe

Gamele Nachabe's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RTA/RMS records, and evidence recovered from Mr Dubois' hard drives such as emails and electronic documentation relating to Senai Steel and, potentially, the evidence of Mr Dubois and Abdula Nachabe.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Gamele Nachabe for an offence under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between January 2012 and October 2012, corruptly giving benefits, on account of Mr Dubois showing favour to Gamele Nachabe, Abdula Nachabe and Senai Steel in relation to the affairs or business of the RMS, the receipt of or expectation of which would tend to influence Mr Dubois to show favour to Gamele Nachabe, Abdula Nachabe and Senai Steel in relation to the affairs or business of the RMS.

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Chapter 7: Hassan Alameddine and Mr Dubois

This chapter examines the circumstances surrounding Mr Dubois' association with Hassan Alameddine and the awarding of RTA/RMS work to Areva Corp in the sum of \$2,131,372.10, Seina Group in the sum of \$6,817,798.90 and EPMD in the sum of \$2,067,945. This chapter also considers Hassan Alameddine's involvement in settling the fallout between Mr Dubois and Mr Taha.

Hassan Alameddine and Mr Dubois

Mr Dubois first met Hassan Alameddine when they attended the University of Western Sydney and studied the same engineering subjects. Hassan Alameddine completed his engineering degree in approximately 2008 or 2009.

Hassan Alameddine was a school friend of Mr Taha. As noted in chapter 3, Mr Dubois met Mr Taha at university, before Mr Dubois was employed by the RTA.

Areva Corp

Areva Corp was incorporated on 6 September 2007. Hassan Alameddine was its sole director and shareholder until 20 June 2013, when control passed to Adam Malas, an alias used by John Goldberg. Mr Malas was listed as the sole secretary, shareholder and director until the company was voluntarily wound up on 26 July 2015.

Hassan Alameddine told the Commission that Areva Corp was the business through which he undertook household energy consultations and provided advice on energy saving measures. Hassan Alameddine told the Commission that he also operated other businesses, including the sale of safes and boats, but these businesses were conducted in his "own name" and not through Areva Corp.

In about late-2009 or 2010, Hassan Alameddine learned that Mr Dubois was working for the RTA and that he was awarding work to their mutual friend, Mr Taha.

Mr Dubois told the Commission that Mr Alameddine requested an opportunity to be awarded RTA work, or at least assist to Mr Taha. Hassan Alameddine did not recall requesting RTA work, and asserted that it was only "logical" that Mr Dubois had approached him. This is contrary to the evidence of both Mr Dubois and Mr Taha. Both agreed that it was Hassan Alameddine who requested RTA work from Mr Dubois.

Whatever be the circumstances, there was no issue that, on 5 September 2011, Areva Corp was registered as an RTA vendor. Further, between about 1 September 2011 and 23 May 2013, Mr Dubois arranged to award Areva Corp 28 RTA/RMS contracts in the total sum of \$2,131,372.10.

Mr Dubois and Hassan Alameddine gave evidence to the effect that Mr Dubois awarded RTA TIRTL project work, steel fabrication work and road signage work to Areva Corp. Hassan Alameddine's lack of relevant expertise meant that the steel fabrication work had to be subcontracted to a steel fabrication company.

Hassan Alameddine conceded that he had no experience at all in roadworks. He gave the following evidence:

The way that it was, looking back at it, were the jobs were outsourced to people that did the actual work, so steel fabrication was given to a steel fabricator. . . someone came in, they used their excavator to dig a hole, services were located. So in terms of putting in that structure in on the side of the road, you find out what your services are and you work around them.

Hassan Alameddine agreed he essentially project managed subcontractors, but he also claimed that he was "hands on".

Did Mr Dubois receive any benefits for Areva Corp work?

The first RTA contract awarded to Areva Corp was the Galston West project, for which Areva Corp was paid \$30,700. The work was undertaken in late-2011.

When asked during the public inquiry whether Mr Dubois had sought any payment in return for arranging for Areva Corp to get this work, Hassan Alameddine gave the following evidence:

I think ... I don't know ... if he [Mr Dubois] took any money off the first job but then it was, it was discussed. I don't remember when or how or whatever but it was very clear that he wanted, he wanted a fee.

He gave the following evidence of how Mr Dubois' "fee" came to be calculated:

There's no way on God's green earth that a company [Areva Corp] that was run by one bloke will be able to get any form of work like this and he'd source work and he'd manage quality and he'd make sure that things are done. I would be learning on the job. This is the best that I could recollect because it wasn't my area of expertise and, and the work's done and the money that would then, whatever was left over, like whatever I did for work there's, there, there, that would be not calculated, like I would work for nothing, and whatever's left over would be split in half and the fact that we, our overheads were so low, like, I was working out of a yard and that yard was costing me zero. I didn't have a secretary. I didn't have whatever.

When pressed as to the nature of the "fee" paid to Mr Dubois, Hassan Alameddine admitted he knew at the relevant time the fee was a form of illicit payment to Mr Dubois. Hassan Alameddine told the Commission that initially he was not pleased about making such payments but that he "toed the line eventually".

Hassan Alameddine also told the Commission that he paid Mr Dubois in relation to 80 per cent of the RTA/RMS jobs that were awarded to Areva Corp and his later companies, Seina Group and EPMD .

In evidence, Mr Dubois acknowledged that, through his various companies, Hassan Alameddine paid him "significant kickbacks" over many years. He said the payments came in the form of cash or cheque, but he preferred cash because "it wasn't traceable". Hassan Alameddine did not dispute that at times he made cash payments to Mr Dubois.

Mr Dubois told the Commission that his payments were initially 10 per cent of the contract value but the amount increased over time to as much as 50 per cent. He gave the following evidence:

[Counsel Assisting]: *About 10 per cent after he had costed in all of the various genuine costs associated with the project?*

[Mr Dubois]: *That's what I recall, and I could be wrong but that's what I remember, yeah.*

[Q]: *But then over time that increased to 30 and even up to 50 per cent?*

[A]: *Correct, yeah, correct.*

[Q]: *So in the later years, with contracts that were allocated to Mr Alameddine's companies, that there was a much bigger percentage that was being allocated towards your kickbacks?*

[A]: *From the profit, from the profit.*

[Q]: From their profits?

[A]: Yes, correct.

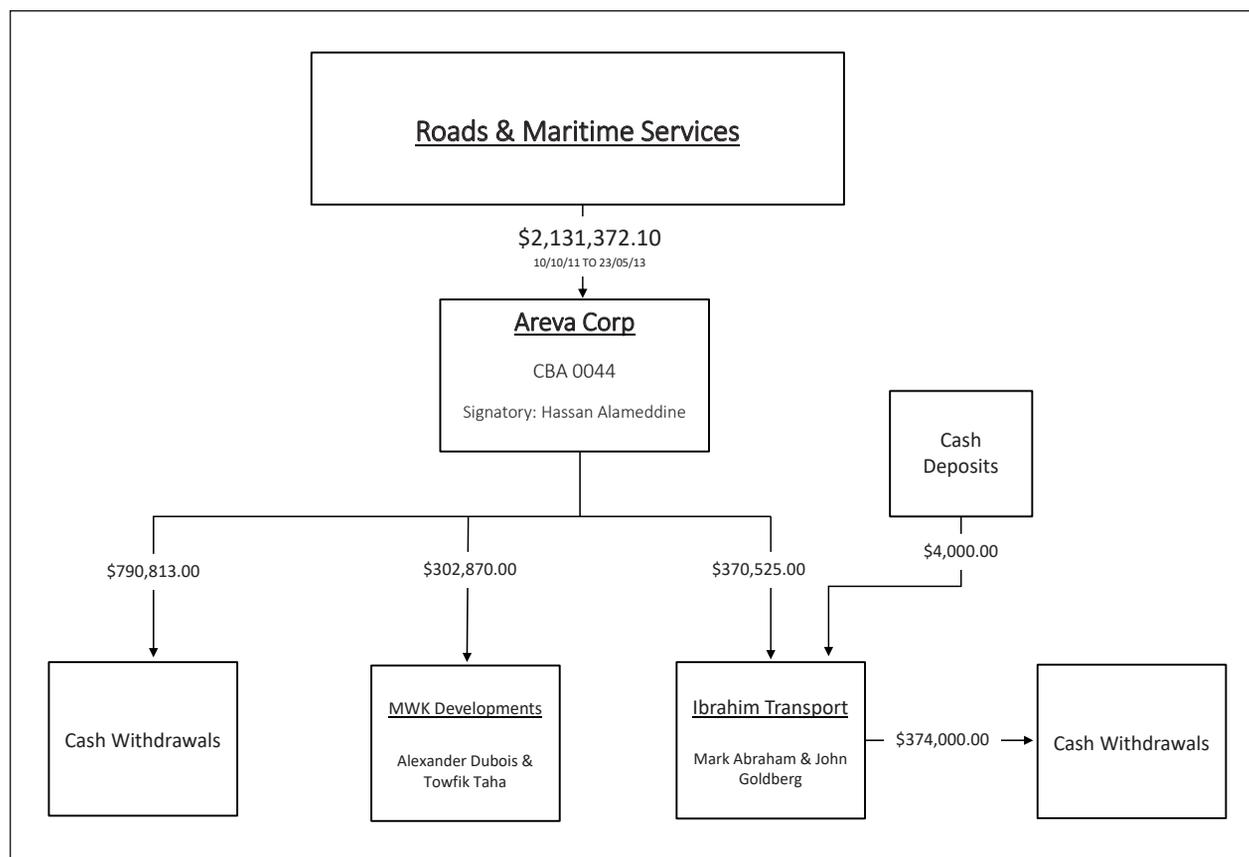
Mr Dubois agreed that one of the means by which Hassan Alameddine achieved a sufficient margin to pay him was through contracts in relation to which Hassan Alameddine’s sole role was to project manage subcontractors.

The Commission forensically reconstructed the Areva Corp Commonwealth Bank account. The following diagram shows three main payment streams from the Areva Corp account, including cash withdrawals of \$790,813.

Between 22 June 2012 and 15 October 2012, Hassan Alameddine made three cheque payments totalling \$302,870 into two MWK Developments bank accounts. As noted in chapter 3 of this report, these accounts were controlled by Mr Dubois. It was common ground that these payments were fees for Mr Dubois arranging for RTA work to be awarded to Areva Corp.

Between 14 January 2013 and 30 May 2013, \$370,525 was transferred from the Areva Corp bank account to a bank account operated by Ibrahim Transport Pty Ltd. Mark Abraham, born Mazen Ibrahim, is the director of Ibrahim Transport. These transfers were payments made by Hassan Alameddine to Mr Dubois; Mr Abraham’s

Figure 7: Diagram showing the payment streams from the Areva Corp bank account



friend, Mr Goldberg, played a role in funnelling the payments to Mr Dubois. This is dealt with in more detail in chapter 8.

Hassan Alameddine's other companies

Upon the closure of the MWK Developments bank accounts and at Mr Dubois' request, Hassan Alameddine discontinued using Areva Corp to undertake work from mid-2013. On 22 July 2013, he acquired a company called H.A.M. Formwork Pty Ltd. Soon thereafter, he changed the company's name to Seina Group Pty Ltd. He commenced bidding for RMS work through Sienna Group in September 2013.

Between 1 September 2013 and 18 June 2019, Seina Group was awarded 43 RMS contracts for which it was paid \$6,817,798.90.

Hassan Alameddine and Mr Dubois also agreed that a second company should be created so that more work could be allocated to Hassan Alameddine. EPMD was registered on 7 January 2013. Hassan Alameddine was listed as director and shareholder for a day, but was replaced by Simon Raha. Mr Raha, also known as Samir Rifai, shared other business interests with Hassan Alameddine, namely a meat export business. Hassan Alameddine told the Commission that Mr Raha was not involved in the business relationship between the RMS and EPMD. The Commission accepts this evidence.

Between 18 April 2016 and 15 April 2019, EPMD was awarded 21 RMS contracts for which it was paid \$2,067,945.

Hassan Alameddine and Mr Dubois told the Commission that both companies participated in and benefited from by-passing RMS procurement procedures through a dummy quoting process that Mr Dubois orchestrated.

On 14 June 2013, Hassan Alameddine acquired Gold Service Wholesaler Pty Ltd ("Gold Service"). Hassan Alameddine was sole director and shareholder of that company until, from 9 July 2013, the sole directorship and shareholding of Gold Service was vested in his brother, Ahmed Alameddine. On the same day, the company's name changed to Acate Pty Ltd. Hassan Alameddine and Mr Dubois accepted that Acate was occasionally used to submit dummy quotes to circumvent the RMS procurement process. It was only during the Commission's investigation that Ahmed Alameddine became aware that Acate was used for this purpose.

Rather than examine each of the projects awarded to Seina Group and EPMD, it is sufficient to look at a typical project which exemplifies how Mr Dubois and Hassan

Alameddine were able to subvert the RMS procurement requirement of obtaining three independent quotes for projects under \$250,000, and how invoices were inflated to incorporate payments to Mr Dubois.

On 24 May 2017, Mr Dubois sent emails to Seina Group, EPMD and Acate seeking a quote for the installation of over height signage on the approach to 11 bridges across Sydney and the Blue Mountains region.

On the same day, at 3.35 pm, a "Harry Alameddine" of Seina Group sent a responding email to Mr Dubois attaching a quote from Seina Group for \$218,350. Hassan Alameddine confirmed that he drafted the quote. He accepted that Mr Dubois would have requested that he increase his initial "barebones" price to incorporate a margin which later would be evenly split between them, and that Mr Dubois would have nominated the price. This accords with Mr Dubois' admission that there would have been a discussion between them concerning increasing Seina Group's price to ensure "a sufficient margin in there for him and for myself".

Later, on the same day at 4.16 pm, "Simon Raha" of EPMD emailed Mr Dubois with a quote from EPMD for \$231,500. Hassan Alameddine accepted that he submitted the quote at Mr Dubois' request and that it was a dummy quote. A word version of the EPMD quote was found on one of Mr Dubois' devices during the execution of a search warrant on his house on 18 June 2019.

At 6:04 pm that day, "Allen Hawat" also sent an email to Mr Dubois attaching a quote from Acate for \$238,330. Hassan Alameddine accepted that he sent the quote under that name to disguise his identity when submitting the quote.

While the receipt of three quotes gave the illusion that there had been compliance with RMS requirements for competitive bidding, there was no competition as Hassan Alameddine was responsible for submitting all three quotes. It was always intended that the contract would be awarded to Seina Group and the other two quotes were merely window dressing.

Mr Dubois approved the creation of an RMS contract form and Seina Group was awarded the contract. On 28 June 2017, the RMS paid Seina Group \$240,185, including GST, for the contract.

Did Mr Dubois receive any benefits in relation to Seina Group and EPMD?

While executing a search warrant at Hassan Alameddine's residence, the Commission found a green notebook. Hassan Alameddine confirmed the notebook belonged to him and that the writing in the notebook was his.

Two of the entries in the notebook related to the gantry decommissioning and new gantry fabrication and installation project at Nyngan which had been awarded to Seina Group by the RMS. The two entries disclosed that Seina Group made a profit of \$116,000 from these two contracts. Hassan Alameddine told the Commission a \$50,000 profit was made in relation to the installation aspect of the project and a \$63,000 profit was made in relation to the fabrication aspect of the project. He agreed that both profits were split between himself and Mr Dubois.

Hassan Alameddine told the Commission there were occasions when money obtained from RMS work was put towards the purchase of luxury cars for Mr Dubois. Mr Dubois selected the cars at a Melbourne dealership. Hassan Alameddine said that he went to the dealership twice on Mr Dubois' instruction.

Hassan Alameddine recalled writing a cheque in relation to a purchase of one of Mr Dubois' high performance vehicles. Bank trace records indicate that, on 27 May 2017, a bank cheque was drawn on an EPMD Commonwealth Bank account for \$213,000 in the favour of Car Sellers Australia Pty Ltd. It was applied to the purchase of a 2007 black Ferrari 599.

Mr Dubois did not dispute that monies provided by Hassan Alameddine were used to purchase luxury vehicles for himself.

The Commission has forensically reconstructed the EPMD Commonwealth Bank account. Cash withdrawals amounting to \$277,300 were made between 10 August 2016 and 18 June 2019.

The Commission has forensically reconstructed the Seina Group Commonwealth Bank account. Cash withdrawals amounting to \$1,976,439.27 were made between 26 September 2013 and 27 May 2019.

Counsel Assisting submitted that it was open for the Commission to find that between October 2011 and May 2019, Hassan Alameddine provided benefits of no less than \$2.05 million to or on behalf of Mr Dubois in return for Mr Dubois misusing his position to award RTA/RMS work to Areva Corp, Seina Group and EPMD. This sum is calculated on the basis that Mr Dubois received half the

cash withdrawn from the Areva Corp, Seina Group and EPMD Commonwealth Bank accounts (\$395,406.50, \$988,219.63 and \$138,650), the cheque payments from the Areva Corp Commonwealth Bank account deposited into the MWK Development bank accounts (\$302,870) and the \$213,000 bank cheque payment drawn on the EPMD Commonwealth Bank account and applied towards the purchase of the black Ferrari. Mr Dubois did not submit that this calculation by Counsel Assisting was wrong. Nor were any submissions put forward on behalf of Hassan Alameddine.

The Commission notes the admissions against self-interest made by Hassan Alameddine that the profits would be split and provided to Mr Dubois and the significant cash withdrawals made from the RMS contractor bank accounts under Hassan Alameddine's control. The Commission further notes admissions by Mr Dubois that the benefits with Hassan Alameddine increased from early on as a result of him being made aware of Mr Taha's provision of benefits to him, and Mr Dubois stating that at times he would receive 50 per cent of Hassan Alameddine's profits from the awarding of RMS work.

The Commission notes that the evidence does not establish Mr Dubois' margin from the outset was 50 per cent of the total profit on each job awarded to Hassan Alameddine. Rather, payments Hassan Alameddine made to Mr Dubois increased to 50 per cent over time. However, the evidence does establish that cheque payments from the Areva Corp Commonwealth Bank account into the MWK Development accounts, and the bank cheque payment made from the EPMD Commonwealth Bank account towards the purchase of the black Ferrari, collectively amounting to \$515,870, were for Mr Dubois. Accordingly, the Commission is satisfied that between October 2011 and May 2019, Hassan Alameddine provided benefits to Mr Dubois of \$515,870 in addition to substantial cash payments.

Ahmed Alameddine

Hassan Alameddine's younger brother, Ahmed Alameddine, worked for each of Areva Corp, Seina and EPMD.

Mr Dubois told the Commission that Ahmed Alameddine assisted his brother with design work on a signage project and was present onsite for other jobs. He thought Ahmed Alameddine may have assisted his brother with preparing quotes and invoices. He did not know whether Ahmed Alameddine was aware of "the financial relationship" he had with his brother.

Ahmed Alameddine told the Commission he understood that EPMD "was in Simon Raha's name" that his brother

was “the owner” of EPMD and it was “completely run” by his brother.

From 2017, Ahmed Alameddine was also aware that his brother was using both EPMD and Seina Group to obtain RMS work.

The Commission forensically downloaded several WhatsApp recordings between Hassan Alameddine and Ahmed Alameddine from the Samsung mobile telephone, found on Hassan Alameddine during the execution of a search warrant on his house. The Commission is satisfied that the telephone belonged to Hassan Alameddine, based on messages and data contained in the telephone, and that the telephone itself was found on Hassan Alameddine’s person.

The five WhatsApp recordings, made by Hassan Alameddine on 1 March 2018, disclose that Ahmed Alameddine upon instruction from his brother, who was in flight overseas at time, prepared an EPMD quotation on his brother’s behalf. Although not having a specific recollection of the incident, Ahmed Alameddine did not dispute that he must have prepared the quote on his brother’s behalf. The recordings also disclose on the same day, that Ahmed Alameddine received a USB from Mr Dubois, who was accompanied by Mr Hadid. Although Ahmed Alameddine recalled an occasion where he received a USB from Mr Dubois for his brother, he did not recall an occasion when Mr Dubois was accompanied by Mr Hadid and dropped off a USB to him.

Hassan Alameddine stated that he told his brother what to do in relation to the RMS work and that he paid him a wage. There is no evidence that his brother received a share of the profit from any of Hassan Alameddine’s companies. Hassan Alameddine told the Commission his brother was unaware of the arrangement he had with Mr Dubois to pay him in return for arranging the awarding of RMS work.

Ahmed Alameddine told the Commission that he knew that his brother and Mr Dubois were friends and that his brother operated a number of companies. He told the Commission that it was only after the Commission had executed search warrants on 18 June 2019 that “he put two and two together” and learned that his brother was paying Mr Dubois.

While Ahmed Alameddine may be criticised for following his brother’s requests, the evidence does not support a finding that Ahmed Alameddine was a party to an arrangement by which money was paid to Mr Dubois in return for him awarding work to Mr Alameddine’s companies.

Corrupt conduct

Mr Dubois

Between 21 September 2011 and 18 June 2019, Mr Dubois misused his public official position with the RTA and the RMS to arrange for the awarding of approximately \$11,017,116 worth of RTA/RMS work to Areva Corp, Seina Group and EPMD, companies owned or controlled by Hassan Alameddine, in return for personal benefits of at least \$515,870 plus substantial cash payments.

This conduct on the part of Mr Dubois was corrupt conduct for the purpose of s 8 of the ICAC Act as it adversely affected the honest and impartial exercise of his official functions (s 8(1)(a)), constituted the dishonest and partial exercise of his official functions (s 8(1)(b)) and involved a breach of public trust (s 8(1)(c)).

Section 249B(1) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2 of this report.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Dubois committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to companies controlled by Hassan Alameddine, in relation to the affairs or business of the RTA/RMS. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Dubois had committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to companies controlled by Hassan Alameddine, in relation to the affairs or business of the RTA/RMS. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is further satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act, that if the facts were to be proved on admissible evidence to the requisite standard of proof of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could find that Mr Dubois committed disciplinary offences, being

substantial breaches of the RTA/RMS codes of conduct giving rise to dismissal as he was specifically required:

- not to accept a gift or benefit that was intended to or likely cause him to act in a biased manner
- to refuse gifts, benefits that might influence or have the potential to influence procurement decisions

Mr Dubois' conduct therefore comes within s 9(1)(b) and s 9(1)(c) of the ICAC Act.

The Commission is also satisfied that, if the facts found were to be proved on admissible evidence to the requisite standard of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Dubois had engaged in conduct that constitutes disciplinary offences of breaching the RTA/RMS codes of conduct in relation to accepting gifts or benefits and that such conduct is sufficiently serious to constitute grounds for his dismissal. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that the conduct was serious corrupt conduct because it involved significant planning and the receipt of substantial improper benefits over a protracted period of time.

Hassan Alameddine

Between 21 September 2011 and 18 June 2019, Mr Alameddine made significant cash and/or cheque payments of no less than \$515,870 in addition to substantial cash payments to Mr Dubois and on behalf of Mr Dubois, as a reward for Mr Dubois misusing his public official position with the RTA/RMS, to award, between 21 September 2011 and 18 June 2019, approximately \$11,017,116 worth of work to Areva Corp, Seina Group and EPMD, companies owned or controlled by Hassan Alameddine.

This conduct on the part of Hassan Alameddine was corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act as it adversely affected the honest and impartial exercise of Mr Dubois' official functions.

Section 249B(2) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Hassan

Alameddine committed offences under s 249B(2) of the Crimes Act of giving corrupt benefits. His conduct therefore comes within s 9(1)(a) if the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Alameddine had committed offences under s 249B(2) of the Crimes Act of giving corrupt benefits. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because it involved planning and the provision of significant improper benefits occurring over a protracted period of time.

Section 74A(2) statements

In relation to the conduct dealt with in this chapter, the Commission considers that Mr Dubois and Hassan Alameddine are affected persons.

Alexandre Dubois

Mr Dubois' evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RTA/RMS records, cheque payments and banking records of Areva Corp, Seina Group, EPMD, MWK Developments and Ibrahim Transport. Additionally, there is other admissible evidence recovered from Mr Dubois' hard drives seized from his house during the execution of the search warrant (such as emails, electronic documentation relating to Areva Corp, Seina Group and EPMD), plus Hassan Alameddine's notebook, mobile telephone and computers containing electronic documentation relating to Areva Corp, Seina Group, and EPMD recovered during the execution of the search warrant of his house. There is also the potential evidence of Hassan Alameddine, Mr Chahine and Mr Hadid (as dealt with in chapter 8, both Mr Chahine and Mr Hadid told the Commission they knew Hassan Alameddine was making payments to Mr Dubois into the MWK Developments account).

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 Dubois for offences under s 249B(1)(a) of the Crimes Act of, between September 2011 and June 2019, corruptly soliciting and

receiving benefits, on account of using his position in the RTA/RMS to award contracts to Areva Corp, Seina Group and EPMD.

As Mr Dubois' employment with RMS was terminated, the question of whether consideration should be given to the taking of action against him for a disciplinary offence, or the taking of action with a view to his dismissal, does not arise.

Hassan Alameddine

Hassan Alameddine's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RTA/RMS records, cheque payments and banking records of Areva Corp, Seina Group, EPMD, MWK Developments and Ibrahim Transport. Additionally, there is other admissible evidence recovered from Mr Dubois' hard drives seized from his house during the execution of the search warrant such as emails, electronic documentation relating to Areva Corp, Seina Group and EPMD, plus Hassan Alameddine's notebook, mobile telephone and computers containing electronic documentation relating to Areva Corp, Seina Group and EPMD recovered during the execution of the search warrant of Hassan Alameddine's house. There is also the potential evidence of Mr Dubois, Mr Chahine and Mr Hadid (as dealt with in chapter 8, both Mr Chahine and Mr Hadid told the Commission they knew Hassan Alameddine was making payments to Mr Dubois into the MWK Developments account).

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Hassan Alameddine for offences under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between September 2011 and June 2019, corruptly giving a benefit to Mr Dubois on account of Mr Dubois showing favour to Hassan Alameddine and companies under his control in relation to the affairs or business of the RTA/RMS, or the receipt of or expectation of which would tend to influence Mr Dubois to show favour to Hassan Alameddine and his companies in relation to the affairs or business of the RTA/RMS.

Chapter 8: Mr Goldberg

Between January 2013 and April 2014, Mr Dubois arranged for the awarding of \$1,089,935 of RMS work to MJ Wilsons Pty Ltd, a company controlled by Mr Goldberg. This chapter examines whether Mr Dubois received any benefits from Mr Goldberg as a reward for awarding this work. This chapter also examines whether companies controlled by Mr Goldberg were used to filter payments from other RMS contractors to Mr Dubois.

Mr Goldberg

Mr Goldberg was born Hussein Taha, and is also known as Adam Malas. He knew Mr Dubois as a family friend through his brothers, Mustafa Taha and Towfik Taha, and told the Commission that Mr Dubois was “like a brother to us” and “he was part of my family”. However, he told the Commission that he later fell out with Mr Dubois over businesses in which they were involved.

In early 2012, Mr Goldberg entered business with Mr Dubois to operate three cafes. These were, Humphrey’s Bakery in Bankstown, Coffee Boss in Bankstown and My Caffeine Romance in Kirrawee.

MJ Wilsons was registered as a company on 10 January 2013. Mr Goldberg told the Commission that, although the company was registered in the name of Mr Abraham, he was responsible for establishing it, had effective control of it and used it to obtain RMS work. The Commission accepts that evidence as it accords with the evidence given by Mr Abraham, a friend of Mr Goldberg’s, as well as the fact that Mr Goldberg was an authorised signatory to the MJ Wilsons bank account. The Commission notes that the only deposits received into the MJ Wilsons bank account were from the RMS in relation to works it purportedly performed. Mr Goldberg admitted that he was the one who had day-to-day control of the company.

Although MJ Wilsons was registered only on 10 January 2013, it submitted its first quote for RMS work on 9 January 2013.

RMS work awarded to MJ Wilsons

Mr Goldberg agreed that he obtained RMS work for MJ Wilsons because of his friendship with Mr Dubois.

MJ Wilsons was awarded six RMS contracts. These related to the refurbishment of HVIS central Sydney sites at Cronulla, Ryde, Heathcote and Illawarra, and works at Galston Gorge, Marulan Bay, Mulgoa Road and Ferrers Road. This chapter focuses on the allocation of contracts for the central Sydney sites and the Mulgoa Road and Ferrers Road project, as they are sufficient to demonstrate how the arrangement between Mr Dubois and Mr Goldberg operated.

It was common ground that Mr Goldberg possessed no relevant or referable experience to enable him to undertake the RMS projects awarded to his business to the requisite standard. Mr Goldberg told the Commission that the work awarded to MJ Wilsons was done by subcontractors who were arranged by Mr Dubois.

The HVIS central Sydney sites refurbishment project

The HVIS central Sydney site refurbishment project was the first contract awarded to MJ Wilsons.

On 10 January 2013, Mr Dubois raised a purchase order request for the project. Attached to the purchase order request was an MJ Wilsons quote 189, dated 9 January 2013, for \$180,000. Mr Dubois conceded that he drafted the quote and the amount was calculated with reference to the payment he was going to receive from Mr Goldberg in return for awarding work to MJ Wilsons.

The MJ Wilsons quote listed seven road widening jobs. These were at Lucas Heights, Captain Cook Drive, Henry Lawson Drive Lansdowne, Henry Lawson Drive Revesby, Henry Lawson Drive Georges Hall, another unspecified location on Henry Lawson Drive, and Penrith.

Mr Goldberg gave evidence that he never prepared a quote or an invoice for any RMS work that Mr Dubois organised the subcontractors engaged to do the works. The Commission accepts this evidence, as it largely accords with Mr Dubois' evidence and the circumstance of Mr Goldberg possessing at best limited project work experience.

The Commission notes the arrangement between Mr Goldberg and Mr Dubois, whereby Mr Goldberg performed little or no work in relation to any of the RMS projects. Rather, it was typically Mr Dubois who drafted and arranged the quote for each job, arranged the subcontractors and invoiced for the work. This was done at the same time he was responsible for the awarding of the project work in his capacity as a project officer for the RMS. This can be seen by the following exchange between Counsel Assisting and Mr Goldberg, relating to the HVIS central Sydney sites refurbishment project:

[Counsel Assisting]: So that if it was the case that Mr Dubois subcontracted it out, you didn't know about that?

[Mr Goldberg]: No. I, we went, like I said, we went once, he came past my café, we'd jumped in the car, we went to Lucas Heights, Henry Lawson Drive and I think another site, or a couple on Henry Lawson Drive. I'm not sure how many we went to. And he was talking about, and he took photos and talking about what needed to be done about asphaltting. Not that I understand at the time, nor to be honest, nor did I care. I'm like, "Okay, you do what you need to do." He was like, "Yeah, I'm going, we're going to do this, we're going to do that."

I'm like, "Okay." And that was the only time I was involved in that contract or knew anything about it. The quoting system, invoicing, whatever you call it, all that paperwork, or even fixing up the paperwork for the RMS, the signing stuff, that never came to me and at the same time, which meant that never came to Mark [Abraham] because he never knew Mark. So he had organised everything on his end.

MJ Wilsons issued an invoice dated 21 January 2013. Despite the invoice referring to only four of the seven road widening jobs listed in the MJ Wilsons quote, the amount sought remained \$180,000. In his evidence to the Commission, Mr Dubois agreed that he was the author of the invoice. Despite creating the invoice and subsequently certifying the services rendered as satisfactory, Mr Dubois was unable to explain why only four of the sites were listed. Mr Dubois was not able to recall whether work at the other three locations was done.

The Commission obtained evidence that Country Pavement Works did at least some of the works at Henry Lawson Drive. Mr Dubois accepted that it "could have" been that Complete Building Fitout was engaged to organise Country Pavement Services as contractors to complete the work. This was notwithstanding that MJ Wilsons was paid for work at Henry Lawson Drive.

Mr Dubois told the Commission that when it came to the awarding of "three or four projects" to MJ Wilsons, he got another RMS contractor to carry out or project manage the work.

Given Mr Goldberg's lack of involvement in carrying out MJ Wilsons' project works, he was unable to say if any of the jobs undertaken by MJ Wilsons were completed.

Mr Goldberg stated that when he heard Mr Dubois give his evidence during the public inquiry about him having also employed Mr Hadid and Mr Chahine for the Henry Lawson Drive site, (works that MJ Wilsons had purportedly performed), he was surprised. He asserted that Mr Dubois had “double dipped” in arranging the awarding and payment of the same set of work to two different RMS contractors. Leaving aside the accuracy of the allegation of double dipping, this evidence correlates with Mr Goldberg’s acceptance that, as far as he was concerned, Mr Dubois was organising MJ Wilsons’ performance of RMS work.

Overall, the Commission is satisfied that MJ Wilsons did not perform works that it was paid by the RMS to do in relation to at least some of the sites relating to the HVIS central Sydney site project.

The Mulgoa Road and Ferrers Road HVIS civil works

On 22 March 2014, Mr Dubois awarded the HVIS civil work upgrade at Mulgoa Road and Ferrers Road to MJ Wilsons.

When executing a search warrant at Mr Dubois’ residence, the Commission found an electronic version of an MJ Wilsons invoice, dated 22 March 2014, relating to this project. The invoice scope of works was divided into two parts. The first part related to Ferrers Road, and generally required saw cutting of the existing road, excavation and the supply and application of 510 square metres of asphalt, which amounted to \$36,000. The second part related to Mulgoa Road, and included similar works to be undertaken and the application of asphalt to 900 square metres of work. The total cost set out in the invoice was miscalculated as \$102,000, instead of the proper GST-inclusive price of \$102,300.

On 22 March 2014, a purchase order request for the GST-exclusive price of \$93,000 in favour of MJ Wilsons in relation to the Mulgoa Road and Ferrers Road jobs was submitted by Mr Dubois, and approved by the manager of camera infrastructure support.

Also located during the execution of the search warrant at Mr Dubois’ house was an unsigned letter, dated 4 April 2014, on MJ Wilsons letterhead purportedly from Mr Abraham advising of MJ Wilsons’ new bank account details.

On 7 April 2014, a signed copy of this letter, purporting to be signed by Mr Abraham, was submitted to the RMS. It formed the basis of a change of vendor details form which incorporated the new bank account details. The new account details were not for an MJ Wilsons account, but for a Commonwealth Bank account belonging to

Wilkins Corp (“the Wilkins Corp Commonwealth Bank account”).

Mr Goldberg told the Commission that he never saw the letter and did not have any recollection of Mr Dubois advising him that he was going to submit a letter requesting a change of bank account details. Mr Goldberg recalled that his ex-wife, who was the signatory to the Wilkins Corp Commonwealth Bank account, informed him of the \$102,300 deposit made by the RMS. Mr Goldberg told the Commission he was then informed by Mr Dubois that “he done it by accident” and that he expressed concern to Mr Dubois and thought that the unsolicited RMS deposit into the Wilkins Corp Commonwealth Bank account “could ... [amount to] a fraud charge”.

Mr Dubois told the Commission he could not recall “signing” the 4 April 2014 letter and further said that it was not his signature on the letter. Mr Dubois said that although he did not recall if he assisted Mr Goldberg in creating the letter, he could not rule out that possibility entirely: “I have assisted with documents in the past. Potentially maybe”. Although Mr Abraham was not asked whether he signed the letter, Mr Abraham and Mr Goldberg’s evidence was that Mr Abraham’s involvement in MJ Wilsons was limited to the circumstances of the creation of the company and its bank accounts. The Commission has not been able to locate any evidence of Mr Abraham’s involvement in drafting the letter or his knowledge of it being sent to the RMS.

There is insufficient evidence for the Commission to determine who signed the letter. However, in circumstances including the finding of an MS-Word copy of the letter on a Touro hard drive at his house, the probabilities favour Mr Dubois as being responsible for the drafting of the letter.

Did Mr Dubois receive any benefits?

Mr Goldberg’s evidence during the public inquiry was directly in conflict with evidence provided during his compulsory examination on 1 December 2020. During his compulsory examination, Mr Goldberg told the Commission that he had no knowledge that Mr Dubois awarded RMS contracts in return for improper payments, and that the first time he heard of Mr Dubois receiving such payments was during the compulsory examination. During the public inquiry, Mr Goldberg conceded that the evidence he gave in his earlier compulsory examination was untruthful. Mr Goldberg then gave the following evidence:

[Counsel Assisting]: Mr Goldberg, when you told the Commission that you had no knowledge of Alex Dubois

over his 10 years at the RMS awarding contracts to people in return for kickbacks, that wasn't true, was it?

[Mr Goldberg]: At that time I had zero memory, yes.

[Chief Commissioner]: If you'll answer the question.

[Mr Goldberg]: Yes, I am answering the question. I did say that.

...

[Counsel Assisting]: You accept the proposition in the question, but I'm trying to get an explanation as to why you gave untruthful evidence.

[A]: Yeah, because I was completely blocked out.

[Q]: Please don't talk over me. Are you accepting the proposition in the question?

[A]: Yes.

[Q]: But you're seeking to give evidence as to circumstances which would explain or justify why you gave untruthful evidence, is that what you're seeking to do?

[A]: That's, yes, that's correct, yes.

[Q]: So, as I understand it, then, you accept the proposition that the evidence that's just been quoted to you from page 1571.21, was untruthful evidence?

[A]: Yes.

With further reference to his concession that he had provided untruthful evidence during the compulsory examination, Mr Goldberg gave the following evidence:

[Counsel Assisting]: And at transcript 1572.10, you told the Commission on that occasion that the first time you ever heard any suggestion that Mr Dubois was awarding contracts to people he knew, and in return getting kickbacks was in the witness box for your compulsory examination on that day. And that was untrue.

[Mr Goldberg]: That's correct – oh, that's untrue. Yeah. But I, and all that stuff, I don't remember it all from that day.

In assessing his credit in relation other matters, the Commission bears Mr Goldberg's untruthfulness into account.

There was evidence that Mr Dubois received cash payments and jewellery from Mr Goldberg. The Commission examined whether these were in return for him arranging for RMS work to be awarded to MJ Wilsons.

Between 22 February 2013 and 29 July 2013, there were 14 cash withdrawals totalling \$941,700 made by Mr Goldberg from the MJ Wilsons account. This was money that had been paid into the MJ Wilsons account by the RMS.

Mr Dubois told the Commission that he sometimes received payments from Mr Goldberg of \$100,000 or \$200,000 and that these were provided to him in a shoebox. Mr Dubois was clear that the payments made by Mr Goldberg were in return for him awarding RMS work to MJ Wilsons. His evidence was:

[Counsel Assisting]: But it's correct, isn't it, that throughout the period of his work through his company – that is in 2013/2014 – he paid kickbacks?

[Mr Dubois]: Yes.

[Q]: And was it typically in the form of cash?

[A]: That's right, yes.

[Q]: All right. And when it came to the cash, would he literally delivery [sic] it to you or would it come from someone else?

[A]: He would deliver the cash.

[Q]: And what sort of size cash payments were you receiving from him, tens of thousands of dollars?

[A]: Yes, at one point, sometimes it was a \$100,000, \$200,000 he would provide.

[Q]: And what, he'd come to your house and give it to you?

[A]: Yes.

[Q] *And what money in a bag, money in a box?*

[A]: *Shoe box.*

[Q]: *Is it the case that you asked him for kickbacks or he offered them?*

[A]: *He offered them.*

While Mr Goldberg acknowledged that he was involved with RMS work through corporate entities with Mr Dubois, he claimed that he and Mr Dubois were partners and that any profits generated through RMS work was shared on a 50:50 partnership basis. He repeatedly asserted that the income shared was not on a basis where he paid “kickbacks” to Mr Dubois.

Mr Goldberg’s evidence was directly in conflict with that of Mr Dubois. Mr Dubois’ account that the payments he received from Mr Goldberg were in return for him causing RMS work to be awarded to MJ Wilsons was against his own interest. That is a matter of importance and provides some support for Mr Dubois in terms of an acceptance of that aspect of his evidence.

Mr Chahine was another witness who gave evidence against his interest, telling the Commission that he had undertaken RMS work as a contractor and paid money to Mr Dubois in respect of those RMS contracts between 2010 and 2019. Mr Chahine’s evidence accordingly constitutes further evidence of a corrupt pattern operated by Mr Dubois in respect of RMS contracts with money being paid to Mr Dubois by contractors in return for receiving RMS work.

The evidence of Mr Dubois and Mr Chahine, accordingly, is evidence both as to the existence of a scheme and it being in operation during the period in which Mr Goldberg was also dealing with Mr Dubois in respect of RMS work. The evidence is, of course, not determinative of the arrangement between Mr Goldberg and Mr Dubois, but it is consistent with a general scheme being operated by Mr Dubois with RTA/RMS contractors and provides evidence as to the common features or similarities in the way in which it was conducted by Mr Dubois.

Mr Goldberg asserted that the payments made to Mr Dubois represented Mr Dubois’ half share in the MJ Wilsons business. At one stage, he agreed with the proposition put to him that the payments made by the RMS to MJ Wilsons “contained kickbacks” but then sought to retract that evidence by reiterating that he was in partnership with Mr Dubois and that “if you’re a partner you took your fair share how is that a kickback”. He later said that there were no “kickbacks” – rather, there was an equal share of the profits of the partnership.

Mr Goldberg agreed that Mr Dubois “organised all the work and I got paid, yes”. He acknowledged taking money out of the MJ Wilsons account and that he paid subcontractors. Mr Goldberg knew that Mr Dubois organised the payment of invoices as well as preparing quotes. He gave no satisfactory explanation for not being registered as a director of MJ Wilsons, but denied that it was because MJ Wilsons was engaged in an illegal scheme. He acknowledged that although he asserted that he had “a partnership” with Mr Dubois, Mr Dubois was not registered as a director or shareholder of MJ Wilsons. He also agreed that he gave payments to Mr Dubois in cash because “he wanted it in cash”.

The Commission does not accept Mr Goldberg’s assertions that the payments made by him to Dubois represented the proceeds of a partnership arrangement. There is no documentary or other evidence that “a partnership” was in fact formed or operated between Mr Dubois and Mr Goldberg or as to its terms and conditions. The contention of Mr Goldberg that the monies were “partnership income” divided between them was a mere assertion otherwise unsubstantiated. Mr Dubois’ evidence as to the nature of the payments, given against interest, is accepted over Mr Goldberg’s unsupported assertions.

Mr Goldberg’s further claim that the payments to Mr Dubois were referable to debts incurred in relation to the cafe businesses is also an unsupported assertion. Mr Goldberg claimed that he left all business records relating to the businesses on the premises and had no relevant documents. Accordingly, there is no corroborative material as to investments by Mr Dubois and Mr Goldberg into any of the businesses, or as to renovation expenses or as to the alleged “debts” or any liability Mr Dubois had arising from those businesses. Mr Goldberg accordingly could not corroborate his assertions from business records, tax returns, invoices, contracts, banking, or any records in relation to the establishment or running costs of any of the businesses.

The Commission does not accept his assertions as to expenses and liabilities arising from the businesses that he said he was involved in. The Commission is satisfied that Mr Goldberg made payments to Mr Dubois as a reward for the latter arranging RMS contracts to be awarded to MJ Wilsons. In reaching this conclusion, the Commission notes evidence dealt with above and later in this chapter that Mr Goldberg was aware Mr Dubois received payments from other RMS contractors in return for awarding RMS work to them and that he allowed another company he controlled, Wilkins Corp, to be used to filter payments from one of those contractors to Mr Dubois.

A further issue for consideration is whether the amount of the payment Mr Dubois received as a reward for causing RMS work to be given to MJ Wilsons can be quantified.

Counsel Assisting submitted that the Commission should find that both Mr Dubois and Mr Goldberg received at least \$470,000 each from the MJ Wilsons arrangement to receive RMS project work. This submission was based on Mr Dubois' evidence that he had an arrangement with Mr Goldberg where they would evenly split the proceeds MJ Wilsons received for RMS work as reward for Mr Dubois' allocation of RMS work to MJ Wilsons.

The Commission is unable, on the evidence, to make a finding as to the exact amount provided to Mr Dubois. This is because not only is the evidence unclear as to the exact amount provided to Mr Dubois, but also the Commission cannot rule out that at least some of the work awarded to MJ Wilsons was completed through use of subcontractors and that these subcontractors were paid from that amount. However, based on Mr Dubois' evidence where he referred to Mr Goldberg providing "\$200,000", the Commission does find on balance that, in relation to the awarding of MJ Wilsons contracts, Mr Goldberg provided cash payments to Mr Dubois amounting to approximately \$200,000.

During the execution of a search warrant of Mr Dubois' house, the Commission located, in a safe, certificates of jewellery valuations. Enclosed with the certificates was a tax invoice dated 16 June 2013, which disclosed the purchase at auction by Mr Goldberg of 12 items of jewellery for \$24,293.75, including GST.

During the public inquiry, Mr Dubois told the Commission that Mr Goldberg purchased jewellery as "gifts" for him. He recalled receiving "six or five items" of jewellery listed in the tax invoice and that Mr Goldberg "bought some jewellery and there was also some jewellery that he had picked out. And he paid for it in cash". Mr Dubois also told the Commission that the cash Mr Goldberg used to pay for the jewellery "would have been [from] the work that he was given through the RMS contract". Mr Dubois did not otherwise explain why Mr Goldberg purchased the jewellery for him.

Mr Goldberg strongly denied the jewellery was a gift for Mr Dubois. He told the Commission that some of the items he purchased, including a \$2,600 loose cut diamond, was for his engagement. He addressed Mr Dubois' claim in the following exchange:

[Counsel Assisting]: Well, Mr Dubois' recollection was that it was that you purchased jewellery for him, he says, of around \$20,000 [a reference to the tax invoice totalling \$24,293.75].

[Mr Goldberg]: He's nothing but a fucking liar, okay? It's that simple. It did not

happen. I did not give him any gifts.

[Q]: Well, all I'm asking you at the moment is whether you, that helps you to recall that perhaps the amount that he owed you in respect of the jewellery, you say, was around \$20,000. Or do you have no recollection about the amount?

[A]: I did not give him any gifts. He came along with me, he was my mate. He bought stuff for himself, and I bought stuff for myself. He goes, "Fix it up, I'll pay you later on when we get home." Sweet.

The Commission notes that, despite being granted the opportunity to cross-examine Mr Dubois, Mr Goldberg's solicitor did not challenge Mr Dubois' evidence that some of the items of jewellery purchased on 16 June 2013 were a gift from Mr Goldberg. The Commission further notes that the tax invoice was in Mr Dubois' possession. That is consistent with Mr Dubois' account, that at least some of the jewellery was purchased by Mr Goldberg for him. It also provides an explanation as to why Mr Dubois possessed the jewellery invoice in his safe years after the purchases were made by Mr Goldberg.

Given the conflict in evidence between Mr Dubois and Mr Goldberg, as well as Mr Dubois not explaining why Mr Goldberg purchased the jewellery for him in the first place, the Commission is not satisfied that Mr Goldberg purchased the items of jewellery for Mr Dubois as a reward for Mr Dubois arranging the awarding of work to MJ Wilsons.

Wilkins Corp

One of the matters explored in the public inquiry was whether Mr Goldberg used companies he controlled to filter improper payments from other contractors to Mr Dubois. This included examining whether Wilkins Corp was used to receive money from CBF Projects (a company controlled by Mr Hadid and Mr Chahine) which in turn was paid to Mr Dubois in return for him awarding RMS contracts to CBF Projects.

Wilkins Corp was registered as a company by Mr Goldberg's former wife on 17 December 2012. She was listed as shareholder and director until 14 June 2013, when she was replaced by Mr Goldberg under his former name, Adam Malas. On 4 July 2013, there was a

further change with Mr Goldberg's former wife replacing him as director and shareholder. Mr Goldberg told the Commission that the purpose for registering Wilkins Corp was to set up a family day care business.

On 14 January 2013, a Wilkins Corp bank account was opened with Suncorp Bank ("the first Suncorp account"). Mr Goldberg was listed as a cosignatory. The first Suncorp account was closed on 18 March 2013. On 20 May 2013, a new Wilkins Corp bank account was opened with Suncorp Bank ("the second Suncorp account"). Mr Goldberg was listed as a cosignatory. On 5 July 2013, the Wilkins Corp Commonwealth Bank account was opened.

Mr Goldberg told the Commission that his former wife had nothing to do with running Wilkins Corp and any withdrawals made by her from any of the Wilkins Corp bank accounts were made on his instructions. The Commission accepts this evidence.

There were two significant deposits made into the first Suncorp account. The first deposit, on 14 January 2013, was of two cheques from CBF Projects amounting to \$59,500. The second deposit, also of a CBF Projects cheque, was made the following day for \$45,000. Thereafter, 10 cash withdrawals were made up to 18 March 2013, when the account was emptied of funds. Two of the withdrawals were made by Mr Goldberg.

There were several deposits and withdrawals relating to the second Suncorp account. These included nine CBF Projects cheque deposits totalling \$424,353 and a cash deposit of \$56,000 made on 9 September 2013. There were two transfers, totalling \$8,000, into the bank account of Minea Cuisine Pty Ltd, a company owned by Mr Dubois. Six transfers, totalling \$271,150, were made to Mr Goldberg's personal Suncorp Bank account. Between 23 May 2013 and 29 August 2013, there were 10 cash withdrawals totalling \$158,275.40.

Two CBF Projects cheques were deposited into the Wilkins Corp Commonwealth Bank account on 5 July 2013 and 11 July 2013 respectively. Each cheque was for \$49,350. An amount of \$49,000 was withdrawn on 10 July 2013 by bank cheque made out to Mr Goldberg. The RMS payment of \$102,300 for the Mulgoa Road and Ferrers Road projects was also paid into this account on 29 April 2014. This was followed by a cash withdrawal of \$102,000 the following day.

In total, \$627,553 was deposited by way of CBF Projects cheques into the three Wilkins Corp accounts.

Mr Goldberg claimed that some of the money paid to Wilkins Corp was money owed to him by Mr Dubois for the purchase of their three café businesses. He claimed that Mr Dubois owed him \$280,000 in

relation to My Caffeine Romance, \$220,000 for Coffee Boss and \$180,000 for Humphrey's Bakery. He said that Mr Dubois paid more than was required and therefore some of the money was paid back to Mr Dubois:

[Counsel Assisting]: All right, so he made a payment for My Caffeine Romance, you say, into the Wilkins Corp account.

[Mr Goldberg]: Correct.

[Q]: And was that one lump sum?

[A]: All up I think it was, like, the money was all up, it was like over – I still remember it was, think it was over 400,000, which was a lot more than what he [Mr Dubois] owed.

[Q]: I see, so you say that he paid you over and above for My Caffeine Romance.

[A]: Yes, he paid it and then he asked me to give him the difference back, which I did.

He went on to provide more details as to how the arrangement with Mr Dubois worked:

[Q]: And what does he say in respect of the remaining part?

[A]: If I can give it to him because that was money owed to him like, so the persons that gave him the cheque it was money owed to him and he's like, "Oh, can you please just take your part and just give me the rest." I'm like, "Yeah, no worries." Which I did.

[Q]: And when you say it was money owed to him, did you understand that that was money owed to him as part of the kickback scheme that he was running through the RMS?

[A]: Yes.

[Q]: And was that because he told you that?

[A]: It was obvious. That was the only source of income he had.

...

[Q]: *But I take it the cheques he was handing you were sizeable amounts.*

[A]: *Yes.*

[Q]: *And so it was obvious to you, was it, that those cheques must have been kickbacks that he was receiving from contractors?*

[A]: *That's correct.*

Mr Goldberg accepted that all the CBF Projects cheques paid into the second Suncorp account were given to him by Mr Dubois and that he knew at the time they were given to him that they were "kickbacks" that CBF Projects was paying to Mr Dubois. He gave the following evidence:

[Q]: *But you had an agreement with Mr Dubois that you would take those cheques and deposit them into the Wilkins Corp account, withdraw the full amount in cash and then pay Mr Dubois some or all of that cash, correct?*

[A]: *To pay back what was the difference of the money that was owed to me, for like the millionth time. Please.*

...

[Q]: *The amounts of the cheques representing, as you acknowledged, containing moneys for kickback or by way of kickbacks for Mr Dubois?*

[A]: *I guess so, yes.*

[Q]: *And then you would, from those moneys, pay him an amount of cash, is that right?*

[A]: *Well, yeah. He had to ask me to, so I said, "Yeah, okay. Not a problem."*

...

[Q]: *Or divided or whatever word you want to use, shared between---*

[A]: *It was the money, it was the money owed to me.*

Mr Goldberg eventually agreed that a purpose for the creation of Wilkins Corp was to provide a means whereby Mr Dubois could access his "kickback money" while minimising his risk of getting caught.

[Chief Commissioner]: *Once you withdrew the cash [from Wilkins Corp], he [Mr Dubois] got some, you got some.*

[Mr Goldberg]: *If that's how you want to say it, yes.*

[Q]: *So in that sense, you facilitated or assisted Mr Dubois to get his hands on what he claimed was his kickback in moneys without the risk of exposure of him to RMS. Right?*

[A]: *Yes.*

[Q]: *And of course you appreciated that was the reason why he was wanting to get the money indirectly through this form of transaction using a corporate bank account.*

[A]: *Yeah. Like he knew like, because he owed me money, he's like, "Oh, can you do this, can you do that?"*

[Q]: *Yes, I know. But you understood---*

[A]: *He could---*

[Q]: *--- what was going through his mind, what his purpose was---*

[A]: *Of course.*

[Q]: *--- was to get his hands---*

[A]: *On as, on as much as money he can.*

[Q]: *--- on the kickback money by an indirect route so that he wouldn't be exposed to RMS as to what he was up to.*

[A]: *Of course. Yes. Of course. Yeah.*

Mr Goldberg maintained that Mr Dubois owed him about \$680,000 in relation to the three cafes, claiming that this explained some of the money paid into the Wilkins Corp accounts. However, he was unable to provide any records of how the amount was calculated. He said that records had been created but he no longer had them.

As to whether Mr Dubois owed Mr Goldberg money in relation to the joint purchase of the cafes, Mr Dubois told the Commission that he remembered making payments to Mr Goldberg for the payment of the cafes. However, Mr Dubois seemed to think that this might have occurred earlier when several cheques were provided by him to Mr Goldberg through the MWK Developments bank accounts. Mr Dubois also told the Commission that he realised that the amount that Mr Goldberg had told him that he purchased the cafes for was “exaggerated by multiple, multiple times”. Regardless of Mr Goldberg’s evidence as to whether money was owed to him by Mr Dubois, Mr Goldberg conceded that he knew that the money coming through Wilkins Corp was “kickbacks” from the RMS projects and that he provided that money to Mr Dubois.

Mr Chahine told the Commission that after the dissolution of the MWK Developments payment system, Mr Dubois instructed him and Mr Hadid to pay the “kickbacks” to Mr Dubois through cash payments to Wilkins Corp. Mr Chahine told the Commission that Mr Goldberg’s role was “moving the funds to Alex [Dubois] ... so it’s not ... traceable.”

Mr Dubois accepted that Mr Goldberg set up Wilkins Corp for the purpose of funnelling payments from CBF Projects to him. Mr Dubois said that Mr Goldberg kept “a cut” of the funds.

The Commission is satisfied that Mr Goldberg used Wilkins Corp to filter payments from CBF Projects to Mr Dubois knowing that those payments were in return for Mr Dubois arranging for RMS contracts to be awarded to CBF Projects.

Ibrahim Transport

The Commission also explored whether Mr Goldberg used another company, Ibrahim Transport, to filter improper payments from Hassan Alameddine’s company, Areva Corp, to Mr Dubois.

Ibrahim Transport was owned by Mr Abraham. Mr Goldberg, however, was a signatory to an Ibrahim Transport Commonwealth Bank account (“the Ibrahim Transport Commonwealth Bank account”).

Mr Abraham told the Commission that the reason Mr Goldberg was made a cosignatory was that Mr Goldberg wanted somewhere to deposit a cheque and later withdraw the funds. Instead of making Mr Goldberg a signatory to his existing business bank account, he decided to open the Ibrahim Transport Commonwealth Bank account with Mr Goldberg as a signatory. Mr Abraham told the Commission that he did not receive any benefit for doing so. There is no evidence that

Mr Abraham was knowingly involved in any arrangement to use the Ibrahim Transport Commonwealth Bank account to filter improper payments from Areva Corp to Mr Dubois.

Between 14 January 2013 and 30 May 2013, Areva Corp drew 13 separate cheques totalling \$370,525 in favour of Ibrahim Transport. Those cheques were deposited into the Ibrahim Transport Commonwealth Bank account. Hassan Alameddine, the then director of Areva Corp, drew four cheques between 23 May 2012 and 18 March 2013 totalling \$102,400 in favour of Mr Goldberg. Mr Goldberg deposited those cheques into another of his Suncorp Bank accounts.

Hassan Alameddine told the Commission that the payments from Areva Corp were payments to Mr Goldberg in connection with Mr Goldberg’s investment in Hassan Alameddine’s boat trading business. Hassan Alameddine claimed Mr Goldberg initially invested “approximately over 150 ... 200,000”. He also was clear that the nature of the payment was an investment and not a loan. Later in his evidence he claimed the amount invested by Mr Goldberg “was roughly around 200,000, give or take a little bit”. The investment was not documented and Hassan Alameddine told the Commission the terms of the agreement were not defined. According to Hassan Alameddine, Mr Goldberg told him he “just didn’t want to have the money in his hands, so he doesn’t spend it. So he said to me ‘Look, basically whatever you give me, I’m fine with’”.

Hassan Alameddine’s evidence conflicts with Mr Goldberg’s evidence. Mr Goldberg told the Commission that the money paid into the Ibrahim Transport Commonwealth Bank account by Areva Corp and Hassan Alameddine was the repayment of a \$400,000 cash loan he had made to Hassan Alameddine for the purchase of boats. Mr Goldberg claimed the loan was made in early 2011. Mr Goldberg said he requested the cheques, which he thought came to about \$370,000, be paid into the Ibrahim Transport Commonwealth Bank account in order to hide the money from his wife because he had a “gambling habit”.

While Mr Goldberg told the Commission he believed that Hassan Alameddine repaid him about \$370,000 (which accords with the total of \$370,525 in Areva Corp cheques deposited into the Ibrahim Transport Commonwealth Bank account), the Commission notes that before he gave evidence at the public inquiry, Mr Goldberg had access to the Ibrahim Transport Commonwealth Bank account records. This access was provided through the Commission’s restricted website, which enables relevant parties to access certain material prior to giving evidence. Mr Goldberg told the Commission that he had looked at some of the documents

on the restricted website but denied he fabricated his evidence to match it up with the Ibrahim Transport Commonwealth Bank account records.

Mr Dubois told the Commission that he could not recall if Areva Corp was making cash payments into Ibrahim Transport. However, Mr Dubois did give evidence that during the 2013 period when he was receiving a large amount of cash payments from Mr Goldberg, this is consistent with the Ibrahim Transport Commonwealth Bank records which outline a series of cash withdrawals that emptied the \$370,525 from that account during that period, as well as Mr Goldberg's own evidence that Mr Dubois never knew or met Mr Abraham. The Commission notes evidence of improper payments continuing to be provided to Mr Dubois by Hassan Alameddine during this period. Nor did Mr Dubois cease arranging the awarding of RTA work to Areva Corp. Accordingly, an inference is available that Mr Dubois continued to receive Areva Corp money through cash payments.

Mr Abraham told the Commission that Mr Goldberg did not mention anything about a repayment of a loan he made to Hassan Alameddine during the period Mr Goldberg operated the Ibrahim Transport Commonwealth Bank account.

Mr Goldberg had access to the Commission's forensic banking charts outlining the relevant transactions of both Areva Corp and Ibrahim Transport before he gave his evidence. Given Mr Goldberg misled the Commission in his compulsory examination evidence, the Commission is not persuaded that it should attach any weight to Mr Goldberg's evidence in the absence of adequate other support. Accordingly, the Commission rejects Mr Goldberg's evidence concerning the loan provided to Hassan Alameddine.

The Commission also notes the inherent inconsistency in Hassan Alameddine's evidence concerning the return of investment of the boat business through Areva Corp. Hassan Alameddine initially gave evidence that the boat business was operated in his own name and not through Areva Corp, and that the only businesses operated through Areva Corp were his energy advisory business and his contracting work for the RMS. Notwithstanding Mr Goldberg's explanation that he did not want his wife to find out about the money, it is inherently unlikely that Hassan Alameddine would pay back this investment to Mr Goldberg through a different and non-related legal entity of Areva Corp. This is especially so as it went into yet another non-related legal entity, Ibrahim Transport, which was an entity that was under the control of Mr Abraham in circumstances where Mr Goldberg could merely have opened up a fresh bank account that his then wife did not know about.

The Commission notes evidence of the pre-existing association between Mr Goldberg and Hassan Alameddine. Both went to the same high school although in different grades and Hassan Alameddine was a friend of Mr Goldberg's brother, Mr Taha. Both knew each other outside of high school. Notwithstanding that Hassan Alameddine denied he was protecting Mr Goldberg in claiming the payments from Areva Corp were the repayment of an investment, the Commission notes that Mr Goldberg did not make full and frank admissions in terms of his involvement in filtering improper payments to Mr Dubois. It is likely there is a reluctance on Hassan Alameddine's part in providing frank evidence in relation to these payments in circumstances where Mr Goldberg has not made admissions against his interest in relation to his involvement in filtering improper payments to Mr Dubois.

The Commission also notes that the Areva Corp payment to Ibrahim Transport should not be considered in a vacuum, but rather viewed in the context of Mr Goldberg's conduct during the same period. The similar conduct concerning Mr Goldberg's use of Wilkins Corp bank accounts to filter illicit payments from CBF Projects to Mr Dubois is highly probative. It also informs the Commission in providing a cogent explanation as to why such significant payments were made from Areva Corp to Ibrahim Transport via Mr Goldberg.

Given the inherent inconsistencies of Mr Goldberg and Hassan Alameddine's evidence as to the nature of the payment, whether it was a loan or investment and the amount of money given to Hassan Alameddine, as well as the above propensity reasoning with respect of Mr Goldberg's conduct with Wilkins Corp, the Commission is satisfied that for a period after MWK Developments ceased operations, Ibrahim Transport was used by Mr Goldberg as a vehicle into which illicit payments could be paid from Areva Corp, and that Mr Goldberg then forwarded those payments to Mr Dubois.

Mr Goldberg and MWK Developments

As noted above, one of Mr Goldberg's brothers is Mr Taha who, as discussed in chapter 2, was involved with MWK Developments. Both Mr Taha, using his legal name Zac Malas, and Mr Dubois, using his birth name Hassan Habbouche, were signatories to MWK Developments bank accounts which were used by Mr Dubois to receive illicit payments from a number of contractors.

Mr Goldberg gave evidence that he discovered how Mr Dubois was using MWK Developments when Mr Dubois gave him several cheques for payments in relation to the café businesses.

The first MWK Developments cheque provided by Mr Dubois was dated 22 October 2012 and was for \$42,800. Two cheques from MWK Developments, each dated 31 October 2012 and each for \$45,000, were also provided by Mr Dubois in Mr Goldberg's favour. A cheque dated 4 November 2012 for \$45,000 and another cheque dated 5 November 2012 for \$45,000, were also drawn by Mr Dubois on the MWK Developments account in Mr Goldberg's favour.

Mr Dubois told the Commission that the payments to Mr Goldberg from MWK Developments could have been for tax payments, payment for the café businesses and services that Mr Goldberg rendered, as well as for services in "liquidating" other companies with which Mr Dubois was associated.

Mr Goldberg told the Commission that the day after he received the 31 October 2012 cheques, he confronted Mr Dubois about the purpose of MWK Developments. Mr Goldberg recalled that "he [Mr Dubois] told me it was kickbacks getting paid to my brother's account for his, I guess for himself, I wasn't happy with that ... That's when I put a full stop to it". Mr Goldberg further elaborated as to what he told Mr Dubois:

There's no more money to go in there. Like, the exact words I said, "It's not going to happen anymore." You know, probably in an aggressive way but it wasn't going to happen anymore, not going to keep using my brother. Like, to me, that was, he was using my brother at the time.

This account differs somewhat from that of Mr Dubois, Mr Hadid and Mr Chahine. They recalled a meeting at Mr Dubois' house with Mr Goldberg and Hassan Alameddine. Each recalled that during the meeting, Mr Goldberg expressed concern that illicit payments were being paid into his brother's company bank accounts and that the payments exposed both Mr Dubois and his brother. In any event, there is common ground that Mr Goldberg was aware that MWK Developments was being used to filter improper payments to Mr Dubois.

The fallout between Mr Goldberg and Mr Dubois

Mr Goldberg told the Commission that he fell out with Mr Dubois after he failed to uphold a promise to award MJ Wilsons a lucrative RMS state-wide lawn mowing contract across different sites. He said a dispute also arose in relation to the cafés which led to him no longer associating with Mr Dubois.

For Mr Dubois' part, he stated that disagreement between him and Mr Goldberg arose because he was not seeing an adequate share of profits from the three cafés he

owned with Mr Goldberg. He no longer associated with Mr Goldberg after April 2014.

Corrupt conduct

Mr Dubois

Between February 2013 and April 2014, Mr Dubois misused his public official position with the RMS to arrange for the awarding of \$1,089,935 of RMS work to MJ Wilsons, a company controlled by Mr Goldberg, in return for cash payments of approximately \$200,000 from Mr Goldberg.

This conduct on the part of Mr Dubois was corrupt conduct for the purpose of s 8 of the ICAC Act as it adversely affected the honest and impartial exercise of his official functions (s 8(1)(a)), constituted the dishonest and partial exercise of his official functions (s 8(1)(b)) and involved a breach of public trust (s 8(1)(c)).

Section 249B(1) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2 of this report.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Dubois committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to a company controlled by Mr Goldberg, in relation to the affairs or business of the RMS. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Dubois had committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to a company controlled by Mr Goldberg, in relation to the affairs or business of the RMS. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is further satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act, that if the facts were to be proved on admissible evidence to the requisite standard of proof of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could find that

Mr Dubois committed disciplinary offences, being substantial breaches of the RMS code of conduct giving rise to dismissal, as he was specifically required to refuse gifts, benefits that might influence, or have the potential to influence, procurement decisions. Mr Dubois' conduct therefore comes within s 9(1)(b) and s 9(1)(c) of the ICAC Act.

The Commission is also satisfied that, if the facts found were to be proved on admissible evidence to the requisite standard of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Dubois had engaged in conduct that constitutes disciplinary offences of breaching the RMS code of conduct in relation to accepting gifts or benefits and that such conduct is sufficiently serious to constitute grounds for his dismissal. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because it involved significant planning and the receipt of significant amounts of money over a period of more than a year.

Mr Goldberg

Between 22 February 2013 and 29 July 2013, Mr Goldberg made cash payments of approximately \$200,000 to Mr Dubois as a reward for Mr Dubois misusing his public official position with the RMS to arrange for the awarding of \$1,089,935 worth of RMS work to MJ Wilsons, a company under Mr Goldberg's control.

This conduct on the part of Mr Goldberg was corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act as it adversely affected, either directly or indirectly, the honest and impartial exercise of Mr Dubois' official functions.

Section 249B(2) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Goldberg committed offences under s 249B(2) of the Crimes Act of giving corrupt benefits. His conduct therefore comes within s 9(1)(a) if the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard

of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Goldberg had committed offences under s 249B(2) of the Crimes Act. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because it involved significant planning and the provision of significant improper payments.

Section 74A(2) statements

In relation to the conduct dealt with in this chapter, the Commission considers that Mr Dubois, Mr Goldberg, Hassan Alameddine, Mr Chahine and Mr Hadid are affected persons.

Alexandre Dubois

Mr Dubois' evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RMS records, cheque payments and financial records of MWK Developments, MJ Wilsons, Wilkins Corp and emails, electronic documentation relating to MJ Wilsons recovered from Mr Dubois' hard drives seized from his house during the execution of the search warrant, and the evidence of Mr Abraham, Mr Chahine, Mr Hadid and Hassan Alameddine.

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 Dubois for:

- an offence under s 249B(1)(a) of the Crimes Act of, between January 2013 and April 2014, corruptly soliciting and receiving benefits, on account of using his position in the RMS to award contracts to MJ Wilsons
- offences under s249C(1) of the Crimes Act of, between January 2013 and March 2014, using documents, namely, quotations and invoices on behalf of MJ Wilsons, which were false or misleading in a material respect with the intent to defraud the RMS
- an offence under s249C(1) of the Crimes Act, of using a document, namely, a letter dated 7 April 2014 purportedly from Mr Abraham, which was false or misleading in a material respect with the intent to defraud the RMS

- an offence under s 192E(1)(b) of the Crimes Act of, between January 2013 and April 2014, conspiring with, or aiding and abetting, Mr Goldberg in the commission of deception to dishonestly obtain a financial advantage through the awarding of contracts to MJ Wilsons.

As Mr Dubois' employment with the RMS was terminated, the question of whether consideration should be given to the taking of action against him for a disciplinary offence, or the taking of action with a view to his dismissal, does not arise.

John Goldberg

Mr Goldberg's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RMS records, cheque payments and financial records of MWK Developments, MJ Wilsons, Wilkins Corp, Areva Corp and Ibrahim Transport and emails, electronic documentation relating to MJ Wilsons recovered from Mr Dubois' hard drives seized from his house during the execution of the search warrant, and the evidence of Mr Abraham, Mr Chahine, Mr Hadid and Mr Dubois.

The Commission is also satisfied that Messrs Abraham, Chahine, Hadid and Dubois could give evidence in criminal proceedings against Mr Goldberg.

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 Goldberg for:

- offences under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between January 2013 and April 2014, corruptly giving benefits to Mr Dubois on account of Mr Dubois showing favour to Mr Goldberg and MJ Wilsons in relation to the affairs or business of the RMS, or the receipt of or expectation of which would tend to influence Mr Dubois to show favour to Mr Goldberg and MJ Wilsons in relation to the affairs or business of the RMS
- an offence under s 192E(1)(b) of the Crimes Act of, between January 2013 and April 2014, conspiring with, or aiding and abetting, Mr Dubois in the commission of deception to dishonestly obtain a financial advantage through the awarding of contracts to MJ Wilsons
- an offence under s 193B(1)(a) of the Crimes Act of, between December 2012 and September 2013, conspiring with, or aiding and abetting

Mr Hadid and Mr Chahine in knowingly dealing with proceeds of crime, namely, that Mr Goldberg received illicit payments into the Wilkins Corp bank accounts from CBF Projects and withdrew those proceeds and provided them to Mr Dubois

- an offence under s 193B(1)(a) of the Crimes Act of, between January 2013 and May 2013, conspiring with, or aiding and abetting, Hassan Alameddine in knowingly dealing with proceeds of crime, namely, that Mr Goldberg received illicit payments into the Ibrahim Transport bank accounts from Hassan Alameddine's Areva Corp bank account and withdrew those proceeds and provided them to Mr Dubois
- two offences under s 87 of the ICAC Act for giving false and misleading evidence when he said:
 - during his compulsory examination that he had no knowledge that Mr Dubois awarded RMS contracts in return for "kickbacks".
 - during his compulsory examination that the first time he heard Mr Dubois was giving RMS contracts for "kickbacks" was when he was giving evidence during that hearing.

Hassan Alameddine

Hassan Alameddine's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RMS records, cheque payments and financial records of MWK Developments, Areva Corp and Ibrahim Transport and the evidence of Mr Dubois, Mr Abraham, Mr Hadid and Mr Chahine.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Hassan Alameddine for an offence under s 193B(1)(a) of the Crimes Act of, between January 2013 and May 2013, conspiring with, or aiding and abetting Mr Goldberg, in knowingly dealing with proceeds of crime, namely, that Mr Goldberg received illicit payments into the Ibrahim Transport bank accounts from Hassan Alameddine's Areva Corp bank account for the purpose of those proceeds being provided by Mr Goldberg to Mr Dubois.

Chahid Chahine

Mr Chahine's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation

to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RMS records, cheque payments and financial records of MWK Developments and Wilkins Corp, and the evidence of Mr Dubois and Mr Hadid.

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 Chahine for an offence under s 193B(1)(a) of the Crimes Act of, between December 2012 and September 2013, conspiring with, or aiding and abetting, Mr Goldberg and Mr Hadid in knowingly dealing with proceeds of crime, namely, that Mr Goldberg received illicit payments into the Wilkins Corp bank accounts from the CBF Projects account, an account controlled by Mr Chahine and Mr Hadid, for the purpose of those proceeds being provided by Mr Goldberg to Mr Dubois.

Barrak Hadid

Mr Hadid's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RMS records, cheque payments and financial records of MWK Developments and Wilkins Corp, and the evidence of Mr Dubois and Mr Chahine.

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 Hadid for an offence under s 193B(1)(a) of the Crimes Act of, between December 2012 and September 2013, conspiring with, or aiding and abetting, Mr Goldberg and Mr Chahine in knowingly dealing with proceeds of crime, namely, that Mr Goldberg received illicit payments into the Wilkins Corp bank accounts from the CBF Projects account, an account controlled by Mr Chahine and Mr Hadid, for the purpose of those proceeds being provided by Mr Goldberg to Mr Dubois.

Chapter 9: Sydney Metro Building Services Pty Ltd

Between 7 June 2012 and 25 July 2013, Mr Dubois arranged the awarding of five RMS contracts to Sydney Metro Building Services Pty Ltd (“Sydney Metro”), for which that company was paid \$472,582. The company was owned by Nabil Habbouche, who is Mr Dubois’ cousin. This chapter examines whether Mr Dubois sought or received any benefits from Mr Habbouche in return for the awarding of any of this work to Sydney Metro.

Mr Habbouche

In about 2000, Mr Habbouche attained a Bachelor of Building in Construction Management at the University of Technology Sydney.

Between 2007 and 2011, Mr Habbouche worked overseas for engineering firms in the UAE. In 2011, he returned to Sydney and commenced work with GEC Consulting Pty Ltd (GEC), a firm operated by Ghazi Sangari and Ahmed Wehbe, the latter being Mr Habbouche’s cousin. Mr Habbouche was listed as GEC’s project manager in relation to the Mount White stage two civil works project which was awarded to GEC on 21 November 2011. GEC’s involvement in relation to this project is dealt with in chapter 10 of this report.

On 17 November 2011, Sydney Metro was registered as a company. Mr Habbouche was its sole director and shareholder.

Sydney Metro’s RMS work

Mr Dubois told the Commission that, sometime after Mr Habbouche returned from the UAE, he asked Mr Dubois about obtaining work. From about mid-2012, he began organising RMS work for Sydney Metro. Mr Dubois agreed that he awarded \$752,430.03 worth of RMS work to Sydney Metro. Sydney Metro was remunerated for the following civil construction contracts:

- Boggabilla HVIS construction (rectification work)
- Boggabilla survey and line marking STC site
- Bulli P2P site construction (relating to installation of TIRTLs)
- Bulli P2P retaining wall
- Condobolin (road site upgrade).

Mr Dubois told the Commission that there were some complaints in relation to some “finishings of the work at Bulli and Condobolin ... Craig [Steyn] and I ... weren’t too happy with the drainage solution and with the finishing of the concrete there”. This evidence also accords with an email from RMS staff, dated 14 May 2013, which detailed several concerns relating to the roadworks undertaken at Condobolin.

Mr Dubois told the Commission that, due to some of the issues in relation to Sydney Metro’s work quality, his concern about the close family link between him and Mr Habbouche and the potential risk of that being discovered, as well as Mr Habbouche’s own desire to work overseas again, he decided to no longer use Mr Habbouche or Sydney Metro as an RMS contractor.

Did Mr Dubois receive any benefits?

Mr Dubois told the Commission that Mr Habbouche was related to Mr Najjarin, a contractor to whom Mr Dubois awarded work. Mr Habbouche also knew other contractors, such as Hassan Alameddine, Mr Chahine and Mr Hadid. According to Mr Dubois, he thought Mr Habbouche understood the latter three contractors were making payments to him.

Mr Dubois told the Commission that, in return for arranging the awarding of RMS contracts to Sydney Metro, he received a cash payment of about \$80,000 or \$90,000 from Mr Habbouche. He recalled he received

the payment in “one go” and that the payment was made after Mr Habbouche had completed multiple RMS projects.

The Commission notes that records from the Commonwealth Bank account of Sydney Metro disclose a series of large-scale withdrawals soon after three payments were made from the RMS. These cash withdrawals amounts were approximate to the payment Mr Dubois believed he received from Mr Habbouche.

Mr Habbouche did not give evidence to the Commission and was not legally represented during the public inquiry.

Mr Habbouche departed Australia on 15 April 2017 and travelled to the UAE. This was before the commencement of the Commission’s investigation.

On 31 August 2021, the Commission made numerous attempts to call Mr Habbouche’s overseas work telephone number. The calls made to the telephone number were not answered. On 3 September 2021, the Commission sent an email to the email address that Mr Habbouche was known to operate. The email advised him of the Commission’s investigation and the public inquiry. The email invited him to assist the Commission by voluntarily participating as a witness in the public inquiry. No response was received from Mr Habbouche.

In these circumstances, Counsel Assisting submitted that, while there is evidence of Mr Dubois that he received payments from Mr Habbouche, the Commission “needs to exercise caution in making adverse findings in relation to Mr Habbouche”. The Commission considers it would not be appropriate to make findings adverse to Mr Habbouche when he did not give evidence and was not legally represented.

Counsel Assisting did not make submissions that corrupt conduct findings should be made against Mr Dubois in relation to his dealings with Mr Habbouche or Sydney Metro. Accordingly, Mr Dubois was not put on notice

that any such finding might be made by the Commission and did not have an opportunity to make submissions on that point. In these circumstances, the Commission has not made any corrupt conduct finding against Mr Dubois with respect to his dealings with Mr Habbouche or Sydney Metro.

Section 74A(2) statements

The Commission is satisfied that, in respect of the matters covered in this chapter, Mr Dubois and Mr Habbouche are affected persons.

Alexandre Dubois

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 Dubois for any offence. There is insufficient admissible evidence that Mr Dubois committed a criminal offence.

As Mr Dubois’ employment with the RMS was terminated, the question of whether consideration should be given to the taking of action against him for a disciplinary offence, or the taking of action with a view to his dismissal, does not arise.

Nabil Habbouche

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 Habbouche for any offence. Counsel Assisting has not submitted that Mr Habbouche’s conduct could constitute a criminal offence.

Chapter 10: GEC Consulting

Between 13 January 2011 and 25 November 2014, Mr Dubois awarded 11 RTA/RMS contracts to GEC Consulting Pty Ltd (“GEC”), a company controlled by Mr Sangari, for which GEC was paid \$472,582. This chapter examines whether Mr Dubois or Mr Steyn sought or received any benefits from Mr Sangari in return for the awarding of any of this work to GEC.

How Mr Sangari and Mr Dubois met

Mr Sangari was a civil engineer, having attained his degree in 2000. He also had a builders licence. He told the Commission he performed engineering consulting work and the occasional construction work. This work was done under GEC (Australia) Consulting Pty Ltd. That company was a predecessor to GEC.

GEC was registered on 18 December 2009. Mr Sangari was director and sole shareholder. Both Mr Sangari and Mr Dubois gave evidence that Mr Wehbe was a partner in GEC. Mr Sangari also told the Commission that the profits were divided equally between him and Mr Wehbe. Mr Wehbe was not called to give evidence.

Mr Dubois told the Commission he was aware that GEC’s business involved providing designs, plans and certifications with respect to residential properties.

Mr Dubois told the Commission that he first knew of Mr Sangari through his cousin, Mr Habbouche, who commenced working at GEC. It was through Mr Habbouche that he learnt that Mr Wehbe, Mr Habbouche’s cousin, also worked at GEC.

Mr Sangari recalled meeting Mr Dubois at the GEC office. Neither he nor Mr Dubois could recall when the meeting occurred. However, it is likely that it occurred before 13 January 2011, when a joint site inspection took place in relation to the first RTA project awarded to GEC.

How GEC came to be awarded work

The first four contracts awarded by Mr Dubois to GEC were in relation to design work. The work was the:

- Kankool facilities upgrade for which GEC was paid \$23,200, including GST
- Galston Gorge inspection bay design for which GEC was paid \$26,400, including GST
- Mount White and Kankool entry lane widening design for which GEC was paid \$49,500, including GST
- Twelve Mile Creek drainage design for which GEC was paid \$12,100, including GST.

The Mount White stage two civil works project (“the Mount White civil works project”) was the first civil works project involving work other than design which GEC undertook on behalf of the RTA.

On 10 November 2011, Mr Sangari emailed Mr Dubois. The email was titled “Mt Widening lane [sic]”. Attached to the email was a fee proposal in relation to the Mount White civil works project, which totalled \$144,000. There was no line breakdown. Among the items listed in the scope of works was asphaltting and marking of the new lane. This was not work within the expertise of GEC or work that was normally undertaken by that company.

On 21 November 2011, the RTA Contracts and Finance Section emailed Mr Dubois attaching the purchase order with respect to the Mount White civil works project. The purchase order was in GEC’s favour approving RTA expenditure for \$144,000.

In the following exchange Mr Dubois’ told the Commission why he awarded the project to GEC:

[Counsel Assisting]: Now, this stands in contrast to the type of work that GEC typically did for the RMS, doesn't it?

[Mr Dubois]: Design work, yes.

[Q]: They were engineers. They weren't a company that actually performed any excavation on roadworks themselves?

[A]: No, they were just a contractor (not transcribable) and manage it, yes.

[Q]: So does this now assist your recollection, that as at November 2011 that you were, in effect, widening the range of jobs that you were having GEC quote for?

[A]: Yes.

[Q]: And do you accept that the reason for, in effect, getting GEC to now take on contract for physical works, rather than drawings and plans, was that you wanted to be able to use them as a means of getting kickbacks on a larger scale?

[A]: Yes.

The evidence obtained by the Commission shows that, on 18 November 2011, Mr Sangari sought a quote from OzPave Pty Ltd to undertake asphaltting work for the project. This work was ultimately done by OzPave for \$50,600. Mr Sangari explained to the Commission that, given the bulk of the work to be undertaken involved roadworks, it was necessary for

work "to be subcontracted out to a road contractor". He said, however, that there were other aspects of the work beyond that undertaken by OzPave. This other work included employing a level 2 electrician, hiring a crane, removing and disconnecting and reconnecting a street light pole employing traffic control operators and landscaping.

Mr Dubois told the Commission that GEC was used to manage excavations and roadworks and agreed it did not actually perform that work itself.

Separately, Counsel Assisting submitted that "the evidence ... suggests that contracts issued to GEC may not have been completed in their entirety. Specifically, drawings that GEC was said to have completed for Urunga, Mount Ousley and Bathurst were unable to be located in RMS records". However, in reply submissions made on behalf of Mr Sangari, Counsel Assisting withdrew that submission, accepting that given the passing of time the possibility that drawings were completed and have been lost could not be precluded.

The Commission accepts that, given the age of the matters and the incomplete RMS records in relation to these projects, there is no cogent evidence to establish that GEC did not complete or substantially perform the above-mentioned contracts. Further, there is no evidence to rebut Mr Sangari's evidence that midway through a number of the design work contracts in relation to Bathurst, Urunga and Mount Ousley, the RMS cancelled the required design works in circumstances where GEC had already provided substantial work on the design projects. Mr Sangari denied that he was told by Mr Steyn or Mr Dubois that he could overcharge in relation to the Mount Ousley and Urunga works.

Benefits provided by Mr Sangari to Mr Dubois

Mr Sangari told the Commission he made two cash payments of \$5,000 each to Mr Dubois in relation to the awarding of RTA/RMS work to GEC by Mr Dubois. He said these payments were made at the request of Mr Dubois. This loosely accords with what Mr Dubois told the Commission, in that he received two or possibly three cash payments from Mr Sangari. Mr Dubois could not recall whether these payments were made at his own or Mr Sangari's suggestion:

My recollection is that I don't recall whether I asked him first or he, he, he proposed it to me, but it could have been a mutual thing. I could have maybe initiated it, I just don't remember.

Mr Sangari said the first \$5,000 cash payment was "likely" made soon after the completion of the Mount White civil works project and after GEC had received payment from the RTA. According to Mr Sangari, Mr Dubois made a request that he "look after him" and that Mr Dubois may have given him his address "to go past his house". Mr Sangari told the Commission that he took Mr Dubois' request to mean "he was asking me for money" and decided to give him \$5,000. He told the Commission that he delivered the \$5,000 to Mr Dubois on the way home and that he most likely "dropped it [the \$5,000] off" at Mr Dubois' house and that Mr Dubois pocketed the money without counting it. The Commission finds that the payment likely occurred around November or December 2011, following GEC issuing its invoice to the RMS on 29 November 2011 for work on the Mount White civil works project.

Both Mr Sangari and Mr Dubois agreed that a second \$5,000 cash payment was made to Mr Dubois. However, neither Mr Dubois nor Mr Sangari could provide the timing of when that payment was made.

Considering Mr Sangari's positive evidence and Mr Dubois' inability to recall while conceding the possibility, the Commission is satisfied that Mr Sangari made two cash payments of \$5,000 each to Mr Dubois. The Commission is further satisfied that these payments were made following Mr Dubois' request.

One issue to be determined is whether these payments were made by Mr Sangari with the intention that they be a reward to Mr Dubois for awarding work to GEC or an inducement to award further work to GEC.

Mr Sangari gave the following evidence:

[Chief Commissioner]: Did it occasion you any cause for concern or did it trouble you that he requested money be paid

to him, given that you were, your company was in a contractual relationship with RMS?

[Mr Sangari]:

Yes, sir

[Q]:

Sorry, it did occasion you concern, or not?

[A]:

Yes, it, it did sir.

[Q]:

And what was your concern?

[A]:

I, to, to be honest, sir, I, I, it was something that I didn't want to do. I didn't – I mean, I did it, that was a mistake I did it, and I decided shortly after not to continue.

[Q]:

So did you consider on the outset that his receipt of cash from a contractor was improper conduct on his part?

[A]:

I believe so.

[Q]:

And did you understand it to be that he was taking advantage of his power to award work to contractors in being able to make requests for personal benefits?

[A]:

Yes, sir.

[Q]:

And did you at any stage query it with him and perhaps point out to him that this request for money was improper?

[A]:

I think later on, sir, I started to avoid answering his calls. It was just---

[Q]:

Started to avoid what?

[A]:

Avoid dealing, like, trying to avoid dealing with him.

[Q]:

Tried to avoid working in with him?

[A]:

That's right, yes.

Counsel Assisting contended that the Commission should find that Mr Sangari paid "kickbacks" to Mr Dubois in order for GEC to receive contracts from the RMS. Submissions on behalf of Mr Sangari disputed that the evidence supported such a finding. Counsel Assisting submitted in reply that Mr Sangari "came fairly close to

making an admission, even if unconsciously” and while he “didn’t make the initial \$5,000 payment with a view to getting more work continuously ... he [Mr Sangari] didn’t rule out that it was part of his thinking that more work might come his way if he paid the money. Or, conversely, that work might be withdrawn or reduced if he didn’t pay the money”. Counsel Assisting relied on the following exchange to support this submission:

[Counsel Assisting]: ...Did you believe that in return for paying Mr Dubois \$5,000 in cash that there would be some benefit that would come to you?

[Mr Sangari]: I, I don’t think that was the intention from my end.

[Q]: Well, why were you paying him the money?

[A]: It was a silly mistake.

[Q]: Well, that doesn’t explain why you did it. It’s a lot of money, you agree?

[A]: Yes.

[Q]: And---?

[A]: But there was never intention, I think, in my mind that we just get more work continuously out of it [from the payment of \$5,000]. I just think there was just a bit of pressure and I just gave it to him.

[Q]: Well, did Mr Dubois ever say anything to you along the lines of offering an assurance that you would receive more work if you went along with his request?

[A]: I’m not sure if we had those discussions. I don’t recall that.

Counsel Assisting contended that even if “Mr Sangari may not have ‘joined all the dots’, he reached a state of satisfaction that in paying the two \$5,000 sums to Mr Dubois, he was both rewarding Mr Dubois for past contracts and seeking to maintain the relationship so that he might obtain future contracts”.

Counsel for Mr Sangari submitted that Counsel Assisting’s “concession” that Mr Sangari “had not joined the dots” and the above exchange defeats any suggestion that Mr Sangari made the two payments with the intention of inducing Mr Dubois to show favour to GEC in the

awarding of RMS contracts. Moreover, it was submitted that “reasonable satisfaction”, as outlined in *Briginshaw v Briginshaw*, could not be based on “indefinite testimony, inexact proofs, or indirect inferences”. It was further submitted on behalf of Mr Sangari that he was not challenged as to the truthfulness of his evidence or whether his attempts to recall the evidence were genuine. Accordingly, it was argued that the evidence does not support a conclusion on the *Briginshaw* approach to proof or otherwise, that Mr Sangari paid the money with the intention of inducing further work to be awarded to GEC.

The Commission accepts that the evidence is not clear in relation to Mr Sangari’s state of mind concerning his intention in making the two cash payments to Mr Dubois. While it may be speculated as to the reasons why Mr Sangari made the two payments, there is insufficient evidence to establish a dishonest or deceptive intent in Mr Sangari to obtain a benefit in return and there is no evidence that payments were pre-planned on Mr Sangari’s part. The evidence lacks the necessary cogency in accordance with the *Briginshaw* approach to determine if Mr Sangari engaged in serious corrupt conduct in that he knowingly intended to make payments to Mr Dubois as a reward for awarding RTA/RMS contracts. The Commission is not assisted by Mr Dubois’ evidence of his interactions with Mr Sangari as that narrow evidence only informs the Commission of *his* state of mind and does not assist in establishing Mr Sangari’s state of mind.

In circumstances where it was not put to Mr Sangari that he was being untruthful or that his attempts to recall the evidence were not genuine, the Commission declines to make a finding of serious corrupt conduct with respect to him.

In relation to Mr Dubois, the Commission notes the admissions against self-interest he made during the public inquiry that the purpose of the payments was to receive a benefit for himself. Notwithstanding the admissions made by Mr Dubois, the Commission declines exercising its discretion in not make a finding of serious corrupt conduct against him. Mr Dubois’ conduct of soliciting a payment from Mr Sangari was not an isolated impropriety but, rather, occurred on two separate occasions where Mr Dubois extracted not insubstantial sums of cash from Mr Sangari. Of note the requests for payment were instigated by Mr Dubois, not Mr Sangari. These solicitations by Mr Dubois amounted to material breaches of the RTA/RMS codes of conduct as he was specifically prohibited from accepting a gift or benefit that was intended to or likely cause him to act in a partial manner.

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect of prosecution of Mr Dubois for offences under s 249B(1) of the Crimes Act concerning the

two payments of \$5,000. The Commission notes that admissions made by Mr Dubois were made under s 38 of the ICAC Act and cannot be used against him in criminal proceedings. This significantly weakens any prospective prosecution against Mr Dubois, as only the potential evidence that could be used against Mr Dubois is Mr Sangari's oral evidence which recalls matters that occurred over 12 years ago. Noting the higher standard of proof required in a criminal prosecution, the Commission considers that the evidence is such that it is highly unlikely a prosecution would be commenced against Mr Dubois.

There was also evidence that GEC completed some work with respect to the residence of Mr Dubois' mother.

The Commission obtained a copy of survey plans and a sketch relating to that residence. The survey plans, dated 28 June 2012, were for the residence and the sketch was a plan for a granny flat at the back of the residence. Mr Sangari told the Commission that Mr Dubois provided the survey plans for the purpose of drafting plans for a granny flat and that Mr Dubois asked him to prepare the sketch, which he did.

Counsel Assisting submitted that the sketch drafted by Mr Sangari represented Mr Dubois "seeking a favour from a contractor without any disclosure of that relationship or arrangement to the RTA/RMS". However, counsel for Mr Sangari contended that it was not open to the Commission to make any findings adverse to Mr Sangari given it was not put to Mr Sangari during the public inquiry that he engaged in wrongful conduct in connection with the sketch GEC drafted on behalf of Mr Dubois. This submission was grounded on the rule in *Browne v Dunn (1893) 6 R 67* which can be summarised as being that where a person intends to contradict testimony given by a witness, he or she should give the witness an opportunity to comment by putting the substance of that contradictory version to the witness in cross-examination.

The Commission notes the *Standard Directions for Public Inquiries* for Operation Paragon, which detail the circumstances where a matter ought to be put to a witness. The matter of whether Mr Sangari drafted the sketch for the purpose of improperly benefitting Mr Dubois is not an unimportant detail. While it is accepted that the rule need not strictly be applied in the conduct of a Commission public inquiry, it is also recognised that a sensible application of the rule can be of significant value to a factfinding tribunal. In the circumstances, the Commission declines to make a finding that Mr Sangari prepared and provided the sketch of the granny flat to Mr Dubois as an improper benefit in circumstances where it was not put to him in those terms or in circumstances where the motive for Mr Sangari's response could be inferred from existing evidence. Counsel Assisting in submissions did not contend that any such finding should be made on this basis.

Mr Sangari and Mr Steyn

It was common ground during the public inquiry that GEC performed design works in relation to Mr Steyn's residence. However, Mr Dubois, Mr Steyn and Mr Sangari provided conflicting accounts concerning the circumstances of how GEC came to be engaged. Also at issue was whether any work done by GEC was in return for or in expectation of it being awarded RTA work.

Mr Dubois told the Commission that after GEC performed some work in relation to the Kankool facilities upgrade, he "may have" suggested Mr Steyn talk to GEC in relation to designs Mr Steyn needed for construction at his residence. Mr Dubois believed he attended a meeting at GEC's offices with Mr Steyn, however, when pressed for specifics he was not clear if Mr Sangari or Mr Wehbe or both were present. Mr Dubois told the Commission the purpose of the meeting was to talk through what Mr Steyn was trying to achieve with his property and that he understood GEC was going to design and plan Mr Steyn's new house.

Mr Steyn's evidence on how he came to engage GEC in relation to his house differs from Mr Dubois' account. While Mr Steyn told the Commission that Mr Dubois recommended GEC, Mr Steyn believed that Mr Dubois told him his cousin, who was an architect, would be able to assist." Mr Steyn understood the cousin to be Mr Wehbe. Mr Steyn said that his first meeting at GEC's offices was with Mr Wehbe.

Mr Sangari told the Commission that, given the relevant events occurred in 2011 or 2012, he could not recall whether he was first contacted by Mr Dubois or Mr Steyn with respect to Mr Steyn's new house. He told the Commission that the first meeting would have likely occurred at GEC's office but given Mr Steyn's house design plans were not his direct area of expertise he "would have [had] to arrange someone in the office [for] him [Mr Steyn] to go through ... the building design aspect". However, later in his evidence, Mr Sangari said that he "probably" started the discussion with Mr Steyn "to the effect that he needed plans done, or, you know assistance in the approval".

Mr Steyn gave evidence to the effect that throughout the process he generally spoke with Mr Wehbe as he was an architect and he thought Mr Wehbe was overseeing the design for the new house. Mr Steyn conceded he had some communications with Mr Sangari as he was the engineer responsible for the design of the hydraulics and concrete piers.

Although cognisant of potential motivations for Mr Sangari to deny or minimise his involvement, the Commission notes that it was not put to Mr Sangari

that he was lying or structuring his evidence in a way to minimise or avoid being implicated in corrupt conduct with respect to the work on Mr Steyn's house. The Commission also notes that Mr Wehbe was not called to give evidence.

First set of GEC designs

On 24 May 2012, GEC drafted plans for Mr Steyn's pool and outhouse. The architectural plans were drawn and approved by Mr Wehbe. The storm water and erosion plans were designed by Mr Wehbe but approved by Mr Sangari. On the same day, GEC drafted an architectural design of Mr Steyn's house, incorporating a driveway.

On 1 August 2012, Mr Steyn emailed Mr Sangari with Mr Dubois copied in. In that email he sought advice in relation to a query from the council concerning a footpath crossing application he submitted for his property. Mr Steyn told the Commission that Mr Dubois told him to send it to Mr Sangari. Mr Sangari told the Commission that he could not recall what happened with respect to that query.

On 8 September 2012, GEC prepared a "raft ground slab" plan as well as a plan titled "pool details" outlining the structure of the proposed pool to be built on Mr Steyn's property. These plans were checked and approved by Mr Sangari. Mr Steyn told the Commission that he thought that GEC "might have been" doing a favour for Mr Dubois in return for getting work, however, Mr Steyn clarified that "he would not be able answer" why GEC was doing work on his house for free.

On 11 September 2012, Mr Steyn emailed both Mr Sangari and Mr Wehbe with Mr Dubois also copied into the email. Mr Steyn wrote, "Thank you for your assistance with the plans for the outbuilding; just a question will I get an updated drawing for [the] actual construction?". Mr Steyn also listed seven other queries relating to the plans for his property.

Mr Steyn told the Commission that Mr Dubois took an interest in his house as "building" was a passion of Mr Dubois'. Mr Steyn gave this as a reason why Mr Dubois was involved in the design of his house. Mr Sangari could not provide a reason why Mr Steyn would copy Mr Dubois into the email.

On 12 September 2012, the certifying authority approved a certification letter Mr Sangari wrote. The letter from Mr Sangari certified the proposed building development for the outhouse and pool design accorded with certain building codes. Mr Sangari told the Commission that he also prepared the BASIX certificate required for lodgement in relation to the development application at Mr Steyn's property. A BASIX certificate means a residential building has passed relevant environmental targets.

On 17 October 2012, Mr Wehbe emailed Mr Steyn. Attached to the email were revised plans for Mr Steyn's property.

The Commission notes that, during this time in 2012, GEC was awarded a contract for the P2P Urunga and Mt Ousley site design.

On 21 January 2013, Mr Steyn emailed both Mr Sangari and Mr Wehbe with Mr Dubois also copied into the email. The email confirmed GEC's past assistance in relation to the development of the property. In the same email, Mr Steyn sought further advice from GEC concerning his enquires relating to the plans of his property. In his evidence to the Commission, Mr Sangari confirmed that, along with other GEC staff, he was involved in the development application process in respect of Mr Steyn's house.

On 7 May 2013, GEC submitted a development application in relation to the "Outbuilding and Inground pool" located at Mr Steyn's house. The application was approved by the council on 8 May 2013.

On 19 August 2013, the Picton and Bathurst design projects were awarded to GEC. Mr Sangari again denied any impropriety occurred in relation to the awarding or progression of this project.

Second set of GEC designs

On 2 May 2014, GEC prepared revised plans in relation to Mr Steyn's residence. These plans were ultimately approved by Mr Sangari.

On 10 June 2014, a BASIX certificate was prepared in relation to Mr Steyn's main house. Mr Sangari told the Commission that this was prepared by Mr Wehbe.

On 7 August 2014, Mr Sangari replied to an email Mr Steyn had sent three days earlier advising that the private certifier for the development application needed several other documents to comply with the development regulations.

On 12 December 2014 and 23 December 2014, Mr Steyn emailed GEC staff requesting updates in relation to the final certifications required for his house.

Mr Sangari told the Commission that Mr Steyn paid for associated approval documentation by the town planner. This is not necessarily inconsistent with Mr Steyn's evidence as, while Mr Steyn told the Commission that he was not asked to pay for drawings or plans, he did not give evidence on whether GEC paid for other associated certifications that he himself was required to obtain from the town planner and private certifiers to complete the development approval process.

GEC lodged a development application in relation to the “demolition of existing house and a construction of a two-storey dwelling” which was approved on 20 February 2015.

On 8 September 2017, Mr Sangari issued a letter to the certifying authority providing certification in respect of the structural aspects of the renovation. Mr Sangari told the Commission that, notwithstanding that he left GEC in 2016, he parted amicably with Mr Wehbe, and he continued to assist the firm in relation to old jobs in which he was previously involved.

Did Mr Sangari provide services to Mr Steyn for an improper purpose?

Mr Sangari told the Commission that all the services GEC provided for Mr Steyn were “a normal home package”. Mr Sangari said that he thought GEC charged Mr Steyn \$3,500 plus GST in relation to all the services and design works it provided for Mr Steyn between 2012 and 2017. The effect of Mr Sangari’s evidence was that the \$3,500 covered work done over both periods and he expected to be paid for the work.

Counsel Assisting submitted that the Commission should reject Mr Sangari’s evidence that GEC “charged or intended to charge \$3,500 for the work done in relation to Mr Steyn’s property”. This submission was based on four points. First, the lack of corroborating documents in the form of invoices, receipts or bank records. Secondly, the inherent unlikelihood of a single invoice being produced for two projects that took place over a period of years. Thirdly, Mr Steyn’s evidence that he was never asked to pay any money for the work performed by GEC and that he never paid any money for it. Fourthly, Mr Dubois’ corroborating evidence that Mr Steyn did not pay for the work GEC did in relation to his property.

Mr Sangari gave evidence that GEC had moved offices and obtained new computers. He said that, as a result, some records were lost. While the Commission notes that GEC has been able to provide some records of the work it undertook for Mr Steyn, it is not inconceivable that a business such as GEC would not continue to hold records for such a long period of time.

With respect to whether it is inherently unlikely for a single invoice to be produced for two projects that took place over a period of years, the Commission notes Mr Sangari’s evidence that it was not unusual for GEC to issue a delayed invoice given the “informal” way in which it conducted business and that “there were many instances where we worked on projects for many years because the homes ... for different reasons, took a long time back and forth with clients ... or our office”. The Commission considers, however, that a delay of years

in issuing a single invoice in relation to two substantial sets of works is unusual.

Mr Dubois told the Commission that he was “pretty certain” that planning and design work in relation to Mr Steyn’s house was not paid for by Mr Steyn because “... he [Mr Steyn] asked me to see if I can give them [GEC] more work to compensate for the work they were doing on his house”. Mr Dubois, however tempered this evidence stating “[If] [h]e’s paid them secretly, I don’t know. But from what I know, he hasn’t paid them”. Mr Dubois conceded, however, that he was never told explicitly by Mr Steyn that he had not paid for the work done by GEC.

Mr Steyn told the Commission that he never paid for any of the services that GEC provided him in relation to the design or planning of his house. He claimed he asked Mr Dubois “what do I owe you for the works”. According to Mr Steyn, Mr Dubois said “no ... it [GEC] was my family” and that Mr Dubois told him not to worry as it was all taken care of and “Mr Wehbe was doing him [Mr Dubois] a favour”. Mr Steyn told the Commission that he later became aware that GEC was an RMS contractor.

The Commission adopts caution in accepting Mr Steyn’s evidence given that his version minimises his involvement in accepting a benefit that was not properly due to him. However, the Commission accepts there is some degree of support for his account in that, based on the evidence before the Commission, Mr Wehbe was involved in progressing design plans in relation to the property.

A significant portion of the evidence adduced from Mr Dubois, Mr Steyn and Mr Sangari, related to GEC’s conduct as a company and not necessarily Mr Sangari’s conduct. This is not problematic in circumstances where the person controlling the corporate entity was the sole director and shareholder. However, the evidence adduced does become problematic in circumstances where there is evidence not only from Mr Sangari, but also from Mr Dubois, that GEC operated through a partnership system between Mr Sangari and Mr Wehbe. Compounding this problem was that Mr Wehbe was not called to give evidence and Mr Sangari made no admissions in relation to the improper provision of benefits to Mr Steyn.

There is no cogent evidence from Mr Dubois that he spoke to Mr Sangari specifically in relation to asking or instructing him to do unpaid work on Mr Steyn’s property. It is worth considering the below exchange between Counsel Assisting and Mr Dubois:

[Counsel Assisting]: But did you understand, then, that GEC [emphasis added] was doing the design and planning works in respect of Mr Steyn’s house?

- [Mr Dubois]: Yes, yes.
- [Q]: Did you understand whether that was being paid for or how it was being arranged?
- [A]: No, it wasn't paid for.
- [Q]: How do you know?
- [A]: I'm pretty certain.
- [Q]: Well, based on what?
- [A]: Because **they** [emphasis added] didn't get paid by Craig. They were, basically he asked me to see if I can give them more work to compensate for the work **they** [emphasis added] were doing for his house.

The above exchange is somewhat equivocal in that it is unclear exactly what Mr Dubois meant when he used the word "they". A strong inference exists that Mr Dubois was likely referring to GEC the corporate entity and not Mr Sangari and Mr Wehbe, given the previous question was asked in relation to GEC.

While an inference exists that Mr Sangari never issued the invoice in relation to the works GEC performed for Mr Steyn because the work was by way of conferring an improper benefit on Mr Steyn, it is clear that is not the only inference that can be drawn from the evidence. When applying the *Briginshaw* approach the Commission is careful not to make findings based on "indirect inferences" or evidence that is not clear and lacks cogency. While Mr Dubois and Mr Steyn broadly agree in that Mr Steyn received free services from GEC, there are important differences in their evidence. These are not trivial but rather substantive. Both have motivations to lay blame elsewhere, albeit Mr Dubois did make admissions against interest in his version of events, when he told the Commission that he was asked by Mr Steyn to award further work to GEC as compensation for him receiving free design work on his property, but even his own evidence does not directly implicate Mr Sangari.

The Commission is cognisant as to the likely motivations of both Mr Steyn and Mr Dubois in tailoring their evidence. However, given the conflicting evidence the Commission is not in a position of satisfaction as to there being sufficient evidence to find that Mr Sangari, at Mr Dubois' behest or otherwise, provided uncharged services as a benefit to Mr Steyn, as reward, or in return for, RTA/RMS work being awarded to GEC.

Corrupt conduct

Mr Dubois

Between November 2011 and December 2014, Mr Dubois misused his public official position with the RTA/RMS by soliciting Mr Sangari to make two payments to him each of \$5,000 as a reward for awarding \$361,262 worth of RTA/RMS work to GEC, a company owned by Mr Sangari.

This conduct on the part of Mr Dubois was corrupt conduct for the purpose of s 8 of the ICAC Act as it adversely affected the honest and impartial exercise of his official functions (s 8(1)(a)), constituted the dishonest and partial exercise of his official functions (s 8(1)(b)) and involved a breach of public trust (s 8(1)(c)).

Section 249B(1) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2 of this report.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Dubois committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to a company controlled by Mr Sangari, in relation to the affairs or business of the RTA/RMS. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Dubois had committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to a company controlled by Mr Sangari, in relation to the affairs or business of the RTA/RMS. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is further satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act, that if the facts were to be proved on admissible evidence to the requisite standard of proof of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could find that Mr Dubois committed disciplinary offences, being substantial breaches of the RTA/RMS codes of conduct giving rise to dismissal, as he was specifically required:

- not to accept a gift or benefit that was intended to or likely cause him to act in a biased manner

- to refuse gifts, benefits that might influence or have the potential to influence procurement decisions.

Mr Dubois' conduct therefore comes within s 9(1)(b) and s 9(1)(c) of the ICAC Act.

The Commission is also satisfied that, if the facts found were to be proved on admissible evidence to the requisite standard of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Dubois had engaged in conduct that constitutes disciplinary offences of breaching the RTA/RMS codes of conduct in relation to accepting gifts or benefits and that such conduct is sufficiently serious to constitute grounds for his dismissal. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because it involved multiple amounts of money over a period of time as well as solicitation leveraged from the awarding of significant contract amounts. It is also conduct that cannot be described as isolated improper conduct.

Mr Sangari

The Commission does not make any finding of corrupt conduct in respect of Mr Sangari.

Mr Steyn

The Commission does not make any finding of corrupt conduct in respect of Mr Steyn.

Section 74A(2) statements

The Commission is satisfied that, in respect of the matters covered in this chapter, Mr Dubois, Mr Steyn and Mr Sangari are affected persons.

Alexandre Dubois

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 Dubois for any offence.

As Mr Dubois' employment with the RMS was terminated, the question of whether consideration should be given to the taking of action against him for a disciplinary offence, or the taking of action with a view to his dismissal, does not arise.

Craig Steyn

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 Steyn for any offence.

As Mr Steyn's employment with the RMS was terminated, the question of whether consideration should be given to the taking of action against him for a disciplinary offence, or the taking of action with a view to his dismissal, does not arise.

Ghazi Sangari

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 Sangari for any offence.

Chapter 11: Lancomm Pty Ltd

Between about December 2011 and June 2018, Lancomm Pty Ltd, a company controlled by Joseph Rahme, was awarded approximately \$702,240 of RMS work. This chapter examines how Mr Steyn came to receive benefits from Mr Rahme as a reward for causing RMS work to be awarded to Mr Rahme's company.

Mr Rahme and Lancomm

Mr Rahme trained as an electrician before moving into telecommunications. He established Lancomm in May 2001, with himself as its sole director and shareholder.

Mr Rahme told the Commission that Lancomm predominantly did "end to end" telecommunications work. This involved scoping and designing fibre network projects and undertaking construction. Part of this work involved "underboring" which required the use of a directional drill to tunnel underneath the ground surface to create a channel through which a pipe or data cabling could be installed.

It was common ground that Mr Rahme first met Mr Steyn when Mr Steyn was working for Telstra and Lancomm was undertaking work for Telstra. They became friends. Mr Steyn recalled that, while he was at Telstra, he had discussions with Mr Rahme about going into business together. Both Mr Steyn and Mr Rahme agreed that nothing eventuated from those discussions. After Mr Steyn commenced working at the then RTA, he assisted Mr Rahme to complete tender documentation for work with telecommunications companies, for which Mr Steyn received payment.

Lancomm and the RMS

Lancomm commenced work for the RMS in late 2011. Mr Rahme recalled the first contract came about after he was contacted by Mr Steyn about an RMS project. Mr Steyn agreed that he was actively involved in recommending that Lancomm receive RMS work.

Lancomm's work for the RMS came in two stages. The first was between late-2011 and mid-2014. The second was in 2018. The work mainly involved "underboring", but some general electrical installation work was also done.

Did Mr Steyn receive any benefits?

In his evidence at the public inquiry, Mr Steyn admitted that he received benefits from Mr Rahme in return for causing RMS contracts to be awarded to Lancomm. The benefits came in the form of cash, goods and services. Some of the benefits provided related to work at his residence.

With respect to the cash payments, it was Mr Steyn's evidence that he did not ask Mr Rahme for money but it was Mr Rahme who offered him money in return for Lancomm receiving RMS work. He agreed that he accepted the offers. Mr Rahme agreed that he made cash payments to Mr Steyn in return for Lancomm receiving RMS work but said that it was Mr Steyn who requested the payments. Given the size and frequency of the cash benefits, and the circumstances of Mr Steyn's receipt of the rewards, the Commission is satisfied that it is more likely that these were requested by Mr Steyn.

Between 25 November 2013 and 15 August 2014, Mr Rahme made four cheque withdrawals totalling \$13,500 paid to "cash". The cheque butts subscribed the payments to "Craig Steyn" or "CS". Mr Rahme confirmed that he, or his wife under his instruction, would cash the cheques. The money from these cheques would then be paid to Mr Steyn. Mr Rahme told the Commission that it was done this way to "keep a log" in his "chequebook" to track payments he made to Mr Steyn.

Mr Steyn said that he also asked Mr Rahme to purchase some Apple products for him. Mr Rahme's credit card statement records the purchase of two items from the Apple online store on 1 November 2012. One item cost

\$899 and the other cost \$1,898. Mr Steyn believed these purchases were for upgraded iPhones and that, to the best of his recollection, he received one and Mr Rahme kept the other. Mr Rahme told the Commission that both telephones were for Mr Steyn. Mr Rahme's evidence is corroborated by an SMS he sent to Mr Steyn on 9 November 2012 that "I'll be in office at approx 4pm this arvo. I'll have the phones for u". The Commission notes that Counsel Assisting submitted the Commission should find that Mr Rahme bought "a couple" of iPhones for Mr Steyn. Mr Steyn did not make any submission to the contrary. In all the circumstances, the Commission accepts that both iPhones were provided to Mr Steyn.

Mr Steyn also recalled that Mr Rahme did work at Mr Steyn's residence for which Mr Steyn did not pay. The work involved some underboring for conduits through which utility services could be installed. This work occurred in late-2012. Mr Rahme gave variable estimates of the approximate cost of the works ranging from \$10,000 to \$20,000.

On 8 November 2012, Mr Steyn sent the following SMS to Mr Rahme:

*Yo dude I need help with the following pls; 40m of P20;
40m of P50; 2 x 2-Pits; 10 x elbows; 4 x P50 collars/bushes
& 4 x P20 T-Pieces if they make them. When can u have
that available pls Dude? When u back?*

Mr Steyn told the Commission he needed these items for work at his residence. Mr Rahme told the Commission the items were provided to Mr Steyn, and they were not paid for by Mr Steyn.

There was also evidence of two transfers made in January 2014 from the Lancomm account to a tiling business which did tiling work at Mr Steyn's residence. Each transfer was for \$5,000.

Mr Rahme told the Commission he was always uncomfortable with providing benefits to Mr Steyn and that was the reason he ultimately ended their relationship.

How the scheme worked

In his evidence, Mr Steyn acknowledged that he typically arranged for Mr Rahme to include a reasonable profit margin in quotes for RMS work. After Mr Rahme disclosed the proposed price to him, he had Mr Rahme add a margin, with the margin to be split 50/50 between them. He gave the following evidence:

Mr Rahme would price it with his profit margin in and say, "Oh, what's our room for movement?"

And I would say, "You can add another eight or ten to it." And that portion would be split fifty-fifty between him and I.

Mr Rahme said that Mr Steyn "always wanted to be all across our quotes prior to us submitting anything to the RMS". He said that, after Mr Steyn saw the draft quote, Mr Steyn asked him to change the quote to an amount that suited Mr Steyn so that it covered Mr Steyn's "portion". He identified a number of quotes that had been inflated as a consequence of this practice.

One of the RMS contracts undertaken by Lancomm involved the supply and installation of P2P infrastructure at Mt Ousley. The Lancomm invoice for this work, which is dated 31 January 2013, is in the amount of \$49,500. Mr Rahme told the Commission the invoice was inflated by between \$15,000 and \$20,000 to cover the cost of the underboring work he did at Mr Steyn's residence.

Mr Steyn and Mr Rahme each recalled at least one occasion on which Lancomm was paid for RMS work it did not do. The work was on the Pacific Highway. Lancomm submitted an invoice, dated 13 June 2018, for \$42,000. Mr Steyn recalled this occurred in circumstances where the work had already been done by the RMS. Mr Rahme told the Commission that Mr Steyn asked him to submit the invoice so that the money paid by the RMS could, in turn, be paid to his father-in-law who was suffering some financial hardship at the time. Mr Steyn recalled that Mr Rahme made a payment to his father-in-law's company, Peter Manuel Services Pty Ltd ("PMS"). As Mr Manuel had died, the Commission notes that it could not call him to give evidence at the public inquiry.

Mr Steyn also gave evidence in relation to a 2018 contract at Tweed Heads. Lancomm received a quote of about \$18,000 from a subcontractor for most of the work. Mr Steyn told Mr Rahme to submit the Lancomm quote for \$45,000 and to try and get a better deal from the subcontractor so that there was more money left over for Lancomm. Mr Steyn agreed that he suggested Mr Rahme significantly overcharge for the work in circumstances where he was, in effect, just supervising someone else doing the actual work. Ultimately, a subcontractor was found to do the work for \$16,500 and Lancomm billed the RMS for \$44,900. Mr Steyn agreed his motivation was to maximise Lancomm's profit and thereby maximise the payment he would receive.

Mr Steyn also told the Commission that, on occasion, he asked Mr Rahme to submit dummy quotes so that he could demonstrate he had met RMS requirements for sourcing three quotes for particular projects. One such occasion was in May 2017 (during the period when Lancomm was not doing RMS work) when Mr Steyn

sought a quote from Lancomm for the design and manufacture and galvanising of antenna brackets to suit new antennae to be installed on average speed cameras across NSW. He also asked Mr Rahme to submit a quote for the same work using another of Mr Rahme's companies, Syndicate Network Services Pty Ltd. Mr Rahme recalled this occasion. Although Lancomm did not do this sort of work, he prepared a quote and included in it the description of works and the amount Mr Steyn had told him to include, which was \$110,330. He understood the quote was required so that Mr Steyn could demonstrate he had received three quotes for the job. Similarly, a quote from Syndicate Network Services for \$112,500 was submitted. Neither company was awarded this work.

J&C Maintenance Services

Mr Rahme registered J&C Maintenance Services Pty Ltd as a company in February 2018 and was its sole director and shareholder. It was deregistered on 2 June 2019. Mr Rahme told the Commission it was established to funnel payments from Lancomm to Mr Steyn after Lancomm recommenced work for the RMS in 2018. Mr Steyn ultimately conceded that J&C Maintenance Services was used to channel "kickbacks" from Lancomm to him to cover his tracks.

There was evidence that, after Lancomm received payment from the RMS, part of the payment was transferred to the J&C Maintenance Services bank account. Money was then transferred to an account in the name of another company owned by a friend of Mr Rahme. That money was then withdrawn from that account, with Mr Rahme's friend keeping 10 per cent and the rest going to Mr Steyn. In some cases, cash withdrawals were made from the J&C Maintenance Services account. Mr Rahme told the Commission that his agreement with Mr Steyn was that the proceeds in the J&C Maintenance Services account would be split equally between them and that he sometimes withdrew cash to pay Mr Steyn his share.

Relevant financial records show that, between 16 May 2018 and 27 June 2018, the RMS paid \$304,590 into the Lancomm account. Just over \$72,000 was then transferred to the J&C Maintenance Services account. There were several cash withdrawals from that account as well as transfers to the account of the company owned by Mr Rahme's friend.

On 31 May 2018, Mr Steyn sent an email to Mr Rahme with an attached spreadsheet created by him setting out "Shareholder Distributions" for J&C Maintenance Services. There is an entry for 25 May 2018 showing distributions of \$4,700 to each of "J" and "C".

There is one other entry, for 31 May 2018, showing distributions of \$9,000 to each of "J" and "C". Mr Steyn told the Commission the distributions to "C" were payments he had received from Mr Rahme and that the spreadsheet was intended to record future payments from Mr Rahme to him in return for arranging RMS work to be awarded to Lancomm.

Quantum

An important issue for the Commission to determine was the value of the benefits Mr Steyn received from Mr Rahme.

In their submissions to the Commission, Counsel Assisting estimated the value of the benefits provided to Mr Steyn as being at least \$74,000. This estimate was based on the following:

- \$2,797 for the two iPhones purchased in 2012
- \$16,500 in cash withdrawals made by Mr Rahme in 2013-14
- \$10,000 Mr Rahme paid to a tiler for tiling work at Mr Steyn's residence in late-2012
- \$10,000, being the least value of the underboring work Mr Rahme arranged to do at Mr Steyn's residence in late-2012
- at least \$35,000 in cash Mr Steyn received through J&C Maintenance Services and the company owned by Mr Rahme's friend.

The amounts of the cash payments were calculated with reference to relevant bank account statements.

Neither Mr Steyn nor Mr Rahme made any submissions disputing the amount calculated by Counsel Assisting.

Having regard to the evidence set out above, the relevant banking records and that the value of the benefits provided to and received by Mr Steyn were not disputed by Mr Steyn or Mr Rahme, the Commission finds that the value of those benefits was approximately \$74,000.

Corrupt conduct

Mr Steyn

Between about December 2011 and June 2018, Mr Steyn misused his public official position with the RMS to arrange for the awarding of approximately \$702,240 of RMS work to Lancomm, a company controlled by Mr Rahme, in return for benefits to the value of approximately \$74,000.

This conduct on the part of Mr Steyn was corrupt conduct for the purpose of s 8 of the ICAC Act as it adversely affected the honest and impartial exercise of his official functions (s 8(1)(a)), constituted the dishonest and partial exercise of his official functions (s 8(1)(b)) and involved a breach of public trust (s 8(1)(c)).

Section 249B(1) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2 of this report.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Steyn committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to a company controlled by Mr Rahme, in relation to the affairs or business of the RMS. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Steyn had committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to a company controlled by Mr Rahme, in relation to the affairs or business of the RMS. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is further satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act, that if the facts were to be proved on admissible evidence to the requisite standard of proof of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could find that Mr Steyn committed disciplinary offences, being a substantial breach of the RMS code of conduct giving rise to dismissal, as he was specifically required to refuse gifts, benefits that might influence or have the potential to influence procurement decisions. Mr Steyn's conduct therefore comes within s 9(1)(b) and s 9(1)(c) of the ICAC Act.

The Commission is also satisfied that, if the facts found were to be proved on admissible evidence to the requisite standard of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Steyn had engaged in conduct that constitutes disciplinary offences of breaching the RMS code of conduct in relation to accepting gifts

or benefits and that such conduct is sufficiently serious to constitute grounds for his dismissal. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because it involved significant planning and the receipt of significant benefits over a period of years.

Mr Rahme

Between approximately December 2011 and June 2018, Mr Rahme provided benefits to the value of approximately \$74,000 to Mr Steyn as a reward for Mr Steyn misusing his public official position with the RMS to arrange for the awarding of approximately \$702,240 worth of RMS work to Lancomm, a company controlled by Mr Rahme.

This conduct on the part of Mr Rahme was corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act as it adversely affected the honest and impartial exercise of Mr Steyn's official functions.

Section 249B(2) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2 of this report.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Rahme committed offences under s 249B(2) of the Crimes Act of giving corrupt benefits. Mr Rahme's conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Rahme had committed offences under s 249B(2) of the Crimes Act of giving corrupt benefits. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because it involved significant planning and the improper provision of significant benefits over a period of years.

Section 74A(2) statements

In relation to the conduct dealt with in this chapter, the Commission considers that Mr Steyn and Mr Rahme are affected persons.

Craig Steyn

Mr Steyn's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RMS records, and, potentially, the evidence of Mr Rahme.

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 Steyn for offences under s 249B(1) of the Crimes Act in relation to the benefits he solicited and received from Mr Rahme on account of using his position in the RMS to arrange for the awarding of RMS contracts to Lancomm.

As Mr Steyn is no longer employed by the RMS, the question of whether consideration should be given to the taking of action against him for a disciplinary offence, or the taking of action with a view to his dismissal, does not arise.

Joseph Rahme

Mr Rahme's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act.

The Commission notes the submission made on behalf of Mr Rahme that the Commission should exercise its discretion not to make a statement that it is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Rahme for any criminal offence. This submission was made based on the Commission's Witness Cooperation Policy, which provides that the Commission may exercise such a discretion in circumstances where it is satisfied a witness has honestly and completely disclosed all relevant information. Mr Rahme initially gave evidence in a compulsory examination on 25 February 2021 and on 18 March 2021, before either he or Mr Steyn gave evidence in the public inquiry. The Commission is satisfied his evidence at the compulsory examinations, and later at the public inquiry, was full and frank and materially assisted the Commission's investigation. In these circumstances, the Commission accepts the submission made on behalf of Mr Rahme and exercises its discretion not to make any statement that it is of the opinion that consideration should be given to obtaining the advice of the DPP with respect his prosecution.

Chapter 12: Mr Steyn and AA Steel Piping Pty Ltd

This chapter examines the circumstances surrounding Mr Steyn's association with Ashley and Sandra Alexander and the cause of the awarding of RTA/RMS contracts to their company, AA Steel Piping Pty Ltd ("AA Steel"), between 25 May 2010 and 29 March 2019 to the value of \$1,747,555.35.

Familial ties between Mr Steyn and Mr and Mrs Alexander

Mrs Alexander is Mr Steyn's cousin. In about 1989, Mr Alexander and Mrs Alexander (collectively "the Alexanders") emigrated from South Africa to Australia. Mr Steyn emigrated about a year later.

Given his previous experience as a boiler maker, Mr Alexander obtained a job at a construction company. During his time at the company, Mr Alexander came to supervise Mr Steyn for a couple of months.

On 5 August 2008, Mr Steyn listed Mr Alexander as a reference when he successfully applied for his first position at the RTA.

It is common ground that prior to the commencement of the public inquiry, both Mr Steyn and his wife were close to the Alexanders.

AA Steel

AA Steel was incorporated on 20 February 2004. Both Mr and Mrs Alexander were listed as directors and shareholders of AA Steel.

AA Steel operated a steel fabrication workshop in north-western Sydney.

Both the Alexanders told the Commission that in terms of how AA Steel operated, specific tasks were divided between them. Mr Alexander was involved in generating work, operating the workshop, carrying out

the work and supervising the staff onsite. Mrs Alexander performed office administration tasks and took care of the paperwork. Mrs Alexander, at the direction of Mr Alexander, operated the AA Steel email address and the AA Steel Commonwealth bank account ("the AA Steel Commonwealth Bank account"). She drafted quotes and invoices under Mr Alexander's direction.

How AA Steel came to be awarded RTA work

In his evidence to the Commission, Mr Alexander agreed that he asked Mr Steyn whether it might be possible for AA Steel to obtain RTA work. This occurred after he discovered the RTA occasionally required steel fabrication work to be performed.

The Commission notes that, due to the age of some of the contracts awarded to AA Steel, it has been difficult to obtain complete RTA records from when AA Steel was first registered as a vendor and awarded works in 2009. However, the available records show that AA Steel was first awarded RTA work on 9 July 2009, and paid \$2,046 for that work, although the details of the work could not be ascertained from the records.

Mr Steyn agreed that, at first, he arranged that AA Steel be awarded small RTA jobs that were typically less than \$10,000. He told the Commission that AA Steel performed a variety of services and that he trained AA Steel to perform works such as road line markings and clearing vegetation. While Mr Steyn conceded that AA Steel effectively learned on the job for work other than steel fabrication, he justified the allocation of such work by stating that AA Steel was "a labour hire company in the steel industry". The Commission rejects Mr Steyn's evidence in this regard as it does not accord with the evidence of Mr Alexander, who agreed that AA Steel worked exclusively in steel fabrication, specifically "pipe fabrication".

Benefits received by Mr Steyn from the Alexanders

Mr Alexander initially gave evidence in compulsory examinations on 20 August 2020 and 13 October 2020. In his compulsory examination on 13 October 2020, he said any payments he and AA Steel made to Mr Steyn were a loan. Subsequently, when giving evidence in the public inquiry, he admitted that evidence was false and that he knew it to be false at the time he gave it. During the public inquiry he told the Commission that, after the execution of the search warrant on Mr Steyn's house on 18 June 2019, he was contacted by Mr Steyn who asked him to state that any payments he made to Mr Steyn were a loan.

The Alexanders gave evidence at the public inquiry that they provided benefits to Mr Steyn because he caused RTA/RMS work to be awarded to AA Steel. The benefits provided were in the form of cash, goods and services for Mr Steyn's family. As will be dealt with in more detail below, some of these benefits also came in the form of payments of school fees, mortgage repayments and the purchase of materials related to the construction of Mr Steyn's residence.

Mr Steyn gave evidence in compulsory examinations on 9 September 2020, 10 September 2020, 11 September 2020 and 12 October 2020. In his compulsory examination on 9 September 2020, he said he borrowed \$100,000 from the Alexanders for work on his home, of which he repaid \$20,000. He also claimed that he never received payments from contractors. Subsequently when giving evidence in the public inquiry, he admitted that evidence in respect of both matters was false and that he knew it to be false at the time he gave it.

When giving evidence at the public inquiry, Mr Steyn agreed that he obtained certain benefits from RTA/RMS contractors in return for them to quote for work and obtain RTA/RMS work.

Chapter 14 deals with an instance where the Alexanders and Mr Dubois, at the request of Mr Steyn, facilitated the provision of a Mercedes Benz C63 to Mr Steyn, that was purchased by Mr Hadid in return for causing RMS work to be awarded to companies that were controlled by him and Mr Chahine.

When did Mr Steyn start receiving benefits?

Evidence presented at the Commission established that, from about 2012 or 2013, the Alexanders provided benefits to Mr Steyn when he started with the demolition and subsequent construction of his house. Mr Alexander recalled the first occasion he was asked to provide a benefit was when Mr Steyn asked him to pay for the skip bin hire for the demolition of Mr Steyn's old house. Mr Steyn recalled the first occasion was when he asked Mr Alexander for a steel beam needed for the construction of his house. The conflict in the evidence as to the timing of when the first benefit was sought or provided is not significant. The Commission has quantified benefits only when they are corroborated by documented evidence such as receipts, bank transfers and delivery dockets.

The spreadsheets

The evidence before the Commission is that, typically, Mr Steyn received a quote from AA Steel for RTA/RMS contracts. Upon discussion with Mr Alexander, he requested that AA Steel's quote be increased to incorporate a margin for himself. Once the job was completed by AA Steel and paid for by the RTA/RMS, that margin would be set aside by AA Steel and added to an existing "tally". The tally represented a value of goods and services Mr Steyn could request be provided to him or purchased on his behalf. Put more simply, the tally represented what was owed to Mr Steyn as a result of him causing the awarding of RTA/RMS work

to AA Steel. The amount on the tally was reduced each time payment was made for goods or services that Mr Steyn wanted. At Mr Steyn’s suggestion a “tally” was kept by Mrs Alexander so that Mr Steyn could keep track of how much was owed to him. Mr Steyn conceded that he typically prepared spreadsheets which Mrs Alexander then updated so he could keep track of money owed to him.

The Commission located two spreadsheets. The first spreadsheet was an incomplete single page spreadsheet which showed dated entries between 5 February 2013 and 3 October 2013 (“the 2013 spreadsheet”). The second spreadsheet was complete, with entries for the period between 2015 and 2018 (“the 2015–2018 spreadsheet”).

The 2013 spreadsheet was located in a desktop computer during the execution of a search warrant by Commission officers at the Alexanders’ residence. Figure 8 below shows a portion of the spreadsheet:

In her evidence to the Commission, Mrs Alexander agreed that the red text entry amounts reflected what was owing to Mr Steyn in return for him causing the allocation of RMS work to AA Steel. She said the black text entries showed the nature of and the value of benefits that the Alexanders provided to Mr Steyn. The below diagram illustrates how the value of the benefits provided to Mr Steyn reduced the overall amount owing to him.

With respect to cash payments, Mr Steyn sought to clarify that, rather than asking for cash from the Alexanders, Mrs Alexander approached him and provided unsolicited payments which he accepted. The Commission rejects this evidence, which was inconsistent with the Alexanders’ evidence, as well as inconsistent with the practice of Mr Steyn’s dealings with Mr Rahme. Mr Rahme told the Commission that Mr Steyn sought and received cash payments from him. In any event, there is no dispute between the Alexanders and Mr Steyn that some of the benefits provided by the Alexanders to Mr Steyn were in the form of cash payments.

Figure 8: Diagram showing portion of the 2013 spreadsheet

\$	23,626.00		
\$	5,000.00	cash	
\$	18,626.00		
\$	371.69	concrete cutting	5/02/2013
\$	18,254.31		
\$	2,310.00	wideline	13/05/2013
\$	15,944.31		
\$	620.50	PK Roofing	14/05/2013
\$	15,323.81		
\$	2,482.00	PK Roofing	17/05/2013
\$	12,841.81		

The 2015–2018 spreadsheet was located on a Samsung Galaxy Note 8 mobile telephone during the execution of the search warrant located at Mr Steyn’s residence. The excel spreadsheet file was entitled “CRAIG AUG 2015.xls”. Some of the many benefits purchased on Mr Steyn’s behalf and shown in the 2015–2018 spreadsheet included:

- \$4,491.85 worth of expenses for Mrs Steyn’s birthday party
- \$13,438.92 worth of tiles for the construction of Mr Steyn’s house
- \$14,646 worth of kitchen cabinetry for the construction of Mr Steyn’s house
- \$8,361 of school fees for Mr Steyn’s children
- \$1,209.88 towards the Steyns’ three day stay at the Terrigal Crowne Plaza Hotel
- \$1977.08 Qantas return ticket from Johannesburg to Sydney for Mrs Steyn’s father, Mr Manuel.

Mrs Alexander told the Commission that, typically, Mr Steyn sent her spreadsheets of this nature once or twice each year so he could be provided with an update to see what was left owing to him.

Mr Alexander told the Commission that Mr Steyn typically came by his workshop and asked him to pay for certain items or services. Mr Alexander then authorised the expenditure of what Mr Steyn requested so that Mrs Alexander would pay an invoice when she received an email from Mr Steyn. Mrs Alexander made admissions that in effect she was “facilitating kickbacks” to Mr Steyn when she was paying invoices for those items or services on behalf of Mr Steyn and that what she was doing was, in effect, “a form of kickback to a public official”.

Quantum of benefits provided to Mr Steyn

Based on available records, the Commission created a chart, tendered in the public inquiry as exhibit 167, which set out 115 instances between 21 February 2013 and 10 December 2018 where the Alexanders were alleged to have provided benefits, either through the AA Steel Commonwealth Bank account, or their personal bank accounts, to Mr Steyn and his family to the value of \$391,452.13. The benefits included payments for furniture, housekeeping for Mr Steyn’s house, school fees, white goods, travel expenses, mortgage repayments and the purchase of materials related to the construction of the Steyn house.

During the public inquiry, Mr Alexander was provided with a copy of the above-mentioned chart, and asked

to highlight all the benefits he could recognise that he and Mrs Alexander, under his instruction, provided to Mr Steyn and his family. Of the 115 items identified, Mr Alexander highlighted 98, with a total value of \$317,258.23. With respect to the 17 entries not highlighted, Mr Alexander stated that he did not dispute they were provided to Mr Steyn. The total value of these items was \$74,193.90.

Mrs Alexander’s evidence accords with her husband’s evidence that she made payments on his instruction. During the public inquiry, Mrs Alexander was taken through numerous payments which she agreed she and Mr Alexander made on Mr Steyn’s behalf.

During the public inquiry, Counsel Assisting took Mr Steyn to several entries in the 2015–2018 spreadsheet. Some of the goods and services referred to in the 2015–2018 spreadsheet were contained in Exhibit 167. Mr Steyn conceded that, based on reviewing the 2015–2018 spreadsheet alone, he did not dispute that the benefits he received from the Alexanders amounted to “hundreds and thousands of dollars”.

Counsel Assisting submitted that the Commission should find that, between July 2009 and March 2019, Mr Steyn misused his public official position to award RTA/RMS works to AA Steel in return for receiving benefits to the value of at least \$391,452.13. This is the total value of benefits identified in Exhibit 167. These submissions were provided to Mr Steyn and the Alexanders, but no submissions were made by them disputing Counsel Assisting’s submission as to the value of the benefits Mr Steyn had received from the Alexanders. In light of this evidence given by the Alexanders, and Mr Steyn’s admission he had received hundreds of thousands of dollars’ worth of benefits from the Alexanders, the Commission is satisfied that the total amount of \$391,452.13 in Exhibit 167 represents the minimum Mr Steyn received from the Alexanders.

Exhibit 110 deals with transactions over the period from 21 February 2013 to 10 December 2018. It follows that, given the evidence establishes the first provision of benefits to Mr Steyn commenced on 21 February 2013, only projects awarded to AA Steel after this date should be considered as tainted. Accordingly, between 28 February 2013 and 29 March 2019, Mr Steyn caused the awarding of RMS projects to AA Steel that totalled \$1,627,172.97.

Ki-Ty Investments

The 2015–2018 spreadsheet contained a column titled “Ki-Ty Investments”. Mr Steyn told the Commission that the Ki-Ty Investments column in the 2015–2018 spreadsheet was a term he came up with. “Ki” and “Ty” represented the first two letters from both his children’s

names. He told the Commission it was a euphemism he used to describe his “cut” from each job AA Steel was awarded.

It will be recalled that the 2015–2018 spreadsheet kept track of benefits provided to Mr Steyn by the Alexanders. It is common ground that, in addition to performing this purpose, the 2015–2018 spreadsheet also referenced certain jobs and enabled both Mrs Alexander and Mr Steyn to keep track of which contracts Mr Steyn inflated and what the original price of the contract was. This can be garnered from the below extract of the spreadsheet, examining the five rows which, from right to left, relate to the RMS purchase order number, the name of the contract, the original quoted price, the price that the contract was awarded to AA Steel and the Ki-Ty investments column representing how much Mr Steyn would receive from each job.

“120k is for AA Steel & the 150k is for KiTy”

A review of WhatsApp messages between Mrs Alexander and Mr Steyn has enabled the Commission to discern how the scheme operated and how Mr Steyn received benefits in connection to the awarding of RMS work to AA Steel operated in respect of two RMS jobs. The first job related to purchase order 4200046657 for \$123,000, which was awarded and paid to AA Steel. The second job related to purchase order number 4200044505 for \$150,000, which was awarded to AA Steel with \$150,000 then “credited” to Ki-Ty Investments for Mr Steyn’s use.

The Commission located a Samsung Galaxy 9 mobile telephone during the execution of the search warrant at Mr Steyn’s residence. The Commission was able to

Figure 9: Extract from the 2015–2018 spreadsheet showing how much Mr Steyn would receive from each RMS contract

PO #	Scope of works	AA Steel Quoted Price	\$ Awarded to job	Ki-Ty Investments	
Balance of previous investments			\$ -	\$ 16,000.00	\$ 16,000.00
4510366428 - 10	Handrail install Top Mt Victoria	\$ 9,800.00	\$ 9,800.00	\$ -	\$ -
4510366428 - 20	Fabricate container feet x 12	\$ 6,200.00	\$ 6,200.00	\$ -	\$ -
4510366428 - 30	Modify generator Container	\$ 13,000.00	\$ 30,000.00	\$ 17,000.00	\$ 17,000.00
4510366428 - 40	Mt Ousley Gantry Locking Mechanism	\$ 1,000.00	\$ 1,000.00	\$ -	\$ -
				\$ -	\$ -
4510366428-10	Antenna Fabrication	\$ 1,500.00	\$ 5,000.00	\$ 3,500.00	\$ 3,500.00
4510366428-20	Bulli Gantry Lock	\$ 1,000.00	\$ 2,000.00	\$ 1,000.00	\$ 1,000.00
4510366428-30	Modify Frame & Mounting Brackets	\$ -	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00
4510366428-40	Install 4 RU Box	\$ 1,000.00	\$ 2,000.00	\$ 1,000.00	\$ 1,000.00
4510366428-50	Replace exhaust Fan	\$ 1,500.00	\$ 5,000.00	\$ 3,500.00	\$ 3,500.00
4510366428-60	Balacktown Yard clean up	\$ -	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00
				\$ -	\$ -
4510376858-10	Westmead yard Clean up	\$ 4,000.00	\$ 12,000.00	\$ 8,000.00	\$ 8,000.00
4510376858-20	Bracket fabricate install for Cameras Mt Victoria	\$ 5,000.00	\$ 13,500.00	\$ 8,500.00	\$ 8,500.00
4510376858-30	RF Controller housing	\$ 1,500.00	\$ 2,000.00	\$ 500.00	\$ 500.00
4510376858-40	Cowan Bridge Works to date	\$ 18,000.00	\$ 18,000.00	\$ -	\$ -
4510379557-10	Container Works***	\$ 5,000.00	\$ 5,000.00	\$ -	\$ -
	Cowan Bridge install	\$ 12,000.00	\$ 16,000.00	\$ 4,000.00	\$ -
Totals		\$ 80,500.00	\$ 138,500.00	\$ 58,000.00	\$ 70,000.00
Ki-Ty Investments Expenses					
Pool Equipment Cover					\$ 700
Advance Demolition					\$ 14,000
AA Steel Beam supply & install on site		Ash to price?			\$ 33,000
Austral bricks		+/- Price			\$ -
EXPENSES TO DATE					\$ 47,700
balance					\$ 22,300
Austral Bricks paid on 5 August			LESS		\$ 15,000.00
BALANCE AS AT 5 AUGUST 2015					\$ 7,300.00

forensically download the contents of that telephone. As a result of the download, the Commission was able to obtain the below WhatsApp messages that occurred on 10 May 2018 between Mr Steyn and Mrs Alexander.

It is not in dispute that “PO” is a reference to the RMS purchase order. The numbers listed correspond to RMS purchase order numbers 4200046657 and 4200044505, each of which were made in the favour of AA Steel. It is common ground that the reference to “KiTy Inv Acc” is a reference to Ki-Ty Investments.

The Commission obtained a copy of RMS purchase order 4200046657. It is dated 21 March 2018 and lists Mr Steyn as the RMS contact person. It is for \$123,000. The services scheduled to be delivered by 31 July 2018 related to annual maintenance of enforcement line markings for 42 average speed camera and P2P enforcement sites across southern NSW.

In his evidence to the Commission, Mr Steyn said that this invoice reflected the cost of work performed by AA Steel. He agreed that with respect to the WhatsApp messages he sent Mrs Alexander on 10 May 2018, he had requested Mrs Alexander to send him a blank invoice for him to populate with “pics” and that he did so. He agreed that he provided the detailed information to go into the invoice. The invoice was paid on 8 June 2018.

On 9 February 2018, Mr Steyn submitted an RMS contract creation form, requesting from his then supervisor, Mr Soliman, the creation of a purchase order in the amount of \$150,000 in the favour of AA Steel. The amount was divided into two subcategories for services to be rendered. The first was for \$84,000 in relation to the supply of “SPD & RPM Annual Maintenance Mid to Far North Coast Pacific Highway”. The second was for \$66,000 in relation to the supply of “SPD & RPM Annual Maintenance North West NSW & Hunter Valley Sites”. The purchase order was approved by Mr Soliman on the same day.

The AA Steel invoice relating to this purchase order was dated 26 May 2018 for \$150,000. Mr Steyn conceded that he drafted the invoice.

AA Steel was paid \$150,000 plus GST by the RMS on 18 June 2018. The RMS remitted the entire amount in relation to RMS purchase order number 4200044505 to the AA Steel Commonwealth Bank account.

During his evidence at the public inquiry, Mr Steyn maintained that AA Steel had undertaken the work set out in its 26 May 2018 invoice. He agreed, however, that the genuine cost of AA Steel doing the work reflected a “massive mark-up” on account of his “margin”. He also agreed that he expected the entire amount would be credited to him so that he would be able to draw on it for his benefit.

Counsel Assisting submitted that the entire 26 May 2018 AA Steel invoice “was false”. Notwithstanding the suspicious circumstances of Mr Steyn’s involvement in drafting the invoice, the Commission is not satisfied that there is cogent evidence to suggest that no work was performed by AA Steel in relation to this job. The Commission notes photographs were provided purportedly evidencing the works carried out by AA Steel. In the circumstances, the Commission accepts Counsel Assisting’s submission that the entire amount for this work was credited to Mr Steyn as “kickback” by AA Steel. In so concluding, the Commission notes that no contrary submission was advanced by Mr Alexander’s legal representative or Mrs Alexander. However, there was no evidence before the Commission that this credit was drawn on by Mr Steyn to receive any benefit.

Table 1: WhatsApp messages between Mr Steyn and Mrs Alexander, 10 May 2018

Number	Sent	Received	Message
1	Mr Steyn	Mrs Alexander	Ok you should also have 2 other PO's 1 for 123k & 1 for 150k
2	Mr Steyn	Mrs Alexander	The \$123k is for AA Steel & the \$150k is for KiTy Inv Acc.
3	Mr Steyn	Mrs Alexander	PO 4200046657 is for \$123k and PO 4200044505 is for \$150k if you send blank invoice for PO4200046657 to creative.service email. I will populate the invoice with Pics tomorrow so you can submit for payment. Then when we get back next week end [sic] I can complete the Invoice for the other PO 4200044505 for submission.

Corrupt conduct

Mr Steyn

Between about February 2013 and March 2019, Mr Steyn misused his public official position with the RMS to arrange for the awarding of approximately \$1,627,172.97 of RMS work to AA Steel, a company controlled by the Alexanders, in return for benefits to the value of at least \$391,452.13.

This conduct on the part of Mr Steyn was corrupt conduct for the purpose of s 8 of the ICAC Act as it adversely affected the honest and impartial exercise of his official functions (s 8(1)(a)), constituted the dishonest and partial exercise of his official functions (s 8(1)(b)) and involved a breach of public trust (s 8(1)(c)).

Section 249B(1) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2 of this report.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Steyn committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to a company controlled by the Alexanders, in relation to the affairs or business of the RMS. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Steyn had committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to a company controlled by the Alexanders, in relation to the affairs or business of the RMS. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is further satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act, that if the facts were to be proved on admissible evidence to the requisite standard of proof of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could find that Mr Steyn committed disciplinary offences, being a substantial breach of the RMS code of conduct giving rise to dismissal, as he was specifically required to refuse gifts, benefits that might

influence or have the potential to influence procurement decisions. Mr Steyn's conduct therefore comes within s 9(1)(b) and s 9(1)(c) of the ICAC Act.

The Commission is also satisfied that, if the facts found were to be proved on admissible evidence to the requisite standard of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Steyn had engaged in conduct that constitutes disciplinary offences of breaching the RMS code of conduct in relation to accepting gifts or benefits and that such conduct is sufficiently serious to constitute grounds for his dismissal. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because it involved significant planning and improper acceptance of significant benefits over a period of years.

Mr Alexander

Between about February 2013 and March 2019, Mr Alexander, in concert with Mrs Alexander, provided benefits to the value of at least \$391,452.13 to Mr Steyn, and on behalf of Mr Steyn, as a reward for Mr Steyn misusing his public official position with the RMS to award approximately \$1,627,172.97 worth of RMS work to AA Steel, a company owned and controlled by Mr Alexander and Mrs Alexander.

This conduct on the part of Mr Alexander was corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act as it adversely affected the honest and impartial exercise of Mr Steyn's official functions.

Section 249B(2) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2 of this report.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Alexander, in concert with Mrs Alexander, committed offences under s 249B(2) of the Crimes Act of giving corrupt benefits. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Alexander had committed offences under

s 249B(2) of the Crimes Act of giving corrupt benefits. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because it involved significant planning and the improper provision of significant benefits over a period of years.

Mrs Alexander

Between about February 2013 and March 2019, Mrs Alexander, in concert with Mr Alexander, provided benefits to the value of at least \$391,452.13 to Mr Steyn, and on behalf of Mr Steyn, as a reward for Mr Steyn misusing his public official position with the RMS to award approximately \$1,627,172.97 worth of RMS work to AA Steel, a company owned and controlled by Mrs Alexander and Mr Alexander.

This conduct on the part of Mrs Alexander was corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act as it adversely affected the honest and impartial exercise of Mr Steyn's official functions.

Section 249B(2) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2 of this report.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mrs Alexander, in concert with Mr Alexander, committed offences under s 249B(2) of the Crimes Act of giving corrupt benefits. Her conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mrs Alexander had committed offences under s 249B(2) of the Crimes Act of giving corrupt benefits. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because it involved significant planning and the improper provision of significant benefits over a period of years.

Section 74A(2) statements

In relation to the conduct dealt with in this chapter, the Commission considers that Mr Steyn, Mr Alexander and Mrs Alexander are affected persons.

Craig Steyn

Mr Steyn's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RTA/RMS records, banking records, receipts and delivery dockets relating to the purchase of goods and services by the Alexanders on behalf of Mr Steyn. There would also be evidence recovered from Mr Steyn's hard drives, and the Samsung Galaxy 9 and Galaxy Note 8 mobile telephones seized from Mr Steyn's house during the execution of the search warrant containing emails, WhatsApp chats, and electronic documentation such as the 2015–2018 spreadsheet. Other admissible evidence that would be available includes electronic documentation recovered from a desktop computer during the execution of the search warrant at the Alexanders' residence, such as the 2013 spreadsheet, and the potential evidence of Mr Alexander and Mrs Alexander.

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 Steyn for offences under s 249B(1)(a) of the Crimes Act of, between February 2013 and June 2019, corruptly soliciting and receiving benefits, on account of using his position to award contracts to AA Steel.

The Commission is also of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Steyn for two offences under s 87 of the ICAC Act for giving false and misleading evidence when he said:

- during his compulsory examination on 9 September 2020 that he borrowed \$100,000 from the Alexanders from their contributions to the cost of works on his home of which he repaid \$20,000
- during his compulsory examination on 9 September 2020 that he never received payments from contractors.

As Mr Steyn's employment with the RMS was terminated, the question of whether consideration should be given to the taking of action against him for a disciplinary offence, or the taking of action with a view to his dismissal, does not arise.

Ashley Alexander

Mr Alexander's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RTA/RMS records, banking records, receipts and delivery dockets relating to the purchase of goods and services by Mr Alexander and Mrs Alexander on behalf of Mr Steyn. There would also be evidence recovered from Mr Steyn's hard drives, and the Samsung Galaxy 9 and Galaxy Note 8 mobile telephones seized from Mr Steyn's house during the execution of the search warrant containing emails, WhatsApp chats, and electronic documentation such as the 2015–2018 spreadsheet. Other admissible evidence that would be available includes electronic documentation recovered from a desktop computer during the execution of the search warrant at the Alexanders' residence, such as the 2013 spreadsheet, and the potential evidence of Mr Steyn and Mrs Alexander.

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 Alexander for offences under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between February 2013 and June 2019, corruptly giving a benefit to Mr Steyn on account of Mr Steyn showing favour to Mr Alexander and Mrs Alexander and their company under their control, namely, AA Steel, in relation to the affairs or business of the RTA/RMS, or the receipt of or expectation of which would tend to influence Mr Steyn to show favour to Mr Alexander and Mrs Alexander and AA Steel in relation to the affairs or business of the RTA/RMS.

The Commission is also of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Alexander for an offence under s 87 of the ICAC Act of giving false and misleading

evidence when he said during his compulsory examination on 13 October 2020 that the payments he and AA Steel made to Mr Steyn were a loan.

Sandra Alexander

Mrs Alexander's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against her in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RTA/RMS records, banking records, receipts and delivery dockets relating to the purchase of goods and services by Mr Alexander and Mrs Alexander on behalf of Mr Steyn. There would also be evidence recovered from Mr Steyn's hard drives, and the Samsung Galaxy 9 and Galaxy Note 8 mobile telephones seized from Mr Steyn's house during the execution of the search warrant containing emails, WhatsApp chats, and electronic documentation such as the 2015–2018 spreadsheet. Other admissible evidence that would be available includes electronic documentation recovered from a desktop computer during the execution of the search warrant at the Alexanders' residence, such as the 2013 spreadsheet, and the potential evidence of Mr Steyn and Mr Alexander.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mrs Alexander for offences under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between February 2013 and June 2019, corruptly giving a benefit to Mr Steyn on account of Mr Steyn showing favour to Mr Alexander and Mrs Alexander and their company under their control, namely, AA Steel, in relation to the affairs or business of the RTA/RMS, or the receipt of or expectation of which would tend to influence Mr Steyn to show favour to Mr Alexander and Mrs Alexander and AA Steel in relation to the affairs or business of the RTA/RMS.

Chapter 13: S A Masters Electrical Services

Between about September 2014 and July 2019, S A Masters Electrical Services (“S A Masters”), a business controlled by Steven Masters, was awarded approximately \$909,489.44 of RMS work. This chapter examines how Mr Steyn came to receive benefits from Mr Masters as a reward for causing some RMS work to be awarded to Mr Masters’ business.

Mr Masters and S A Masters

Mr Masters trained as an electrician after completing year 11 at high school. He received level 2 certification which enabled him to perform electrical works relating to streetlights and other electrical street connections. He operated as a sole trader in that trade and established the business name S A Masters Electrical Services from 2008.

Mr Masters became an RTA contractor in 2004. From then until about 2015, the work he received was from the RTA/RMS Electrical Project Group. Mr Masters told the Commission that the Electrical Project Group was shut down in early 2015. This broadly accords with Mr Steyn’s evidence that, from around 2010 and 2011, the RMS started to make internal resources redundant, and that Mr Steyn was required to source contract work for his programs.

From about 2014, Mr Masters started to perform electrical works for the RMS HVP Unit. This work included working on generators, fixing weigh stations and electronic signage lights and installation with respect to the electrical aspects of gantries.

He performed equal amounts of work with Mr Dubois and Mr Steyn but developed a friendly working relationship with the latter. There is no evidence that Mr Dubois had any improper dealings with Mr Masters.

As a result of Mr Masters’ engagement with the HVP Unit and in particular Mr Steyn, from 2014, the volume of

RMS work awarded to S A Masters noticeably increased.

Did Mr Steyn receive any benefits?

In his evidence at the public inquiry, Mr Steyn admitted that he received benefits from Mr Masters in return for causing RMS contracts to be awarded to S A Masters. The benefits came in the form of Mr Masters providing free or discounted electrical services at Mr Steyn’s residence, the purchase of goods for Mr Steyn, including Apple products, and money through the payment of invoices to PMS, a company initially set up on 9 May 2018, by Mr Steyn for his father-in-law, Mr Manuel.

By late-2016, Mr Steyn was in the process of building a house and was installing electrical wiring for the house. Mr Steyn told the Commission that Mr Masters visited his place approximately half a dozen times and checked some of the electrical works. At times, this required Mr Masters to rectify works done by Mr Steyn. Mr Masters said that he visited Mr Steyn’s house between five and nine occasions, with each visit lasting “a few hours”. On 17 March 2017, Mr Masters also signed off on the certificate of compliance in relation to the electrical work at Mr Steyn’s house. Mr Masters recalled that he also performed work on the electrical switch board at Mr Steyn’s house, and received “a couple of hundred dollars”, but on other occasions he did not receive payment. This broadly accords with Mr Steyn’s evidence, where he recalled one instance when he paid Mr Masters \$500 for the electrical work performed at his house. He said, however, that he understood he paid Mr Masters below the market rate for the electrical works Mr Masters performed. Mr Masters told the Commission he did this “to stay in good with [Mr Steyn]” in order to continue receiving RMS work.

It is common ground that, on 20 December 2016, Mr Masters also purchased five downlights for Mr Steyn’s house, that Mr Steyn did not pay for, and did so for the

same reason. He also installed cameras at Mr Steyn's house and provided 20 to 30 rolls of electrical tape. The Commission notes there is no evidence as to the value of the electrical tape provided by Mr Masters to Mr Steyn.

In his evidence to the Commission, Mr Steyn said that, between 2017 and 2018, he asked Mr Masters to purchase for him some Apple products and products which supported Apple devices. In his evidence, Mr Masters confirmed that he bought \$13,868.87 worth of Apple products or products that supported Apple devices ("the Apple products") for Mr Steyn. Mr Masters told the Commission that he regarded "the Apple purchases as the cost of doing business with Mr Steyn". These purchases by Mr Masters were later registered to Mr Steyn or his family members. Some of the 21 items purchased were:

- an iPad Pro 10.5
- Apple AirPods (Apple Bluetooth earphones)
- an iPhone X
- a Belkin BoostUp wireless charge pad
- an iPad Pro 11.

While Mr Steyn conceded Mr Masters provided these items at no charge to him, and he made the request because Mr Masters was an RMS contractor, he denied they were the cost of Mr Masters obtaining RMS work. He also denied that the cost was offset by RMS money. However, Mr Steyn conceded that asking Mr Masters to provide him such gifts was an abuse of his position as a public official.

The Commission rejects Mr Steyn's claim that he did not view the purchases of the Apple products by Mr Masters as not being related to his awarding of RMS work to S A Masters. The Commission relies on several circumstances that give rise to the inference that Mr Steyn knew the Apple products were, in fact, benefits provided to him by Mr Masters in relation to the awarding of RMS work to S A Masters. First, the Apple products were purchased at Mr Steyn's request. Secondly, Mr Steyn acknowledged in his evidence that he made these requests to Mr Masters because he was an RMS contractor. Thirdly, Mr Steyn admitted that he knew he was able to make the request to Mr Masters because of his position as a public official. Fourthly, the Commission notes that Mr Steyn turned his mind to the reason why Mr Masters provided the Apple products to him because, in his words, he thought Mr Masters may have "thought he was looking after a customer". Such an understanding by Mr Steyn denotes the transactional nature of the request he made to Mr Masters, which was inextricably linked to his position at the RMS. Fifthly, although these

items were provided to Mr Steyn, he never paid for them. Sixthly, the acceptance by Mr Steyn of the Apple products as a reward for RMS works to Mr Masters' company is consistent with Mr Steyn's admitted conduct in receiving other benefits from Mr Masters and others as a reward for awarding RMS works.

Counsel Assisting submitted that Mr Masters' purchase of the Apple products was part of the "kickbacks" Mr Steyn received for misusing his public official position to award RMS contracts to Mr Masters. Mr Steyn's legal representatives were provided with a copy of the submissions. No submissions were made disputing Counsel Assisting's submission. In all the circumstances, the Commission is satisfied that Mr Steyn sought and accepted the Apple products provided by Mr Masters in connection to the awarding of RMS work to S A Masters.

Mr Masters also made transfers amounting to \$26,400 to PMS. Mr Steyn conceded that the company became a vehicle for him to receive improper payments from Mr Masters and other contractors.

The Commission obtained two PMS invoices issued to S A Masters. The first PMS invoice, numbered 2105-18, was for \$12,000 and dated 21 May 2018. This was expressed to be in relation to "Service Rendered for the consultation of business development". The second PMS invoice, numbered 0406-18, was for \$12,000 and dated 4 June 2018. That invoice listed the following four services purportedly rendered:

- Continuation of support for business development
- Support for delivery of works to various customers
- Assistance with paperwork for quotations
- Surveillance works carried out on behalf of S A Masters Electrical.

During June 2018, Mr Masters made the following transfers into the PMS bank account:

- \$2,800 on 19 June 2018 described as "Inv 0406-18"
- \$13,200 on 19 June 2018 described as "Inv 2105-18"
- \$10,400 on 21 June 2018 described as "Inv 0406-18".

These payments total \$26,400 and represent the totals of the two PMS invoices (\$24,000) plus GST. Mr Masters agreed these payments were made by him to PMS. In his evidence to the Commission, Mr Steyn acknowledged that the two PMS invoices were "nothing more than a device to disguise kickbacks" that he received from S A Masters.

The Commission was able to forensically download an SMS message from a Samsung Galaxy Note 8 mobile telephone found at Mr Steyn's residence during the execution of a search warrant. On 6 June 2018 Mr Steyn sent Mr Masters the following message, "Let me know when you want those invoices please mate?" Mr Masters told the Commission he received this message from Mr Steyn and that Mr Steyn provided him with both PMS invoices at the same time after that date.

Mr Masters told the Commission he never engaged PMS to perform any services for S A Masters. In providing evidence in relation to the second invoice, Mr Masters agreed that the invoice represented "some kind of deception".

Mr Masters told the Commission that, approximately a week after he performed work for the RMS at the Jerilderie and Narrandera sites, he was provided with the invoices by Mr Steyn and that he was instructed by Mr Steyn to pay "Peter". He understood from what he was told by Mr Steyn that he needed to pay because Mr Manuel was not on the RMS Maintenance Panel. While Mr Masters recalled he saw a person he knew by the name of "Peter" at toolbox meetings at the Jerilderie and Narrandera sites, he did not know what work "Peter" performed. Mr Masters did not know Mr Manuel was Mr Steyn's father-in-law. During the public inquiry, Mr Masters was shown Mr Manuel's driver licence. He identified Mr Manuel as "Peter". His identification was not challenged by Mr Steyn's legal representatives and also accords with Mr Steyn's own evidence that Mr Manuel was at the Jerilderie and Narrandera sites.

Mr Masters knew that the payments he made to PMS were not in relation to anything Mr Manuel did on S A Masters' behalf. Mr Masters also said he did not question Mr Steyn about making the payments because he did not want to upset the relationship he had with Mr Steyn and did whatever Mr Steyn asked of him in order to continue receiving RMS work.

Mr Steyn gave evidence at the public inquiry that he told Mr Masters he could charge the RMS and make it look like he had done work to that value. This accords with Mr Masters' evidence, who said he was told by Mr Steyn he could "invoice it on the next job you do, and don't make it obvious" in reference to recouping his payments to PMS through issuing S A Masters invoices to RMS. Mr Masters agreed with Counsel Assisting that he suspected that "there was something fishy about this arrangement".

During his evidence at the public inquiry, Mr Masters agreed that he caused two false invoices to be issued to the RMS in order to recoup the payments he made to PMS. Both invoices were dated 31 May 2018.

The first was for \$8,055 in relation to "Existing works completed re Pacific Highway 7(Feb/Mar/Apr '18)". The second was for \$16,200, in relation to "Sth Region Inspections + the Colbee Compound". Mr Steyn gave evidence that he allowed Mr Masters to bill for works not performed so he could pay PMS. He said he could not recall which invoices submitted by S A Masters were false.

On 18 June 2018 and 20 June 2018, the RMS respectively remitted S A Masters \$17,820 and \$8,860.50, representing the GST inclusive amounts of both invoices.

Mr Masters maintained that he did not suspect the PMS payments were "another kickback payment" to Mr Steyn and maintained he believed at the time that the payments to PMS were for RMS work Mr Manuel had done onsite, notwithstanding he did not know what work Mr Manuel performed.

The Commission does not accept Mr Masters' evidence that he did not suspect the PMS payments were going to Mr Steyn. The Commission relies on a number of circumstances that give rise to the inference that Mr Masters knew the payments to PMS were, in fact, payments to Mr Steyn. First, it was Mr Steyn himself who requested that Mr Masters pay the invoices, not Mr Manuel. Secondly, Mr Masters made admissions that the invoices were provided to him by Mr Steyn as opposed to Mr Manuel. Thirdly, Mr Masters acknowledged that the invoices represented a deception in that no services were rendered by PMS in favour of S A Masters. Fourthly, while Mr Steyn's request to Mr Masters that he not make the false invoices to RMS look "obvious" led Mr Masters to question the PMS arrangement, he issued the false invoices despite his concerns. Finally, Mr Masters' claim that he believed that Mr Manuel had performed work, despite him not knowing what work Mr Manuel performed, is disingenuous. These circumstances, in combination with Mr Masters having already provided Mr Steyn benefits in the form of Apple products which he understood to be "the cost of doing business" with Mr Steyn, indicate that Mr Masters would have understood at the relevant time that requests made by Mr Steyn to pay the PMS invoices were likely payments for Mr Steyn's benefit.

The Commission notes that Mr Steyn's misconduct of receiving benefits from Mr Masters amounted to significant breaches of the RMS code of conduct as he was specifically prohibited from accepting gifts, benefits from contractors that might influence or have the potential to influence procurement decisions.

Quantum

An important issue for the Commission to determine was the value of the benefits Mr Steyn received from Mr Masters as a reward for arranging for RMS works to be awarded to S A Masters.

In their submissions to the Commission, Counsel Assisting estimated the value of the benefits provided by Mr Masters to Mr Steyn between 2014 and 2019 as being “at least” \$40,268.87. This estimate was based on the following:

- \$13,868.87 of Apple products and Apple supported products purchased by Mr Masters for Mr Steyn
- \$26,400 of payments Mr Masters made into the PMS bank account.

The estimate does not include the cost of the value of the LED downlights purchased by Mr Masters for Mr Steyn, the purchase of 20 to 30 rolls of electrical tape, the free or discounted electrical services Mr Masters provided to Mr Steyn’s house and the free installation of cameras by Mr Masters for Mr Steyn.

Having regard to the evidence set out above, the relevant banking records and that the value of the benefits provided to and received by Mr Steyn was not disputed by Mr Steyn or Mr Masters, the Commission finds that the value of those benefits was at least \$40,268.87.

Another important issue for the Commission to determine was the value of RMS work that was awarded by Mr Steyn to Mr Masters when the latter first commenced providing benefits to Mr Steyn. The first instance of benefits being provided by Mr Masters to Mr Steyn that the Commission ascertained with certainty is purchase of the downlights by Mr Masters on 20 December 2016 for Mr Steyn. However, having regard to Mr Master’s evidence, that Mr Dubois also awarded work to Mr Masters, it is difficult to quantify the value of work Mr Steyn arranged to be awarded to Mr Masters. The Commission has calculated from Exhibit I67, lines 114 to 231, that a total of \$614,377.11 worth of work was awarded. Based on Mr Masters’ admission that both Mr Dubois and Mr Steyn equally awarded work to his business, it is clear that the amount from Mr Steyn is in the thousands of dollars. The Commission accordingly finds a significant amount of RMS work was arranged to be awarded by Mr Steyn.

Corrupt conduct

Mr Steyn

Between about December 2016 and June 2019, Mr Steyn misused his public official position with the RMS to arrange for the awarding of a significant amount of RMS work to S A Masters, a business controlled by Mr Masters, in return for benefits to the value of no less than \$40,268.87.

This conduct on the part of Mr Steyn was corrupt conduct for the purpose of s 8 of the ICAC Act as it adversely affected the honest and impartial exercise of his official functions (s 8(1)(a)), constituted the dishonest and partial exercise of his official functions (s 8(1)(b)) and involved a breach of public trust (s 8(1)(c)).

Section 249B(1) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2 of this report.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Steyn committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to a business controlled by Mr Masters, in relation to the affairs or business of the RMS. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Steyn had committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to a business controlled by Mr Masters, in relation to the affairs or business of the RMS. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is further satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act, that if the facts were to be proved on admissible evidence to the requisite standard of proof of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could find that Mr Steyn committed disciplinary offences, being a substantial breach of the RMS code of conduct giving rise to dismissal, as he was specifically required to refuse gifts, benefits that might

influence or have the potential to influence procurement decisions. Mr Steyn's conduct therefore comes within s 9(1)(b) and s 9(1)(c) of the ICAC Act.

The Commission is also satisfied that, if the facts found were to be proved on admissible evidence to the requisite standard of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Steyn had engaged in conduct that constitutes disciplinary offences of breaching the RMS code of conduct in relation to accepting gifts or benefits and that such conduct is sufficiently serious to constitute grounds for his dismissal. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because it involved improper acceptance of benefits over a period of years.

Mr Masters

Between approximately December 2016 and June 2019, Mr Masters provided benefits to the value of no less than \$40,268.87 to Mr Steyn as a reward for Mr Steyn misusing his public official position with the RMS to arrange for the awarding of a significant amount of RMS work to S A Masters, a company controlled by Mr Masters.

This conduct on the part of Mr Masters was corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act as it adversely affected the honest and impartial exercise of Mr Steyn's official functions.

Section 249B(2) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2 of this report.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Masters committed offences under s 249B(2) of the Crimes Act of giving corrupt benefits. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Masters had committed offences under s 249B(2) of the Crimes Act of giving corrupt benefits. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because it involved improper provision of significant benefits and the conduct took place over a period of years.

Section 74A(2) statements

In relation to the conduct dealt with in this chapter, the Commission considers that Mr Steyn and Mr Masters are affected persons.

Craig Steyn

Mr Steyn's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RMS records, banking records, receipts and delivery dockets relating to the purchase of goods and services by Mr Masters on behalf of Mr Steyn, evidence obtained from Mr Steyn's accountant including the PMS invoices, the Galaxy Note 8 mobile telephone seized from Mr Steyn's house during the execution of the search warrant containing SMS communications to Mr Masters and the potential evidence of Mr Masters.

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 Steyn for offences under s 249B(1) of the Crimes Act of, between December 2016 and June 2019, corruptly soliciting and receiving benefits from Mr Masters on account of using his position in the RMS to arrange for the awarding of RMS contracts to S A Masters.

As Mr Steyn is no longer employed by the RMS, the question of whether consideration should be given to the taking of action against him for a disciplinary offence, or the taking of action with a view to his dismissal, does not arise.

Steven Masters

Mr Masters' evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RMS records, banking records, receipts and delivery dockets relating to the purchase of goods and services by Mr Masters on behalf of Mr Steyn, evidence obtained from Mr Steyn's accountant including the PMS invoices, the Galaxy Note 8 mobile telephone seized from



Mr Steyn's house during the execution of the search warrant containing SMS communications to Mr Masters and the potential evidence of Mr Steyn.

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 Masters for offences under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between December 2016 and June 2019, corruptly giving a benefit to Mr Steyn on account of Mr Steyn showing favour to Mr Masters and his business, namely, S A Masters, in relation to the affairs or business of the RMS, or the receipt of or expectation of which would tend to influence Mr Steyn to show favour to Mr Masters and S A Masters in relation to the affairs or business of the RMS.

Chapter 14: The allocation of P2P projects to Mr Chahine and Mr Hadid

This chapter examines the circumstances surrounding the allocation of Mr Steyn's P2P program contracts to companies controlled by Mr Chahine and Mr Hadid, and the involvement of Mr Steyn and Mr Dubois in causing the awarding of that RMS work.

Mr Dubois introduces Mr Steyn to Mr Chahine and Mr Hadid

In about 2011, Mr Steyn and Mr Dubois first came to work together within the RTA Compliance and Enforcement Branch. Although working on different programs, Mr Dubois' STC program and TIRTL work overlapped with Mr Steyn's average camera P2P programs.

Mr Dubois agreed that, by 2013 or 2014, he and Mr Steyn had become friends. This also accords with Mr Steyn's evidence that, by 2014 when they were both working in the same area in the HVP Unit, he was discussing the designs of his house with Mr Dubois. Both told the Commission that they had become aware they were acting corruptly using contractors with which they were associated. Mr Dubois told the Commission that neither decided to report the other's activities as "it wasn't in his interest, and it wasn't in mine ... because ... if I spilled the beans, he would, it was double-edged [sic] sword". Similarly, Mr Steyn told the Commission that, sometime before March 2014, he became aware of Mr Dubois' arrangement in receiving benefits from contractors, accepted that he preferred not to enquire into it and told the Commission "[I] stuck to my own business".

Mr Chahine told the Commission that he and Mr Hadid first met Mr Steyn through Mr Dubois in about 2013, at an RMS/RTA job in country NSW. This broadly accords with an RMS purchase order request form filled out by Mr Steyn "for Alex Dubois" relating to Picton Road and Port Macquarie P2P sites for \$25,000 in favour of CBF Projects.

Mr Steyn told the Commission he also knew Mr Hadid and Mr Chahine by the names of "Baz" and "Hoody" respectively.

Mr Steyn allows the awarding of RTA/RMS contracts to Mr Chahine and Mr Hadid's companies

It will be recalled in chapter 2 that, in addition to CBF Projects, in 2015 Mr Hadid and Mr Chahine, agreed to create two further companies, being Euro Civil and OzCorp Civil.

Counsel Assisting submitted that it was unclear if Mr Steyn was present for at least one meeting where Mr Dubois requested that Mr Chahine and Mr Hadid create multiple companies so that work could be spread so as to receive more RMS work. Mr Dubois told the Commission that "in discussions ... with Craig Steyn at the time, where we wanted to, he has advised me and we had conversations along those lines where there ... should be an even distribution of work between the [Hadid and Chahine] companies. So we couldn't give all the work to one company". Mr Chahine told the Commission that it was Mr Dubois and Mr Steyn's idea to set up a second contractor company. For his part, Mr Hadid told the Commission that the prospect of opening up another company was "brought up in a meeting when Mr Dubois and Mr Steyn and all that were there, that it was [agreed that it was] beneficial if we opened up another one so they can split the work up across the board so it doesn't look like one company's got it". Mr Steyn did not give evidence on this issue.

Mr Steyn told the Commission that he needed first to obtain Mr Dubois' approval to use Mr Hadid and Mr Chahine's companies for the awarding of RMS work. Mr Steyn told the Commission that, typically, he first approached Mr Dubois about a P2P project that needed

to be undertaken. Mr Dubois then nominated Mr Hadid and Mr Chahine's companies to undertake the work and Mr Steyn then used the nominated company for those works. The Commission notes Mr Dubois' evidence is unclear on how this arrangement operated. Mr Dubois stated that Mr Hadid and Mr Chahine came to do work on Mr Steyn's P2P program "over a period of time". In the absence of evidence to the contrary, the Commission accepts Mr Steyn's evidence that at Mr Dubois' suggestion, he used the companies that were controlled by Mr Chahine and Mr Hadid for his P2P program. The Commission also notes that it accords with the evidence of Mr Chahine and Mr Hadid that Mr Dubois usually managed their interactions when it came to dealing Mr Steyn.

Mr Steyn told the Commission that, in arranging the awarding of work to companies controlled by Mr Chahine and Mr Hadid, he assumed their price was inflated beyond the proper costs of works to allow a sufficient margin to meet the costs of work and materials they provided for his house.

Given the way Mr Steyn allowed the awarding of RMS work to be approved to Mr Hadid and Mr Chahine's companies, it is difficult for the Commission to quantify the amount of work that was awarded to their companies. However, as dealt with below, the Commission is satisfied based on the value of benefits provided and the protracted period of time over which they were provided to Mr Steyn, that the RMS work he allowed to be awarded to Mr Hadid and Mr Chahine's companies, both in terms of volume and value, was substantial.

How benefits to Mr Steyn were provided

Mr Steyn admitted that while he had acted corruptly in his dealings with some contractors before meeting Mr Dubois, after being introduced to a number of contractors by Mr Dubois he was, through them, able to obtain more financial benefits for himself in return for arranging for them to get RMS work. Mr Steyn told the Commission that, with respect to those contractors, Mr Dubois directly handled the important aspects of the relationship between himself, Mr Chahine and Mr Hadid when it came to the provision of benefits. This is corroborated by the following evidence given by Mr Hadid:

[Counsel Assisting]: Did you ever speak to Mr Steyn about the items you were paying for?

[Mr Hadid]: I mean, we, everything sort of had to go through Alex and stuff like that. He was a bit funny like that.

He just wanted everything to always go through him and stuff like that. But on a few occasions, if we were on a, if we were on a job site or something like that and there was something I was organising or something like that, sometimes Mr Steyn might ask me a couple of questions about it or something like that.

[Q]: Did you understand from the questions that he knew that you were paying for the items?

[A]: Correct, yes.

The evidence before the Commission shows that two categories of improper benefit were provided to Mr Steyn through dealings with Mr Chahine and Mr Hadid. One category related to work associated with the knockdown and rebuild of Mr Steyn's house. The other was the provision of a white Mercedes C63 vehicle.

The Commission has identified 20 transactions between 18 December 2012 and 2 November 2017, totalling \$114,121.25, where CBF Projects and Euro Civil directly paid either through cash payments, cheques or bank transfers for services and materials towards work on Mr Steyn's house.

Mr Steyn told the Commission that he talked to Mr Dubois about the plans and renovations to his residence. Mr Steyn said that Mr Dubois offered to pay for services and materials towards the construction of his house and that he believed that Mr Dubois had in turn arranged for RMS contractors associated with him to pay for those services and materials.

In evidence, Mr Steyn recalled an instance after Mr Dubois and Mr Chahine attended to measure up how much gyprock was required for his pool house. When he received a gyprock delivery at his residence he looked at the gyprock delivery docket and noticed it referred to "CBF". This caused him to "wonder whether ... in effect maybe the contractors [associated with Mr Dubois] were doing it [paying for materials]" towards the construction of his house. Mr Steyn said he asked Mr Dubois how the construction materials for his house were organised and delivered. According to Mr Steyn, Mr Dubois told him that "I've taken care of it". Mr Steyn admitted he understood that it was contractors like Mr Chahine that paid for construction materials for his house.

Mr Steyn's evidence in relation to the extent of his knowledge as to whether Mr Chahine and Mr Hadid purchased materials for the construction of his house is inconsistent with Mr Dubois' evidence. Mr Dubois

told the Commission that, in return for awarding P2P work, Mr Steyn requested Mr Hadid and Mr Chahine allocate certain money for things he needed for his house. Mr Dubois also told the Commission that he communicated Mr Steyn's requests to Mr Hadid and Mr Chahine. The Commission notes that Mr Steyn's legal representatives never challenged this evidence.

WhatsApp messages between Mr Steyn and Antoine Fedele of Sydney Pebble Company Pty Ltd ("Sydney Pebble") also demonstrate that Mr Steyn knew it was contractors associated with Mr Dubois that were paying for materials and services towards the construction of his house. WhatsApp messages of 6 November 2017, obtained from a Samsung Galaxy 9 mobile telephone during the execution of the search warrant at Mr Steyn's residence, show Mr Steyn knew Mr Hadid was paying for at least some of the work undertaken by Sydney Pebble.

Mr Steyn told the Commission that he believed he may have forwarded Mr Fedele's messages onto Mr Hadid.

Mr Steyn told the Commission that he provided the Sydney Pebble quote to Mr Dubois, who told him that Mr Hadid would "take care of it". Mr Steyn acknowledged that "quite possibly" Mr Hadid would have made up for paying the \$59,311.10 invoiced by Sydney Pebble through RMS work. Mr Steyn also told the Commission that he "might very well have" known that Mr Dubois had a system where he was incorporating margins into RMS work to cover Mr Steyn's construction expenses, such as the pavement of his driveway and veranda by Sydney Pebble.

Mr Hadid acknowledged he paid the \$59,311.10 invoiced by Sydney Pebble.

The Commission notes that, towards the conclusion of his public inquiry evidence, Mr Steyn admitted that he assumed that margins were incorporated into P2P RMS contracts he was responsible for to cover the cost of materials and services used in the construction of his house. Mr Steyn knew that "thousands or tens of thousands" were being loaded into RMS invoices as a result of the "freebies" he received in relation to the materials and work done on his house.

To the extent that Mr Steyn suggested that he had limited knowledge that Mr Chahine and Mr Hadid purchased materials and services towards the construction of his house in return for Mr Steyn allowing their companies to work on P2P programs, the Commission rejects this evidence. First, the Commission notes that Mr Steyn's assertion is inconsistent with Mr Dubois' unchallenged admission that he was involved in relaying Mr Steyn's requests that Mr Chahine and Mr Hadid purchase materials towards the construction of his house. Secondly, Mr Steyn's evidence does not accord with the WhatsApp messages which demonstrate that he knew it was Mr Hadid who was responsible for the payment of pavement services for his house. Thirdly, the Commission finds it implausible that, for a six-year period, Mr Steyn did not seriously question Mr Dubois' arrangement of "purchasing goods" in circumstances where he saw a receipt of materials purchased on his behalf from CBF Projects. Fourthly, both Mr Chahine and Mr Hadid told the Commission they physically attended Mr Steyn's property to plaster his pool house or home theatre area which was never paid for by Mr Steyn. In this regard, Mr Steyn conceded that he saw Mr Chahine attend his property for the purpose of measuring up how much gyprock was required towards the construction of his pool house and that he never paid for the work performed by Mr Chahine. Fifthly, Mr Hadid recalled that, notwithstanding the tight control Mr Dubois kept in respect of managing the relationship between him and Mr Steyn, there were a few occasions where Mr Steyn asked him questions about items he was paying for on Mr Steyn's behalf. Finally, Mr Steyn's evidence is disingenuous when viewed in combination of the above circumstances and that at the same time he had his own arrangement with AA Steel, where he had received similar benefits from that company in the form of construction materials for his house which were ultimately paid through inflated invoices issued on the RMS.

The Commission is satisfied that Mr Steyn was aware that the receipt of benefits relating to the construction of his house was linked to him allowing Mr Chahine and Mr Hadid's companies to work on projects in relation to his P2P program.

Table 2: WhatsApp messages dated 6 November 2017 between Mr Steyn and Mr Fedele

Number	Sent	Received	Message
1	Mr Fedele	Mr Steyn	Hi Craig it's Antoine from Sydney pebble sorry to bother you mate , but can you please ask baz [Mr Hadid] if he can pay does [sic – those] invoices urgently please. Thanks mate.
2	Mr Steyn	Mr Fedele	No Problem Antoine I will call him now.
3	Mr Fedele	Mr Steyn	Ok thanks Craig

Some of the benefits provided to Mr Steyn’s house by Mr Chahine and Mr Hadid’s companies included purchases of significant items such as:

- bricks, for \$6,634.90
- cabinetry and whitegoods, for \$7,650
- concreting, for \$8,701
- pavers and paving services for \$59,311.10.

Mr Hadid told the Commission that Mr Dubois informed him that because his and Mr Chahine’s companies were performing work on Mr Steyn’s P2P programs, that they would need “to pay for things related to the work” at Mr Steyn’s house. Similarly, Mr Chahine told the Commission that Mr Dubois informed him that whatever he paid for in respect of Mr Steyn’s house would be made up through P2P projects that his companies would work on.

The other benefit provided to Mr Steyn, through Mr Dubois, was a white Mercedes C63 vehicle (“the white Mercedes C63”).

It is common ground Mr Steyn sought to purchase a vehicle without having to pay for it. Mr Steyn told the Commission the vehicle was meant for his wife. After some discussions over “an extended period of time” between him and Mr Dubois, Mr Dubois arranged for the purchase of a Mercedes. Mr Hadid, acting on Mr Dubois’ instruction, drew a cheque from the Built Engineering account for the purchase of a grey Mercedes C63. Although money was transferred, the purchase was unsuccessful. Mr Dubois subsequently sourced the white Mercedes C63 from another dealership. Mr Dubois then arranged for the first dealership to reimburse \$124,000 to the second dealership to facilitate the purchase of the white Mercedes C63. By agreement between Mr Steyn and Mr Alexander, the vehicle was purchased under Mrs Alexander’s name on 21 December 2018. Mr Steyn took possession of the car.

Mr Dubois agreed that he tried to source a vehicle for Mr Steyn. He told the Commission, “I’m one million per cent sure that that car was through a, a bribe, kickback because I helped organise it”. Mr Dubois gave evidence that he had “arranged for contractors that did the work for his [P2P] program to pay a dealership for the vehicle”. This is consistent with Mr Hadid’s evidence that he was requested to draw a cheque made out to a dealership which he knew Mr Dubois used because “Mr Steyn wanted a C63” and that by drawing the cheque, Mr Hadid knew it was in regards to P2P “work that was associated to Mr Steyn”.

Mr Steyn told the Commission he assumed that one of the RMS contractors would pay for the car but that he

“turned a blind eye to it”. He claimed he did not know which contractor would pay. When challenged on this point by Counsel Assisting, Mr Steyn denied it was important to know who was paying for the car so he could reward them with work. The Commission rejects Mr Steyn’s evidence as to his ignorance in relation to which RMS contractor paid for the car. First, it is simply not credible that Mr Steyn accepted an expensive benefit from an RMS contractor without knowing the identity of the contractor. In evidence Mr Steyn conceded that by this time he was on “reasonably friendly terms with Mr Chahine and Mr Hadid”. Secondly, it is inconsistent with the evidence of Mr Alexander, who told the Commission that in about 2020, sometime after the execution of search warrants by the Commission on Mr Steyn’s residence, Mr Steyn told him that if he was ever asked where he bought the car, he was supposed to say he bought it from “Baz”. The latter request by Mr Steyn to Mr Alexander serves as cogent evidence that Mr Steyn knew it was Mr Hadid who was behind the purchase of the white Mercedes C63. The Commission notes that Mr Steyn’s legal representatives were present when this evidence was heard and never challenged Mr Alexander’s evidence on this point.

Counsel Assisting submitted that the value of the white Mercedes C63 should be incorporated into the value of benefits Mr Steyn derived from Mr Chahine and Mr Hadid. This was also not challenged by Mr Steyn’s legal representatives despite being provided with the opportunity to do so.

The Commission was able to forensically download WhatsApp messages dated 25 December 2018, between Mr Dubois and Mr Steyn, obtained from a black Samsung mobile telephone located during the execution of the search warrant at Mr Dubois’ residence:

Table 3: WhatsApp messages dated 25 December 2018 between Mr Dubois and Mr Steyn

Time	Message From	Message
9:45 am	Mr Dubois	Merry Christmas and to u and ur family, may u have a happy and prosperous new year, zoom zoom
10:22 am	Mr Steyn	Hahahahahahaha Mate Merry Christmas to You, Sandra and all the Family, have a good rest mate and zoom zoom would not be possible without you mate! Thank You Bro

Mr Steyn told the Commission that his message to Mr Dubois was in thanks to Mr Dubois assisting him obtaining the white Mercedes C63.

At around mid-2019, the white Mercedes C63 was then driven to the Alexanders. According to Mr Alexander, Mr Steyn told him the reason for this was that he had some concern about an investigation that was being conducted into the RMS. The Commission notes that Mr Steyn and Mr Dubois' supervisor in the HVP Unit, Mr Soliman, was the subject to the Commission investigation, Operation Ember, and Mr Steyn was aware that greater scrutiny was now being afforded to the entire RMS HVP Unit. This resulted in Mr Steyn leaving the car with Mr Alexander.

Mr Alexander told the Commission he used the white Mercedes C63 for some time until he sold it for \$100,000.

Counsel Assisting submitted that the Commission should find Mr Chahine was involved in the purchase of the white Mercedes C63 for Mr Steyn. While it was Mr Hadid who wrote the cheque used to purchase the car, the Commission notes there was significant cooperation between Mr Hadid and Mr Chahine when it came to all aspects of their business, including their dealings with providing benefits to both Mr Dubois and Mr Steyn. However, the evidence does not establish that Mr Chahine knew money from Built Engineering was used for the purchase of the car for Mr Steyn. This is evidenced by Mr Chahine's exchange with Counsel Assisting:

[Counsel Assisting]: *But you're aware that he was talking to Mr Hadid from time to time about cars he [Mr Dubois] wanted.*

[Mr Chahine]: *Correct.*

[Q]: *And did Mr Hadid tell you that from time to time he was drawing cheques for dealers so that cars were being bought?*

[A]: *No, he was just drawing cheques so he just, what he done with it, he done with it, so...*

[Q]: *And did Mr Hadid, for instance, ever tell you that there were cheques being drawn by him in the name of car dealers?*

[A]: *Yes, oh, yes.*

[Q]: *But you weren't aware of the specifics of individual cars that*

were being bought, I take it, from what you're telling us?

[A]: *Yes, correct.*

Mr Chahine also told the Commission he understood that money deposited from their other companies, Euro Civil and OzCorp Civil, into the Built Engineering account was for Mr Dubois' benefit. The Commission notes that, excluding the white Mercedes C63, all other benefits provided to Mr Steyn in relation to his house were provided from Euro Civil and CBF Projects accounts, not the Built Engineering bank account. Unlike the understanding Mr Chahine and Mr Hadid shared in relation to the payments of goods and services for Mr Steyn's house, the Commission is not satisfied that Mr Chahine was involved in the purchase of the white Mercedes C63 for Mr Steyn.

Quantum of benefits provided to Mr Steyn

Based on available records, the Commission created a chart, which formed a part of exhibit 98 that was tendered on the third day of the public inquiry. The chart identified 21 instances, between 18 December 2012 and 2 November 2017, where payments were made from CBF Projects and Euro Civil bank accounts to pay for work performed by contractors on Mr Steyn's house. The payments over that period total \$114,121.25. The chart also records the transfer of \$124,000, which the Commission established related to the purchase of the white Mercedes C63 for Mr Steyn.

In their submissions, Counsel Assisting relied on this chart to arrive at the value of \$238,121.25 worth of benefits provided by Mr Chahine and Mr Hadid at Mr Dubois' direction.

The Commission notes that both Mr Hadid and Mr Chahine made significant admissions as to the continuous provision of benefits in the form of supply of materials, items and services towards the construction and furnishing of Mr Steyn's house. Both Mr Chahine and Mr Hadid were taken to significant benefits they were responsible for providing to Mr Steyn, which formed a part of exhibit 98. These included the payment for bricks, gyprock, pavers, concreting, furniture and fittings. The Commission notes that no objection was made by Mr Hadid's legal representatives or Mr Chahine on the calculation of the quantum of benefits submitted by Counsel Assisting in relation to Mr Steyn. The Commission is satisfied that Mr Chahine and Mr Hadid, acting in concert with one another, were responsible for providing benefits to the value of \$141,121 by way of goods and services toward

Mr Steyn's residence. In addition, Mr Hadid was responsible for providing an additional \$124,000 used towards the purchase of the white Mercedes C63 for Mr Steyn's benefit.

The Commission is satisfied of Mr Steyn's knowledge, that through Mr Dubois' intervention, Mr Hadid and Mr Chahine continuously provided him with benefits towards the construction of his house and that he knew that Mr Hadid was responsible for the purchase of the white Mercedes C63. The Commission notes that no objection was taken by Mr Steyn's legal representatives on the calculation of the value of these benefits amounting to \$238,121.25. The Commission is satisfied that Mr Steyn received benefits in the amount of \$238,121 in what he knew were rewards for him allowing the awarding of work to companies owned Mr Chahine and Mr Hadid.

Mr Dubois' submissions did not respond to Counsel Assistings' quantification of the total benefits provided to Mr Steyn. Instead, it was submitted that the absence of an objection "is not too [sic] be taken as a concession that the Submission of Counsel Assisting is correct or agreed too [sic]". The Commission relies on Mr Dubois' admissions in organising the white Mercedes C63 valued at \$124,000. The Commission also notes that the evidence establishes all requests for benefits that Mr Steyn made to Mr Chahine and Mr Hadid went through Mr Dubois. This evidence is consistent with Mr Dubois' admissions that over "a period of time" he communicated Mr Steyn's request for benefits from Mr Hadid and Mr Chahine towards the construction and furnishing of Mr Steyn's house. Accordingly, the Commission is satisfied that in each instance Mr Steyn requested a benefit from Mr Chahine and Mr Hadid, that it was Mr Dubois who facilitated the request.

Corrupt conduct

Mr Steyn

Between about December 2012 and December 2018, Mr Steyn misused his public official position with the RMS to allow the awarding of substantial RMS work to companies owned or controlled by Mr Chahine and Mr Hadid, namely, CBF Projects, Euro Civil and OzCorp Civil, in return for benefits from Mr Hadid and Mr Chahine to the value of approximately \$238,121.

This conduct on the part of Mr Steyn was corrupt conduct for the purpose of s 8 of the ICAC Act as it adversely affected the honest and impartial exercise of his official functions (s 8(1)(a)), constituted the dishonest and partial exercise of his official functions (s 8(1)(b)) and involved a breach of public trust (s 8(1)(c)).

Section 249B(1) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2 of this report.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Steyn committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to companies controlled by Mr Chahine and Mr Hadid, in relation to the affairs or business of the RMS. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Steyn had committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits as an inducement or reward for showing favour to companies controlled by Mr Chahine and Mr Hadid, in relation to the affairs or business of the RMS. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is further satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act, that if the facts were to be proved on admissible evidence to the requisite standard of proof of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could find that Mr Steyn committed disciplinary offences, being substantial breaches of the RMS code of conduct giving rise to dismissal, as he was specifically required to refuse gifts, benefits that might influence or have the potential to influence procurement decisions. Mr Steyn's conduct therefore comes within s 9(1)(b) and s 9(1)(c) of the ICAC Act.

The Commission is also satisfied that, if the facts found were to be proved on admissible evidence to the requisite standard of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Steyn had engaged in conduct that constitutes disciplinary offences of breaching the RMS code of conduct in relation to accepting gifts or benefits and that such conduct is sufficiently serious to constitute grounds for his dismissal. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because it involved significant planning and the improper acceptance of significant benefits.

Mr Dubois

Between about December 2012 and December 2018, Mr Dubois misused his public official position with the RMS to recommend the awarding of substantial RMS work to companies owned or controlled by Mr Chahine and Mr Hadid, namely, CBF Projects, Euro Civil and OzCorp Civil, in return for benefits provided to or on behalf of Mr Steyn from Mr Hadid and Mr Chahine to the value of approximately \$238,121.

This conduct on the part of Mr Dubois was corrupt conduct for the purpose of s 8 of the ICAC Act as it adversely affected the honest and impartial exercise of his official functions (s 8(1)(a)), constituted the dishonest and partial exercise of his official functions (s 8(1)(b)) and involved a breach of public trust (s 8(1)(c)).

Section 249B(1) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2 of this report.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Dubois committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits for Mr Steyn as an inducement or reward for showing favour to companies controlled by Mr Chahine and Mr Hadid, in relation to the affairs or business of the RMS. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Dubois had committed offences under s 249B(1) of the Crimes Act of corruptly soliciting or receiving benefits for Mr Steyn as an inducement or reward for showing favour to companies controlled by Mr Chahine and Mr Hadid, in relation to the affairs or business of the RMS. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is further satisfied for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act, that if the facts were to be proved on admissible evidence to the

requisite standard of proof of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could find that Mr Dubois committed disciplinary offences, being a substantial breach of the RMS code of conduct giving rise to dismissal, which prohibits the dishonest use of an RMS officer's role for personal gain or the advantage of others. Mr Dubois' conduct therefore comes within s 9(1)(b) and s 9(1)(c) of the ICAC Act.

The Commission is also satisfied that, if the facts found were to be proved on admissible evidence to the requisite standard of the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Dubois had engaged in conduct that constitutes disciplinary offences of breaching the RMS code of conduct in relation to accepting gifts or benefits and that such conduct is sufficiently serious to constitute grounds for his dismissal. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because it involved significant planning and improper benefits of significant value over a period of years.

Mr Hadid

Between about December 2012 and December 2018, Mr Hadid provided benefits to and on behalf of Mr Steyn to the value of approximately \$238,121 (being approximately \$114,121 provided in concert with Mr Chahine by way of payment for goods and services associated with the construction of Mr Steyn's house, and \$124,000 for the purchase of a white Mercedes C63 for Mr Steyn's use), in return for Mr Steyn misusing his public official position with the RMS, to allow the awarding of substantial work to companies owned or controlled by him and Mr Chahine, namely, CBF Projects, Euro Civil and OzCorp Civil.

This conduct on the part of Mr Hadid was corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act as it adversely affected the honest and impartial exercise of Mr Steyn's official functions.

Section 249B(2) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2 of this report.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Hadid,

in concert with Mr Chahine, committed offences under s 249B(2) of the Crimes Act of giving corrupt benefits. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Hadid had committed offences under s 249B(2) of the Crimes Act. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because it involved planning and the improper provision of significant benefits over a protracted period of time.

Mr Chahine

Between December 2012 about and November 2017, Mr Chahine, in concert with Mr Hadid and Mr Dubois, provided benefits to the value of approximately \$114,121 to and on behalf of Mr Steyn, by way of payment of goods and services associated with construction at Mr Steyn's house, in return for Mr Steyn misusing his public official position with the RMS, to allow the awarding of work to companies owned or controlled by him and Mr Hadid, namely, CBF Projects, Euro Civil and OzCorp Civil.

This conduct on the part of Mr Chahine was corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act as it adversely affected the honest and impartial exercise of Mr Steyn's official functions.

Section 249B(2) of the Crimes Act is relevant for the purposes of s 9(1)(a) of the ICAC Act. The elements of the offence are set out in chapter 2 of this report.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Chahine, in concert with Mr Hadid, committed offences under s 249B(2) of the Crimes Act of giving corrupt benefits. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Chahine had

committed offences under s 249B(2) of the Crimes Act of giving corrupt benefits. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that this is serious corrupt conduct because it involved planning and the improper provision of significant benefits over a protracted period of time.

Section 74A(2) statements

In relation to the conduct dealt with in this chapter, the Commission considers that Mr Steyn, Mr Dubois, Mr Hadid and Mr Chahine are affected persons.

Craig Steyn

Mr Steyn's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RMS records, banking records, invoices, receipts and delivery dockets relating to the purchase of goods and services by Mr Hadid and Mr Chahine on behalf of Mr Steyn, the Samsung Galaxy 9 mobile telephone seized from Mr Steyn's house during the execution of the search warrant containing emails and WhatsApp chats, and the potential evidence of Mr Dubois, Mr Hadid, Mr Chahine, Mr Alexander and Mrs Alexander.

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 Steyn for offences under s 249B(1)(a) of the Crimes Act of, between December 2012 and December 2018, corruptly soliciting and receiving benefits, on account of using his position to award contracts to CBF Projects, Euro Civil and OzCorp Civil.

As Mr Steyn's employment with the RMS was terminated, the question of whether consideration should be given to the taking of action against him for a disciplinary offence, or the taking of action with a view to his dismissal, does not arise.

Alexandre Dubois

Mr Dubois' evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RMS records, banking records, invoices, receipts and delivery dockets relating to the purchase of goods and

services by Mr Hadid and Mr Chahine on behalf of Mr Steyn, the Samsung Galaxy 9 mobile telephone seized from Mr Steyn's house during the execution of the search warrant containing emails and WhatsApp chats, and the potential evidence of Mr Steyn, Mr Hadid, Mr Chahine, Mr Alexander and Mrs Alexander.

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 Dubois for offences under s 249B(1)(a) of the Crimes Act of, between December 2012 and December 2018, aiding and abetting Mr Steyn in corruptly soliciting and receiving benefits, on account of using his position to award contracts to CBF Projects, Euro Civil and OzCorp Civil.

As Mr Dubois' employment with the RMS was terminated, the question of whether consideration should be given to the taking of action against him for a disciplinary offence, or the taking of action with a view to his dismissal, does not arise.

Barrak Hadid

Mr Hadid's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RMS records, banking records, invoices, receipts and delivery dockets relating to the purchase of goods and services by him and Mr Chahine on behalf of Mr Steyn, the Samsung Galaxy 9 mobile telephone seized from Mr Steyn's house during the execution of the search warrant containing emails and WhatsApp chats, and the potential evidence of Mr Dubois, Mr Steyn, Mr Chahine, Mr Alexander and Mrs Alexander.

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 Hadid for offences under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between December 2012 and December 2018, corruptly giving a benefit to Mr Steyn on account of Mr Steyn showing favour to Mr Hadid, Mr Chahine and companies under their control, namely, CBF Projects, Euro Civil and Maintenance and OzCorp Civil (collectively "their companies") in relation to the affairs or business of the RMS, or the receipt of or expectation of which would tend to influence Mr Steyn to show favour to Mr Hadid and Mr Chahine and their companies in relation to the affairs or business of the RMS.

Chahid Chahine

Mr Chahine's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including RMS records, banking records, invoices, receipts and delivery dockets relating to the purchase of goods and services by him and Mr Hadid on behalf of Mr Steyn, the Samsung Galaxy 9 mobile telephone seized from Mr Steyn's house during the execution of the search warrant containing emails and WhatsApp chats, and the potential evidence of Mr Dubois, Mr Steyn, Mr Hadid, Mr Alexander and Mrs Alexander.

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 Chahine for offences under s 249B(2)(a) or s 249B(2)(b) of the Crimes Act of, between December 2012 and November 2017, corruptly giving a benefit to Mr Steyn on account of Mr Steyn showing favour to Mr Hadid, Mr Chahine and their companies in relation to the affairs or business of the RMS, or the receipt of or expectation of which would tend to influence Mr Steyn to show favour to Mr Chahine and Mr Hadid and their companies in relation to the affairs or business of the RMS.

Chapter 15: Mr Steyn and M&M Inspections Pty Ltd

This chapter examines the circumstances surrounding Mr Steyn’s association with Eric Louis Martin Duchesne (known as Martin Duchesne) and the awarding of RMS project contracts to Mr Duchesne’s company, M&M Inspections Pty Ltd, in the amount of \$282,736.

Mr Duchesne and Mr Steyn’s friendship

Mr Duchesne was a family friend of the Steyn family, often referred to by Mr Steyn and Mrs Steyn as “Uncle Marty”.

Mr Duchesne told the Commission that he first met Mr Steyn as Mr Steyn was “a friend” of his daughter, and that both his daughter and Mr Steyn first met when they were at school in Australia. Both Mr Duchesne and Mr Steyn were members of the South African community and often saw each other at community functions. Mr Duchesne was sufficiently close to Mr Steyn to be invited to Mr Steyn’s wedding to Mrs Steyn.

M&M Inspections

Mr Duchesne first commenced his career as a boiler maker in South Africa before attaining experience in the field of quality assurance relating to steel fabrication. In 1978, Mr Duchesne migrated to Australia from South Africa. He was certified in and worked for a number of businesses associated with quality assurance relating to mechanical and welding inspections.

On 19 June 1992, Mr Duchesne incorporated M&M Inspections, with himself listed as director and shareholder. Through M&M Inspections, he provided quality assurance, often times interstate, to mining companies relating to welding inspections and mechanical inspections concerning valves, pumps and the like.

The awarding of RMS work to M&M Inspections

It is uncontested that, around 2015, Mr Steyn offered Mr Duchesne the opportunity to undertake quality inspection work relating to the RMS steel fabrications on P2P camera projects located around the state, as well as other RMS projects.

Unlike the typical RMS procurement processes dealt with in this report, Mr Duchesne operated from a “bucket system”, where he was required to nominate a “bucket price”, usually for a set time period. The RMS set aside funds based on the mutually-agreed bucket price, which operated more or less as a budget from which Mr Duchesne gradually drew down, on a per hour basis, from the agreed budget until the funds ran out. Once the funds were expended, a new “bucket price” needed to be negotiated.

Mr Duchesne told the Commission that both Mr Steyn and Mr Dubois outlined to him what would be required if he were to work at the RMS. The work would entail inspecting steel and fabrication works performed by RMS contractors, notably Hassan Alameddine’s company, Seina Group.

On 26 January 2015, Mr Duchesne sent an email to Mr Dubois quoting \$20,000 to conduct general quality assurance and quality control activities relating to “procedure review and implementation and progress inspection of fabrications”. The following day a more formal proposal letter was sent to Mr Dubois outlining Quality Assurance and Quality Control activities M&M inspections would provide including:

- *The review of Quality documentation...*
- *Review and where required, the Implementation of Quality Procedures*
- *Review of Welding Procedures...*

- *In process Quality inspections and sign off of Inspection documentation at both workshop and respective work sites*

...

Pricing of \$20,000.00 is based on QA/QC coverage of 8 weeks.

On 28 January 2015, the proposal – coded RMS 0001 – was further changed to incorporate an \$80 hourly rate and travel charge based on \$0.70 per kilometre in addition to any toll charges and out-of-metropolitan Sydney accommodation expenses.

On 3 February 2015, Mr Dubois approved an RMS purchase order request form in favour of M&M Inspections for \$10,000, with a contract end date of 30 June 2015. This form described the work Mr Duchesne would undertake as, “Quality assurance & quality control, review of documentation and inspections in accordance to Proposal Letter RMS 0001 dated 28/01/2015”.

M&M Inspections issued invoices on 12 February 2015, 11 March 2015 and 24 March 2015. These were for the provision of inspection reports in relation to various steel fabrications and attending the CT Fabrications workshop to ensure procedures were adhered to. Collectively, \$9,353.30 was remitted by the RMS to M&M Inspections.

Hassan Alameddine and M&M Inspections

The Commission examined two payments made by Hassan Alameddine’s company, Seina Group, to M&M Inspections. These were examined because, at the relevant times, M&M Inspections was engaged by the RMS to oversee the work being performed by Seina Group.

The first payment was made by Seina Group on 7 June 2016. It was for \$1,100. On the M&M Inspections bank statement, the payment was described as “steel inspections”. Mr Duchesne told the Commission this payment was made by Seina Group because Seina’s work in relation to an RMS job was defective and failed the original inspection he performed. Mr Duchesne was paid by the RMS for the original inspection. However, after Seina Group repaired the defect, Mr Duchesne was paid by Seina Group to reinspect the repairs. Mr Duchesne told the Commission that there was no double up of payment by the RMS and Seina Group for the same task but, rather, each entity paid for separate inspections.

The second payment made by Seina Group was on 11 July 2015. It was for \$5,000. On the M&M Inspections bank statement the payment was described as “ISO and eng fees”. The payment related to assisting Seina Group obtaining International Organization Standardization (ISO) certification status from WorkCover. Mr Duchesne told the Commission that this payment was in relation to a request from Mr Dubois that Seina Group attain ISO certification status from WorkCover. Mr Duchesne said he performed “preparatory work to get them [Seina Group] to the point before they brought a qualified person” and the certification process remained unfinished.

Although not specifically asked about the above transactions, Hassan Alameddine told the Commission he at times used a steel fabricator to perform quality assurance checks on Seina Group’s steel works. Those services were priced in his invoice to the RMS. Mr Duchesne then performed a quality assurance check on the same steel work on behalf of the RMS. Hassan Alameddine said this was done to mitigate delays on projects.

There is no evidence that there was anything improper about these payments made by Seina Group to M&M Inspections.

Mr Manuel and PMD Consulting Pty Ltd

It will be recalled that Mr Manuel was Mr Steyn's father-in-law. The Commission examined how Mr Manuel came to work on RMS jobs and bill M&M Inspections, and whether Mr Steyn derived any improper benefit from this arrangement.

As Mr Manuel had died, the Commission notes that it could not call him to give evidence at the public inquiry.

On 2 February 2018, Mr Duchesne emailed Mr Steyn with Mr Dubois copied in. Attached to the email was Mr Duchesne's proposal letter relating to inspections of fabrications and erection in relation to four bridge structures. The pricing proposed an hourly rate of \$80, capped at \$45,000, as well as additional accommodation and travel expenses.

On 20 February 2018, a request for RMS contract creation was submitted by Mr Dubois for \$45,000 in M&M Inspections' favour. It was approved by Mr Steyn on the same day.

Mr Duchesne told the Commission that, sometime around February, he informed Mr Steyn that he would be unable to work as he would be overseas for approximately six weeks. According to Mr Duchesne, Mr Steyn said he would organise someone else to replace him while he was away.

Mr Duchesne told the Commission that, before his departure, he had a second discussion with Mr Steyn who told him he would use Mr Manuel, whom Mr Duchesne had previously met, as his replacement. As a result of that conversation, he was asked by Mr Steyn to set up a company for Mr Manuel to be used to perform RMS work while he was away. Mr Duchesne told the Commission that he complied with Mr Steyn's request to set up a company with Mr Manuel as he was concerned that if he refused, he would not be awarded further RMS work. Mr Duchesne thought that M&M Inspections would not be performing any works on behalf of the RMS during his absence. Mr Steyn told the Commission he agreed with Mr Dubois and Mr Duchesne for Mr Manuel and Mr Duchesne to create a company.

On 21 March 2018, PMD Consulting Pty Ltd ("PMD") was registered by Mr Duchesne. According to Mr Duchesne, the title PMD was arrived through using the first letters of Peter, Manuel, Duchesne. Mr Manuel was listed as director of the company.

On 4 April 2018, Mr Manuel arrived in Sydney from Johannesburg. Mr Duchesne told the Commission that he met Mr Manuel while both were on RMS projects in the Narrandera and Jerilderie area. According to Mr Steyn,

Mr Duchesne provided instructions on how to perform quality assurance duties.

On 19 April 2018, Mr Duchesne departed Sydney for South Africa. Mr Duchesne returned to Sydney on 14 May 2018. The Commission infers the onsite meeting between Mr Manuel and Mr Duchesne occurred between when Mr Manuel arrived and when Mr Duchesne departed.

The Commission obtained a number of PMD invoices addressed to M&M Inspections located on a Western Digital external hard drive during the execution of a search warrant by Commission officers at the Steyns' residence. These invoices related to the purported services Mr Manuel rendered in relation to RMS works. They were as follows:

- PMD invoice numbered MM250518-01 for \$2,000, dated 25 May 2018, for works performed by Peter Manuel at Jerilderie and Narrandera
- PMD invoice numbered MM080618-02 for \$5,000, dated 8 June 2018. It contained a mere one-line description "Services Rendered April18 – June18"
- PMD invoice numbered MM080618-01 for \$3,305, dated 8 June 2018, concerning "structure installations" in relation to Jerilderie and Narrandera sites and itemised travel, meal and accommodation costs, between 30 April 2018 and 2 May 2018
- PMD invoice MM130818 for \$25,300, dated 13 August 2018, for "services rendered May18 – July18", "Assistance with Business Development" and "Engagement of third [sic] Party Services to Assist". The invoice also itemised a \$10,000 partial payment of an invoice made on "28-Nov" and listed an outstanding balance of \$15,300.

Mr Duchesne told the Commission that it was only after he had returned from South Africa that Mr Steyn informed him that M&M Inspections would be invoicing the RMS, and in turn PMD would be invoicing M&M Inspections.

Mr Duchesne told the Commission that, after consulting with Mr Steyn, he paid all the invoices submitted to M&M Inspections by PMD. Mr Duchesne told the Commission he paid the invoices notwithstanding that he had no way of knowing what, if anything, Mr Manuel had done, because he could not disprove that Mr Manuel had not performed the work.

Mr Steyn told the Commission that Mr Manuel performed the work described in the invoices. He said there were multiple invoices for the Jerilderie and

Narrandera sites because Mr Manuel performed the work in phases. Mr Steyn, however, conceded that it was wrong and highly improper to engage Mr Manuel, an unqualified man in his seventies, to perform quality assurance work while Mr Duchesne was overseas.

According to Mr Duchesne the first PMD invoice, MM250518-01, represented “a handover” that was performed to allow Mr Manuel to assume work while Mr Duchesne was overseas.

Mr Duchesne told the Commission he understood the second PMD invoice, MM080618-02, covered at least part of the period while he was in South Africa but agreed it lacked detail and gave him no guidance as to what work Mr Manuel did.

In respect of the third PMD invoice, MM080618-01, Mr Duchesne said he understood the work on “structure installations” referred to the work at the Jerilderie and Narrandera sites. However, he conceded it was not described well in the invoice.

In their submissions, Counsel Assisting submitted that the 13 August 2018 invoice for \$25,300 represented a “kickback” to Mr Steyn.

The Commission notes that, although the invoice purports to be for work performed between May and July 2018, Mr Duchesne had returned from South Africa on 14 May 2018. In these circumstances the explanation that PMD was engaged to undertake work during Mr Duchesne’s absence would not apply to work undertaken after 14 May 2018.

Mr Steyn told the Commission that he did not recognise the invoice, however, he stated that it was possible that Mrs Steyn showed it to him. Mrs Steyn told the Commission she assisted her father, Mr Manuel, by preparing invoices to M&M Inspections. She said that she did not raise with Mr Manuel why the amount on this invoice was so large or what services her father actually performed in relation to the invoice. Mrs Steyn denied that she was deliberately distancing herself from knowledge that her husband was involved in “the work” PMD received that she invoiced for on behalf of Mr Manuel.

Mr Duchesne paid the invoice, notwithstanding that he knew the invoice did not represent a genuine reflection of the work Mr Manuel performed. In his evidence to the Commission, he agreed that the invoice was a “nonsense”. Mr Duchesne said he paid because he felt pressured as Mr Steyn advised him Mr Manuel had complained to him that he had not paid his invoice and instructed him to pay the PMD invoice. Mr Duchesne said he suspected that Mr Steyn “was up to no good” and challenged Mr Steyn about what work Mr Manuel had performed, to which

Mr Steyn replied he had done some work as a contractor overseeing steel fabrications at Ashflex. Mr Duchesne said he did not suspect that money paid in accordance with the invoice would go to Mr Steyn.

Mr Steyn told the Commission that PMD’s primary purpose became a corrupt one in the sense that Mr Manuel, who was an unqualified person, was filling in for Mr Duchesne, who was a qualified person. He denied receiving any money for which PMD invoiced. However, he accepted he had a financial interest in Mr Manuel being paid for work, as he and his wife would not have to pay for Mr Manuel’s living expenses. Mr Steyn told the Commission that at the relevant period, Mr Manuel lived at the Steyn residence.

Counsel Assisting submitted that the payment of this invoice represented a “kickback” to Mr Steyn. However, there is no evidence the funds invoiced by PMD made their way to Mr Steyn. Accordingly, the Commission is not satisfied that Mr Duchesne intended that the payment of the 13 August 2018 invoice was to benefit Mr Steyn or was in return for Mr Steyn awarding RMS work to M&M Inspections. The Commission declines to make adverse findings against Mr Steyn and Mr Duchesne in these circumstances.

While Mr Steyn conceded it was highly improper for him to have employed Mr Manuel, Counsel Assisting’s submission did not advance a finding of corrupt conduct in those terms. The Commission, therefore, declines to make a finding in circumstances where Mr Steyn was not provided an opportunity to respond to this misconduct.

M&M Inspections invoice 410 and payment to PMS

In chapter 13, reference was made to Peter Manuel Services Pty Ltd (PMS), being an incorporated company set up by Mr Steyn. Mr Steyn told the Commission it was initially set up to allow Mr Manuel to perform “handyman works” while in Australia. He conceded that it was eventually used as a vehicle through which contractors could funnel corrupt payments to him. In evidence, he said he received payments through PMS from Mr Rahme and Mr Masters. Mr Steyn denied he ever received cash from Mr Duchesne. He was not questioned on whether Mr Duchesne made any payments to PMS.

On 4 October 2018, at 9:13 am, Mr Duchesne emailed Mr Steyn an excel document “RMS Invoice RMS0114-0410xlsx.xlsx”. The invoice was for \$16,000. It contained three line items. The first line item was for works related to “Management of Decommissioning works at New Italy” for \$16,000. The other two line items were not costed. They were the “Installation of structures

at Blackmans Point and Kempsey for the ASC [Average Safety Camera] Program” and “Services for the assistance in the Management of delivery works on the ASC across NSW”. The body of the email contained the following:

Hi Crai [sic]

Please review attached invoice prior to me submitting officially

Marty

At 4:15 pm, on the same day, Mr Steyn replied to Mr Duchesne asking that he “Please check that invoice to ensure it is the correct invoice?”.

At 4:48 pm, on the same day, Mr Duchesne replied to Mr Steyn on his iPhone and asked, “When you have time Pls [sic] call to discuss”. Mr Duchesne told the Commission he could not recall if there was a telephone call between him and Mr Steyn to discuss the invoice.

The Commission located a Samsung Galaxy 9 mobile telephone during the execution of the search warrant at Mr Steyn’s residence. The Commission was able to forensically download the contents of that phone. As a result of the download, the Commission was able to obtain the following email messages between Mr Duchesne and Mr Steyn’s private email address.

At 9:36 pm, on 4 October 2018, Mr Duchesne emailed Mr Steyn’s private email address. The email contained no subject heading, however, in the body of the email Mr Duchesne advised Mr Steyn that there was a “Draft invoice attached”.

On 4 October 2018, Mr Steyn replied to the email and attached an excel file titled “RMS Invoice RMS0114-0410 Rev1.xlsx”. Mr Steyn wrote the following in body of the email:

Okay

Here is your invoice to submit, please Pdf and send in ASAP to TSS Invoices and Cc ... me at work

I have allocated the following;

\$18k to M&M Inspections

\$15k to PMS which I will arrange the invoice as soon as you advise funds cleared I [sic]

\$33k Total excluding

please ensure name and ABN is all correct as per the change that has occurred

Any questions I am working from home

tomorrow

At 6:53 am the following day, Mr Duchesne emailed TTS, the RMS section responsible for the processing of invoices, and copied in Mr Steyn. In the body of the email, Mr Duchesne advised “Please find Invoice RMS0114-0410 attached for processing”. Attached was an M&M Inspections invoice numbered RMS0114-0410, dated 5 October 2018. The invoice related to the same work as in the \$16,000 invoice of 4 October 2018. While the invoice made no reference to payment to PMS, there were notable changes. These included now four differently-phrased line items inserted, instead of three. Most notably, the price of the invoice increased from \$16,000 to \$33,000. The \$33,000 was paid by the RMS on 5 November 2018.

Notwithstanding that Mr Duchesne’s conduct reflected Mr Steyn’s instructions contained in the 4 October 2018 email, Mr Duchesne maintained that he did not recall seeing that email. He denied having any dealings with PMS. Mr Duchesne denied that he used any of the information provided by Mr Steyn in the 4 October 2018 email when finalising the M&M Inspections invoice. Mr Duchesne also told the Commission that “I billed for work I had done” and maintained the work was genuinely done. In explanation as to how he arrived at the price, he stated that he had not inserted the three line items which were for works he had done.

Counsel Assisting submitted that the inflation of the 5 October 2018 invoice to \$33,000 provided for a “\$15,000 allowance for PMS” and represented a “kickback” payment made by Mr Duchesne to Mr Steyn.

Counsel Assisting submitted one reason to find that it was illegitimate was because of an available inference that the 5 October 2018 invoice was issued to reimburse Mr Duchesne for paying Mr Manuel during this period. However, the invoices paid by Mr Duchesne were in respect to PMD, not PMS, to which the 4 October 2018 email from Mr Steyn to Mr Duchesne relates. As to whether it was recompense for Mr Duchesne’s payment of PMD invoices, the Commission is unable to be satisfied to the requisite standard in light of Mr Duchesne’s evidence that some of the inflation of the invoice was attributable to travel and accommodation.

Counsel Assisting submitted there were several features about invoice 410 that point to it being “illegitimate”. First, the draft 4 October 2018 invoice sent by Mr Duchesne to Mr Steyn lacked detail as demonstrated by the two line items that were not costed. Secondly, it was almost impossible for Mr Duchesne to arrive at the subtotals for each costed line item if charging at his \$80 hourly rate. For instance, one line item for \$10,000 was for four days work

between 24 July 2018 and 27 July 2018. If Mr Duchesne had worked at his usual \$80 per hour rate for 24 hours a day throughout the entire four-day period, the total would have come to only \$7,680. However, Mr Duchesne contended that his travel and accommodation costs were probably incorporated into this calculation. Thirdly, the communications between Mr Steyn and Mr Duchesne, where Mr Steyn outlined “\$15k to PMS” occurred through Mr Steyn’s private email address instead of his RMS email address, point to the impropriety of the proposed \$15,000 payment to be made to PMS.

In an email of 8 October 2018, Mr Steyn wrote, “15k PMS which I will arrange the invoice as soon as you advise the funds cleared”. This is suggestive of Mr Steyn’s involvement in arranging for PMS to receive payment from M&M Inspections. However, a PMS invoice has not been located nor is there available evidence indicating that Mr Duchesne made a payment to a PMS bank account. There is also no available evidence indicating that Mr Steyn received any payment or benefit from Mr Duchesne.

The Commission would have been assisted by the evidence of Mr Steyn concerning his conduct regarding the 4 October 2018 email, and whether he received a benefit from Mr Duchesne in relation to the M&M Inspections invoice dated 5 October 2018. While Mr Steyn denied receiving cash payments from Mr Duchesne, the specific issue as to whether he received any benefit from Mr Duchesne was not explored.

The Commission has regard to the “reasonable satisfaction” approach outlined in *Briginshaw* noting that findings should not be based on “indefinite testimony, inexact proofs, or indirect inferences”. The Commission also has regard to Mr Duchesne’s evidence that his travel and accommodation costs to these remote locations contributed to prices contained in the invoice. Overall, the Commission is not satisfied that there is cogent evidence that the 5 October 2018 invoice incorporated a margin which Mr Duchesne paid as a “kickback” to Mr Steyn.

The Commission is also not satisfied to the requisite standard that Mr Duchesne provided any benefits to Mr Steyn. It follows that the Commission declines to make an adverse finding against Mr Duchesne.

The Commission also declines to make an adverse finding against Mr Steyn, in circumstances where his conduct concerning the email dated 4 October 2018, was not put to him.

Counsel Assisting submitted that consideration be given to obtaining the advice of the DPP in relation to Mr Duchesne submitting the M&M Inspections invoice dated 5 October 2018 to the RMS, in that his conduct could constitute offences contrary to s 192E of the

Crimes Act, namely, obtaining a financial advantage by deception and/or s 192G the Crimes Act, namely, intention to defraud by false or misleading statement. The Commission notes that admissible evidence likely to be available in potential criminal proceedings against Mr Duchesne is of insufficient cogency to rebut the 5 October 2018 M&M Inspections invoice reflecting the genuine cost of services provided to the RMS.

Corrupt Conduct

The Commission does not make any finding of corrupt conduct in respect to Mr Steyn or Mr Duchesne.

Section 74A(2) statements

The Commission is satisfied that, in respect of the matters covered in this chapter, Mr Steyn and Mr Duchesne are affected persons.

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 Steyn or Mr Duchesne for any offence.

Chapter 16: The Heavy Vehicle Maintenance Panel

This chapter deals with the circumstances in which “category A” of the Heavy Vehicle Maintenance Panel (“the HVM Panel”) was set up. It examines whether Mr Dubois and Mr Steyn used the HVM Panel to favour those companies from which they received improper benefits.

Establishing the HVM Panel

On 14 July 2017, Mr Steyn emailed his supervisor Mr Soliman, the manager of the HVP Unit, with Mr Dubois and other members of the HVP Unit copied in. In the email, Mr Steyn stated he understood “there may be some requirement for a review of the current procurement model used”. He set out some considerations with respect to the current model, including the difficulty in planning resources and funding in various circumstances. He noted, “I am not sure if there is an option to engage a panel” to do the work in the heavy vehicle area. Mr Soliman could not recall his response to the email.

Mr Steyn told the Commission he initially had a discussion with Mr Evans, the RMS contracts manager and finance manager within CEB, who suggested the idea of establishing the HVM Panel. He recalled that Mr Evans suggested “if you are regularly using those resources, then you need to put a panel together instead of having to [create] a contract all the time”. Mr Steyn said he then discussed the idea with Mr Soliman who asked him to send an email to him and the HVP Unit team so they could discuss the issue. Mr Evans was not called to give evidence.

Counsel Assisting submitted that the Commission should find that Mr Steyn was “one of the early promoters” of the HVM Panel and that he had been thinking about its creation “for a while”. In making this submission, Counsel Assisting noted the following SMS message from Mr Steyn to Mr Rahme sent on 20 June 2012:

I am trying to keep you in the loop so I can get you on the panel contracts we are trying to establish.

The Commission does not consider that an SMS about a possible panel contract sent some five years before the July 2017 email to Mr Soliman is sufficient basis on which to make a finding that Mr Steyn promoted the idea of the HVM Panel. The tenor of the July 2017 email to Mr Soliman is consistent with Mr Steyn’s evidence that it was sent at Mr Soliman’s request.

Mr Soliman gave evidence that the HVM Panel was established on the initiative of Mr Steyn and Mr Dubois. Mr Soliman told the Commission that Mr Steyn and Mr Dubois told him, “they need a panel to basically manage their work”. The Commission does not consider Mr Soliman’s evidence as determinative of this issue. This is because of his own conduct in respect of what would become Category B of the HVM Panel. This was the subject of the Commission’s Operation Ember investigation and May 2022 report, *Investigation into the awarding of contracts by employees of the former NSW Roads and Maritime Services*. Findings of corrupt conduct were made against Mr Soliman in that report.

In any event, even if Mr Steyn did not initiate discussion about establishing the HVM Panel, there is evidence that both he and Mr Dubois realised it could be used to get more work for contractors who provided them with improper benefits so that those contractors would be able to afford to provide them with further benefits.

RMS records show that, on 31 July 2017, a two-hour meeting between Mr Dubois and a representative of WSP Engineering (“WSP”) was booked. It was common ground that WSP was engaged to assist with the creation of the documentation around the HVM Panel.

Some 15 minutes after the meeting was set to have occurred, Mr Steyn emailed Mr Dubois an excel spreadsheet. The subject of the email was described as “resource matrix”. The spreadsheet contained a list of

20 contractors, many of which were involved in providing improper benefits to Mr Steyn and Mr Dubois or providing dummy quotes. These were Acate (which had provided dummy quotes in favour of Seina Group), AA Steel, OzCorp (“incorrectly spelt by Mr Steyn as Aus Corp”), CBF Projects, EPMD, Euro Civil, Lancomm, M&M Inspections, S A Masters and Seina Group. Mr Steyn told the Commission that the spreadsheet might have been composed to reflect companies that would be ultimately placed onto the HVM panel.

Ultimately, two HVM panels were created. These were Category A and Category B. Category A related to civil and electrical works, steel fabrication and signage installation. Category B related to procurement of weigh-in motion systems, portable weighing scales, weigh bridges and brake testing equipment.

On 25 September 2017, an advertisement was published on the RMS eTender website for public tender for the HVM Panel. The tender close date was 6 October 2017. Thirteen tenders were received, including from Lancomm, CBF Projects, Seina Group, EPMD, OzCorp Civil, Euro Civil, AA Steel and S A Masters.

The tender evaluation panel comprised Mr Dubois, Mr Steyn, another RMS representative and a representative of WSP. They each signed the tender evaluation report on various dates in October 2017. Included in the report was a section dealing with conflicts of interest in the following terms:

We individually declare that there was no actual or potential conflict or incompatibility between our personal or corporate interests and the impartial fulfilment of duties in carrying out this tender assessment.

In the case of both Mr Steyn and Mr Dubois, there were clear conflicts of interest given that some of the companies that had tendered had provided them with improper benefits in return for being allocated RMS work.

The selected tenderers included Lancomm, CBF Projects, Seina Group, EPMD, OzCorp Civil, Euro Civil, AA Steel and S A Masters.

There was evidence that Mr Dubois and Mr Steyn had assisted some of these with their tenders.

Mr Dubois’ assistance

Mr Dubois’ evidence was that he contacted Mr Hadid and Mr Chahine in relation to companies they controlled, namely, CBF Projects, Euro Civil and OzCorp Civil to put their submission tenders in. He said he also contacted Hassan Alameddine in respect of EPMD and Seina Group for the same purpose. Mr Dubois told the Commission that he provided assistance to Mr Chahine, Mr Hadid and Hassan Alameddine during the HVM Panel submission process, and that assistance was that he ensured that the documentation those companies were to submit was “acceptable” in the sense they satisfied the criteria process. This involved him drafting some of the submissions or editing them. This accords with Hassan Alameddine’s evidence who told the Commission that Mr Dubois assisted him in preparing documents for the tender in relation to his companies. Mr Chahine told the Commission that Mr Dubois provided him with a USB with draft documents, being “the actual forms ... needed to complete” the submission process. Mr Chahine said the documents provided by Mr Dubois served as guidance “to show us what we needed” to make tender responses for the companies that he and Mr Hadid controlled. Mr Chahine told the Commission that Mr Dubois told him, in effect, that if he submitted his paperwork that he would be on the HVM Panel.

Mr Dubois conceded that part of his motivation in encouraging Mr Chahine, Mr Hadid and Hassan Alameddine to apply for the HVM Panel was a financial one, in that it would “make it easier” for him “to give a flow of work to them” and continue to receive benefits from these contractors.

Mr Steyn's assistance

In his evidence during the public inquiry, Mr Steyn initially denied that he assisted Mr Rahme in Lancomm's submission process to get on the HVM Panel.

There was evidence from WhatsApp messages forensically downloaded from Mr Rahme's iPhone that showed that, between 25 September 2017 and 12 October 2017, Mr Steyn contacted him to advise that the HVM Panel was being established and encouraged him to apply for Lancomm to be included on the panel.

Mr Rahme told the Commission that he was reluctant to apply because of his experience with Mr Steyn wanting benefits in return for awarding RMS work. He deliberately missed the deadline for submitting an application, but Mr Steyn arranged for him to make a late application. He then submitted a deficient application, which resulted in Lancomm receiving zero against all three criteria. Notwithstanding this, Lancomm was placed on the panel. Mr Rahme's evidence that he was reluctant for Lancomm to be included on the panel is consistent with messages he sent to Mr Steyn at the time and is accepted by the Commission. Accordingly, the Commission accepts counsel for Mr Rahme's submission that it can be inferred that "Mr Rahme was deliberately trying to prevent Lancomm being accepted onto the RMS Panel". The WhatsApp chat evidence also accords with the submission of Counsel Assisting that Mr Steyn "cajoled and nagged Mr Rahme for Lancomm to submit a tender".

On 23 October 2017, after Lancomm had been accepted, Mr Rahme received an email from Mr Steyn advising "Told you if this works you'll have to hand over your firstborn". He told the Commission he understood Mr Steyn was telling him that he was obliged to Mr Steyn for getting Lancomm on the panel and would require payment once Lancomm started to get panel work.

In his evidence to the Commission, Mr Steyn agreed a motivation to have Lancomm appointed to the HVM Panel was it would be of personal benefit to him as he would be able to obtain payments in return for arranging Lancomm to get HVM Panel work.

Although not having a specific recollection, Mr Steyn also told the Commission he may have had conversations prior to October 2017 with AA Steel and S A Masters in respect of submitting their tender submissions.

Corrupt conduct and s 74A(2) statements

Counsel Assisting did not make any submissions that it was open to the Commission to make corrupt conduct findings against anyone arising from the matters dealt with in this chapter. Similarly, Counsel Assisting did not make any submissions that any statement should be made that consideration be given to obtaining the advice of the DPP with respect to the prosecution of any person or the taking of any other action against any person arising from the matters discussed in this chapter. Thus, those whose conduct is the subject of this chapter have not had the opportunity to make submissions on whether it would be open to the Commission to make such findings or recommendations on the available evidence. In these circumstances, the Commission has decided not to make any corrupt conduct findings or any statements under s 74A(2) of the ICAC Act.

Chapter 17: Corruption prevention

As described in previous chapters, this investigation has uncovered the corrupt activities of Mr Dubois and Mr Steyn in relation to the programs of minor works, STC and P2P. This corrupt conduct spanned a near 10-year period and involved the awarding of at least \$38,639,606 of work where the Commission has made findings of corrupt conduct.

Their corrupt activities occurred throughout the three phases of the procurement cycle – “Plan”, “Source” and “Manage” – which is enshrined in the NSW Government Procurement Framework. These phases were incorporated in the RMS Procurement Manual, which governed procurement practices for much of the period that the Commission found that the corrupt conduct occurred. This chapter sets out the deficiencies identified in each of these phases as it relates to the RMS’ construction procurement arrangements and makes nine recommendations to TfNSW.

To provide additional context, the Commission notes the environment in which the HVP Unit operated. For almost half of the period under investigation, Mr Dubois and Mr Steyn reported to the manager of the HVP Unit, Mr Soliman. The Commission found that, between November 2015 and September 2018, Mr Soliman engaged in unrelated corrupt conduct that involved the awarding over \$12.2 million in work to two companies owned by his friends and manipulating processes to favour and benefit those businesses and himself.¹ Adding the volume of transactions attributable to Mr Dubois and Mr Steyn, gives a total exceeding \$50 million in heavy vehicle enforcement (HVE) procurement tainted by corruption.

While the Commission accepts that it was unfortunate to have two corrupt public officials with procurement

delegations under the supervision of another corrupt public official, that situation is indicative of widespread failures in the fundamentals of procurement and management which allowed such a situation to come about.

Planning construction procurement

The Plan phase is designed to ensure that an agency understands both what it needs to buy and the relevant market conditions, and then uses this information to develop an appropriate procurement strategy. Where this phase is not performed adequately, potential corruption risks include buying items that are not needed, improperly restricting or expanding the pool of suppliers to be approached, and facilitating future intentional under-delivery (for example, through over-specification or creating conditions that allow an unsuitable supplier to be appointed).

As written, RMS policies and procedures required a detailed approach to planning construction procurement. For instance, the RMS Procurement Manual discussed the importance of strategic thinking including defining the “real” need, analysing the relevant market, and using this information to ensure that the subsequent approach to market adopts a properly defined and endorsed procurement strategy.

However, this investigation has revealed that Mr Dubois and Mr Steyn were able to routinely depart from the RMS’ policies and procedures. In fact, frequently:

- needs analysis was missing or inadequate
- market analysis was missing or inadequate
- procurement strategies were not prepared
- procurement activities were approved by individuals lacking the requisite delegation.

¹ As set out in the Commission’s May 2022 report *Investigation into the awarding of contracts by employees of the former Roads and Maritime Services* (henceforth “Operation Ember”).

Needs analysis

Determining the actual need is a critical component of planning a procurement. Inadequate needs analysis creates immediate corruption risks related to over-ordering, ordering an unnecessarily high standard of product (sometimes termed “gold plating”), and favouritism via improper inclusion or exclusion of suppliers. Longer term, poor needs analysis creates corruption risks related to topics such as under-delivery and improper variations.

The needs analysis conducted in relation to HVE procurements was very limited. As part of the public inquiry, TfNSW informed the Commission while there was “a mandatory corporate requirement for divisional and branch business plans, there was no requirement for unit level plans”. This created a risk that Mr Dubois or Mr Steyn could identify work as “needed” without providing any evidence.

The Commission has identified an email from Mr Dubois dated 3 March 2017, in relation to inspection of STC footings. Mr Dubois emailed a supplier and requested that supplier, “produce a report that demonstrates that the existing footings do not meet current standards”.

This request alone did not involve a genuine exploration of need. In fact, the supplier specifically rejected any notion that a proper assessment of whether the footings met current standards could be done without detailed inspection. Instead, new standards were effectively created to justify the “need” for new footings. In an internal email, the supplier took from the above email that:

Alex [Dubois] would like us to demonstrate that the existing footings are not suitable for re-use for the new safe-tcam gantries [sic]. Without doing a detailed inspection for each footing I would imagine that this would be difficult to prove, so I think we need to come up with a memo with a list of footing re-use conditions so onerous that it will be easier just to install new footings.

As noted later in this chapter, the risk also manifested itself on occasions when Mr Dubois and Mr Steyn engaged suppliers who were paid by the RMS, but no work was done.

Robust needs analysis utilises a variety of information sources, including stakeholder engagement, expenditure analysis and asset management. HVE procurements had deficiencies regarding each of these areas.

Stakeholder engagement

Consultation with stakeholders can help ensure that procurement need is appropriately assessed. For instance, asset owners can provide detailed information about the issue to be addressed by the procurement and

category managers can inform and assist with proper analysis of relevant markets, supplier, and procurement methodology. It is noted that the RTA Delegation Manual stated that delegation functions were implicitly limited by an obligation to consult. On 4 April 2017, this was made more explicit in the RMS Delegation Manual with standards introduced that delegates must observe, including to inform themselves of relevant facts, consult with subject matter experts, obtain professional advice, and consult with and inform line management.

There is no evidence that there was any consultation between the HVP Unit, (including Mr Dubois or Mr Steyn), and either the construction procurement policy owner in Commercial Services or a category manager within the Procurement Branch for any of the procurements examined in this investigation. Such consultation may have identified Mr Dubois and Mr Steyn’s non-compliance with RMS policy and procedural requirements.

A July 2016 RMS Enterprise Risk Profile Report identified unclear communication between stakeholders as a broader issue in programs of work conducted by the Safety and Compliance Division that the HVP Unit fell under. Additionally, in relation to the STC program, it noted a lack of a project ownership, which clearly impeded stakeholder engagement.

Expenditure analysis

Analysis of historic expenditure helps to determine procurement need. Understanding historical expenditure patterns and trends can help predict the likelihood and quantum of future expenditure.

There does not appear to have been any analysis of past expenditure in relation to HVE programs of work. If such analysis had been conducted, it is possible the corrupt expenditure identified in this report would have been identified sooner. In addition, it may have identified suitable suppliers (such as those on RMS or NSW Government panels), precluding suppliers associated with Mr Dubois and Mr Steyn from being allocated this work.

The RMS’ ability to conduct analysis of HVE expenditure was impeded by the way it was classified. For almost all the period applicable to this investigation, general cost codes were used to track HVE expenditure. This meant that the RMS could not easily track expenditure for each specific site or at the individual asset level.

Asset management

Effective asset management provides information on what was previously paid and the residual value of assets over time. This information is important as it informs the business case for refurbishing or replacing a given asset.

A former technical project manager and colleague of Mr Dubois and Mr Steyn within the Compliance Operations Branch, stated that “asset management was absolutely atrocious in that place”. They explained how when they started at the RTA in 2010, there was no asset register or asset management plans and they had to create their own register using MS Excel spreadsheets. The former technical project manager shared these spreadsheets with Mr Dubois and Mr Steyn in 2014 so that they could emulate the approach when asked to do so by their manager.

Notwithstanding this initiative, HVE management did not have the information necessary for adequate asset management, such as purchase date, initial value, repair and maintenance information, expected life, depreciation rate or residual value. In a competent asset management regime, such information would be stored in a dedicated asset management system.

A further illustration of the problem relates to the nine camera programs being managed by the Compliance and Regulatory Services Division (CARS). In six of the nine programs, there was a longstanding funding shortfall that had not been identified or addressed in the RMS Asset Maintenance Plan. A former manager of Mr Dubois and Mr Steyn described the effect of this in relation to the STC program:

And there was no budget, there was nothing to maintain them and my understanding was they just kind of ticked over, until problems started happening, and there was no proper governance structure, around the life cycle.

... For those ones [STCs] in particular, we inherited basically a basket case.

This investigation has identified little evidence of the RTA/RMS improving asset management practices for HVE infrastructure between 2009 and 2019. A proposal to purchase an asset management system in 2011 did not go ahead. In July 2016, an RMS Enterprise Risk Profile Report noted insufficient funds allocated for enhancement and maintenance of STC assets.

Moreover, as noted by several NSW Audit Office reports, asset management appears to have been a broader issue in the RTA/RMS during this period. For instance:

- a 2011 report noted that the RTA Strategic Asset Maintenance Plan recommended a funding option that deferred establishing a sustainable asset management regime until after 2020
- repeated NSW Audit Office reports commented on the RMS’ capital renewal and maintenance backlog – this was \$5.1 billion in 2014, \$5.3 billion in 2015, \$3.4 billion in 2016 and \$3.4 billion in 2018

- a 2017 report noted internal control deficiencies surrounding asset management.

TfNSW advised that the procurement task is now shared between the relevant asset owners and a new Partnerships and Regulatory Assurance Directorate, in addition to having signoff from the appropriate financial delegate. Within the directorate, TfNSW advise that an Assurance and Agreements team has several oversight functions including asset management review when end-of-life procurement is being considered.

Market analysis

While needs analysis aims to understand what needs to be purchased, market analysis aims to identify who might potentially supply it. Inadequate market analysis creates immediate corruption risks related to supplier favouritism. Longer term, it creates risks related to over-pricing and under-delivery, as poor market research may only result in inadequate suppliers being identified.

HVE procurement was characterised by a lack of market research. For instance, market assessment of categories of work such as surveying, civil works, asphaltting, line marking, barrier control, electrical, steel fabrication and quality assurance simply did not occur.

Consequently, many mandatory whole-of-government or RTA/RMS supplier panels were not used. For instance, at relevant times, CARS had established panels for electrical and civil works. The RMS Procurement Manual explicitly stated the steps required to “not reinvent the wheel” by using existing arrangements but Mr Dubois and Mr Steyn simply did not comply. Some routine checking and enforcement measures would have made it much harder for Mr Dubois and Mr Steyn to carry out their corrupt scheme.

In some cases, it appears that market analysis had previously been the domain of a head contractor. For instance, in relation to the STC program, a technology supplier, CIC Engineering, had subcontracted component categories of work, such as electrical and civil works, but stopped doing so. Mr Dubois and Mr Steyn were able to engage suppliers for these categories of work without market analysis or the requirement to use existing whole-of-government or other supplier arrangements being enforced.

Procurement strategy

A procurement strategy is a critical governance document. As noted in the RMS Procurement Manual, a procurement strategy is the main outcome of the planning phase and usually includes:

- key findings about risks, needs and the supply market
- the recommended demand-related approach
- risk assessment (including risk management plans if appropriate)
- the recommended sourcing approach and evaluation criteria
- the expected benefits, including savings
- the project plan.

There was no overall procurement strategy for either the STC or P2P programs of work. This appears to have been a consequence of the lack of planning surrounding these programs that was discussed earlier. For instance, the uncertainty caused by a lack of an assigned budget and ad hoc, reactive work requests which created challenges in developing a procurement strategy.

Instead, each procurement conducted under these programs was considered in isolation. In most cases, the estimated value of a given procurement was less than \$250,000, meaning that a procurement strategy was not required. By contrast, the cost of each program was vastly more than this – for instance, an internal memo dated 28 March 2014 estimated that the RMS had spent \$30 million across all STC sites since 1995.

The lack of a procurement strategy made oversight of HVE procurements far more difficult. First, it assisted Mr Dubois and Mr Steyn to conceal their deliberate failure to document the need for various procurements and analyse the market. Secondly, it made it more difficult to govern later procurement phases given that a procurement strategy usually serves as a reference point.

Exercise of delegations

Once a procurement method has been determined, relevant procurement activities need to be approved by a delegated officer. Frequently, this includes approval of the procurement method itself. Agencies usually carefully assign these delegations to individuals with appropriate knowledge and authority.

Until 4 April 2017, the delegation for approving invitations to tender for minor infrastructure contracts and acceptance of tenders sat with specified officers in either Network Services, Infrastructure Services, or the Centre for Road Safety. Consequently, it appears that between 11 October 2009 and 4 April 2017, no-one in the Customer and Compliance Division² was delegated to

authorise procurement activities related to infrastructure contracts. Yet they did so. This created risks such as potential challenges to the legality of the relevant contracts, and procurement decisions being made by untrained, inexperienced staff.

There were three key factors that allowed this exercise of authority without delegation to occur:

- The delegation authorities were not sufficiently updated following organisational change.
- Oversight was focused on major construction procurements (over \$2,000,000) and consequently little attention was paid to minor works projects.
- Some officers had poor understanding of the relevant delegations and the steps in the process that were required to be authorised which differed depending on whether the procurement was for goods and services or construction.

Additional types of delegation breaches that occurred in relation to HVE procurement included:

- prior to 2014, Mr Dubois repeatedly issued letters of acceptance while still a contractor
- an invitation to tender for work exceeding \$2,000,000 was approved by an officer without delegation
- an officer both approved the accepted tenders and signed the letters of award for the HVM panel despite the Delegation Manual prohibiting the same person approving both
- the letter of award for the HVM panel was not authorised by the Commercial Services Branch despite the anticipated allocation of over \$6,000,000 worth of work.

As a result of the Commission's Operation Ember investigation, TfNSW has taken several steps to improve its procurement *planning* processes, including developing and deploying a heavy vehicle asset register. However, that investigation concerned goods and services procurement, *not* construction procurement. In its submissions, TfNSW stated it intends revising specified procurement policy documents and templates, and communicating process requirements (for example, via training). This investigation provided many examples of sensible policy requirements being ignored or worked around without consequence. Hence, it will be important that TfNSW addresses compliance and assurance mechanisms. Consequently, the following recommendation is made.

² Later renamed Safety and Compliance Division, Regulatory Reform Division, and Compliance and Regulatory Services Division.

RECOMMENDATION 1

That TfNSW reviews its processes surrounding construction procurement to ensure that planning of minor works:

- is based on a meaningful analysis of need
- properly considers relevant market(s), including the existence of relevant panels of suppliers or prequalification schemes
- is guided by an appropriately detailed procurement strategy, with controls to avoid the splitting of work
- is only conducted in accordance with its delegation framework.

In its submissions, TfNSW did not oppose this recommendation and submitted that the new Construction Procurement Accreditation Manual will achieve the objectives of this recommendation.

Sourcing suppliers

The Source phase of the procurement process involves the selection and contractors of suppliers and consequently has some of the most well-known corruption risks. These include intentionally biased selection processes, failing to manage a conflict of interest, improper release of confidential information and intentionally committing the agency to undesirable terms (for example, unreasonable prices or contract conditions).

While the RTA/RMS had detailed processes for sourcing construction procurement suppliers, in practice these were ignored by Mr Dubois and Mr Steyn, who repeatedly:

- failed to adequately approach the market
- adopted biased and inadequate supplier selection processes
- failed to appropriately contract suppliers.

Approaching suppliers

One key component of the Source phase is requesting a quote, tender response, or similar bid document from suppliers. While the RTA/RMS had clear, detailed requirements regarding which and how many suppliers should be approached, these requirements were undermined or ignored in relation to HVE procurements conducted by Mr Dubois and Mr Steyn.

Some key requirements that were not followed by Mr Dubois and Mr Steyn included:

- use of preferred suppliers, such as those on RTA/RMS panels and whole-of-government

prequalification schemes

- obtaining set numbers of quotations (and/or obtaining them using a particular methodology).

The correct practice, at times, was ignored. At other times it was undermined by (a) order splitting to ensure quoted prices did not go beyond a procurement threshold; or (b) using dummy quotations to provide a false assurance that there was competition.

Use of preferred suppliers

When executed properly, preferred supplier arrangements, such as agency supplier panels and whole-of-government prequalification schemes, can be a valuable means of simplifying procurement processes. However, preferred supplier arrangements have little value if their requirements are not enforced.

Most of the suppliers that Mr Dubois and Mr Steyn approached were not members of any approved panel. This was despite requirements to use existing panel arrangements for many of the procurements they conducted.

Mr Dubois and Mr Steyn's failure to use these preferred suppliers was, in part, due to the RTA/RMS not enforcing its requirements. Mr Dubois and Mr Steyn were each made aware of relevant panel arrangements, and colleagues within CARS regularly used panel suppliers when procuring similar items.

Had the panel arrangements been enforced, none of the suppliers that Mr Dubois and Mr Steyn favoured would have been entitled to the work, especially as the procurements in question would have been subject to assurance activities managed by the procurement area of the RTA/RMS.

Following the Commission's Operation Ember investigation, TfNSW has taken several steps to improve its procurement processes, including increased checking that procurements are compliant with TfNSW requirements. Consequently, the Commission makes no recommendation on this issue.

Order splitting

One key procurement requirement is to determine the number of suppliers that should be approached to bid. While these requirements sometimes depend on factors such as whether preferred suppliers are being approached and the nature of the item being procured, most frequently the expected value of the procurement is a critical factor in determining the number of suppliers to be approached.

Order splitting, a practice prohibited by the Delegation and Procurement Manuals, allows dollar thresholds (exclusive of GST) that trigger procurement controls to be by-passed.

As discussed below, there were red flags that this was occurring. There was a practice of keeping orders under \$250,000 including many that are not readily explicable.

In chapter 2, the Commission found that Mr Hadid knew he had to keep the project price for each contract under \$250,000 to ensure the applicable three quotes procedure. In addition, keeping contracts under \$250,000 avoided the need to prepare a procurement strategy, which would have involved scrutiny of the business need and compliance with policy and procedure, not just by HVP Unit line management, but also specialist procurement and commercial staff.

Order splitting also avoided scrutiny by more senior managers, whose approval was required for amounts over \$500,000.

The Commission has identified instances where STC and P2P jobs under \$250,000 (exclusive of GST) were awarded in a relatively short period of time, which either related to the same project site or same program of works. Had those jobs not been split and considered as an aggregate, a procurement strategy would have been required.

Examples of where the awarding of smaller jobs in relation to the same program of works occurred over a relatively confined period that were indicative of order splitting include:

- MJ Wilsons being engaged between February 2013 and June 2013 via five purchase orders totalling \$987,635
- Euro Civil being engaged during the 2016 calendar year via nine separate purchase orders totalling \$1,464,430
- EPMD being engaged between April 2016 and June 2017 via seven purchase orders totalling \$920,150
- OzCorp Civil being engaged between March 2016 and May 2017 via five purchase orders totalling \$1,166,222.20
- two purchase orders being raised on the same date for STC rectification works at Nyngan and Coonabarabran awarded to Areva Corp in identical amounts of \$179,500.

Red flags of potential order splitting also extended to individual jobs, including:

- separate contracts for \$107,800 and \$217,800, which were awarded in the same month to CBF Projects. These jobs were for work on the entry lane and exit lane to the same vehicle inspection station

- works performed by the same company at Mount White over a five-month period, which were spread over five purchase orders totalling \$255,662.

By-passing of procurement thresholds through order splitting was not mere laziness or ignorance. It involved deliberate attempts to avoid oversight of the relevant procurements as part of a corrupt scheme. For instance, Mr Chahine, a contractor associated with Mr Dubois who dealt with him for nearly 10 years, told the Commission that he and other contractors were told to keep quotes under \$250,000 to avoid scrutiny.

Nevertheless, there were occasions when an individual purchase exceeded \$250,000 yet there was no evidence that a procurement strategy had been implemented. Examples clearly over the threshold include the awarding of contracts to the value of \$258,500 to MJ Wilsons in June 2013, and to Euro Civil in June and December 2015 in the amounts of \$255,200 and \$269,500 respectively.

Robust expenditure analysis could have identified such red flags. It also could have identified that, since at least September 2014, prices excluding GST had been used when considering procurement process thresholds despite the RMS Procurement Manual requiring that prices inclusive of GST be used for this purpose. In 2015 alone:

- CBF Projects was awarded work valued at \$247,500, \$248,200, and \$249,000 (GST exclusive)
- Seina Group was awarded work valued at \$243,000 (GST exclusive).

Failure to obtain three quotes

Despite the practice of splitting orders, there were occasions when Mr Dubois and Mr Steyn simply did not obtain the required number of quotes.

For instance, three quotes were required for goods and services procurements exceeding \$30,000 (inclusive of GST). As noted in chapter 5, only one quote was obtained when BMN Electrical was awarded a \$30,400 contract for work at Twelve Mile Creek despite not being on a panel.

Three quotes were required for construction works exceeding \$50,000 (inclusive of GST) if the relevant supplier was not on a panel. Mr Dubois was aware of this requirement as early as 3 March 2011. Despite this, there were occasions where the Commission obtained evidence from TfNSW that only one quote was obtained. For instance, despite not being a preferred panel supplier, contracts for civil works were awarded based on one quote to:

- UDE Group in April 2011 for \$194,000
- MJ Wilsons in January 2013 for \$198,000
- Sydney Metro in August 2012 for \$86,680, and \$269,500 in March 2013.

As noted in chapter 4, the Commission was satisfied Mr Dubois created a false tender evaluation report to circumvent the RTA procurement process of obtaining three quotes to award the contract to UDE Group referred to above.

In September 2016, Mr Soliman reminded Mr Dubois and Mr Steyn that three quotes were required for civil work over \$50,000 but did not specify whether this should be inclusive of GST. Mr Steyn was aware of this requirement as early as 28 April 2010. In August 2017, Mr Steyn approved a purchase order created by Mr Dubois awarding work in the sum of \$48,000, excluding GST, to Euro Civil for civil works at Port Macquarie based on one quote. No RMS staff queried the apparent failure of Mr Dubois to obtain three quotes.

Following the Commission's Operation Ember investigation, TfNSW has taken several steps to improve its procurement processes, including an order-splitting prevention initiative and increased inspections that procurements are compliant with TfNSW requirements. Consequently, the Commission does not make a recommendation on this issue.

Selecting suppliers

Once suppliers have been approached to participate in a procurement, agencies usually have detailed processes for obtaining and evaluating their bids. These cover topics such as how information should be provided to and received from suppliers, how supplier bids should be evaluated and any due diligence that should be performed on suppliers prior to contract award.

Once again, while the RTA/RMS had reasonable documented requirements, in practice HVE supplier selection processes had deficiencies such as:

- minimal due diligence being conducted on suppliers
- manifestly inadequate bid evaluation processes, resulting in the selection of unsuitable suppliers
- commercial-in-confidence information being passed from one supplier to another.

Supplier due diligence

As discussed in the Commission's 2020 publication, *Supplier Due Diligence: A guide for NSW public sector agencies*, supplier due diligence helps ensure that agencies obtain

assurance that suppliers are who they say they are, have requisite and claimed skills and experience, and do not pose an unnecessary integrity risk. It is a perennial observation in the Commission's investigation reports that adequate supplier due diligence would have flagged a supplier as suspicious before they were used in a corrupt scheme.

Basic supplier due diligence would have detected some red flags that Mr Dubois might be associated with companies he engaged on behalf of the RTA/RMS. For instance, companies associated with Mr Dubois had the same company contact address as Seina Group and TTS Group.

ASIC searches would also have detected associations between different companies engaged by Mr Dubois, a red flag for dummy or collusive bidding, such as:

- Areva, Seina Group and EPMD sharing the same residential address and Hassan Alameddine having been a director of each
- Abdula Nachabe being a director of both A&A Structural and Senai Steel (see chapter 6).

ASIC searches would also have identified that the date of registration of some companies was very close to, and on one occasion after, the date of the quote or invoice that led to that company being created in the vendor master file. As noted in chapter 8, MJ Wilsons submitted its first quote for RMS work the day before it was registered. This is a red flag of a company being created for a corrupt purpose.

Internet searches could also have identified red flags such as suppliers without a website or having a residential address as their principal place of business.

Apart from ASIC checks and internet searches, examination of quotes should have identified red flags, such as companies submitting quotes for the same work having identical addresses, a red flag for dummy or collusive bidding. This demonstrates the importance of segregation of functions in the procurement process and supplier due diligence being performed by a skilled and independent actor, especially as neither Mr Dubois nor Mr Steyn had any incentive to identify such red flags.

In addition, as mentioned in chapters 3, 4, 8 and 10, the Commission identified corrupt procurement arrangements involving asphaltting which, for obvious reasons, was a core function of the RTA/RMS. Some more sophisticated due diligence procedures might have raised questions about why asphaltting work was being awarded to suppliers that were not on an approved panel.

When such red flags are identified, they need to be explored to determine their significance. This did not happen in relation to the current investigation. For instance, the Contracts and Finance Section noted

that BMN Electrical was not in the contract management system. This led the Contracts and Finance Section to ask Mr Dubois to confirm that BMN Electrical was on the database for prequalified contractors, had passed all pre-quality checks and provided the essential documentation required before they could commence work. On 23 May 2011, Mr Dubois emailed the Contracts and Finance Section and informed it: “Yes that is the situation and we have used them before and have all the insurances required”. By simply relying on Mr Dubois’ word, the red flag was effectively buried.

Following the Commission’s Operation Ember investigation, TfNSW is currently undertaking a project on supplier due diligence and vendor creation controls. Agencies are exposed to major corruption risk if they are not able to establish the bona fides of the suppliers with whom they deal. In this regard, it is noted that there are no mandatory requirements for general supplier due diligence in the NSW Procurement Policy Framework – other than some specific modern slavery provisions.

The recommendation below is designed to inform TfNSW’s supplier due diligence project and has been framed to allow a degree of flexibility, for example, in instances when a supplier’s bona fides have already been partially or fully established through a pre-qualification process.

RECOMMENDATION 2

That TfNSW ensures that it has a robust supplier due diligence framework that includes:

- routinely obtaining full ASIC records of new suppliers
- routinely conducting internet searches on new suppliers
- further due diligence checks being conducted on a risk-basis
- due diligence checks being conducted by an individual who is not involved in selecting the supplier
- processes to follow up supplier red flags in a meaningful manner.

Bid evaluation

Bid evaluation is clearly a critical procurement step, involving actions such as agreeing selection criteria and weightings, convening a selection committee, and having the selection committee apply the criteria and weighting to each bid. Consequently, poor bid evaluation processes create major corruption opportunities, as not performing these steps adequately can markedly distort who is ultimately awarded work.

There were a range of issues with the bid evaluation processes conducted by Mr Dubois and Mr Steyn.

First, the investigation found no evidence of an approved evaluation committee for any of the procurement processes conducted by Mr Dubois and Mr Steyn. It appears that in most cases, the evaluation of quotes received was conducted informally by either Mr Dubois or Mr Steyn. In most cases no written records of the evaluation were kept. Where written records were made, they were often not filed in the required central records management repositories which meant that no other person had access to the information.

Secondly, many of the quotations examined by the Commission only had a single lump figure instead of providing a breakdown of pricing against each component of work. Although giving evidence in relation to invoices, Mr Dubois told the Commission that lump sum figures “made it a little bit easier” to open up the opportunity for corrupt practices to occur. Having the one lump sum figure made quoting, including dummy quoting, easy as colluding bidders had to only manipulate one figure. Mr Chahine told the Commission that a lump sum meant that Mr Dubois “could put a bigger kickback for himself, so we couldn’t itemise or break those up realistically”. Insufficient specificity also meant that, if someone other than Mr Dubois or Mr Steyn had been involved in evaluating quotes received, they would have found it difficult to detect whether components of work were consistent with market prices.

Thirdly, there were substantial issues in relation to the scoring of bids. As will be recalled in chapter 6, an RTA tender assessment report was located on a device in Mr Dubois’ home during the execution of a Commission search warrant. That report concerned the tender evaluation of several companies competing to provide services in relation to state-wide inspections of gantries at STC sites. Mr Dubois’ assessment of these bids provides a good example of a poor evaluation in that it showed the following.

- There was questionable scoring of non-price criteria. SKM offered a unique technology solution that purported to address relevant issues and was less time consuming to implement. Mr Dubois scored SKM 2 out of 10 on the proposed methodology criterion and 5 on technical skills. There was no justification provided for these scores.
- The formula for scoring price set out in the Engineering Contracts Manual (“the ECM”) was not applied. The consequent difference between Mr Dubois’ scoring of price compared with that required by the ECM was sometimes substantial. Indeed, the company that won the bid,

A & A Structural, would only have been the third-placed bidder had the pricing formula been applied correctly.

Fourthly, tender evaluation reports sometimes contained false information. As noted in chapter 4, Mr Dubois admitted to the Commission that he had falsified the evaluation report for the Mount White North HVCS exit lane expansion. It falsely stated that:

- the sector manager northern infrastructure services, Mr Stuart, participated in the tender evaluation
- one bidder, Mr Taha, possessed the necessary experience to carry out the works
- another bidder, Mr Hadid, attended a pre-tender meeting.

Fifthly, the Commission identified instances where authorised delegates did not examine the supporting bid documentation. This rendered the exercise of their delegation as a rubber stamp approval process.

Given these issues, it is perhaps not surprising that there were many incidents where a supplier was awarded work despite major issues being apparent with their capacity. For instance:

- AA Steel specialised in steel fabrication but was awarded line marking work
- Complete Building Fitout, originally an office fit-out company, was awarded line marking and civil construction work
- companies were awarded civil work despite having no documented experience
- BMN Electrical had to subcontract its work to another electrical company because it was not qualified to perform the type of electrical work that it had been awarded.

The evaluation process for the HVM panel had a range of issues, including (but not limited to):

- Lancomm being included on the panel despite scoring zero on all tender criterion
- no approval of the weightings used
- use of a prohibited criterion, namely the requirement to demonstrate similar work had been carried out for the RMS or another state government agency in the last 24 months
- the “independent member” of the tender evaluation committee (TEC) not being independent because they were an employee of a supplier to the RMS

- no pre-tender meeting occurring, despite the sizeable amount of work to be allocated to the panel
- no TEC members signing an individual conflict of interest declaration
- persons signing the tender evaluation report when they were not TEC members
- the delegate approving their own recommendation.

Such issues can only exist in the absence of competent oversight. One of the non-TEC members who signed the report was Mr Dubois and Mr Steyn’s manager at the relevant time, Mr Soliman. As noted in chapter 1, Mr Soliman provided no oversight and stated that he accepted the word of Mr Steyn and Mr Dubois during the entire procurement process.

When Mr Soliman’s manager approved the tender evaluation, he did not read the tender documentation and did not recall having a focus on the procurement aspects of the tender. The Delegation Manual in force at the time was silent on who had the delegated authority to approve the panel being set up because no financial expenditure was being committed at that point.

As a result of the Commission’s Operation Ember investigation, TfNSW has taken several steps to improve its procurement processes, including the appointment of a manager procurement process and systems. Consequently, the Commission does not make a recommendation on this issue.

Commercial-in-confidence information

It is critically important that commercial-in-confidence information provided by suppliers be protected. Loose controls around this information can undermine competitive tension, expose an agency to legal action and adversely impact its reputation in the supplier community.

The Commission notes there were also occasions when commercially sensitive information was disclosed to a supplier. For instance, Mr Dubois:

- on 11 January 2011, communicated with A&A Structural concerning the scope and requirements for STC works the RMS was to provide
- on 1 March 2011, provided A&A Structural with a copy of a quote from Parsons Brinckerhoff prior to the former company providing its own bid
- provided a quote from Highco Electrics to CBF Projects and a quote from Euro Civil to Senai Steel.

Following the Commission's Operation Ember investigation, TfNSW has taken several steps to improve its procurement processes, including the appointment of a manager procurement strategy and governance. Consequently, the Commission makes no recommendation on this topic.

Contracting suppliers

The final part of the Source phase involves signing a contract with the supplier. Under NSW Government information access provisions, there are also requirements to disclose certain awarded contracts.

Award and execution of contracts

For those transactions purporting to be under contract, based on the existing evidence, the Commission's investigation identified several unexecuted contracts in relation to works that were awarded by Mr Dubois and Mr Steyn. Sometimes there was no written contract and often the contract was not executed (unsigned or only signed by the supplier). Among other things this meant that contracts were not disclosed pursuant to s 35 of the *Government Information (Public Access) Act 2009*.

While contracts were entered into despite not being executed, letters of acceptance were sent to suppliers. This sometimes occurred in violation of RMS policy requirements. For instance:

- prior to 2014, when Mr Dubois was a contractor, not an employee, he sometimes signed these letters despite not having the delegation to do so
- on one occasion, as set out in chapter 2, Mr Dubois did not just author (albeit falsely) a tender evaluation report but also emailed the letter of acceptance with his signature block
- the letter of acceptance was sometimes signed by the delegate who had approved the selection (specifically prohibited by the delegation authority).

While violation of an individual policy requirement may not be heinous on its own, the toleration of a lack of adherence to policy can send the wrong messages to staff that control measures are not important. It can also inadvertently provide encouragement to corrupt individuals that they can pursue corrupt schemes with little risk of being detected.

Following the Commission's Operation Ember investigation, TfNSW has taken several steps to improve its procurement processes, including the appointment of a manager procurement process and systems. Consequently, the Commission does not make a recommendation on this issue.

Contract disclosure

In addition to not being fully executed, contracts were not disclosed in accordance with NSW Government requirements. None of the relevant contracts from this investigation, of which approximately 100 exceeded \$150,000 (not considering split orders), could be located in archives on the NSW eTender website. Only three relating to one supplier were located in a PDF document on the TfNSW website with the information not easily searchable.

The disclosure of information could have provided a basis for competitors to lodge a complaint that they were being locked out of the market. More broadly, the disclosure of contracts provides a basis for interested parties to establish whether there was a common group of suppliers that were being allocated work despite not being pre-qualified suppliers or members of relevant panels.

In fact, one electrical supplier, who had experience in delivering work for the RMS, told the Commission that he had sought the opportunity from Mr Dubois to bid for HVE work but this did not eventuate.

Following the Commission's Operation Ember investigation, TfNSW has taken several steps to improve its procurement processes, including improved processes around contract disclosure. Consequently, the Commission does not make a recommendation on this issue.

Contract management

The Manage phase of the procurement process is where an agency often experiences most of its corrupt losses (though these losses are often facilitated by poor execution of the Plan and Source phases). For instance, invoices may be paid when work has not been completed, a supplier may charge prices beyond what was agreed or there may be improper variations to the contractual arrangements.

The contract management processes followed by Mr Dubois and Mr Steyn were poor and did little to ensure that suppliers performed satisfactorily. These processes were characterised by:

- failure to always verify that work had been completed
- unauthorised use of subcontractors
- inadequate performance management of suppliers.

Verification of work completion

Verifying that contracted work has been completed before a supplier is paid is a critical control against under-delivery.

The Commission found that Mr Dubois and Mr Steyn on occasion caused suppliers to be paid when no work was performed. In respect of Mr Dubois, as dealt with in chapter 7, the Commission found that MJ Wilsons did not perform works it was paid to complete. Similarly, as dealt with in chapters 11 and 13 respectively, Mr Steyn requested both Mr Rahme and Mr Masters to bill the RMS for work they had not carried out.

An enabling factor was that the operational staff enforcing heavy vehicle compliance (being the beneficiaries of projects), often were not engaged with in relation to contract management processes. This lack of visibility meant that there was no effective or independent oversight by them of contractor performance. Operational staff had little or no visibility over the specifications for work, which contractors had been awarded the work or the performance standards they had to meet. Procurement experts were not engaged with at all which meant that compliance checks on technical and engineering standards did not occur.

Another factor making independent verification difficult, had it occurred, is that Mr Dubois told the Commission that it was common for invoices with a lack of specificity to go through for payment. When asked whether this opened up the opportunity for corrupt transactions, Mr Dubois said, “it made it a little bit easier, yes”.

In the early years of the corrupt scheme, Mr Dubois certified the completion of work while he was still a contractor. A TfNSW procurement expert advised the Commission:

if we sort of apply the logic behind it, you know effectively when you are certifying the goods and services have been supplied or works have been done you are crystalizing [sic] a liability for the agency and I would have thought unless you had delegated authority to do that you probably can't.

This practice gave Mr Dubois control over substantial expenditure by the RMS in relation to suppliers with which he was associated. For instance, between March and July 2012, Mr Dubois certified that work had been completed on a series of invoices from Complete Building Fitout that totalled \$698,402.80.

As a result of the Commission's Operation Ember investigation, TfNSW has taken several steps to improve its procurement processes, including the appointment of a manager procurement process and systems. In its submissions, TfNSW advised it is developing a harmonised Construction Procurement Accreditation Manual with associated training that will apply regardless of which division initiates a construction procurement. Consequently, the Commission makes no recommendation on this issue.

Use of subcontractors

The Commission sometimes uncovers corrupt subcontracting relationships in its investigations. At times, a corruptly engaged supplier lacks the necessary staff and expertise and must rely on a subcontractor to complete the work. For example, BMN Electrical had to subcontract its work to another electrical company because it was not qualified.

This often means that the subcontractor unwittingly facilitates the contractor's corrupt benefits. The Commission makes no assertion that any of the referenced subcontractors in this section knowingly participated in any of the corrupt conduct identified by this investigation.

Subcontracting arrangements provide yet another example of non-compliance with RMS policy requirements. The Commission identified several cases where subcontracting of HVE procurements occurred without the required RMS approval.

Subcontracting was sometimes used to facilitate profits for suppliers, allowing them to funnel corrupt benefits back to Mr Dubois and Mr Steyn. For example, BMN Electrical increased its quote to incorporate a payment for Mr Dubois. And as dealt with in chapter 11, Mr Steyn agreed that in relation to a 2018 contract at Tweed Heads, he told Mr Rahme to get a better deal from a subcontractor who would do most of the work so that there was more money left over for Lancomm, thereby maximising Mr Steyn's payment.

As a result of the Commission's Operation Ember investigation, TfNSW has taken several steps to improve its procurement processes. However, subcontracting was not an issue in that investigation, and it is not clear the extent to which subcontracting risks are being addressed by TfNSW's actions.

In its submissions, TfNSW advised it accepted the criticisms in relation to the inadequate controls regarding the use of contractors and it did not oppose recommendation 3 below, however, it contended that the supplier due diligence framework be developed as a part of recommendation 2. Given the significant issues highlighted in this investigation, the Commission is satisfied that this issue should be encapsulated as a separate recommendation.

RECOMMENDATION 3

That TfNSW strengthens its controls surrounding subcontractors and makes any necessary enhancements to ensure that it monitors the role of subcontractors throughout the construction procurement process.

Performance management

Management of supplier under-performance helps detect and prevent a variety of corrupt conduct, as poor performance is often a consequence of, and/or a cover for, corrupt conduct.

This investigation uncovered systematic non-compliance with supplier performance management requirements. RMS policy required performance reports for all minor and physical works and services contracts valued over \$50,000. Despite most of the procurements investigated by the Commission meeting these criteria, no performance reports were found.

Additional evidence of poor supplier performance management includes that:

- aside from Mr Dubois' first project in 2009/2010, no quality assurance such as whether delegation, procurement, disclosure, and recordkeeping policies were being complied with, was applied to any of his projects
- project outcomes, including financial outcomes, were not adequately measured for the projects that Mr Dubois and Mr Steyn managed (to determine whether technical, quality and safety standards were being met; or, considering any variations, whether the infrastructure purchased represented value for money)
- there was no evidence presented to the Commission of benefit realisation management in relation to either the P2P or STC programs, which is not surprising given there was no cost benefit analysis nor outcome measures set when they were being planned.

Moreover, Mr Dubois sought to avoid independent scrutiny of suppliers he engaged. For example, he emailed the Intelligent Transport Systems Project (ITSP) Section in January 2011 to say that he would manage implementation of projects at Kankool and Mount White as, "ITSP will not add any value to these as they are seen to be entirely contracts admin". This work was being completed mostly by contractors with which Mr Dubois was associated.

Several RMS audit reports provide evidence that inadequate supplier performance management was a broader issue across the RMS. Moreover, a thematic audit conducted in August 2016, which considered audits and other management reviews over the previous two years, identified that issues with contractor performance arose from a lack of compliance, rather than deficiencies in policies and procedures.

As a result of the Commission's Operation Ember investigation, TfNSW has taken several steps to improve its procurement processes. Consequently, the Commission makes no recommendation on this issue.

General procurement issues

The existence of widespread systemic issues in the Plan, Source and Manage phases of HVE procurement, exposed by Mr Dubois and Mr Steyn's corrupt conduct and the corrupt conduct detailed in Operation Ember, invites the question of whether there were broader issues with procurement governance.

This investigation identified broader issues that spanned multiple phases, namely:

- insufficient procurement competence
- limited assurance and accountability regarding construction procurement
- inadequate procurement recordkeeping.

Procurement competence

One key issue identified by this investigation was a lack of procurement knowledge among individuals involved in HVE procurement that might have enabled them to identify and report red flags relating to Mr Dubois and Mr Steyn's conduct. Relevant RMS staff appeared to lack knowledge:

- that threshold amounts specified in policy were inclusive of GST
- that the threshold for three quotes where no panel existed (including GST) was \$30,000 (goods and services) or \$50,000 (construction)
- that it was mandatory to use existing panels of suppliers
- that a procurement strategy was required for procurements above \$250,000 (including GST)
- about how estimated project costs should be calculated
- about how price criteria should be evaluated when assessing tenders
- that contracts above \$150,000 (including GST) must be publicly disclosed within 45 days of the contract becoming effective.

The Commission also identified some evidence that HVE management lacked procurement skills. This is especially problematic under a decentralised procurement model. Mr Soliman did not have any meaningful contract allocation or civil works experience when he commenced

as the HVP Unit manager. He agreed that he had no capacity to understand what was in purchase order requests, and when asked whether he ever sought assistance, he responded “no, because I never had any issues with a purchase order”.

The issue of procurement competence appeared to be a broader issue at the RMS. A 2016 thematic audit report, based on audit and other procurement reviews since January 2014, made several observations related to knowledge and capability:

- There were inconsistent procurement practices across the RMS.
- The decentralised model within the RMS required untrained staff to perform procurement activities.
- There was a lack of both a clearly defined procurement capability framework for the RMS and an adequately resourced capability development program to effectively support the decentralised model. Similar observations were made in an earlier procurement capability assessment conducted in October 2015.
- There was no central approach to procurement knowledge management or a central register of professional procurement standards.
- Many of the overarching procurement policies and procedures were highly complex and there were instances of contradictory guidance between some RMS policies and procedures.
- There were inefficiencies due to duplication, contradictory and onerous controls making it hard to achieve lean and robust processes.

Of relevance to this investigation, the thematic audit report identified the risk that:

...difficult to follow policies can create a culture of acknowledged non-compliance which, when combined with a lack of clarity over expected practice, makes it hard to identify employees who are deliberately circumventing the policy to their own advantage.

As a result of the Commission’s Operation Ember investigation, TfNSW has taken several steps to improve its procurement processes. However, the extent to which these steps address procurement competence is unclear.

RECOMMENDATION 4

That TfNSW develops and implements a plan to:

- **assess the procurement competence of relevant TfNSW employees and contractors who perform procurement activities,**

making allowance for the fact that different activities may require different competencies, and rectify any competency deficits

- **adopt mechanisms to ensure that staff with new procurement responsibilities are competent.**

Procurement assurance and accountability

One constant theme in this investigation was non-compliance with procurement process requirements. Had compliance with these requirements been enforced, Mr Dubois and Mr Steyn’s corrupt conduct could have been substantially curtailed.

In relation to HVE procurement, there was a lack of knowledge regarding whether procurement policy and procedure were being followed. There was no evidence that significant effort was made to ensure that procurement decisions complied with required policy and procedural standards. Where breaches were identified, they were dealt with in isolation and there were few changes to systems to prevent similar breaches in the future. For example, the non-disclosure of contracts, failure to obtain three quotes, and poor recordkeeping described in this chapter.

This calls into question how the RMS’ assurance and accountability processes regarding procurement operated. This investigation discovered that HVP Unit construction procurement was essentially divorced from the RMS’ accountability and assurance regime.

The RMS had a chief procurement officer (CPO) position, but this role only had accountability for goods and services procurement. Accountability for construction procurement lay with the executive director of technical services in the Technical Services Division. These two individuals had separate reporting lines and were in different parts of the RMS.

The construction procurement policy framework was the responsibility of the director commercial services. Commercial Services had little visibility over the construction procurements being conducted for HVE infrastructure. In fact, the then director commercial services informed the Commission in an interview she was not aware that HVE undertook construction projects.

Consequently, any oversight, audits or other assurance activity carried out by Commercial Services did not capture the HVP Unit’s construction procurement activities.

Under the terms of its goods and services procurement accreditation, the RMS provided quarterly progress reports to NSW Procurement on its procurement improvement plan. These reports were signed off by the CPO and the RMS' chief executive officer. However, these progress reports were confined to goods and services procurement and did not address the construction work awarded by Mr Dubois and Mr Steyn.

As a result of the Commission's Operation Ember investigation, TfNSW has taken several steps to improve its procurement processes, including the appointment of a manager procurement strategy and governance. Consequently, the Commission makes no recommendation on this topic.

Procurement recordkeeping

As noted elsewhere in this chapter, HVE procurement was characterised by poor management of budgetary and expenditure information. This points to broader deficiencies in procurement information management, something that was discussed in the aforementioned 2016 thematic audit:

...there is currently limited analysis and reporting of aggregated procurement spend, no central approach to procurement knowledge management or a central register of professional procurement standards.

Although the poor management of procurement information was partially due to the deficiencies in procurement processes already discussed, an additional cause was poor recordkeeping.

An RMS officer who worked alongside Mr Dubois and Mr Steyn, for much of the period between 2010 and 2019, informed the Commission that she had trouble getting documentation and information from Mr Dubois or Mr Steyn, as they often did not place documents in recordkeeping systems. Signs of Mr Dubois' poor recordkeeping practice were apparent almost immediately after he commenced working at the RTA/RMS, for instance:

- in his first months of employment, his then supervisor expressed concerns about the difficulty in locating critical documents including signed project briefs and business cases
- a quality audit for Mr Dubois' first project in July 2010 identified several non-conformances and concerns, primarily about inadequate recordkeeping and transparency.

The endemic nature of Mr Dubois' poor recordkeeping is demonstrated by the number of requests made to him to remediate inadequate records, such as requests to fix deficiencies regarding:

- creating or completing records in the RMS contract records management system, CM21
- declarations of contracts required for principal arranged insurance
- non-disclosure of contracts
- documentation to support a vendor creation request
- documentation to support a purchase order
- documentation to support creation of a shopping cart
- contract-related documents.

Poor recordkeeping was also a broader issue at the RMS. For instance, a July 2016 Enterprise Risk Report relating to the CARS division identified that recordkeeping was fragmented, inadequate and poorly governed. Additionally, a June 2016 internal audit identified issues with maintenance of data in CM21 including its completeness and accuracy. The importance of good recordkeeping is emphasised by the audit report's comment that:

...the lack of data integrity inhibits management's ability to monitor contractor usage and identify instances of non-compliance with procurement practices.

While TfNSW has taken several steps to improve its procurement processes, it is not clear the extent to which these steps address recordkeeping.

RECOMMENDATION 5

That TfNSW reviews its governance of procurement information to ensure that accurate and completed records are kept.

In its submissions, TfNSW accepted this recommendation and advised that:

- there is an opportunity for divisions that carry out procurement activities to align their record keeping requirements and explore aligning systems used for goods and services procurement and construction procurement
- it would establish a cross divisional working group to align documentation requirements in procurement.

Underlying issues

This chapter has already discussed many systemic issues that compromised the HVE procurement control environment. The extent and longevity of these issues calls into question the RMS' broader control framework.

This investigation identified the following broader issues in the RMS' control environment that were conducive to Mr Dubois and Mr Steyn's corrupt conduct:

- inadequate responses to reported conflicts of interest
- limited staff management
- cultural issues within the relevant RMS division
- poor management of change affecting the HVP Unit
- chaotic budget management
- insufficient support for suppliers making complaints
- a lack of management accountability.

Conflicts of interest

The Commission's investigation reports frequently identify poor management of conflicts of interest as a factor conducive to serious corrupt conduct.

As described in previous chapters, Mr Dubois and Mr Steyn were plagued by conflicts of interest which led to the exercise of their public duty in a way that was partial, unfair, and corrupt. Mr Dubois and Mr Steyn's corrupt conduct resulted in their deliberate failure to declare their associations and conflicts of interest and allowed them to create dishonest arrangements with their contractors whereby they received corrupt benefits. Had their associations been adequately managed, none of the companies involved in this investigation would have been awarded relevant RMS/RTA work.

There was a limited response when suspicions or concerns of a conflict of interest were raised. For instance, an RTA official verbally reported that, in April 2011, Mr Dubois had driven to a worksite in a contractor's vehicle with two contractors nicknamed "Hoody" and "Baz" also in the car.³ The official said that when he reported what he had observed to the sector manager, he was provided a response to the effect "it has taken such a long time to obtain approval and funds let's get Alex to get them in and out".

As a result of the Commission's Operation Ember investigation, TfNSW has implemented a new ethical training framework, including training for leaders. Consequently, the Commission makes no recommendation on this issue.

³ It is not in dispute that Mr Hadid was known as "Baz" and that Mr Chahine was known as "Hoody".

Staff management

Effective staff management is a critical corruption control. It allows for the detection and actioning of red flags of corrupt conduct or other improper behaviour. It can also greatly influence ethical tone by creating either a climate that protects against corrupt conduct or, if it is lacking, one that tolerates or even encourages it.

Neither Mr Dubois nor Mr Steyn were properly managed. There is little evidence of Mr Dubois or Mr Steyn's repeated non-compliance with RTA/RMS process requirements being addressed by their managers despite:

- this non-compliance being a performance issue
- the non-compliance both increasing the risk of corrupt conduct and potentially providing cover for it (given potential difficulties in distinguishing corrupt and non-corrupt non-compliance)
- multiple examples of employees identifying non-compliance by Mr Dubois and Mr Steyn, noting TfNSW identified 20 instances.

In addition to not addressing performance issues, Mr Dubois and Mr Steyn's managers generally failed to detect or effectively act upon several red flags of misconduct, including:

- attending a work site driving a contractor's vehicle
- appearing overly friendly with contractors
- failing to obtain three quotes when required to do so
- tardiness in relation to providing supporting documents or completing records
- frequently awarding contracts just below a threshold amount to the same contractor or contractors for very similar work
- awarding work to contractors with little or no relevant experience
- high leave balances.

There appear to be two main reasons for this inadequate staff management.

First, Mr Dubois and Mr Steyn's line managers sometimes lacked visibility of their actions. Many of the projects managed by Mr Dubois and Mr Steyn involved assets owned by a different business unit. Consequently, their own managers had less interest in the procurement process or the outcome.

Secondly, the performance management of Mr Dubois and Mr Steyn was treated as a mere box-ticking exercise. For instance, when their manager, Mr Soliman,

was shown an extract of the 2016/2017 performance development review of Mr Steyn, he told the Commission that the form did not matter commenting “this form went nowhere... It went into the black, black hole of doom, as my old, old boss used to say”.

This apparent rubber stamping of performance reviews raises the question of the extent that performance management was taken seriously by staff and supervisors in the HVP Unit. The importance of this question is reinforced by the fact that Mr Soliman told the Commission that he was not so competent as a manager. Notwithstanding the matters highlighted in Operation Ember, this calls into question how Mr Soliman’s performance was managed.

As a result of the Commission’s Operation Ember investigation, TfNSW has implemented a new ethical training framework, including training for leaders. However, the staff management issues discussed in this part extend beyond ethics.

In its submissions to the Commission, TfNSW stated that its ICT system, Equip, is now used for performance evaluation processes, it is overhauling its approach to performance and development planning, and it is providing performance management training to its leaders. The Commission notes that to ensure good performance management, agencies need mechanisms to ensure that staff management processes are effective *in practice*.

RECOMMENDATION 6

That TfNSW reviews supervision of staff involved in procurement processes to ensure that managers are alert to, and aware of, red flags of misconduct, and act upon them appropriately.

Organisational culture

Corrupt conduct invariably occurs in the context of other organisational dysfunction and a pattern of corrupt conduct is often just one element of a poor organisational culture. Consequently, monitoring organisational culture is, *inter alia*, an important element of corruption control.

One element of organisational culture that can be associated with corrupt conduct is employee engagement. This is because poor engagement can motivate corrupt conduct and a corrupt environment can reduce employee engagement.

Data from the NSW Public Service Commission’s People Matter Employee Survey (“the PMES”) pointed to potential cultural issues with CARS, that included the HVP Unit. As per Table 4, publicly available PMES data for the years 2016 to 2019 show that CARS (or its predecessor, the Safety and Compliance (S&C) Division) scored lower than the whole of the RMS on every employee engagement driver four years in a row.

Table 4: CARS Division and RMS engagement scores by percentage

	2016		2017		2018		2019	
	RMS	S&C	RMS	CARS	RMS	CARS	RMS	CARS
Employee engagement	64	60	64	55	65	58	63	57
Engagement with work	76	N/A	70	59	71	61	69	61
Senior managers	47	41	45	33	48	37	47	39
Communication	61	53	63	50	64	53	63	57
High performance	68	61	62	50	63	53	62	55
Public sector values	68	61	61	48	62	51	61	52
Diversity & inclusion	70	62	73	61	74	63	73	66

The Commission is not suggesting that an agency or business unit with below average PMES scores is likely to employ corrupt staff. However, these data provided a warning sign of cultural issues inside CARS. If the RMS had examined the cultural issues suggested by these data, it could have gained insight into the fact that the HVP Unit was isolated and lacking in strategic direction and oversight. The RMS could also have identified issues of non-compliance and favouritism and, ultimately, it may have identified the non-declaration of Mr Dubois and Mr Steyn's associations with RMS contractors.

As a result of the Commission's Operation Ember investigation, TfNSW has taken several steps to improve its procurement processes, including training modules to help drive an ethical culture. However, the issues discussed in this part are broader in scope than ethical training.

TfNSW submitted that it has:

- introduced various cultural programs and provided associated training
- various cultural surveys in place, and allows branch leaders to share results with their teams
- processes to report on survey results to senior management.

The steps taken by TfNSW to date appear predicated on a manager wanting to do "the right thing" to discover and address cultural issues. While no recommendations are made, the Commission notes that a manager presiding over poor culture may be incentivised to hide cultural issues. Central monitoring of data such as the PMES survey responses would help agencies to identify cultural issues even if a manager is trying to hide them. Importantly, it would also assist agencies to monitor progress on actions to address cultural issues.

Change management

Poorly managed organisational change is an important corruption risk factor. An agency's control framework is based on assumptions regarding its internal and external operating environment, and these assumptions can be rendered invalid due to restructures and other organisational changes.

Prior to 2011, the forerunner to the HVP Unit was placed in a division that had construction expertise, which facilitated the effective oversight of its procurement activities. However, in early 2011, the unit was moved into a division, which did not have this expertise.

Further changes in internal arrangements did not inhibit Mr Dubois and Mr Steyn from sourcing suppliers with which they were associated. For example, in August

2011, the existing arrangements for procuring steel fabrication work were put on hold, creating a temporary lack of certified suppliers while panel arrangements were established. Mr Steyn told the Commission that, "I was told by the internal resources they would be made redundant...[and]...was advised you'll have to find someone else to do it". Consequentially, as result of this disruption Mr Dubois and Mr Steyn were able to award work to suppliers with which they were associated.

In March 2014, Mr Dubois and Mr Steyn came under the supervision of Mr Soliman. The process associated with this management change further weakened the RMS' capacity to oversee HVE construction procurement. For instance, Mr Soliman said that in relation to the P2P program managed by Mr Steyn, he did not get a handover and did not attend meetings with the Centre for Road Safety about the program. Mr Soliman said he relied on Mr Steyn as to what work was required. The transfer of supervisory responsibility without proper handover meant there was a loss of managerial continuity and knowledge transfer concerning the HVE program. This resulted in a reduction in managerial capacity which allowed Mr Dubois and Mr Steyn to continue their corrupt conduct. This culminated in Mr Dubois and Mr Steyn being able to set up a panel wherein Part A consisted almost entirely of their associates to further their corrupt scheme. Coincidentally, Mr Soliman's own corrupt scheme investigated in Operation Ember was facilitated by Part B of that same panel.

TfNSW submitted that a recommendation concerning change management was unnecessary because evidence before the public inquiry related to its predecessor agencies. It also advised that:

- its Enterprise Transformation team is involved in its Evolving Transport reform program
- the Transformation and Reform Committee, an executive level forum to oversee and govern all of the transformation programs within TfNSW, is charged to oversee and govern all of the transformation programs within TfNSW
- TfNSW is developing a multi-year program to upskill its change management capacity.

The Commission notes that the types of changes relevant to this investigation appear to be much smaller than those governed by Evolving Transport. It also considers that while a change management upskill program is a useful endeavour, governance includes more than policy documents and training.

RECOMMENDATION 7

That TfNSW strengthens its governance of change management processes to ensure that the following are addressed:

- potential structural weaknesses that might arise
- the effect of change on supplier markets, including knowledge of potential suppliers
- adequacy of supervisor and management handovers that may be required when accountabilities change (whether these relate to oversight of an individual or a function).

Budget management

A stable budget environment assists in efforts to control corrupt conduct. When an appropriate quantum of funds is provided in a predictable manner, it allows for better planning and monitoring of expenditure, which in turn makes it easier to implement controls surrounding the use of the allocated funds.

The funding of HVE programs was uncertain and chaotic, leading to ad hoc budgeting and expenditure processes, and ultimately increased corruption risk.

Some HVE operations were insufficiently funded. For instance, a former RMS technical project manager within CARS told the Commission that the STC program never had any funding apart from a slight operational budget. It was a system being run without a budget and that STC was one of “those things where...we have it but we don’t care about it”. Another example was given of enforcement technicians not being able to order equipment they needed because there was no budget.

This funding shortfall led to the STC program being largely dependent on temporary funding from other organisational programs. While there is nothing inherently wrong with re-allocating budgets, it is important that all aspects of budget management be subject to governance that is commensurate with risk. Poor budget management can create incentives for work arounds, create corruption risks and hinder the detection of corrupt practices.

HVE budget management was poorly governed. For instance, as mentioned earlier in this chapter, the flow of funds to HVE programs was tracked manually using a spreadsheet. While this is noted, tracking of funds is something that should have been handled more formally by the RMS. The quantum and severity of systemic issues discussed in this chapter also strongly argue against the existence of an appropriate level of governance.

There was also pressure to spend money toward the end of each financial year. The technical project manager was regularly asked if they had spare budget that could be re-allocated to other areas. It is the Commission’s experience that an end-of-year expenditure rush creates corruption risks because of the likelihood that oversight of such purchases is limited.

While, following the Commission’s Operation Ember investigation, TfNSW has taken several steps to improve its procurement processes, the issue of budgetary management is intimately linked to project and program management and governance. In its submissions, TfNSW stated it will be introducing new policy/framework requirements regarding construction procurement and asset management, and a new business unit that will be a source of expertise relating to asset management. TfNSW also stated it has assurance requirements in place for high-value assets. While these steps have value, it should be noted that in this investigation relevant policy requirements were ignored, and expert business units were not consulted.

In its submissions, TfNSW opposed a recommendation relating to a review of its infrastructure programs, raising concerns about going beyond the lower value operation assets that were the subject of this investigation. It also advised that TfNSW is allocated a capital budget and there are assurance requirements already in place across the broader capital delivery budget especially for larger Tier 1 projects.

RECOMMENDATION 8

That TfNSW reviews its infrastructure programs to ensure that the new policy/framework requirements for construction procurements (regardless of asset value) include an appropriate level of assurance and compliance mechanisms to address the systemic risks identified in this investigation.

Complaint management

Research has consistently shown that corrupt conduct is most frequently detected by complaints, especially from knowledgeable insiders. A robust complaints management framework is thus a critical component of an agency’s corruption control system.

The RTA/RMS’ complaints management framework was insufficient to ensure that complaints from suppliers regarding HVE procurement were received and properly managed.

In some cases, suppliers did not know how to report suspicions or concerns to an independent person.

For instance, Abdula Nachabe considered complaining to someone in the RTA/RMS about Mr Dubois' insistence that he be paid a "project management fee" but ultimately did not do so because the only person he knew in the RTA/RMS was Mr Dubois.

On other occasions, suppliers reported concerns about the behaviour of Mr Dubois or Mr Steyn, but the RMS appears to have taken no meaningful action in response. Examples of these include:

- a director of CIC Engineering stating that he had told Mr Dubois' manager about improper allocation of work to companies associated with Mr Dubois
- another director of CIC Engineering telling an RMS official that all the people doing the work were friends or relatives of Mr Dubois; the official relayed this to their manager who was also Mr Dubois' manager.

The Commission accepts that knowledge of reporting options may not have been a factor in some cases but appears to have been a factor in cases such as Abdula Nachabe's. However, the Commission also notes that concerns raised by suppliers did not make it to the relevant reporting channels and were not appropriately managed.

In its submissions, TfNSW advised that :

- suppliers are provided with information about how to make a complaint
- misconduct reporting channels exist and are being enhanced
- the reason suppliers did not complain was not due to a lack of knowledge of how to make a complaint.

RECOMMENDATION 9

That TfNSW strengthens its complaints management and contracts management systems to ensure that:

- **there is clear and easy access for suppliers to report suspected corrupt conduct by TfNSW employees, including their designated TfNSW project and/or contract manager**
- **adequate processes exist to manage allegations of corrupt conduct raised by suppliers.**

Managerial accountability

A fundamental issue illustrated by this investigation is the accountability of managers regarding the integrity of decision-making processes within their purview. The RMS Delegations Manual clearly articulated the responsibilities of delegates and the principles they were required to follow, but the prescribed standards were often not met in practice.

Many of the procurement decisions relevant to this investigation were not authorised by Mr Dubois or Mr Steyn. For instance, purchase order requests were often signed by their managers, or occasionally by more senior managers. Given the systemic non-compliance with RMS procurement process requirements found in this investigation, these delegates clearly did not meet the prescribed standards.

One manager, Mr Soliman, explained how he reviewed purchase orders. This had the effect of abrogating his managerial accountability. In essence, Mr Soliman remarked that his function was limited to putting a signature on a document:

I'm looking at it seeing if it makes any sense, seeing if they say the work needs to be done, I don't know if you would call that rubber stamping. I mean I'm approving the work that they say needs to be done.

Furthermore, Mr Soliman agreed that he failed to perform any kind of meaningful oversight of these procurements:

[Counsel Assisting]: I'm putting it to you in every sense it is true that you did not employ or engage your cerebral processes to look at the content of an order, to evaluate each item, which had a monetary amount against it, assess whether the monetary amount was appropriate, whether the work was necessary, whether the work for which the purchase order related to was appropriate, you didn't consider any of those matters?

[Mr Soliman] Not to that level of detail, no.

As a result of the Commission's Operation Ember investigation, TfNSW has implemented a new ethical training framework, including training for leaders. Consequently, the Commission makes no recommendation on this issue.

The recommendations in this chapter are made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E



of the ICAC Act, will be furnished to TfNSW and the responsible minister.

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

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

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

Appendix 1: The role of the Commission

The Commission was created in response to community and Parliamentary concerns about corruption that had been revealed in, inter alia, various parts of the public sector, causing a consequent downturn in community confidence in the integrity of the public sector. It is recognised that corruption in the public sector 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 Commission's functions are set out in s 13, s 13A and s 14 of the ICAC Act. One of the Commission's principal functions is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

- i. corrupt conduct (as defined by the ICAC Act), or
 - ii. conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or
 - iii. conduct connected with corrupt conduct,
- may have occurred, may be occurring or may be about to occur.

The Commission may also investigate conduct that may possibly involve certain criminal offences under the *Electoral Act 2017*, the *Electoral Funding Act 2018* or the *Lobbying of Government Officials Act 2011*, where such conduct has been referred by the NSW Electoral Commission to the Commission for investigation.

The Commission may report on its investigations and, where appropriate, make recommendations as to any action it believes should be taken or considered.

The Commission may make findings of fact and form opinions based on those facts as to whether any particular person has engaged in serious corrupt conduct.

The role of the Commission is to act as an agent for changing the situation that has been revealed. Through its work, 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 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 t

Appendix 2: Making corrupt conduct findings

Corrupt conduct is defined in s 7 of the ICAC Act as any conduct which falls within the description of corrupt conduct in s 8 of the ICAC Act and which is not excluded by s 9 of the ICAC Act.

Determining corrupt conduct

Section 8 defines the general nature of corrupt conduct. Subsection 8(1) provides that corrupt conduct is:

- (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or
- (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
- (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
- (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

Subsection 8(2) specifies conduct, including the conduct of any person (whether or not a public official), that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority, and which, in addition, could involve a number of specific offences which are set out in that subsection.

Subsection 8(2A) provides that corrupt conduct is also any conduct of any person (whether or not a

public official) that impairs, or that could impair, public confidence in public administration and which could involve any of the following matters:

- (a) collusive tendering,
- (b) fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety or the environment or designed to facilitate the management and commercial exploitation of resources,
- (c) dishonestly obtaining or assisting in obtaining, or dishonestly benefitting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage,
- (d) defrauding the public revenue,
- (e) fraudulently obtaining or retaining employment or appointment as a public official.

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

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

In *Greiner v ICAC* (1992) 28 NSWLR 125 (at 136, 143) Gleeson CJ said the following in relation to s 9:

Reference has been made above to the conditional nature of a conclusion reached in relation to s 9(1). An accurate understanding of the operation of

the word “could” in s 9 is essential to a proper performance of the task of evaluation required by that section.... However, it is of some assistance to an understanding of the way in which s 9(1) operates to consider what might be its effect in relation to a case where it is said that the conduct in question could constitute or involve a criminal offence.

It was common ground in these proceedings that, in determining whether conduct could constitute or involve a criminal offence, the Commissioner would be required to go through the following process of reasoning. First, he would be required to make his findings of fact. Then, he would be required to ask himself whether, if there were evidence of those facts before a properly instructed jury, such a jury could reasonably conclude that a criminal offence had been committed. (It is not necessary for present purposes to examine what happens in a case where the Commissioner’s findings depend in a significant degree upon evidence that would be inadmissible at a criminal trial.) I will return below to the significance of the approach to be taken to s 9(1).

...

... s 9(1) must be applied by the Commission, and by this Court, in a manner that is consistent with the purpose of the legislature, which was that the standards by which it is applied must be objective standards, established and recognised by law, and its operation cannot be made to depend upon the subjective and unexaminable opinion of the Commissioner.

Section 13(3A) of the ICAC Act provides that the Commission may make a finding that a person has engaged or is engaged in corrupt conduct of a kind described in paragraphs (a), (b), (c), or (d) of s 9(1) only if satisfied that a person has engaged or is engaging in conduct that constitutes or involves an offence or thing of the kind described in that paragraph.

In *D’Amore v ICAC* [2012] NSW 473 at [75] McClellan CJ described s 13(3A) (and s 9(5)) as creating jurisdictional facts. He held:

In those circumstances, the jurisdictional facts created by ss 13(3A) and 9(5) will be found to exist where the Commission forms, in good faith, an evaluative judgment that the person under investigation has committed an offence or breached an identified law, provided the Commission has properly construed relevant criteria such as the elements of the offence or the requirements of the identified law.

The application of s 13(3A) was also considered by the Court of Appeal in *D’Amore v ICAC* [2013] NSWCA 187. Basten JA said the following at [221]:

That leaves open the question as to the matter about which the Commission must be satisfied under s 13(3A). It would clearly be inconsistent with both the function of the Commission and the structure of the Act generally to hold that the Commission must be satisfied beyond reasonable doubt that an offence has been committed. The Commission is not a criminal court and is not required to reach conclusions on the basis of material which would constitute admissible evidence in a criminal proceeding: cf s 17(1). So understood, s 13(3A) requires that the Commission be satisfied that the conduct has occurred and that it is conduct of a kind which constitutes a criminal offence. The combined purpose of ss 13(4) and 74B, is to emphasise that the Commission is not delivering a verdict on a criminal charge.

In *Duncan v ICAC* [2016] NSWCA 143 Beazley P held, at [469]:

Effectively, therefore, there are two requirements at play. First, pursuant to s 9(1), conduct will only constitute corrupt conduct if it could constitute or involve conduct of the kinds specified in paras

(a) to (d). Second, pursuant to s 13(3A), the power of the ICAC to make a finding of corrupt conduct is conditioned on the ICAC being satisfied that the relevant conduct constitutes or involves an offence or thing of the kinds specified in paras (a) to (d) of s 9(1). Thus, whilst the provisions overlap, there is a distinction between the meaning of corrupt conduct, which engages ss 7, 8 and 9 and the subsequent conditioning of power on the relevant state of satisfaction within the meaning of s 13(3A): see *Bathurst CJ* at [164]-[165]; *Basten JA* at [598].

Basten JA (with whom Beazley P agreed) held at [598]:

Section 8(2) and s 9(1)(a) of the ICAC Act refer to conduct which “could constitute or involve” a criminal offence; s 13(3A) requires the Commission to be satisfied that a person “has engaged in ... conduct that constitutes or involves an offence”. It is clear from the legislative scheme identified above that s 13(3A) does not impose an obligation to be satisfied that an offence has in fact been committed. Rather, that as to which the Commission must be satisfied is the capacity of the facts found to constitute an offence, if proved by admissible evidence to the satisfaction of the appropriate court.

Subsection 9(4) of the ICAC Act provides that, subject to subsection 9(5), the conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in s 8 is not excluded by s 9 from being corrupt if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

Subsection 9(5) of the ICAC Act provides that the Commission is not authorised to include in a report a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection 9(4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from the ICAC Act) and the Commission identifies that law in the report.

Section 74BA of the ICAC Act provides that the Commission is not authorised to include in a report under s 74 a finding or opinion that any conduct of a specified person is corrupt conduct unless the conduct is serious corrupt conduct.

The Commission adopts the following approach in determining findings of corrupt conduct.

First, the Commission makes findings of relevant facts on the balance of probabilities (see below).

The Commission then determines whether relevant facts as found by the Commission come within the terms of subsections 8(1), 8(2) or 8(2A) of the ICAC Act.

If they do, the Commission then considers whether the conduct comes within s 9 of the ICAC Act.

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

In the case of subsections 9(1)(b), 9(1)(c) and 9(1)(d) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

If the Commission finds the conduct comes within s 9, the Commission then considers the requirements of s 13(3A).

In the case of subsection 9(1)(a) and subsection 9(5) the Commission considers and determines whether it is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that the person has committed a particular criminal offence.

In the case of subsections 9(1)(b), 9(1)(c) and 9(1)(d) the Commission considers and determines whether it is satisfied that, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

If satisfied the requirements of s 13(3A) have been met, the Commission then considers and determines whether, for the purpose of s 74BA of the ICAC Act, the conduct is serious corrupt conduct.

If all the above requirements are satisfied, the Commission may make a finding of corrupt conduct.

Standard of proof

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

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

...reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or fact to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

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

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

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

Findings set out in this report have been made applying the principles detailed in this Appendix.

Appendix 3: Summary of responses to proposed adverse findings

Mr Dubois

Although Mr Dubois did not request a summary of the substance of the submissions made on his behalf be included in the report, the Commission considers it is appropriate that those submissions are addressed.

Denial of adequate time to prepare for the hearing

Mr Dubois submitted that, given he was first informed on 21 April 2021 there would be a public inquiry and that the public inquiry commenced on 10 May 2021, he was not given sufficient time “to prepare an adequate case or properly be represented” at the public inquiry.

The first point to be made is that the public inquiry was conducted for the purposes of a Commission investigation and unlike litigation in a court Mr Dubois was not required to prepare a “case”. As observed by Basten JA in *Duncan v Independent Commission Against Corruption* [2016] NSWCA 143 at [690]:

...the statutory function being exercised by the Commission in the course of the public inquiry was, in a fundamental sense, investigative. It bore no relation to a civil or criminal trial before a court with jurisdiction to resolve factual and legal issues in a dispute between contending parties.

The Commission accepts that Mr Dubois was notified on Wednesday 21 April 2021 that the public inquiry would commence on Monday 10 May 2021.

On 3 May 2021, the lawyer representing Mr Dubois wrote to the Commission seeking to have the public inquiry date vacated so as to allow his client time to prepare for the public inquiry. The basis for this application was that:

- the lawyer had obtained access to the Commission’s restricted website, which

contained over 20,000 pages of information, at approximately 2:00 pm on 3 May 2021

- despite having practised as a barrister and solicitor, the lawyer considered it was not possible to prepare for the public inquiry by 10 May 2021
- while funding had been sought from the Department of Communities and Justice (DCJ) for an additional legal representative to assist with the matter, a response had not been received as of 3 May 2021.

The application was considered by Chief Commissioner Hall. On 4 May 2021, Mr Dubois’ lawyer was advised of the Chief Commissioner’s decision to proceed with the public inquiry as planned. In support of that determination the lawyer was advised of the following:

- that from at least 11 October 2019, Mr Dubois’ lawyer and his firm had represented Mr Dubois with respect to Operation Paragon including throughout all his compulsory examinations. Accordingly, the lawyer and his firm were seized of the factual issues as they related to Mr Dubois and other relevant witnesses which formed the basis of the public inquiry
- Mr Dubois provided significant admissions during his compulsory examinations and, for the most part, cooperated with the Commission. The lawyer’s firm was properly appraised of those admissions and his evidence
- the material provided on the restricted website did not solely relate to Mr Dubois
- the public inquiry was not an accusatorial process at which a formulated issue was to be resolved
- it was in the public interest that the public inquiry progress in a timely manner.

In reaching this determination, the Commission took into account that, between 11 March 2020 and 24 February 2021, Mr Dubois had participated in six days of compulsory examination with his legal representative present at all those hearings. Mr Dubois had made significant admissions in respect of receiving improper payments from many of the contractors with whom he dealt. Mr Dubois and his lawyer were therefore well aware prior to 21 April 2021 of both the matters under investigation and the issues affecting Mr Dubois. Indeed, his legal representative was instructed in this matter since at least 11 October 2019.

It is also relevant to note that much of the material provided on the restricted website related to banking documents and RMS projects. Attached to these documents were concise transactional summaries and summaries of the RMS project work in question which would facilitate Mr Dubois' lawyer getting across the salient issues. Further, a significant portion of the material clearly related to Mr Steyn rather than Mr Dubois.

On 5 May 2021, Mr Dubois' lawyer advised the Commission that he would not be appearing for Mr Dubois at the public inquiry. In doing so he again cited the volume of material on the restricted website and concerns that the DCJ had not been able to fund legal representation to work over weekends or evenings to enable the material on the restricted website to be read or to fund counsel or a second lawyer to assist.

The Commission then wrote to the DCJ about Mr Dubois' lack of legal representation asking if there was any further reconsideration by the DCJ for allocating Mr Dubois resources for additional legal representation.

On 10 May 2021, the DCJ advised that funding had been made available to Mr Dubois for additional legal representation. Later that day, Mr Dubois' lawyer acknowledged that additional funding was available from the DCJ but advised he was not presently instructed

to appear at the public inquiry and had not undertaken preparation as he had not been retained at that juncture. He again requested an adjournment.

The Commission declined to adjourn the public inquiry but advised Mr Dubois' lawyer and Mr Dubois that the Commission would accommodate Mr Dubois by rescheduling the witness order so that allegations relating to Mr Steyn would be addressed first, with Mr Dubois not to be called until the week commencing 24 May 2021, to allow further time for him to prepare. The Commission also advised Mr Dubois that he would have the opportunity to cross-examine Mr Steyn at a later date.

Having not received a reply from Mr Dubois or his lawyer, on 14 May 2021 the Commission again notified Mr Dubois of the DCJ decision and that it was anticipated he would be required to give evidence in the week commencing 24 May 2021.

On 17 May 2021, the Commission was advised by the DCJ that it had been advised by Mr Dubois' lawyer on 11 May 2021 that he was no longer instructed to appear at the public inquiry and, as a result, the DCJ had contacted Mr Dubois and invited him to make contact if he required legal assistance. The DCJ advised that it had not been contacted by Mr Dubois.

On Thursday 20 May 2021, the Commission wrote to Mr Dubois advising him that he was required to give evidence at the public inquiry on Wednesday 26 May 2021 and requested that he advise if he had retained legal representation.

On 20 May 2021, the DCJ advised the Commission that, as of 10:00 am on that day, it had not received any contact from Mr Dubois about his legal representation despite having "reached out to Mr Dubois on multiple occasions between 5 and 11 May 2021 in an effort to confirm legal representation for him in relation to Operation Paragon".

Mr Dubois attended the Commission on 26 May 2021 and gave evidence in the public inquiry. He was not legally represented at the public inquiry. When asked whether there was any application, he wished to make he responded, “No, thank you”.

The Commission also notes Mr Dubois did not obtain legal representation during the five-and-a-half-month break in sitting dates between 23 June 2021 and 9 December 2021 caused by the COVID-19 pandemic.

For the reasons set out above, the Commission does not consider Mr Dubois was put to any undue disadvantage by being notified on 21 April 2021 of the 10 May 2021 commencement date for the public inquiry. The Commission considers that, in the circumstances set out above, Mr Dubois had ample opportunity to avail himself of legal representation for the public inquiry.

Application for adjournment on medical grounds

Between 26 May 2021 and 1 June 2021, Mr Dubois appeared before the Commission and was examined by Counsel Assisting. He was not excused from his summons and was advised that he would be required for further examination and cross-examination at a future date.

On 23 June 2021, before Mr Dubois could be recalled, it became necessary to adjourn the public inquiry due to new COVID-19 restrictions announced by the NSW Government. The public inquiry did not resume until 6 December 2021.

In late November 2021, Mr Dubois contracted COVID-19 and suffered additional complications thereafter and was hospitalised. Mr Dubois, through his lawyer, informed the Commission of his condition on 1 December 2021. Mr Dubois was discharged from hospital on 5 January 2022. Thereafter the Commission sought and obtained updates on his condition and obtained a medical report on his fitness to give evidence. After considering this information, on 3 March 2022, the Commission wrote to Mr Dubois to advise that it was not satisfied that he was unfit to give evidence. The Commission advised that, in those circumstances, it proposed that Mr Dubois:

- give his evidence for a total of one day
- participate via audio visual link from his home
- be allowed to take regular short breaks in addition to the 1 hour and 15 minutes the Commission ordinarily allows.

Mr Dubois participated in the public inquiry on 29 March 2022 via audio/visual link. At the time the Chief Commissioner, who was presiding at the public inquiry,

reiterated that if Mr Dubois needed to take a break all he needed to do was to indicate.

Mr Dubois submitted that, despite having access to Mr Dubois’ medical records, the Commission still required him to give evidence on 29 March 2022 which was unfair and prejudicial to him, particularly considering the seriousness and nature of his condition, and this constituted a denial of procedural fairness.

The Commission rejects this submission. The decision to proceed to take evidence from Mr Dubois on 29 March 2022 was based on consideration of Mr Dubois’ condition as set out in the medical evidence before the Commission. Appropriate steps were put in place to limit the duration of his evidence, allow him to give evidence from his home and to offer him breaks should he so request. When giving evidence on 29 March 2022, Mr Dubois did not manifest any discomfort or inability to effectively participate in the hearing. The Commission does not consider Mr Dubois was unduly prejudiced by being required to give evidence at that time or that such a requirement constituted a failure to afford procedural fairness.

Section 74A(2) statements

It was also submitted by Mr Dubois that given the “nature” of his evidence, both in his compulsory examinations and the public inquiry, the Commission should exercise its discretion not to refer Mr Dubois to the DPP for the consideration of criminal prosecution.

The submission did not address the “nature” of his evidence to which the Commission should have regard. While Mr Dubois did make significant admissions against interest in his evidence, the Commission does not consider that appropriate grounds have been made out for it to consider exercising any discretion to not recommend consideration be given to seeking the advice of the DPP with respect to the prosecution of Mr Dubois for criminal offences.





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