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INDEPENDENT
COMMISSION
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CORRUPTION

Investigation into tendering and payments in relation to NSW Fire Brigades capital works projects

ICAC REPORT



DECEMBER 2008

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Mr President
Mr Speaker

In accordance with section 74 of the *Independent Commission Against Corruption Act 1988* I am pleased to present the Commission's report on its investigation into the conduct of Christian Sanhueza, Clive Taylor and others in relation to tendering and payments for the building, repair and renovation of NSW Fire Brigades capital works projects.

I presided at the public inquiry held in this investigation.

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

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

Yours faithfully

A handwritten signature in black ink, appearing to read 'Jerrold Cripps', written over a light grey rectangular background.

The Hon Jerrold Cripps QC
Commissioner

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Executive summary

This report concerns an investigation conducted by the Independent Commission Against Corruption (“the Commission”) into the conduct of Christian Sanhueza and Clive Taylor and others in relation to tendering and payments for the building, repair and renovation of NSW Fire Brigades capital works projects.

Between late 2005 and 2007 Mr Sanhueza and Mr Taylor, who were contracted by NSW Fire Brigades (“the NSWFB”) as project managers, operated a scheme whereby they submitted false tenders and quotes to NSWFB in order to manipulate the awarding of the NSWFB contracts to companies controlled by Mr Sanhueza. Their scheme affected 39 NSWFB projects. As a result of the successful implementation of their scheme the companies controlled by Mr Sanhueza received \$6,075,120. After paying the subcontractors that did the actual work Mr Sanhueza received at least \$1,399,922 and Mr Taylor received \$1,010,000.

Mr Sanhueza used these proceeds to reduce amounts he owed on properties at Ambarvale and Glen Alpine by over \$850,000. Mr Taylor used the proceeds to purchase a farm and stock for about \$586,000 and to reduce a mortgage on his home by about \$226,000.

The Commission referred the receipt of corrupt proceeds to the NSW Crime Commission (NSWCC), which obtained restraining orders against Mr Sanhueza and Mr Taylor. On 12 November 2008, the Supreme Court made a proceeds assessment order pursuant to the *Criminal Assets Recovery Act 1990* against Mr Sanhueza for the sum of \$950,000.

On 20 November 2008 the Supreme Court made an assets forfeiture order under section 22 of the *Criminal Assets Recovery Act 1990* that the interest in specified property of Mr Taylor (a farm at Merriwa, two flatscreen televisions and a laptop computer) be forfeited to and vest in the Crown.

This report also examines Mr Sanhueza’s and Mr Taylor’s conduct in relation to the falsification of documents; soliciting and receipt of money, televisions and computers from NSWFB contractors Rasem Guirguis and Soliman Hanna in return for ensuring they continued to receive NSWFB work; the improper provision of confidential NSWFB documentation and other information by another NSWFB worker, Patricia Xuereb; and attempts by Mr Sanhueza, Ms Xuereb, Mr Taylor and his wife to cover up their activities from the Commission’s investigation.

The public inquiry

As part of the investigation, the Commission held a public inquiry from 20 August 2008 to 3 September 2008 at which evidence was taken from 17 persons. The Hon Jerrold Cripps QC, Commissioner, presided over the public inquiry. Chris Ronalds SC was Counsel Assisting the Commission.

Commission’s findings

The Commission found that Mr Sanhueza and Mr Taylor engaged in corrupt conduct in relation to their improper manipulation of the contract selection process in order to ensure that contracts relating to 39 NSWFB projects were awarded to companies controlled by Mr Sanhueza.

The Commission also found that Mr Sanhueza, Mr Taylor and Rasem Guirguis engaged in corrupt conduct in relation to Mr Sanhueza and Mr Taylor obtaining from Mr Guirguis four flat screen televisions valued at a total of \$22,800 and two laptop computers valued at a total of \$7,500, as a reward for Mr Sanhueza and Mr Taylor continuing to award NSWFB work to Mr Guirguis. The Commission also found Mr Sanhueza, Mr Taylor and another NSWFB contractor, Soliman Hanna, engaged in corrupt conduct in relation to Mr Sanhueza and Mr Taylor each obtaining \$1,000 from Mr Hanna as a reward for Mr Sanhueza and Mr Taylor continuing to award NSWFB work to Mr Hanna.

The Commission found that Patricia Xuereb, who worked under contract for the NSWFB, engaged in corrupt conduct in relation to her improper provision of confidential NSWFB documentation and other information to Mr Sanhueza.

Statements are made pursuant section 74A(2) of 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 Mr Sanhueza, Mr Taylor, Annamarie Taylor, Mr Guirguis and Ms Xuereb for various criminal offences.

Corruption prevention issues and recommendations

The Commission has identified serious deficiencies in the practices, systems and internal controls employed by the NSWFB in relation to its capital works function. Weaknesses were apparent in numerous areas including recruitment of contracted staff, capital works budgeting and estimating, staff supervision and work review, corruption risk management, tendering and contract management, record-keeping, financial delegations, internal audit, financial management and management of gifts and benefits.

These systems deficiencies provided opportunities which Mr Sanhueza and Mr Taylor exploited to their considerable gain, and also contributed to the NSWFB's failure to prevent or detect the corrupt conduct exposed through this investigation.

A total of 14 corruption prevention recommendations are made to the NSWFB to support and complement the initiatives it is already taking to improve the relevant systems and internal controls and better manage the risks identified in this investigation.

As part of the performance of its statutory functions the Commission will monitor the implementation of the recommendations made as a result of this investigation.

The recommendations will be communicated to the NSWFB with a request that implementation plans for the recommendations are provided to the Commission within three months of the publication of this report.

The Commission will also request progress reports on the implementation of recommendations at intervals of 12 and 24 months after the publication of this report.

These reports will be posted on the Commission's website, www.icac.nsw.gov.au, for public viewing.

Corruption prevention recommendations made in this report

RECOMMENDATION 1

That the NSWFB develops a written agreement with any recruitment agency from which it sources staff that clearly sets out all the tasks the recruitment agency is required to perform, for example reference and qualifications checks.

RECOMMENDATION 2

That the NSWFB Human Resources Division ensures that all staff hired on contract are selected on merit and subjected to appropriate checks in regard to claimed qualifications and experience, and references by previous employers.

RECOMMENDATION 3

That the NSWFB ensures that contracted staff understand their roles and responsibilities as public officials. Strategies to achieve this could include:

- a. developing a comprehensive position description for any contracted position outlining the responsibilities of the position;
- b. entering into a written agreement with the contractor, additional to their agreement with the recruitment agency, which sets out the duties and conduct expected of the contractor, and which the contractor is required to read and sign;
- c. developing and implementing a comprehensive induction process including clear instruction on the NSWFB Code of Conduct and their responsibilities as public officials.

RECOMMENDATION 4

That the NSWFB reviews its practice of using contracted project managers. It should consider all options including:

- a. creating permanent project manager positions;
- b. seconding experienced project managers from other public sector agencies;

- c. sourcing project managers from the Department of Commerce's pre-qualified panel of project manager contractors;
- d. appropriate restructuring of the Property Services Unit to meet its skill and staffing needs.

RECOMMENDATION 5

That the NSWFB review its budget allocation process for capital works funding to ensure the process provides an accurate and independent estimate of the cost of a capital works project.

RECOMMENDATION 6

That where it is determined that a contingency amount should be included in the budget allocation, the two dollar figures for the contingency amount and the estimated cost of the project should be clearly and separately identified in the budget allocation.

RECOMMENDATION 7

That the NSWFB conducts a comprehensive corruption risk assessment of the Property Services Unit and ensures it has adequate internal controls in place to manage these risks.

RECOMMENDATION 8

That the NSWFB ensures that its managers have the following skills and knowledge:

- a. understanding of the responsibilities and key accountabilities of their positions;
- b. the skills to meet these responsibilities;
- c. understanding of the relevant government and NSWFB policies pertaining to their work;
- d. understanding of their financial delegations;
- e. ability to supervise their staff effectively, including instituting effective work review and checking mechanisms;
- f. ability to assist staff to maintain appropriate boundaries with contractors.

Strategies to achieve this could include:

- specific and general management training;
- performance management of all staff with supervisory duties to ensure key accountabilities are met and to identify skill deficits.

RECOMMENDATION 9

That the NSWFB rewrites the position descriptions and performance agreements of the relevant senior managers to clearly define the desired behaviour, allow for measuring of this behaviour and to clarify that consequences will follow if there is a failure to comply.

RECOMMENDATION 10

That the NSWFB reviews its capital works process to ensure consistency with government policy and best practice. Strategies to achieve this could include:

- a. revising the *Property Services Procedures Manual* to ensure it is consistent with the *NSW Government Procurement Policy TPP04-1*, the *NSW Government Code of Practice for Procurement* and the *NSW Government Tendering Guidelines* (December 2006);
- b. ensuring the *Property Services Procedures Manual* provides sufficient guidance for all staff levels and experience;
- c. engaging only legitimate and capable building contractors by using:
 - Department of Commerce pre-qualified contractors; or
 - developing a NSWFB list of contractors using the Department of Commerce's guidelines;
- d. vetting subcontractors for suitability;
- e. maintaining adequate project documentation;
- f. undertaking adequate checks prior to authorising contracts;
- g. undertaking adequate checks, such as onsite verification of progress by a manager, prior to authorising progress payments.

RECOMMENDATION 11

That the NSWFB takes steps to reduce the influence of the project manager in the selection of tenderers. Strategies to achieve this could include:

- a. using a tender review panel consisting of three or more persons to review tenders;
- b. including on the tender review panel one person independent of the Property Services Unit but with knowledge and experience in contracting and construction;
- c. allowing the project manager to advise the tender review panel but not to vote for a successful tenderer.

RECOMMENDATION 12

That the work of the Property Services Unit is subject to regular and random internal audit review, including performance audits and audit of use of financial delegation.

RECOMMENDATION 13

That the Finance and Administration Directorate of the NSWFB puts a process in place to check that when a payment is being processed, the amount of the payment requested is within the approving officer's delegation.

RECOMMENDATION 14

That the NSWFB revises its policy on gifts and benefits to provide that staff involved in procurement may not accept gifts or benefits of any type, including those of token value, from any current or potential tenderer or contractor.

Chapter 1: Introduction

This report concerns an investigation conducted by the Commission into allegations of corrupt conduct involving the defrauding of NSW Fire Brigades (“the NSWFB”) in relation to the tendering and payments for the building, repair and renovation of NSWFB capital works projects.

The Commission’s investigation was primarily concerned with the conduct of Christian Sanhueza and Clive Taylor, who were contracted by the NSWFB as project managers.

In summary, this report examines the arrangements entered into by Mr Sanhueza and Mr Taylor whereby they submitted false tenders and quotes to the NSWFB in order to manipulate the awarding of NSWFB contracts to companies controlled by Mr Sanhueza. Their scheme affected 39 NSWFB projects worth in total over \$6 million. These companies did not undertake any work on these projects. The work was done by others. This scheme resulted in Mr Sanhueza receiving at least \$1,399,922 and Mr Taylor receiving \$1,010,000. The report also examines their conduct in relation to the falsification of documents; soliciting and receipt of money, televisions and computers from NSWFB contractors Rasem Guirguis and Soliman Hanna in return for ensuring they continued to receive NSWFB work; the improper provision of confidential NSWFB documentation and other information by another NSWFB worker, Patricia Xuereb; and attempts by Mr Sanhueza, Ms Xuereb, Mr Taylor and his wife to cover up their activities from the Commission’s investigation.

The Commission’s investigation arose as the result of a report made to the Commission on 17 April 2007 by the NSWFB pursuant to section 11 of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”). This section places a duty on the principal officer of a public authority to report to the Commission any matter that the principal officer suspects on reasonable grounds concerns or may concern corrupt conduct. The report stated that Mr Sanhueza was associated with a number of companies which undertook construction work for the NSWFB. The NSWFB subsequently provided the Commission with an investigation report by IAB Services which found that Mr Sanhueza had been a director of three companies which had been awarded NSWFB projects which he managed.

Why the Commission investigated

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;*
- (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’s role is set out in more detail in Appendix 1, while Appendix 2 sets out the definition of corrupt conduct under the ICAC Act.

The matters reported to the Commission were serious and would, if established, constitute corrupt conduct. Given the large amounts of money involved and the serious and systemic nature of the alleged conduct, the Commission determined it was in the public interest to conduct an investigation into these matters.

Conduct of the investigation

The Commission obtained and analysed a large number of relevant documents to ascertain whether there was evidence to support the allegations. Most of these documents were obtained through the issuing of notices under section 22 of the ICAC Act. Over 60 section 22 notices were issued in the course of the investigation.

The Commission also sought information by issuing two notices under section 21 of the ICAC Act. This section allows the Commission to require a public authority or public official to produce a statement of information to the Commission.

The Commission also lawfully executed nine search warrants, as a result of which further documents and records were obtained and analysed.

A large number of people were interviewed and provided statements.

The Commission lawfully intercepted eight telecommunications services, as a result of which it gathered valuable information and recovered documents which were being hidden from the Commission.

The Commission also conducted four compulsory examinations in order to obtain a better understanding of factual issues.

The public inquiry

The ICAC Act provides that for the purposes of an investigation the Commission may conduct a public inquiry if it considers it is in the public interest to do so.

Prior to making that determination it was necessary to consider those matters set out in section 31(2) of the ICAC Act. That section provides that:

Without limiting the factors that it might take into account in determining whether or not it is in the public interest to conduct a public inquiry, the Commission is to consider the following:

- (a) *the benefit of exposing to the public, and making it aware, of corrupt conduct,*
- (b) *the seriousness of the allegation or complaint being investigated,*
- (c) *any risk of undue prejudice to a person's reputation (including prejudice that might arise from not holding an inquiry),*
- (d) *whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.*

As the allegations were serious and appeared to have substance, the Commission determined it was in the public interest to conduct a public inquiry. It was also clearly in the public interest to fully identify any systemic weaknesses within the NSWFB which may have allowed any corrupt conduct to occur.

The public inquiry commenced on Monday, 18 August 2008 and was held over 11 days, concluding on 3 September 2008. Evidence was taken from 17 persons.

The Hon Jerrold Cripps QC, Commissioner, presided over the public inquiry. Chris Ronalds SC was Counsel Assisting the Commission.

At the conclusion of the public inquiry and in accordance with the usual practice of the Commission and the requirements of procedural fairness, submissions about possible findings were made by Counsel Assisting and an opportunity to respond

given to those who might be the subject of adverse findings. Submissions received in response were considered in preparing this report.

Investigation findings and section 74A(2) statements

The Commission's findings of facts are set out in Chapters 3, 4, 5 and 6 of this report.

Findings of corrupt conduct are made against Christian Sanhueza, Clive Taylor, Rasem Guirguis, Soliman Hanna, and Patricia Xuereb.

The report contains statements pursuant to section 74(2) of the ICAC Act that the Commission is of the opinion that the advice of the Director of Public Prosecutions (DPP) should be obtained in relation to the prosecution of Mr Sanhueza, Mr Taylor, Annamarie Taylor, Mr Guirguis and Ms Xuereb for various criminal offences.

Corruption prevention issues

Chapter 7 sets out the Commission's corruption prevention response to the conduct disclosed during the course of the investigation. The Commission has identified systemic weakness and made 14 recommendations to the NSWFB to minimise or prevent similar corrupt conduct and improper work practices from recurring. Recommendations are made in relation to recruitment processes; capital works budgeting and estimating processes; and internal controls.

As part of the performance of its statutory functions the Commission will monitor the implementation of the recommendations made as a result of this investigation.

The recommendations will be communicated to the NSWFB with a request that implementation plans for the recommendations are provided to the Commission within three months of the publication of this report.

The Commission will also request progress reports on the implementation of recommendations at intervals of 12 and 24 months after the publication of this report.

These reports will be posted on the Commission's website, www.icac.nsw.gov.au, for public viewing.

Recommendation that this report be made public

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

Chapter 2: Background

The purpose of this chapter is to set out relevant background information on the NSWFB and the persons involved in the investigation. This information will be of assistance in understanding the evidence set out in the subsequent chapters in this report.

NSW Fire Brigades

NSW Fire Brigades was established as a NSW Government Department pursuant to section 65 of the *Fire Brigades Act 1989* (NSW). It is a public authority under the ICAC Act. As part of its core fire-fighting functions it is responsible for building new fire stations and renovating and repairing existing fire stations. A budget is set for each capital works project.

The Capital Works Unit is primarily responsible for carrying out projects within budget. Its functions include obtaining plans for building works, seeking tenders, evaluating tenders, making recommendations and overseeing the work of new buildings and associated repairs and maintenance. At the relevant times the capital works projects team, in the main, consisted of two project managers, Mr Sanhueza and Mr Taylor, under the supervision of Grozdan Zrinski.

Mr Sanhueza

Mr Sanhueza applied for and obtained a contract position of project manager with the NSWFB in July 2005. NSWFB paid him through Cord Management Pty Ltd, an employment agency.

Mr Sanhueza was not a credible witness. As demonstrated in the following chapters, he was prepared to lie or mislead in order to try and hide the nature and extent of his conduct. He also attempted to cover up his involvement in corrupt activities by asking others to tell lies on his behalf. He created and used false documents. It was only when faced with overwhelming evidence that Mr Sanhueza made limited admissions about his corrupt activities. The Commission does not accept Mr Sanhueza's evidence unless it is corroborated by other, reliable evidence.

Mr Taylor

Mr Taylor also applied for and obtained a contract position of project manager with the NSWFB in July 2005. The NSWFB paid him through Cord Management Pty Ltd.

Mr Taylor was also not a credible witness. He was also prepared to lie and mislead in order to try and hide the nature and extent of his conduct. It was only when faced with overwhelming evidence that he made limited admissions. He blamed others for his conduct and attempted to minimise his involvement wherever he could. He created and used false documents for financial benefit. He also attempted to hide documents from the Commission's investigation. The Commission does not accept Mr Taylor's evidence unless it is corroborated by other, reliable evidence.

Public officials

The ICAC Act defines a public official as an individual having public official functions or acting in a public official capacity and includes any persons who undertakes public functions. As NSWFB project managers, Mr Sanhueza and Mr Taylor exercised public official functions. They were responsible for the management of NSWFB capital works projects and spending public money on behalf of the NSWFB. At all times they were under the direction and control of the NSWFB. Although the administrative arrangement for payment was through Cord Management Pty Ltd, they were paid by the NSWFB calculated on contracted rates based on the number of hours they worked for the NSWFB.

Chapter 3: The Sanhueza and Taylor scheme

This chapter examines a corrupt scheme whereby Mr Sanhueza and Mr Taylor submitted false tenders and quotes to NSWFB in order to manipulate the awarding of NSWFB contracts to companies controlled by Mr Sanhueza. Their scheme affected 39 NSWFB projects. The companies did not actually undertake any physical work on the projects. Mr Sanhueza and Mr Taylor arranged for other companies to do the actual work. For ease of reference these companies are referred to as “subcontractors” in this report. As a result of the successful implementation of this scheme, the companies controlled by Mr Sanhueza received \$6,075,120. After paying the subcontractors who did the actual work, Mr Sanhueza and Mr Taylor retained a total of at least \$2,409,922 for themselves.

As project managers Mr Sanhueza and Mr Taylor were responsible for carrying out building projects for the NSWFB within an allocated budget. They abused their positions by submitting quotes or tenders on behalf of companies controlled by Mr Sanhueza at amounts just below the allocated NSWFB budget, using their inside knowledge of the budget limits. The eight companies controlled by Mr Sanhueza which were used in the scheme were:

- Byldcon Pty Ltd;
- Carney Group Pty Ltd;
- Cavet Pty Ltd;
- Ceachei Pty Ltd;
- Deltavale Pty Ltd;
- Delvington Pty Ltd;
- Midas Capital Pty Ltd; and
- Mollix Pty Ltd.

Mr Sanhueza and Mr Taylor were also responsible for submitting fake tenders priced at higher amounts than those submitted by the companies controlled by Mr Sanhueza. This was done to comply, ostensibly, with NSWFB procurement policy, which required three tenders or quotes for the relevant projects. The fake tender prices were often above the budget figures and generally contained less information than the tender Mr Sanhueza and Mr Taylor had predetermined would win.

Either Mr Sanhueza or Mr Taylor would then complete an evaluation form or approval for a purchase order recommending the contract be granted to one of the companies under Mr Sanhueza’s control, and give it to one of their managers for approval. The managers always signed and approved the tender as recommended and the contracts were awarded accordingly. Mr Sanhueza or Mr Taylor then arranged for other companies to undertake the actual work on the projects at significantly lower prices. After paying the subcontractors they split the remainder between themselves.

Mr Sanhueza and Mr Taylor were paid by the NSWFB for their expertise as project managers. However, having predetermined which company would be awarded each project, they did not need to properly obtain or evaluate quotes or tenders as required by their positions.

How the scheme came about

Mr Sanhueza and Mr Taylor gave similar evidence as to how their scheme came about. They independently realised they could deliver the projects for considerably less than the NSWFB budget. Mr Sanhueza claimed to have initiated the discussion by approaching Mr Taylor. After some discussion they agreed on the scheme.

Mr Taylor said that the Willoughby Fire Station, a project awarded to Ceachei Pty Ltd on 30 September 2005, was the first project where they operated the scheme.

In order to maximise their profits from the scheme, they negotiated with those who did the actual work in order to reduce costs. Mark Sullivan and the directors of Bilas Knight, the two main subcontractors who did the actual work, gave evidence that their quotes were negotiated to a lower price. For example, Mr Sullivan later submitted three quotes for some repairs and replacements at Pymont Fire Station. Although the scope of the works remained substantially the same the cost was gradually reduced from \$27,302 to \$19,500. Eventually Mr Sullivan was paid only \$15,150 for this work.

Initially, Mr Taylor gave evidence defending the scheme by claiming that there was no extra cost to the NSWFB as he got the jobs completed below budget and that “it was what was happening in the office”. Later he agreed that, given the money made for himself and

Mr Sanhueza, there was additional cost to NSWFB and this was unnecessary. He also conceded that there was no-one he knew at the NSWFB who was engaged in any similar scheme.

Mr Taylor admitted that he did not tell the subcontractors they were working for companies controlled by Mr Sanhueza. He also admitted that he knew that, as a project manager, he was responsible for spending public money efficiently and effectively and that he failed to do so.

Although Mr Sanhueza eventually accepted that what he did was wrong, he claimed that at the time he did not think it was wrong to direct NSWFB contracts to companies under his control at prices which were far in excess of the real cost of the work. However, he admitted that he always knew creating and submitting false quotes or tenders was wrong and agreed that he did so to make money. He admitted that he did not tell anyone at the NSWFB what he was doing and agreed that he did not want anyone to find out as he knew his job would be in serious jeopardy. The reason he used different company names was to reduce the chances of being caught. The Commission is satisfied that Mr Sanhueza knew at the time that his actions were wrong.

Mr Sanhueza and Mr Taylor also sought to excuse their actions by claiming that NSWFB managers did not care what they did as long as the project came in under budget. The Commission rejects this claim as patently absurd. The assertion was denied by Mr Zrinski and Mr Gibbs. If Mr Sanhueza and Mr Taylor had really believed their managers did not care what they did, they would not have needed to take the sometimes elaborate steps they took to hide their activities from the NSWFB.

Fake documents

The scheme required the creation and use of fake documents in order to demonstrate ostensible compliance with NSWFB procurement policy, which required a minimum of three tenders or quotes for each project.

On several occasions, quotes were obtained from Mr Sullivan and Bilas Knight Pty Ltd. Mr Sanhueza and Mr Taylor used these quotes to calculate the amount they would quote for the project. The main change in their quotes was the price. As they knew the budget allocated to each project, they generally inflated the price to an amount just below the approved budget amount. They also knew that the lowest price was usually accepted by the NSWFB.

Mr Sanhueza used the names and other details of friends, businesses or former colleagues in the fake tenders/quotations. He also created details such as

fictitious names, insurance policy details, licence numbers and other details as needed. Some of this information was obtained from old NSWFB files. Supporting false documents were also created, including business cards for several companies under the control of Mr Sanhueza. These also contained identities belonging to friends or former associates or were fictitious. Some were in the names of Mr Sanhueza and Mr Taylor.

While Mr Taylor played a lesser role in the actual production of the false documentation, he agreed that he knew the documentation was false, had assisted Mr Sanhueza with setting the costs and had knowingly submitted the false documents as genuine documents. One example is Joclem Pty Ltd, a company name used by Mr Sanhueza which was previously registered by George Nahed, his former business associate. Mr Sanhueza used the name without Mr Nahed's knowledge. He admitted that he knew no such person as "George Joclem", who purported to have signed the quotations or tender schedules for five different projects.

Mr Sanhueza consistently claimed it was acceptable to NSWFB to submit fake quotes because Mr Zrinski, his manager, had told him to get "cover prices", which he said he understood meant a "bodgy price", to make up the necessary number of quotes. Mr Zrinski denied using the term "cover prices" or asking Mr Sanhueza to submit fake quotes. Mr Sanhueza agreed that Mr Zrinski never asked him to obtain "bodgy prices" or to make up quotes. Mr Sanhueza then claimed that he discussed the use of cover prices with Mr Gibbs, the assistant director of capital works. Mr Gibbs denied using this term. Mr Sanhueza also claimed that Ken McGraw told him to get two "cover prices" on minor repair and maintenance jobs. While Mr McGraw agreed he may have used the term "cover prices" he did not use the term to suggest that false quotes should be obtained. Mr Sanhueza conceded that Mr McGraw never told him to obtain false quotes but claimed that he took Mr McGraw's reference to "cover prices" to mean that.

The Commission is satisfied that Mr Sanhueza falsely claimed that he understood he had been asked to obtain false quotes to satisfy NSWFB procurement policy in an attempt to, at least in part, minimise or excuse his conduct. This conclusion is supported by a number of lawfully intercepted telephone conversations.

On 4 October 2007, in a conversation with Mr Taylor, Mr Sanhueza said "I think we say about Joclem and Phixet is that Groz told you to um to get two cover prices, or Gibbsy told you, Gibbsy because Groz wasn't there". Joclem Pty Ltd and Phixet Pty Ltd were two companies whose details were used to provide fake quotes. Mr Sanhueza agreed that during

this conversation he was attempting to work out an explanation for their actions which could be given to the Commission in any forthcoming interviews.

On 16 October 2007, Mr Sanhueza asked Tim Eggar, who owned one of the businesses in whose name Mr Sanhueza provided a fake quote and who was about to be interviewed by the Commission, to tell Commission officers that:

they [Mr Sanhueza and Mr Taylor] asked me for a cover price so I gave them one.

Mr Eggar had no prior knowledge that Mr Sanhueza had submitted quotes using Mr Eggar's business name. When Mr Eggar sounded annoyed Mr Sanhueza went on to say:

Yeah. Well that's it yeah I mean there's nothing wrong with that, you know, just as long as there is another genuine price – see what Clive and I were going to say is just that – we just got two cover prices so that rules you out but since they're going to interview you fuck you might as well either say that you just gave a cover price or to make it better for us you just say look I've just priced it um you know when um so that I didn't get the job so I got rid of it you know and I haven't – I haven't quoted anything else since.

Mr Sanhueza agreed he was trying to get Mr Egger to make up a story about cover prices. This and other attempts to procure false evidence are dealt with in Chapter 6.

Mr Taylor claimed that he used the term "cover prices" when discussing the assessment of the tenders for West Wallsend with Rasem Guirguis, the consultant architect for that project. Mr Guirguis denied this. Mr Taylor agreed that he did not tell Mr Zrinski that the quotations were false or that he played a role in creating the tender because he knew that if he did so, he would not get the job. He conceded that he knew what they were doing was wrong.

Mr Sanhueza prepared the invoices or progress claims on behalf of companies under his control and submitted them to the NSWFB for payment. Both he and Mr Taylor certified the invoices or claims stating that the work was done as stated by these companies and recommended payment.

Disguising control

Mr Sanhueza controlled a series of companies, even though at the time of tendering he was not registered on Australian Securities and Investments Commission (ASIC) records as a director or shareholder of those companies. He took active steps to distance himself from these companies in case the NSWFB undertook enquiries.

He was a director and shareholder of Cavet Pty Ltd, Deltavale Pty Ltd, and Delvington Pty Ltd before these formal roles were transferred to Dario Romero, a friend and a baker who lent his name and personal and company details to Mr Sanhueza without knowing exactly what he was involved in. Mr Sanhueza agreed that he used Mr Romero so that he would no longer appear as a director or shareholder of these companies. Mr Romero advised Mr Sanhueza when mail concerning these companies arrived at his residential address. He occasionally signed documents on behalf of these companies at Mr Sanhueza's request, but did not know or recall the nature of these documents. He received \$8,900 in regular installments as his "fee" for performing these tasks and allowing his name to be used.

Although the ASIC registration was in Mr Romero's name, Mr Sanhueza also used other people's addresses and contact details for these companies. These persons notified Mr Sanhueza of any mail but otherwise had no knowledge of the activities of the companies.

Mr Sanhueza admitted that, at all times, he had complete control of the eight companies which he and Mr Taylor used to successfully tender for NSWFB work. He conducted all the banking and financial transactions. He set up and controlled a series of email accounts, one for each company. Mr Sanhueza and Mr Taylor admitted that they used different companies so that the quotes or tenders would appear to be from genuine competitors and that they thereby reduced the risk of their scheme being detected.

Each of the companies had a letterhead which included details that were either false, or those of a relative or friend. There was a postal or street address for each company. There was a telephone and a fax number. The telephone number was a Hutchinson pager service which answered with a message in the company's name and then a text message was sent to the nominated mobile number with the details for a response. Mr Sanhueza managed this part of the scheme.

The projects

The table overleaf sets out relevant summary details of each of the 39 projects affected by the scheme. In order to demonstrate in greater detail how the scheme worked, more comprehensive details of what occurred in six of the projects are set out.

Finley Fire Station

A budget of \$500,000 was approved by NSWFB in September 2005 for a new fire station at Finley. Mr Sanhueza was appointed the project manager. This was one of the earlier major projects awarded to a company under the control of Mr Sanhueza. Elaborate attempts were made to make the process appear genuine. Later, some of the more elaborate forms of concealment were abandoned after Mr Sanhueza and Mr Taylor became aware that the documents they submitted were not being checked. The earlier false documents also contained more information. For example, Mr Sanhueza pretended that three tender requests were sent out by Australia Post, using urgent delivery express post and the barcodes were attached to the files. However the barcodes were not used and the requests for tender were not sent.

Mr Sanhueza and Mr Taylor agreed that both of them worked on documents for the tender. The Finley fire captain provided the names and details of two local companies interested in submitting tenders to Mr Sanhueza. Mr Sanhueza admitted that he did not provide these local companies with the tender specification documents, but he falsely represented to the fire captain that they had been invited to tender.

Mr Sanhueza agreed that he did not send out requests for tender, as it would have risked the possibility that they would have received genuine tenders lower than his tender, thereby frustrating their scheme.

Mollix Pty Ltd, a company controlled by Mr Sanhueza, was awarded the contract based on a recommendation signed by Mr Sanhueza. Mr Sanhueza admitted that he also signed the purchase order as he was acting in Mr Zrinski's position at the time. The tender for \$435,050, was signed by the non-existent "John Mollix", it contained false insurance details and other fictitious information. Mr Sanhueza admitted that he signed it as John Mollix. Letters were written by him addressed to Mollix Pty Ltd and placed on file but not posted in order to give the appearance of a genuine award of tender. Two fake tenders were also submitted by Mr Sanhueza in the names of HB Hereward Pty Ltd and Colin Joss & Co. Both were real companies that

had previously done work for NSWFB. Their details were obtained from old files and used without their knowledge or consent.

Subsequently quotations were obtained from The Shed Company and Bilas Knight Pty Ltd (building companies) and the latter did the actual work. Mr Sanhueza created and submitted progress claims under the name Mollix Pty Ltd and also certified that these services were provided as claimed on behalf of NSWFB. This was false and these claims also included other false information. Mr Sanhueza admitted that he falsely signed the claims for Mollix Pty Ltd stating "I certify that all work specified and/or varied was inspected on [date] and completed satisfactorily" without any inspection. Mr Sanhueza also admitted that he wrote that the retention amount was guaranteed by a 'bank guarantee' on an invoice for Mollix Pty Ltd dated 29 May 2006. The Commission finds this was false and that he wrote this after his discussion with Mr Taylor.

The NSWFB paid Mollix Pty Ltd a total of \$415,910. Bilas Knight Pty Ltd was paid \$340,474 by Mollix Pty Ltd for actually performing the work at Finley. Mr Sanhueza and Mr Taylor shared up to \$75,436, which represented about 18% of the NSWFB payment.

Scone Fire Station

A budget of \$300,000 was approved in August 2005 for extensions and renovations to Scone Fire Station. Mr Taylor was appointed the project manager. Byldcon Pty Ltd, a company controlled by Mr Sanhueza, was awarded the contract with a tender price of \$291,500 on 18 January 2006. The Byldcon Pty Ltd tender contained false information including the building licence number and insurance details. It contained a forged signature.

There were two fake tenders also submitted. One was from Carney Group Pty Ltd, another company controlled by Mr Sanhueza, with a price of \$279,000 containing a false signature by Mr Sanhueza of a non-existent person, "Brent Rogers". The other, All State Constructions Pty Ltd, was also a fraudulent tender with a price of \$320,000 containing a false signature of a non-existent person, "Joseph Parker".

Analysis of the documents demonstrates that the Carney Group Pty Ltd tender was based on quotations provided by Mr Sullivan. The documents also demonstrate close cooperation and involvement between Mr Sanhueza and Mr Taylor. A number of progress claims were written and submitted to NSWFB for payment by Mr Sanhueza. They were certified by Mr Taylor that the work was done satisfactorily by Byldcon

No.	Project/Fire Station	Objective	Project manager	Approved budget \$	Date tender/ quote	Company awarded contract
1	Beecroft	Repaint interior & repair	Taylor	17,765	1/26/2007	Mollix
2	Bellbird	Repairs air-conditioning	Taylor	20,000	11/30/2006	Byldcon
3	Berowra	Extensions & renovations	Sanhueza	350,000	2/20/2006	Carney Group
4	<i>Blackheath</i>	<i>Major upgrade</i>	<i>Sanhueza</i>	<i>230,000</i>	<i>10/2/2006</i>	<i>Delvington</i>
5	Blacktown	Painting and repairs	Sanhueza	30,000	11/12/2005	Cavet
6	Bourke	Major station upgrade	Taylor	350,000	9/26/2006	Delvington
7	Cabramatta	Repairs and maintenance	Sanhueza	73,200	11/15/2006	Byldcon
8	Cessnock	Repairs	Taylor	25,000	11/30/2006	Byldcon
9	Corrimal	Major extensions and renovations	Taylor	306,500	8/24/2006	Ceachei
10	Dapto	Minor repairs roof	Sanhueza	5,351	6/8/2006	Carney Group
11	<i>Dee Why</i>	<i>Major station facilities upgrade</i>	<i>Taylor</i>	<i>440,000</i>	<i>2/13/2007</i>	<i>Cavet</i>
12	Eastwood	Repairs	Taylor	40,000	11/9/2006	Byldcon
13	Finley	New lightweight Station	Sanhueza	500,000	2/28/2006	Mollix
14	Glebe	Repairs and maintenance	Taylor	156,000	1/16/2006	Byldcon
15	Greenacre/Chullora	Re-roofing Building A	Sanhueza	550,000	9/30/2006	Deltavale
16	Harden	Extensions & renovations	Sanhueza	450,000	3/29/2006	Cavet
17	Holmesville/ West Wallsend	Preliminary earthwork	Taylor	160,000	12/10/2006	Midas Capital
18	<i>Holmesville/ West Wallsend</i>	<i>New station</i>	<i>Taylor</i>	<i>1,315,000</i>	<i>1/31/2007</i>	<i>Midas Capital</i>
19	Huntingwood	New Command Office	Taylor	300,000	5/31/2006	Mollix
20	Kandos	Station facilities upgrade	Sanhueza	170,000	10/20/2006	Cavet
21	Katoomba	Renovation & new office	Taylor	220,000	4/7/2006	Ceachei
22	Kogarah	Repairs	Sanhueza	10,780	2/13/2006	Carney Group
23	Kogarah	Repairs and maintenance	Sanhueza	115,000	12/15/2005	Mollix
24	Lane Cove	Repairs and maintenance	Taylor	22,000	2/22/2007	Cavet
25	Leura	Extensions & renovations	Taylor	232,000	6/28/2006	Carney Group
26	Maroubra	Air conditioning	Taylor	48,000	11/4/2005	Ceachei
27	Marrickville	Repairs	Sanhueza	140,000	12/23/2005	Cavet
28	Matrville	Major extensions & renovations	Taylor	350,000	7/20/2006	Byldcon
29	Matrville	Remedial work	Taylor	90,000	11/29/2005	Cavet
30	<i>Mona Vale</i>	<i>Station facilities upgrade</i>	<i>Taylor</i>	<i>300,000</i>	<i>11/2/2006</i>	<i>Carney Group</i>
31	Mosman	Upgrade ablutions	Sanhueza	20,000	11/11/2005	Ceachei
32	Muswellbrook	Fencing, concrete hardstand	Taylor	20,000	11/3/2005	Cavet
33	Northmead	Repair & maintenance	Sanhueza	30,000	12/15/2005	Byldcon
34	Northmead	Repair & maintenance	Sanhueza	10,780	2/15/2006	Ceachei
35	Pyrmont	Replace doors and repairs	Taylor	60,000	11/4/2005	Ceachei
36	Scone	Extensions & renovations	Taylor	300,000	1/10/2006	Byldcon
37	Warnervale	Flyscreens & fence	Taylor	8,910	12/8/2006	Mollix
38	West Tamworth	Extensions & renovations	Taylor	235,000	1/20/2006	Byldcon
39	Willoughby	Refurishment of ablutions	Taylor	45,000	9/12/2005	Ceachei
	Allowance for untraced amounts allocated to subcontractors					

Note : The rows in italics include adjudication payments.

	Contract amount incl. GST	Total payment made by NSWFB	Subcontractor & others	Total payments to subcontractors	Balance	% of total payments
	\$	\$		\$	\$	
	17,765	17,765	Not identified		17,765	100%
	20,000	21,230	DA Creative Colour	1,520	19,710	93%
	324,500	346,170	M.D. Sullivan & others	170,095	176,075	51%
	<i>220,000</i>	<i>4,429</i>			<i>4,429</i>	<i>100%</i>
	31,020	21,780	M.D. Sullivan	11,450	10,330	47%
	357,500	357,500	Bilas Knight	233,574	123,926	35%
	52,250	93,894	M.D. Sullivan	10,715	83,179	89%
	25,000	26,510	DA Creative Colour	16,000	10,510	40%
	295,350	328,966	Bilas Knight & others	272,666	56,300	17%
	5,351	5,351	DA Creative Colour	1,600	3,751	70%
	<i>415,800</i>	<i>486,332</i>	<i>M.D. Sullivan & others</i>	<i>161,308</i>	<i>325,024</i>	<i>67%</i>
	-	43,450	DA Creative Colour	22,486	20,964	48%
	435,050	415,910	Bilas Knight	340,474	75,436	18%
	-	150,150	M.D. Sullivan	82,460	67,690	45%
	330,000	330,000	Ideal Metal Roofing & others	238,447	91,553	28%
	450,000	430,100	M.D. Sullivan	230,486	199,614	46%
	159,455	159,445	Centurion	130,627	28,818	18%
	<i>1,031,800</i>	<i>125,695</i>			<i>125,695</i>	<i>100%</i>
	300,000	347,215	DA Creative Colour & others	147,133	200,082	58%
	159,500	3,277			3,277	100%
	220,000	221,950	DA Creative Colour	145,148	76,802	35%
	-	10,780	DA Creative Colour	6,252	4,528	42%
	115,000	122,243	M.D. Sullivan & others	56,367	65,876	54%
	22,000	24,200	Martin & Lara Berroa	3,650	20,550	85%
	211,200	211,200	Bilas Knight & others	162,563	48,638	23%
	-	27,885	M.D. Sullivan	20,756	7,129	26%
	110,000	119,140	DA Creative Colour & others	41,764	77,376	65%
	346,500	370,425	Bilas Knight	247,500	122,925	33%
	-	143,660	M.D. Sullivan & others	40,318	103,342	72%
	<i>260,150</i>	<i>304,831</i>	<i>M.D. Sullivan & others</i>	<i>90,607</i>	<i>214,224</i>	<i>70%</i>
	20,768	20,768	M.D. Sullivan	12,620	8,148	39%
	-	16,478	M.D. Sullivan	5,000	11,478	70%
	-	24,079	M.D. Sullivan	12,475	11,604	48%
	-	10,780	DA Creative Colour	8,000	2,780	26%
	-	36,740	M.D. Sullivan	18,370	18,370	50%
	291,500	307,296	M.D. Sullivan & others	126,737	180,560	59%
	-	8,910	M.D. Sullivan & others	8,420	490	5%
	289,500	339,460	M.D. Sullivan	248,710	90,750	27%
	35,000	39,127	M.D. Sullivan	20,000	19,127	49%
				+ 318,901	- 318,901	
Totals:		6,075,120		3,665,198	2,409,922	
Average:						40%

Pty Ltd. Mr Taylor admitted that he knew that Byldcon Pty Ltd had not done any work when he signed the progress claims.

There were significant delays by Mr Sullivan at this site and the work had to be completed by others. Mr Sanhueza and Mr Taylor repeatedly asserted that, despite their scheme, they always brought projects in under allocated budget. In this case however, due to delays and other difficulties, the final cost was above the allocated budget and approximately \$50,000 above the initial contract price of \$265,000. Mr Taylor agreed that this project exceeded the budget and that if he had managed the project according to his duties, including visiting the site, the project could have been completed for less. NSWFB paid a total of \$307,296 to Byldcon Pty Ltd. Mr Sullivan, the main contractor, was paid \$79,205 by Byldcon Pty Ltd and other contractors were paid \$47,532, totaling \$126,737 for the actual work. Mr Taylor and Mr Sanhueza, who actually did no work, shared up to \$180,560, which represented about 59% of the cost to the NSWFB.

Matrville Fire Station

A budget of \$350,000 was approved for some major extensions and renovations at Matrville Fire Station. Mr Taylor was allocated the job. He asked Mr Sullivan for a quotation. Mr Sullivan quoted \$196,450. Mr Sanhueza then created a quote from Byldcon Pty Ltd, a company he controlled, by cutting and pasting Mr Sullivan's quote onto Byldcon Pty Ltd letterhead. He varied the price to \$346,500.

Mr Taylor admitted that he agreed with Mr Sanhueza to inflate the Byldcon Pty Ltd quote. Mr Taylor agreed that had Mr Sullivan's quote been provided to NSWFB, the work could have been carried out for less than the final cost.

The Byldcon Pty Ltd quote contained a forged signature. Two fake tenders from Citisquare Pty Ltd and Phixet were also submitted.

Byldcon Pty Ltd was awarded the contract on 28 August 2006, based on Mr Taylor's recommendation. Byldcon Pty Ltd was eventually paid \$370,425 by NSWFB. Bilas Knight Pty Ltd actually performed the work and was paid \$247,500 by Byldcon Pty Ltd. The payments to Bilas Knight Pty Ltd were made by electronic funds transfers through companies controlled by Mr Sanhueza. They showed the payment description as "NSWFB", so it appeared as if the payments were being made by NSWFB. Mr Taylor and Mr Sanhueza shared the balance of \$122,925, which represented about 33% of the NSWFB payment.

Greenacre/Chullora re-roofing

The Greenacre/Chullora Fire Station needed major re-roofing. In July 2006, a budget of \$550,000 was approved for the first portion of the work on Building A. Mr Sanhueza was appointed the project manager. Ideal Metal Roofing Pty Ltd submitted a quote on 21 July 2006 for \$186,000 (plus GST), however this was not included with the quotes provided for consideration of the tender. Deltavale Pty Ltd, one of the companies controlled by Mr Sanhueza, was awarded the contract on Mr Sanhueza's recommendation based on a tender dated 30 September 2006 for \$330,000. There were two fake tenders, under the names of Fielders Pty Ltd and KC Roofing Pty Ltd, also submitted by Mr Sanhueza.

NSWFB paid a total of \$330,000 to Deltavale Pty Ltd. The main sub-contractor, Ideal Metal Roofing Pty Ltd, was paid \$209,814 for doing the actual work and \$28,633 was paid to other subcontractors.

Mr Taylor denied that he was involved in the Greenacre project and said that he did not think he shared in the proceeds. The Commission is satisfied he was involved as the documents show that he controlled the approval and payments. There were also emails sent from Mr Sanhueza to Mr Taylor chasing payments. The Commission is satisfied that Mr Taylor and Mr Sanhueza shared up to \$91,553 which represented about 28% of the NSWFB payment.

Bourke Fire Station

The Bourke Fire Station needed a major upgrade. A budget of \$350,000 was approved in July 2006. Although Mr Taylor was appointed the project manager he agreed that Mr Sanhueza also worked on the project. On 19 June 2006, Mr Sanhueza, pretending to be Simon Cavesonte from NSWFB, obtained a quote for the construction of the exterior structure from The Shed Company. On 21 June 2006, Mr Taylor obtained a quote from Bilas Knight Pty Ltd for the full scope of the work.

Using the information from these quotes Mr Sanhueza submitted an unsigned tender from Delvington Pty Ltd, one of the companies he controlled, for \$357,500. It purported to be from "Doug Livingston". Mr Sanhueza and Mr Taylor agreed this was a fictitious person. On 5 July 2006, Mr Taylor signed the NSWFB form seeking approval to carry out works at an estimated cost of \$350,000. On 3 November 2006, Delvington Pty Ltd, was awarded the contract. On 6 September 2006, prior to the approval of the tender, Mr Sanhueza had told Bilas Knight Pty Ltd to proceed with the project.

There was only one other tender, from Joclem Pty Ltd, on file. This was purportedly signed by a “George Joclem”. Mr Sanhueza admitted that the tender from Joclem Pty Ltd for \$362,000 was fake and George Joclem did not exist. No references were made to Bilas Knight Pty Ltd or The Shed Company quotations in the request for approval of the purchase order.

The purchase order form awarding the contract was signed by Mr Taylor stating that the request was “made in accordance with the Brigades (NSWFB) Authority to Incur Expenditure, Purchasing Policy”. He admitted that he knew when he signed the document that this statement was false. He also said that he knew that Delvington Pty Ltd was a company controlled by Mr Sanhueza and that they had worked out the pricing and the contents of the tender together, for the purpose of obtaining a personal financial benefit.

Mr Taylor admitted that he knew that Bilas Knight Pty Ltd was doing the work. He provided Mr Sanhueza with percentage figures for progress claims and Mr Sanhueza would add an extra amount and submit the claims under the name Delvington Pty Ltd to NSWFB. Invoices for progress claims submitted by Mr Sanhueza on behalf of Delvington Pty Ltd were certified for payment by Mr Sanhueza and Mr Taylor.

Mr Taylor agreed that he did not inform NSWFB that the project could have been completed for less than \$250,000. Even at the later stage of the public inquiry, Mr Taylor insisted that, despite receiving financial benefits for himself, he was assisting the NSWFB by coming in under the NSWFB’s budget for the project.

The payments to Bilas Knight Pty Ltd were made through Delvington Pty Ltd and recorded as “NSWFB” in electronic banking records so that it appeared the payments were in fact made from NSWFB. Mr Taylor denied that he knew this but admitted that at all times he was aware that Bilas Knight Pty Ltd thought they were working for the NSWFB, as recorded in their correspondence. He admitted that he did not inform Bilas Knight Pty Ltd otherwise.

NSWFB paid a total of \$357,500 to Delvington Pty Ltd for this project. Bilas Knight, who did the work, was paid \$233,574 by Mr Sanhueza. Mr Sanhueza and Mr Taylor shared up to \$123,926 which represented 35% of the NSWFB payment.

West Wallsend/Holmesville Fire Station

A new fire station was to be built at West Wallsend. A property was purchased and the preliminary design project was assigned to Mr Taylor. As the project manager he had a number of expert reports stating that

there were problems with contaminated soil which needed to be properly remediated before any building work could commence. A detailed expert report made recommendations to remove the contaminated soil to a specified depth and refill with new soil or to manage the contaminated soil on site by containment and increase the existing height of the land. Mr Taylor arranged for Centurion Pty Ltd, a contractor, to perform some of the preliminary earthworks without informing the contractor of the contamination.

Mr Taylor gave evidence that he gave the detailed expert report to Centurion Pty Ltd. The Commission rejects this evidence and accepts the statements from the operators of Centurion Pty Ltd that they were not informed of, nor given any reports about, the contamination. Centurion Pty Ltd would not have been able to do the work required as it did not have the necessary contaminated waste removal licence.

Mr Taylor made partial admissions that he made the decision to contain the contaminated waste on site and to refill the site only to a lower height without consulting any of his managers. He agreed it was a very important decision and that his decisions on remediation meant that the gains available to Mr Sanhueza and him from the project were significantly increased, as the expenditure was reduced by not performing the required work. He claimed this was not deliberate.

Mr Taylor agreed that Mr Sanhueza took a genuine quotation for the earthworks and drainage, dated 28 December 2006, from A.J. Bristow & Sons Pty Ltd, a company capable of doing the work, copied it, reduced some of the costs and submitted it as a quotation from Midas Capital Pty Ltd, one of the companies controlled by Mr Sanhueza, dated 29 December 2006 for a price of \$159,445. This was just below the NSWFB estimated cost of \$160,000 for preliminary earthworks.

Midas Capital Pty Ltd was awarded the contract on Mr Taylor’s recommendation. Mr Sanhueza created the quote but claimed Mr Taylor provided him with the figure to put in the quote. However, it is not necessary to determine precisely who did what. The Commission is satisfied that Mr Taylor had full knowledge and was equally involved in the arrangement.

On 22 January 2007, Mr Taylor signed an invoice submitted by Mr Sanhueza as Michael Smythe on behalf of Midas Capital Pty Ltd stating that the services had been rendered by Midas Capital Pty Ltd at West Wallsend/Holmesville Fire Station. He admitted that he fully knew that all work had been done by Centurion Pty Ltd and that there was no “Michael Smythe” involved with Midas Capital Pty Ltd.

Mr Sanhueza also signed and approved the invoice as he was performing some of Mr Zrinski's duties while he was absent on leave. The purchase order awarding the contract was also approved on the same day. Midas Capital Pty Ltd was paid \$159,445 by NSWFB. Centurion Pty Ltd did the work and was paid \$130,627 by Midas Capital Pty Ltd for the work. Mr Taylor and Mr Sanhueza shared the balance of \$28,818 which represented 18% of the NSWFB payment.

Around January 2007, after the completion of the preliminary earthworks, Mr Sanhueza and Mr Taylor submitted tenders for the building of the new fire station. Tenders were received under the names of Midas Capital Pty Ltd, Phixet and Joclem Pty Ltd. The tender from Midas Capital Pty Ltd was for \$1,031,800. The tenders were sent to Mr Guirguis for evaluation. The email correspondence to and from Mr Guirguis to Mr Sanhueza and Mr Taylor shows that there was hardly any material upon which a proper evaluation of the tenders could have been conducted. Eventually, after some email correspondence, Mr Guirguis agreed to do the evaluation if a schedule of costs was provided. Upon a submission of a schedule of costs from Midas Capital Pty Ltd, it was recommended for the award of the tender.

Mr Sanhueza and Mr Taylor admitted that the other quotes from Phixet and Joclem Pty Ltd were fake and that they had predetermined that Midas Capital Pty Ltd would be recommended to do the work. The tender recommendation was signed and approved by Mr Sanhueza. Mr Sanhueza and Mr Taylor resigned from the NSWFB before any building work commenced.

The subcontractors

With a few exceptions, the construction, renovation and repairs to the fire stations that Mr Taylor and Mr Sanhueza organised were done by two building contractors and one painter/handyman.

Bilas Knight Pty Ltd was a small building company. The directors, Michael Dawson and John Mills, were also directors of The Shed Company, which specialised in building sheds of metal construction. At all times, Mr Dawson and Mr Mills considered that they were working for NSWFB. The second main contractor was Mr Sullivan trading as M.D. Sullivan Pty Ltd and Top Mark Constructions. Initially, he considered that he was working for the NSWFB based on the representations made to him but later he was not so sure.

Diego Alamos is a painter. He also did general handyman work and further subcontracted work to specialised trades such as electrical and plumbing. Mr Sanhueza asked that Mr Alamos give his quotations to

him so Mr Alamos was under the impression he was working for the NSWFB and not for any companies controlled by Mr Sanhueza.

There is no evidence that Messrs Dawson, Mills, Sullivan or Alamos acted corruptly.

Sharing of proceeds

The Commission traced the payments made by the NSWFB for the 39 projects. A total amount of \$6,075,120 was paid into accounts held under the various companies controlled by Mr Sanhueza. Amounts totaling \$3,346,297 were paid to subcontractors and other parties as expenses. In addition, there are numerous small transactions, totaling \$318,901, which the Commission did not trace to the end receiver. The Commission has treated these as expenses, giving Mr Sanhueza and Mr Taylor the benefit of any unexplained payments. This leaves a balance of \$2,409,922 which was shared between Mr Sanhueza and Mr Taylor.

Mr Sanhueza and Mr Taylor disagree as to the proportion of the proceeds received by each of them. Mr Taylor claimed that he only received a share of the proceeds flowing from his projects and did not get any money from Mr Sanhueza's projects. Mr Sanhueza accepted that he received substantial financial benefits but insisted he received the same as Mr Taylor. He gave evidence that he paid out money for various expenses and the remaining amount was split evenly.

The Commission's figures are based on a complete analysis of the banking records of all companies and include all payments made to contractors and other recorded expenditures including those which were not traced or explained. These calculations include the adjudication payments set out below made to Mr Sanhueza's companies after he and Mr Taylor resigned from the NSWFB. The Commission does not consider it necessary to resolve the discrepancies in their evidence. Neither was a credible witness. The Commission is satisfied on the evidence that they shared the proceeds fairly evenly until they resigned from the NSWFB. Mr Sanhueza kept the majority of subsequent payments.

The Commission is satisfied that Mr Taylor received \$1,010,000. These funds were used to purchase and stock a farm at Merriwa, costing at least \$586,213, and to repay \$226,150 off the mortgage on his Macquarie Links home.

The Commission is satisfied that Mr Sanhueza received at least \$1,399,922. He used these funds to pay \$370,822 off the mortgage on his property at Ambarvale and to pay \$481,166 off the mortgage on his property at Glen Alpine.

How the scheme was discovered

Upon his return from annual leave in February 2007, Mr Zrinski discovered that the contract for building the West Wallsend/Holmesville Fire Station was approved by the NSWFB at a cost of just under \$1 million. Although approval limits for capital expenditure by the NSWFB had increased from \$500,000 to \$1 million in June 2001, Mr Zrinski was not aware of this change. He therefore decided to review the project. He conducted an ASIC search which identified that Mr Sanhueza had been a former director and secretary of Midas Capital Pty Ltd. He subsequently discovered that Mr Sanhueza had been a director of other companies which were awarded NSWFB contracts. He reported his discoveries to his managers. Further enquiries by Mr Zrinski revealed that of the other tenderers, Phixet was not currently listed as a company at all and Joclem Pty Ltd was deregistered in mid-2005.

When questioned by Mr Gibbs and Mr Zrinski on 30 March 2007, Mr Sanhueza confirmed that he recommended Midas Capital Pty Ltd (for the West Wallsend/Holmesville project) to Mr Taylor for inclusion in the tender list. He also disclosed that he held interests in other companies which had undertaken NSWFB work. Mr Sanhueza offered to terminate his services and this offer was accepted.

The tendering process was supervised by Mr Taylor. Mr Taylor was questioned on 2 April 2007 but denied any knowledge of Mr Sanhueza's involvement with Midas Capital Pty Ltd. He resigned on the same day. His denial was a false statement, as he conceded when giving evidence at the public inquiry. After resigning from NSWFB Mr Taylor was appointed a director of Midas Capital Pty Ltd and performed some work for that company.

The adjudication

At the time of their resignation from the NSWFB the projects at Blackheath, Dee Why, Kandos, Mona Vale, and West Wallsend/Holmesville, which Mr Sanhueza and Mr Taylor had arranged to be awarded to companies under Mr Sanhueza's control, had not been completed. The Dee Why and Mona Vale projects were nearly completed but there were disputes concerning

completion of works and outstanding payments. The contracts for Blackheath, Kandos and West Wallsend/Holmesville were terminated by the NSWFB.

The companies controlled by Mr Sanhueza claimed outstanding payments and loss of profits in relation to these projects. Despite legal advice that the contracts may have been entered into fraudulently, the NSWFB decided to proceed with an adjudication of the claims. The outcome of the adjudication process resulted in the NSWFB paying \$674,578 to the various companies controlled by Mr Sanhueza. The NSWFB decision to agree to adjudication was ill-advised. If the NSWFB had not agreed to adjudication it would have been necessary for Mr Sanhueza to take court action to obtain any further payment. In the event that NSWFB established fraud in relation to the contracts it is highly likely that either it would not have had to make any further payments or its liability would have been substantially reduced.

After allowing for possible payments to subcontractors the Commission is satisfied that of the \$674,578 received as a result of the adjudication Mr Sanhueza retained over \$500,000 for his own benefit. The Commission is satisfied that Mr Taylor received \$25,000 consisting of:

- \$10,000 paid into his bank account on 11 July 2007 by Luftha Pty Ltd, another company controlled by Mr Sanhueza, in relation to the West Wallsend/Holmesville project;
- two amounts of \$5,000 each paid into his bank account on 28 and 29 August 2007 by the Carney Group Pty Ltd and Bettoli Pty Ltd, another company controlled by Mr Sanhueza, in relation to the Mona Vale project; and
- \$5,000 paid into his bank account on 30 August 2007 from Cavet Pty Ltd in relation to the Dee Why project.

While the Commission is satisfied that Mr Taylor was generally aware of what was done, the evidence establishes that Mr Sanhueza had overall control of the claims submitted in the adjudication proceedings.

Mr Sanhueza did not attend any of the adjudication proceedings but relied on the submission of documents. He did not tell the adjudicator that the companies awarded the NSWFB contracts were controlled by him, that the tender was awarded by means of submitting fake tenders, or that he and Mr Taylor made the tender recommendations.

In his evidence to the Commission Mr Sanhueza admitted that he created false documents to support the Midas Capital Pty Ltd claim in relation to the

West Wallsend/Holmesville project and forged Mr Romero's name on some of the documents. He also admitted to forging Mr Romero's name on claims submitted in relation to the Blackheath and Kandos projects and admitted that no work had actually been done at either site.

He insisted that the Midas Capital Pty Ltd claim for the West Wallsend/Holmesville project included actual costs for the hours that he and Mr Taylor worked on the project. The only work he could recollect was a couple of site visits by Mr Taylor. He also claimed that he incurred expenses of approximately \$70,000 for "screw piles". He did not provide any evidence to support these claims. The Commission could not locate any documents or bank transfers or payments from any of Mr Sanhueza's accounts for the purchase of screw piles. In these circumstances the Commission rejects his evidence that Midas Capital Pty Ltd incurred such an expense. The Commission is satisfied that no such expense was incurred.

Findings of fact

Based on the evidence set out in this chapter the Commission is satisfied to the requisite degree that the following facts have been established:

1. In relation to each of the 39 NSWFB projects identified in the table in this chapter, Christian Sanhueza and Clive Taylor, who at the time were NSWFB project managers, jointly and improperly manipulated the contract selection process in order to ensure that NSWFB contracts were awarded to companies controlled by Mr Sanhueza so that they could benefit financially by dishonestly obtaining money from the NSWFB through those companies. The manipulation included:
 - jointly creating and submitting tenders and quotes to NSWFB on behalf of companies controlled by Mr Sanhueza, without disclosing Mr Sanhueza's interest in the companies
 - creating fake tenders and quotes for submission to the NSWFB in order to ensure that tenders or quotes submitted on behalf of companies controlled by Mr Sanhueza were the cheapest;
 - recommending NSWFB contracts be awarded to companies controlled by Mr Sanhueza; and
 - signing certifications and approvals for payments to companies controlled by Mr Sanhueza, knowing those companies did not do any work.

2. As a result of their manipulation of the NSWFB contract selection process Mr Sanhueza improperly obtained for his own benefit at least \$1,399,922 and Mr Taylor improperly obtained for his own benefit \$1,010,000.

Findings of corrupt conduct

In determining findings of corrupt conduct the Commission has applied the approach set out in Appendix 2 to this report.

The Commission finds that Mr Sanhueza and Mr Taylor engaged in corrupt conduct on the basis that their conduct as outlined in the above findings of fact is conduct that:

- adversely affected, either directly or indirectly, their honest or impartial exercise of official functions and therefore comes within section 8(1)(a) of the ICAC Act,
- constitutes or involves the dishonest or partial exercise of their official functions and therefore comes within section 8(1)(b) of the ICAC Act,
- constitutes or involves a breach of public trust by them as public officials and therefore comes within section 8(1)(c) of the ICAC Act, and
- adversely affected their exercise of official functions and could involve official misconduct, obtaining secret commissions and fraud and therefore comes within section 8(2) subsections (a); (d); and (e) of the ICAC Act.

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

- make or use false instruments contrary to section 300(1) and 300(2) of the *Crimes Act 1900* (NSW) ("the Crimes Act") in relation to the creation and submission of the false documents to the NSWFB,
- giving documents or statements (including certifications/approvals) as agents of the NSWFB containing false or misleading information with intent to defraud contrary to section 249C(1) and 249C(2) of the *Crimes Act* in relation to false documents or statements submitted to the NSWFB,

- obtaining money by deception contrary to section 178BA of the *Crimes Act* in relation to the submission of tenders and quotes in the names of companies controlled by Mr Sanhueza,
- obtaining financial advantage by making or publishing false or misleading statements contrary to section 178 BB of the *Crimes Act* in relation to the submission of tenders and quotes and claims or invoices to NSWFB in names of companies controlled by Mr Sanhueza, and
- the common law offence of misconduct in public office.

Their conduct could also constitute or involve reasonable grounds for dismissing, dispensing with the services of or otherwise terminating their services as public officials and therefore comes within section 9(1) (c) of the ICAC Act.

Section 74A(2) statements

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

- a. *obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of the person for a specified criminal offence,*
- b. *the taking of action against the person for a specified disciplinary offence, or*
- c. *the taking of action against the person as a public official on specified grounds,*

with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

An affected person is a person against whom, in the Commission’s opinion, substantial allegations have been made in the course of, or in connection with, an investigation. The Commission is satisfied that Mr Sanhueza and Mr Taylor are affected persons.

Mr Sanhueza and Mr Taylor made some admissions during the course of their evidence. However, these admissions were made subject to a declaration made pursuant to section 38 of the ICAC Act. The effect of this declaration is that their evidence cannot be used against them in any subsequent criminal prosecution except for offences under the ICAC Act. However

there is substantial documentary evidence that is available to the DPP including evidence of fraudulently created documents, payments records, banking records, and statements from a number of witnesses whose identities were used without their knowledge by Mr Sanhueza and Mr Taylor, and other information concerning the use of false information by Mr Sanhueza and Taylor.

In all the circumstances the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Sanhueza and Mr Taylor for the following criminal offences in relation to each of the 39 projects detailed in this report:

- make or use false instruments contrary to section 300(1) and 300(2) of the *Crimes Act* in relation to the creation and submission of the false documents to the NSWFB;
- giving documents or statements (including certifications/approvals) as agents of the NSWFB containing false or misleading information with intent to defraud contrary to section 249C(1) and 249C(2) of the *Crimes Act* in relation to false documents or statements submitted to the NSWFB;
- obtaining money by deception contrary to section 178BA of the *Crimes Act* in relation to the submission of tenders and quotes in the names of companies controlled by Mr Sanhueza; and
- obtaining financial advantage by making or publishing false or misleading statements contrary to section 178 BB of the *Crimes Act* in relation to the submission of tenders and quotes and claims or invoices to NSWFB in names of companies controlled by Mr Sanhueza.

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 Sanhueza for offences under sections 300(1), 300(2), 178BA and 178BB of the *Crimes Act* in relation to the creation and use of false documents in the adjudication proceedings.

As a result of this investigation, Mr Sanhueza and Mr Taylor resigned from NSWFB. It is therefore not necessary to make any statement in relation to any of the matters referred to in section 74A(2)(b) or (c) of the ICAC Act.

Chapter 4: Other benefits

This chapter examines the obtaining of other benefits by Mr Sanhueza and Mr Taylor. In particular, they each obtained two flat screen televisions and a laptop computer from Raseem Guirguis, an architect who did work for the NSWFB, and \$1,000 each from another NSWFB contractor, Soliman Hanna. This chapter also examines Mr Sanhueza's use of false invoices to obtain payment from the NSWFB and the provision of other benefits to NSWFB officers by Mr Guirguis.

Televisions and computers

Mr Guirguis is an architect and a partner in the firm of Barrelle Guirguis Architects. He estimated that between 1999 and 2006 the proportion of his time spent on work for the NSWFB increased from about 10–15% to 75–80%. Much of this increase occurred after Mr Sanhueza and Mr Taylor, neither of whom he had previously known, joined the NSWFB.

In 2006 Mr Guirguis bought two laptop computers at a cost of \$7,500 and four flat screen televisions for a cost of \$22,800. Mr Sanhueza and Mr Taylor each received one laptop computer and two flat screen televisions from Mr Guirguis.

Mr Guirguis told the Commission that Mr Taylor had visited him at his office and given him a piece of paper containing details of the computers and flat screen televisions. Mr Guirguis was told that if he did not purchase those items he would not receive any more NSWFB work.

Mr Taylor told the Commission that both he and Mr Sanhueza had discussed approaching Mr Guirguis to obtain these items but that it was Mr Sanhueza who made the initial approach to Mr Guirguis. He denied that the basis of the request was that if Mr Guirguis did not comply Mr Guirguis would cease to obtain further NSWFB work. Mr Taylor said these items were provided as a secret commission in recognition of work on the Greenacre project already awarded to Mr Guirguis. Mr Taylor understood that the arrangement was wrong.

Mr Sanhueza also denied that any threat had been made to Mr Guirguis about losing future NSWFB work. He claimed Mr Guirguis provided these items in appreciation of being awarded work on the Greenacre project. He claimed he was not surprised by this as gifts were common in the construction industry.

Mr Sanhueza was responsible for recommending Mr Guirguis for the Greenacre project. He said before the contract was awarded Mr Guirguis said he would look after Mr Sanhueza and Mr Taylor "the Arab way" by giving them a gift. Subsequent to Mr Guirguis being awarded the Greenacre project he and Mr Taylor came up with the idea of obtaining two television sets each as representing an appropriate reward for the amount of work given to Mr Guirguis.

Mr Guirguis said he purchased the laptops and televisions because he was concerned that if he ceased to receive NSWFB work he would lose a business he had worked hard to build up. He claimed he had not reported the request, which he regarded as blackmail, to the NSWFB as Mr Taylor told him that everyone did it. However, Mr Guirguis said he had not previously been approached by anyone in the NSWFB to provide gifts.

Mr Sanhueza rang Mr Guirguis on 2 October 2007. This was after both Mr Sanhueza and Mr Taylor had left the NSWFB. The telephone call was lawfully intercepted by the Commission. During the course of the call Mr Sanhueza asked, "Did you tell them the truth about the TVs and everything else?", to which Mr Guirguis responded, "No".

At that stage Mr Guirguis knew that Mr Sanhueza was talking about the flat screen televisions and laptop computers he had given to Mr Sanhueza and Mr Taylor.

Mr Sanhueza's conversation was threatening in tone. In particular, he told Mr Guirguis that "everybody who's involved, I'm gonna fuck them and their families the same shit that as what, what my kids went through. Each and everyone of your kids is going to go through the same shit". He told Mr Guirguis this was going to happen because Mr Guirguis had assisted the Commission. Later in the conversation he told Mr Guirguis that he could take it was a threat or a promise but "I'm gonna come and fucking see each and everyone of you ... and with your families. I'm gonna let – make your families go through what my kids have gone through". Mr Guirguis made a complaint to the Commission the following day about the threats.

Mr Guirguis was interviewed by Commission officers on 3 October 2007 but did not disclose that he had given televisions and computers to Mr Sanhueza and Mr Taylor. In his later evidence at the public inquiry he said he failed to do so as "... it was wrong and I was not proud of it" and he was hoping the Commission would not discover what he had done. He agreed that

by October 2007 neither Mr Taylor nor Mr Sanhueza was in a position to influence what, if any, work was awarded to him.

In respect of any discrepancies in the evidence of Mr Guirguis, Mr Taylor or Mr Sanhueza about this issue, the Commission favours the evidence of Mr Guirguis, as Mr Sanhueza and Mr Taylor are not credible witnesses.

It is clear that Mr Guirguis paid \$30,300 for four flat screen televisions and two laptop computers for Mr Sanhueza and Mr Taylor. These items were provided to them as a reward to ensure that he continued to receive work from the NSWFB.

Money payments

Soliman Hanna is a structural engineer who has done contract work for the NSWFB since late 2005 or early 2006.

On 10 April 2006 Mr Taylor sent him an email telling him to “put all work on hold until further notice”. Mr Hanna said he had already invoiced the NSWFB for some of the work he had done but had not been paid. After he had not heard from Mr Taylor for six or seven weeks he rang him. He said Mr Taylor told him that in return for the amount of work he had been given he had to “look after” Mr Taylor and Mr Sanhueza by paying each of them \$1,000.

Mr Hanna said that he agreed to this because he was worried about his business and the effect that a loss of work from the NSWFB would have on that business, his family and his ability to meet his mortgage repayments. Mr Hanna said that on subsequent occasions Mr Taylor made hints for further payments but Mr Hanna did not make any further payments.

Mr Hanna said he did not report the request to the NSWFB as he was confused and was worried about the future of his business.

Mr Sanhueza claimed that he, Mr Taylor and Mr Hanna agreed to “pad” an invoice to the NSWFB by \$3,000 and then split the amount between them. Mr Hanna denied this had occurred. Although Mr Sanhueza could not recall the project for which he claimed the invoice was inflated he agreed that he had received \$1,000 from Mr Hanna.

Mr Taylor claimed that Mr Hanna offered a cash payment “because we had given him a lot of work”. He received \$2,000 of which he kept \$1,000 and gave the remaining \$1,000 to Mr Sanhueza.

It is not necessary to resolve the conflict in evidence between Mr Hanna, Mr Taylor or Mr Sanhueza. It is clear on the evidence that Mr Hanna paid Mr Taylor and Mr Sanhueza \$1,000 each to ensure the awarding of future work.

False invoices

Mr Sanhueza and Mr Guirguis entered into an arrangement whereby Mr Sanhueza provided four invoices to Mr Guirguis, who in turn, submitted them under cover of his firm’s invoices for payment by the NSWFB.

The first is an invoice dated 25 October 2006 in the amount of \$2,618 purporting to be from Steve Johnstone, Mechanical Engineer. There is no such person. This invoice was submitted for payment to the NSWFB under cover of a Barrelle Guirguis invoice dated 21 November 2006.

The second invoice is dated 15 November 2006 in the amount of \$2,613.60 purporting to be from Dalcon Pty Ltd. This invoice was submitted for payment to the NSWFB under cover of a Barrelle Guirguis invoice dated 22 November 2006.

The third invoice is dated 20 December 2006 in the amount of \$2,475.60 purporting to be from Dalcon Pty Ltd. The fourth invoice is also dated 20 December 2006 and is in the amount of \$1,870. It purports to be from Steve Johnstone. Both invoices were submitted for payment to the NSWFB under cover of a Barrelle Guirguis invoice dated 2 January 2007.

Mr Sanhueza agreed that all four invoices were fakes created by him for the purpose of obtaining a financial benefit from the NSWFB. He claimed that both Mr Taylor and Mr Guirguis were party to the arrangement and had agreed that once the NSWFB paid the invoices the proceeds would be split between the three of them.

Mr Taylor claimed that he had no knowledge of or involvement in this scheme and had not seen the Johnstone or Dalcon Pty Ltd invoices. He denied ever having a discussion with Mr Guirguis and Mr Sanhueza in which a plan was devised to obtain money from the NSWFB by submitting false invoices. He denied receiving any cash from Mr Guirguis.

The invoices were connected with the Bathurst Fire Station project. Mr Guirguis agreed he received the invoices from Mr Sanhueza but claimed he believed they were genuine invoices for work actually performed on the Bathurst Fire Station project. He believed the work detailed in the invoices was consistent with work he knew needed to be done on the project. He

denied they were part of a scheme between himself and Mr Sanhueza to obtain improper payments from the NSWFB.

Mr Guirguis submitted the invoices to the NSWFB and was paid. The money remained in his bank account and was not paid out to anyone until Mr Guirguis was informed by the Commission that the invoices were false, at which time he repaid the money to the NSWFB.

He claimed he had not previously paid the money out as he was waiting on a statement. His evidence on this point is not accepted. He did not need a statement or further invoice to pay out the money. On the face of it he had all the necessary details in the invoices to pay out the money once he received it from the NSWFB. Of course, as the invoices were false, any such attempt would have been futile unless the money was paid directly to Mr Sanhueza.

In all the circumstances the Commission is satisfied that Mr Guirguis was a knowing party to the submission of the false invoices to the NSWFB. The Commission is not satisfied that Mr Taylor was a party to the arrangement. Mr Taylor denied knowledge of the scheme and Mr Guirguis did not identify him as being involved in providing the invoices.

Lunches and golf days

Despite claiming to having been blackmailed by Mr Taylor in mid-2006 over the televisions and computers, Mr Guirguis paid for himself, Mr Taylor and Mr Sanhueza to have lunch at the Level 41 restaurant on 8 December 2006. Mr Guirguis paid the bill of \$664 for this lunch. Mr Guirguis claimed the lunch was suggested by Mr Taylor and Mr Sanhueza, who chose the restaurant. He understood he was expected to pay.

Mr Taylor claimed the lunch was Mr Guirguis's idea. He said Mr Guirguis offered to pay.

Mr Sanhueza claimed that the idea of dining at Level 41 was a joint decision. He agreed that he anticipated Mr Guirguis would pay but denied it was part of any arrangement whereby in return for paying Mr Guirguis would continue to receive the NSWFB work.

There was other evidence that the three of them attended other, less expensive lunches, for which Mr Guirguis also paid. He said he did so as he believed it was good business practice.

Mr Guirguis also organised a golf day on 4 August 2006 to which he invited a number of NSWFB officers and other clients. Both Mr Sanhueza and Mr Taylor attended. He thought the idea for a client golf day

originated with Mr Taylor. He paid for the event which included lunch and the provision of some novelty trophies. He estimated the cost as between \$3,000 to \$4,000.

From about 2002 or 2003 Mr Guirguis also gave small Christmas gifts to various NSWFB officers. These presents were either bottles of whisky, bottles of wine or hampers. They were mainly given to project managers and area managers as well as secretarial staff. He did so because "I just thought it was a nice thing to do at Christmas time". He thought he spent \$500 to \$600 in total on gifts.

The issue of the golf day and Christmas gifts is considered further in Chapter 7 which deals with corruption prevention issues.

Findings of fact

Based on the evidence set out in this chapter the Commission is satisfied to the requisite degree that the following facts have been established:

1. In 2006 Rasem Guirguis purchased, and Christian Sanhueza and Clive Taylor accepted, two laptop computers valued at \$7,500 and four flat screen televisions valued at \$22,800 as a reward for Mr Sanhueza and Mr Taylor to ensure that Mr Guirguis continued to receive NSWFB work.
2. In 2006 Soliman Hanna paid \$1,000 to each of Mr Sanhueza and Mr Taylor, who accepted the payments, as a reward for Mr Sanhueza and Mr Taylor to ensure Mr Hanna continued to receive NSWFB work.
3. Mr Sanhueza created two false invoices in the name of Steve Johnstone dated 25 October 2006 and 20 December 2006 for \$2,618 and \$1,870, and two false invoices in the name of Dalcon Pty Ltd dated 15 November 2006 and 20 December 2006 for \$2,613.60 and \$2,475.60, which he provided to Mr Guirguis with the intention that Mr Guirguis would claim payment of the invoices from the NSWFB and share the amount with Mr Sanhueza once payment had been received from the NSWFB.
4. Mr Guirguis submitted the invoices to the NSWFB knowing they were false and with the intention of obtaining payment from the NSWFB to which he knew he was not entitled for the purpose of sharing that payment with Mr Sanhueza.

Corrupt conduct

The Commission finds that Mr Sanhueza and Mr Taylor engaged in corrupt conduct on the basis that their conduct as outlined in findings of fact 1 and 2 is conduct that:

- affects or could adversely affect, either directly or indirectly the honest or impartial exercise of their official functions and therefore comes within section 8(1)(a) of the ICAC Act,
- constitutes or involves the dishonest or partial exercise of their official functions and therefore comes within section 8(1)(b) of the ICAC Act, and
- constitutes or involves a breach of public trust by them as public officials and therefore comes within section 8(1)(c) of the ICAC Act.

Such conduct could also constitute or involve criminal offences of corruptly receiving or soliciting a benefit contrary to section 249B(1) of the Crimes Act and therefore comes within section 9(1)(a) of the ICAC Act and could constitute or involve reasonable grounds for dismissing, dispensing with the services of or otherwise terminating their services as public officials and therefore comes within section 9(1)(c) of the ICAC Act.

The Commission finds that Mr Guirguis engaged in corrupt conduct on the basis that his conduct as outlined in finding of fact 1 is conduct that:

- adversely affects, or could adversely affect, either directly or indirectly the honest or impartial exercise of official functions by any public official (Mr Sanhueza and Mr Taylor) and therefore comes within section 8(1)(a) of the ICAC Act, and
- adversely affects, or could adversely affect, either directly or indirectly the exercise of official functions by a public official (Mr Sanhueza and Mr Taylor) and which could involve bribery and obtaining or offering secret commissions and therefore comes within section 8(2) of the ICAC Act.

Such conduct could also constitute or involve a criminal offence of corruptly giving or offering a benefit to an agent contrary to section 249B(2) of the Crimes Act.

The Commission finds that Mr Hanna engaged in corrupt conduct on the basis that his conduct set out in finding of fact 2 is conduct that:

- adversely affects, or could adversely affect, either directly or indirectly the honest or impartial exercise of official functions by public officials (Mr Sanhueza and Mr Taylor) and therefore comes within section 8(1)(a) of the ICAC Act, and
- adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by public officials (Mr Sanhueza and Mr Taylor) and which could involve bribery and obtaining or offering secret commissions and therefore comes within section 8(2) of the ICAC Act.

Such conduct could also constitute or involve a criminal offence of corruptly giving or offering a benefit to an agent contrary to section 249B(2) of the Crimes Act.

The Commission finds that Mr Sanhueza engaged in corrupt conduct on the basis that his conduct set out in finding of fact 3 is conduct that adversely affects, or that could adversely affect, either directly or indirectly the exercise of official functions by a public official (being the NSWFB official(s) who authorised and made payment on the false invoices) and which could involve official misconduct, fraud and theft, and therefore comes within section 8(2) of the ICAC Act.

Such conduct could also constitute or involve the common law offence of misconduct in public office and making or using a false instrument contrary to section 300 of the Crimes Act and therefore comes within section 9(1)(a) of the ICAC Act. Such conduct could also constitute or involve reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of Mr Sanhueza and therefore comes within section 9(1)(c) of the ICAC Act.

The Commission finds that Mr Guirguis engaged in corrupt conduct on the basis that his conduct set out in finding of fact 4 is conduct that adversely affects, or that could adversely affect, either directly or indirectly the exercise of official functions by a public official (being the NSWFB official(s) who authorised and made payment on the false invoices) and which could involve fraud and theft, and therefore comes within section 8(2) of the ICAC Act.

Such conduct could also constitute or involve the making or using of a false instrument contrary to section 300 of the Crimes Act and therefore comes within section 9(1)(a) of the ICAC Act.

Section 74A(2) statements

In relation to the matters referred to in this chapter of the report the Commission considers that Mr Sanhueza, Mr Taylor, Mr Guirguis and Mr Hanna are affected persons and makes the following statements pursuant to section 74A(2) of the ICAC Act.

Mr Sanhueza

Although Mr Sanhueza made a number of admissions his evidence was given subject to a declaration made pursuant to section 38 of the ICAC Act. This means his evidence is not admissible against him in any criminal prosecution, except for an offence under the ICAC Act. There is, however, other evidence potentially available to the DPP including the evidence of Mr Guirguis and Mr Hanna, documentary evidence, telephone interception evidence and evidence of Commission officers in relation to his possession of the laptop computer and flat screen televisions purchased by Mr Guirguis.

In these circumstances the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Sanhueza for offences under section 249B(1) of the Crimes Act in relation to the soliciting and receipt of a laptop computer and two flat screen televisions from Mr Guirguis and \$1,000 from Mr Hanna; offences under section 300 of the Crimes Act for the making and using of false instruments in relation to the false invoices, and making a menacing telephone call to Mr Guirguis on 2 October 2007, contrary to section 474.17 of the *Criminal Code Act 1995* (Cwlth).

Mr Taylor

Although Mr Taylor made a number of admissions his evidence was given subject to a declaration made pursuant to section 38 of the ICAC Act. This means that his evidence is not admissible against him in any subsequent criminal proceedings, except for an offence under the ICAC Act. There is, however, potentially other evidence available including the evidence of Mr Guirguis and Mr Hanna, documentary evidence, and evidence of Commission officers regarding Mr Taylor's possession of the laptop computer and two flat screen televisions purchased by Mr Guirguis.

In these circumstances the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Taylor for offences under section 249B(1) of the

Crimes Act in relation to soliciting and receiving a laptop computer and two flat screen televisions from Mr Guirguis and \$1,000 from Mr Hanna.

Mr Guirguis

Although Mr Guirguis made some admissions his evidence was given subject to a declaration made pursuant to section 38 of the ICAC Act and cannot be used against him in any subsequent criminal prosecution, except for an offence under the ICAC Act. However, other evidence including invoices and payment records are available.

In all the circumstances the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Guirguis for offences under section 249B(2) of the Crimes Act in relation to the provision of the laptop computers and flat screen televisions to Mr Sanhueza and Mr Taylor.

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 Guirguis for any criminal offence arising from the submission of false invoices to the NSWFB.

Mr Hanna

Mr Hanna gave his evidence subject to a declaration made pursuant to section 38 of the ICAC Act. Accordingly, his evidence is not admissible against him in any subsequent criminal prosecution, except for an offence under the ICAC Act.

In all the circumstances the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Hanna.

Chapter 5: Inside source

Mr Sanhueza left the NSWFB in late March 2007. Confidential NSWFB documentation and other information was then provided to him by Patricia Xuereb who, at the time, was employed under contract to the NSWFB. Mr Sanhueza and Ms Xuereb also agreed to provide misleading information to the Commission in the event they were questioned as to how Mr Sanhueza came to possess a number of the documents she had provided to him.

Ms Xuereb commenced working for the NSWFB in July 2006 as a receptionist. She was recruited through an external hire company. After about four-and-a-half months she progressed to a different position in which she undertook broader administrative duties including the processing of invoices and raising of purchase orders. She ceased employment with the NSWFB in October 2007.

She met both Mr Sanhueza and Mr Taylor when they worked at the NSWFB and developed a friendship with them.

From her desk in the open area of the workplace she was able to listen to conversations and observe activities relevant to Mr Sanhueza which she later reported to him. She remained in regular telephone contact with him and met him on a number of occasions. At these times she advised him what was happening at the NSWFB and also provided him with a number of NSWFB documents which she had removed without authorisation.

The documents

As part of its investigation, Commission officers executed a search warrant on Mr Sanhueza's home on 4 September 2007. A number of documents clearly belonging to the NSWFB were located during the course of the search. It was apparent that a number of these documents were highly confidential and some could only have been obtained after Mr Sanhueza left the NSWFB. The documents included:

- a copy email dated 18/5/07 from Mr Clark to Mr Zrinski and Mr Gibbs with attached draft IAB Services investigation report dated May 2007 on tendering and contract processes for capital works projects administered by Mr Sanhueza and Mr Taylor;
- a copy letter dated 3/5/07 from Sparke Helmore Solicitors to the NSWFB containing legal advice on strategies available to the NSWFB concerning the cancellation of the contract between the NSWFB and Midas Capital Pty Ltd for the West Wallsend/Holmesville Fire Station project;
- copies of correspondence and invoices from Sparke Helmore Solicitors to the NSWFB regarding the adjudication application;
- an original letter dated 3/8/07 from the ANZ bank to Mr Zrinski concerning his ANZ home loan and identifying his account number and home address; and
- copies of correspondence and various tax invoices from Madden Associates to the NSWFB relating to the assessment of amounts payable to Carney Group Pty Ltd in relation to the Mona Vale and Dee Why projects.

Having access to Sparke Helmore's legal advice to the NSWFB could materially assist Mr Sanhueza in relation to the adjudication proceedings. Although the IAB Services investigation report did not uncover the full extent of Mr Sanhueza's conduct and effectively cleared Mr Taylor it was nevertheless an important indicator of the state of knowledge at the NSWFB concerning the conduct of both Mr Sanhueza and Mr Taylor.

How Mr Sanhueza got the documents

During the execution of a search warrant at Ms Xuereb's house on 6 September 2007 she told a Commission officer that she had provided NSWFB documents to Mr Sanhueza. When she initially gave evidence to the Commission in a compulsory examination on 28 November 2007 she told the Commission that these documents were limited to three purchase orders relating to projects on which Mr Sanhueza had worked. She claimed she had discovered that copies of these purchase orders had disappeared, which she thought was suspicious, and decided to provide Mr Sanhueza with copies so that it could not be claimed he had done anything without proper authorisation. She claimed she had provided the documents without Mr Sanhueza asking for them. She denied she had discussed with Mr Sanhueza what evidence they should give to the Commission.

When she gave evidence at the public inquiry on 26 August 2008 Ms Xuereb initially maintained this explanation. It soon became apparent that the explanation was false.

What really happened

The Commission lawfully intercepted a telephone conversation between Ms Xuereb and Mr Sanhueza on 3 September 2007. During the course of that conversation Ms Xuereb volunteered to obtain a copy of the NSWFB Corporate Group Executive minutes for Mr Sanhueza. After hearing this conversation played Ms Xuereb agreed that she had not been worried that the minutes document had gone missing, but had in fact offered to provide the document to Mr Sanhueza as she thought it might contain information useful to him.

Ms Xuereb then admitted that she took other NSWFB documents she thought might benefit Mr Sanhueza and passed them to him. These included the draft IAB Services report which she heard about in the office. She searched for and found a copy which she photocopied, and then gave the photocopy to Mr Sanhueza. She agreed she knew he had no right to have the report. She also agreed that she knew Mr Sanhueza was involved in adjudication proceedings with the NSWFB and that occasionally she saw documents which might be useful to him for those proceedings which she photocopied and provided to him.

On 8 October 2007 Mr Sanhueza sent an SMS message to Ms Xuereb in Spanish. Once translated the message read:

I need a copy of the Fire Brigade bank account.

About two hours later that day Ms Xuereb responded with an SMS message to Mr Sanhueza which was also in Spanish. When translated it read:

When are you going to need the account number.

Although she told the Commission she did not know why Mr Sanhueza wanted the bank account details, she did provide them to him.

Ms Xuereb said that Mr Sanhueza asked her find out Mr Zrinski's residential address. She searched through Mr Zrinski's desk and drawers in order to find something containing that information. Having found the letter from the ANZ she gave it to Mr Sanhueza.

Mr Sanhueza claimed he could not recall how the ANZ letter to Mr Zrinski came to be at his house. The Commission does not accept his evidence on this matter. The Commission accepts Ms Xuereb's evidence on this point.

Telephone conversations between Ms Xuereb and Mr Sanhueza provide a reason for Mr Sanhueza wanting to know where Mr Zrinski lived. The Commission lawfully intercepted a telephone conversation between Ms Xuereb and Mr Sanhueza at 11:07am on 27 September 2007. The purpose of the telephone call was for Ms Xuereb to advise Mr Sanhueza that Mr Zrinski was going to drive past Mr Sanhueza's house in an unmarked car. This was apparently something she had overheard in the office. The Commission lawfully intercepted another telephone conversation between them later that day at 1:10pm. Ms Xuereb made this telephone call in her lunch hour so that she could leave the office and avoid the risk of anyone overhearing her. During the course of this conversation Mr Sanhueza asked Ms Xuereb to ascertain the type and registration number of the car used by Mr Zrinski. She subsequently provided this information to Mr Sanhueza. She agreed she did so in order that Mr Sanhueza could pretend he had actually seen Mr Zrinski drive past in the car.

In a compulsory examination on 4 October 2007 Mr Sanhueza claimed he had observed Mr Zrinski drive past his house in a white station wagon while he was "whipper snipping trees up near the front gates". At the public inquiry, after hearing the above telephone conversations, he admitted that he never saw Mr Zrinski drive past his house and that he wanted information from Ms Xuereb so that he could represent to Mr Zrinski that he had seen him drive past his house. He admitted knowingly giving false evidence on this matter at his compulsory examination.

At approximately 4:11pm on 2 October 2007 Mr Sanhueza rang Mr Zrinski, told him he was going to shoot him and said, "I'm going to go to Drummoyne first, give your mummy a visit and then I'm gonna come and see you in Balmain" if Mr Zrinski drove past his house again. Shortly thereafter he rang Ms Xuereb and told her she would need to be his witness that Mr Zrinski had driven past his house. He told her about his threat to shoot Mr Zrinski and then asked her for Mr Clark's address as "I'm gonna fuck that cunt up too". Ms Xuereb claimed that as a result of learning of the threat made to Mr Zrinski she declined to accede to Mr Sanhueza's request for her to provide him with Mr Clark's address.

Mr Sanhueza claimed that Ms Xuereb never provided him with Mr Clark's address.

Mr Sanhueza agreed that Ms Xuereb had provided him with various NSWFB documents and information, including information useful to him in the adjudication proceedings. He knew her actions were wrong.

Although it appears that Ms Xuereb occasionally met Mr Taylor in Mr Sanhueza's company there is no evidence she gave documents to Mr Taylor.

Agreement to mislead

The Commission lawfully intercepted a telephone conversation between Ms Xuereb and Mr Sanhueza on 4 September 2007. Mr Sanhueza told Ms Xuereb that the Commission had executed a search warrant at his house. Being forewarned, Ms Xuereb told Mr Sanhueza she would check to see what documents she had and make them “disappear”. Mr Sanhueza told her that if he was asked where the NSWFB documents found at his house came from he would say they had been mailed to him and he did not know who had been responsible for doing so.

In her evidence to the Commission Ms Xuereb agreed that she was concerned that NSWFB documents might be found at Mr Sanhueza’s house which, because of their dates, would demonstrate they had come into existence after Mr Sanhueza had left the NSWFB. She agreed that they concocted a story whereby Mr Sanhueza would claim that the documents had just turned up in the post.

She agreed that after she had been told by Mr Sanhueza on 4 September 2007 about the search warrant at his house, she took steps to destroy some of the documents she had kept at her house.

In their telephone conversation at 4:11pm on 2 October 2007 Mr Sanhueza reminded Ms Xuereb that she was to say she had only sent a couple of NSWFB documents to him and he would claim the rest had been sent by NSWFB officer Meagan Green as “I’m gonna fuck her up too”.

Mr Sanhueza denied that he was prepared to tell lies about Ms Green in order to protect Ms Xuereb but was not able to offer any explanation as to why he was prepared to nominate her as the source of the NSWFB documents found at his house. By 2 October 2007 Mr Sanhueza was aware that Ms Green was compiling NSWFB documents for the purposes of the Commission’s investigation. He agreed that was possibly why he was prepared to tell lies about her. In the event, however, when he gave evidence to the Commission he did not nominate Ms Green as the source of the documents.

Ms Xuereb agreed that she had intentionally lied in her compulsory examination when she had said that the only documents she had removed from the NSWFB for Mr Sanhueza were the three purchase orders. She agreed that her evidence at the compulsory examination was consistent with what she and Mr Sanhueza had agreed she would say and that she and Mr Sanhueza had agreed she would lie in her evidence to the Commission.

Ms Xuereb discusses her evidence with Mr Sanhueza

At the time of her compulsory examination Ms Xuereb was present when an order was made pursuant to section 112 of the ICAC Act. That order prevented her telling anyone except her legal representative about her evidence or that she had given evidence. Although she was aware that her evidence was subject to such an order she subsequently met with Mr Sanhueza and told him about the evidence she had given to the Commission and in particular that she had stuck to the plan about the number of documents she had provided to Mr Sanhueza.

Findings of fact

Based on the evidence set out in this chapter the Commission is satisfied to the requisite degree that the following facts have been established:

1. Between approximately late March 2007 and October 2007 Ms Xuereb knowingly improperly provided confidential NSWFB documentation and other information to Mr Sanhueza which she knew he had no right to have but which she thought might be of benefit to him. The documentation and information included:
 - the copy of an email dated 18/5/07 from Mr Clark to Mr Zrinski and Mr Gibbs with attached draft IAB Services investigation report dated May 2007;
 - the copy of a letter dated 3/5/07 from Sparke Helmore Solicitors to the NSWFB containing legal advice;
 - copies of correspondence and invoices from Sparke Helmore Solicitors to the NSWFB regarding the adjudication application;
 - the original letter dated 3/8/07 from ANZ to Mr Zrinski concerning his ANZ home loan and identifying his account number and home address;
 - copies of correspondence and various tax invoices from Madden Associates to the NSWFB relating to the assessment of amounts payable to Carney Group Pty Ltd in relation to the Mona Vale and Dee Why projects; and
 - details of the NSWFB bank account number.

2. Mr Sanhueza requested Ms Xuereb to provide him with NSWFB documentation and other information which he knew he had no right to and which Ms Xuereb was not authorised to provide to him. This included:
 - Mr Zrinski's address details; and
 - details of the NSWFB bank account number.

Corrupt conduct

The Commission finds that Ms Xuereb engaged in corrupt conduct on the basis that her conduct outlined in finding of fact 1 is conduct that:

- adversely affected the honest or impartial exercise of her public official functions and therefore comes within section 8(1)(a) of the ICAC Act;
- constituted or involved the dishonest or partial exercise of her public official functions and therefore comes within section 8(1)(b) of the ICAC Act;
- constituted or involved a breach of public trust and therefore comes within section 8(1)(c) of the ICAC Act; and
- involved the misuse of information or material that she acquired in the course of her official functions and therefore comes within section 8(1)(d) of the ICAC Act.

Such conduct could also constitute or involve criminal offences of misconduct in public office (a common law offence) and therefore comes within section 9(1)(a) of the ICAC Act and could constitute or involve disciplinary offences or reasonable grounds for dispensing with or terminating her services as a public official and therefore comes within sections 9(1)(b) and (c) of the ICAC Act.

Section 74A(2) statements

In relation to the matters referred to in this chapter of the report the Commission considers that Ms Xuereb and Mr Sanhueza are affected persons and makes the following statements pursuant to section 74(2) of the ICAC Act.

Ms Xuereb

Although Ms Xuereb made a number of admissions her evidence was given subject to a declaration made pursuant to section 38 of the ICAC Act. This means her evidence is not admissible against her in any criminal prosecution, except for an offence under the ICAC Act. There is, however, other evidence potentially available to the DPP including telephone interception evidence and documentary evidence.

In these circumstances the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Xuereb for the following offences:

- misconduct in public office (a common law offence) in relation to her removal of NSWFB documents and confidential information from the NSWFB which she provided to Mr Sanhueza;
- giving false or misleading evidence contrary to section 87 of the ICAC Act in her compulsory examination of 28 November 2007 and at the public inquiry on 26 August 2008 concerning the number and type of documents she provided to Mr Sanhueza; and
- contravening an order made under section 112 of the ICAC Act contrary to section 112(2) of the ICAC Act.

Mr Sanhueza

Although Mr Sanhueza made a number of admissions his evidence was given subject to a declaration made pursuant to section 38 of the ICAC Act. This means his evidence is not admissible against him in any criminal prosecution, except for an offence under the ICAC Act. There is however other evidence potentially available to the DPP including telephone interception evidence.

In these circumstances the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Sanhueza for the following offences:

- making a threatening telephone call to Mr Zrinski on 2 October 2007 contrary to section 474.15(2) of the *Criminal Code Act 1995* (Cwlth); and
- giving false or misleading evidence contrary to section 87 of the ICAC Act in relation to his evidence at his compulsory examination on 4 October 2007 that he had observed Mr Zrinski drive past his house.

Chapter 6: Attempted cover-ups

This chapter examines attempts by Mr Sanhueza, Mr Taylor and others to conceal their activities from the Commission's investigation. Attempts by Mr Sanhueza and Ms Xuereb to mislead the Commission are dealt with in the previous chapter. This chapter examines Mr Sanhueza's dealings with a number of other people who he suggested provide false information to the Commission and attempts by Mr Taylor and his wife, Annamarie Taylor, to remove documents from their home to avoid their discovery by the Commission.

Mr Sanhueza attempted to convince a number of people to mislead the Commission. His purpose in doing so was to protect himself against possible adverse findings by the Commission.

Mr Sanhueza and Mr Romero

Some tenders for NSWFB projects were submitted in the names of companies that appeared to be controlled by Dario Romero. In fact they were controlled by Mr Sanhueza. Mr Romero allowed Mr Sanhueza to use his name.

On 4 September 2007 Mr Sanhueza became aware that Commission officers were executing a search warrant at Mr Romero's home. In a series of telephone conversations with Mr Romero he instructed Mr Romero on the answers he should give to Commission officers if questioned about dealings with the NSWFB. These included that Mr Romero should say:

- Mr Romero did work for the NSWFB but had someone else cost his quotes and that person was now overseas;
- Mr Romero could not recall what prices he had quoted the NSWFB as he no longer had the documents;
- Mr Romero won the job and completed the work;
- Mr Sanhueza never gave Mr Romero any prices to quote for NSWFB work;
- Mr Romero had given his files to Mr Sanhueza and was paying him to do paper work for him (thus explaining why the company documentation was with Mr Sanhueza rather than Mr Romero);
- every time a new job came up Mr Romero established a new company to do that job; and
- Mr Romero should pretend he was stupid.

Mr Sanhueza agreed he was instructing Mr Romero to tell lies when questioned by the Commission. The purpose of doing so was because Mr Sanhueza did not want the Commission to know that it was he rather than Mr Romero who had really run the companies.

Mr Romero was interviewed by Commission officers on 4 September 2007 but did not lie as suggested by Mr Sanhueza. At the public inquiry he said that he had agreed with Mr Sanhueza to be a director of the companies in return for payment but did not expect to do any work and was not fully aware of what Mr Sanhueza was doing. He agreed that the above answers Mr Sanhueza told him to tell the Commission were lies.

Mr Sanhueza and Mr Nahed

George Nahed is a friend and former work colleague of Mr Sanhueza. He was a director of Citisquare Pty Ltd. The company subsequently went into liquidation. One of the tenders for the Matraville project was in the name of that company. Mr Nahed had also established another company, Joclem Pty Ltd, which was used by Mr Sanhueza to tender for the West Wallsend project.

After being approached by Commission officers for information Mr Nahed telephoned Mr Sanhueza on 19 October 2007. At that stage Mr Nahed was aware, from Commission officers, that documents in the name of Joclem Pty Ltd had been submitted to the NSWFB. Mr Nahed told Mr Sanhueza that he had not submitted any quotes to the NSWFB and asked Mr Sanhueza if he had used Joclem's name to submit quotes. Mr Sanhueza denied he had done so. In a subsequent telephone conversation, on 23 October 2007, Mr Sanhueza told Mr Nahed that he had found the Joclem documentation and had used it to submit a "cover price".

When he gave evidence at the public inquiry in August 2008 Mr Nahed said the Citisquare Pty Ltd and Joclem Pty Ltd documents submitted to the NSWFB were false and he had not given Mr Sanhueza permission to use those company names.

Mr Nahed agreed that in the telephone conversation of 23 October 2007 Mr Sanhueza had suggested Mr Nahed help him in relation to the Commission's investigation. Although Mr Nahed did not lie about his involvement in NSWFB projects he did claim, when interviewed on 26 November 2007, that Mr Sanhueza had not discussed the Commission's investigation with him. After considering the transcripts of the telephone conversations in the public inquiry he agreed that he and Mr Sanhueza had discussed the Commission's investigation. He was not able to offer any explanation as to why he had made a false statement.

Mr Sanhueza agreed that he had asked Mr Nahed to lie to the Commission.

Mr Sanhueza and Mr Egger

Timothy Egger and Mr Sanhueza were friends. Mr Egger established Phixet in 1988. The business ceased operating in about 1995 and its registration lapsed in 2006.

After the Commission first made contact with Mr Egger he had a series of telephone conversations with Mr Sanhueza. The first was on 16 October 2007. Mr Egger asked Mr Sanhueza what the investigation was about, to which Mr Sanhueza responded that he supposed it was in relation to "that dodgy tender" for the West Wallsend project. Mr Egger told Mr Sanhueza he knew nothing about it. Mr Sanhueza told Mr Egger to tell the Commission that Mr Egger had priced the job but had subsequently thrown away his records. He suggested that Mr Egger say that Mr Sanhueza had asked him for a "cover price" and that Mr Egger had tendered for the job on that basis. In a subsequent telephone conversation on 17 October 2007, Mr Sanhueza told Mr Egger to tell the Commission that he had tendered for a couple of NSWFB projects and that when he did not get the jobs he destroyed the background documentation.

Mr Egger agreed that Mr Sanhueza had asked him to lie to the Commission by pretending he had played an active role in the tenders purportedly submitted by Phixet. Mr Egger said that after considering the matter he decided he could not lie. He told the Commission that he had never given Mr Sanhueza permission to use his business name and he had not been involved in providing quotes for any NSWFB work.

Mr Sanhueza admitted he was worried when he found out Mr Egger was to be interviewed by the Commission and he therefore asked Mr Egger to lie to the Commission.

False qualifications

On 21 June 2005 Mr Sanhueza sent an e-mail to Cord Management Group ("Cord") by way of applying for employment. The e-mail referred to an attached CV. This was a document headed "Summary of Experience & Capabilities" which falsely asserted Mr Sanhueza had a "Bachelor of Commerce major in accounting, [and an] MBA (Master in Business Administration)".

Gordon Stroud is a consultant with Cord. He recalled the CV submitted by Mr Sanhueza and said he telephoned him to clarify where Mr Sanhueza obtained these qualifications. Mr Sanhueza told him he obtained the Bachelor of Commerce degree from the University of New South Wales (UNSW) in 1991 and the MBA from the Macquarie Graduate School of Management. Mr Stroud recorded this information on his copy of the CV.

Cord submitted a confidential report on Mr Sanhueza to the NSWFB which contained reference to the qualifications claimed by Mr Sanhueza. Mr Zrinski placed importance on these qualifications in deciding to employ Mr Sanhueza.

In his evidence at the public inquiry Mr Sanhueza agreed he sent the e-mail to Cord but would only allow that he "possibly" attached the CV with the false qualifications. He agreed he subsequently discussed his application with Mr Stroud but denied telling him he had an MBA from Macquarie University or had graduated from the UNSW in 1991. He agreed that he did not have these qualifications.

The Commission does not accept Mr Sanhueza's denials. There is no reason to doubt that the CV attached to the e-mail was prepared by Mr Sanhueza and submitted by him as part of his application. There is also no reason to doubt the evidence of Mr Stroud. In addition, there was other evidence of Mr Sanhueza claiming false qualifications.

When Commission officers executed a search warrant at Mr Sanhueza's home on 4 September 2007 they located documents purporting to be:

- a University of Sydney transcript of academic record in Mr Sanhueza's name showing he had qualified for a Bachelor of Economics Degree in 1991;
- an Orange TAFE 1989 examination results certificate addressed to him for an Associate Diploma course in accounting; and
- an Orange TAFE 1990 examination results certificate addressed to him for an Associate Diploma course in accounting.

Mr Sanhueza agreed he had not graduated from the University of Sydney and had never attended the Orange TAFE. He claimed he had created the documents while “playing around” and denied he did so in order to be able to pass himself off as a person with these qualifications.

He subsequently agreed however that he had falsely represented that he had attended the University of Sydney and had an MBA in an application he made in 2007 to become a member of the Australian Institute of Public Management.

This evidence clearly illustrates that Mr Sanhueza had the means and ability to create false qualifications and that he was prepared to misrepresent his qualifications if he thought it would advantage him. The Commission is satisfied that Mr Sanhueza provided Cord with a CV falsely representing that he had a Bachelor of Commerce degree from the UNSW and a MBA from the Macquarie Graduate School of Management and also told Mr Stroud he had these qualifications in order to improve his chances of obtaining employment with the NSWFB.

The Taylors attempt to hide documents

Mr Taylor found out from Mr Sanhueza on 4 September 2007 that the Commission was executing search warrants at various premises. Mr Taylor was not at home at the time but his wife was. In anticipation that the Commission might execute a search warrant at his house he telephoned his wife, Annamarie Taylor, and arranged for her to collect any relevant documents, remove them from the house and place them in hired storage. At the time they were unaware that their telephone conversations were being lawfully monitored by the Commission. In one of their conversations Mrs Taylor told her husband she had collected a number of bank account statements (which were relevant to the Commission’s investigation and which she referred to as “a gold mine”) and placed them in the boot of her car.

In his evidence at the public inquiry Mr Taylor agreed that he was concerned that documents might be found which would reveal the scheme run by himself and Mr Sanhueza.

Mrs Taylor took the documents to a commercial self-storage facility. She completed a written agreement with the self-storage company in which she provided false information, including her address and details of an alternate contact person.

Mrs Taylor agreed she was trying to hide the documents from the Commission. She gave a false address in the agreement because “I was hoping that if anything was found that it wouldn’t relate to me, or us”.

Both Mr and Mrs Taylor denied that Mrs Taylor was aware of the nature of the scheme in which Mr Taylor and Mr Sanhueza were involved. The Commission rejects their evidence on this point. Mrs Taylor deposited significant amounts from Ceachei, Midas, Deltavale and Mollix into the Taylor’s joint bank account. Although she claimed she had not asked Mr Taylor about the source of these payments, she conceded she played an active role in their financial affairs. Her reference to the bank statements as a “gold mine”, her attempt to hide them from the Commission and her attempt to prevent the self-storage hire agreement from identifying her as the depositor are strong indications that she was aware that Mr Sanhueza and her husband were involved in an improper scheme to obtain money from the NSWFB. There is other compelling evidence to support this conclusion.

During the course of a lawfully intercepted telephone conversation between Mr and Mrs Taylor on 4 September 2007 Mr Taylor advised her that the Commission was executing a search warrant at Mr Romero’s home. Mr Sanhueza had told Mr Taylor that Mr Romero was to be interviewed by the Commission. Mr Taylor told his wife that he had told Mr Sanhueza not to let Mr Romero be interviewed without a lawyer “because he could just open his mouth and we could all be in a big shit”. Mrs Taylor responded, “Yeah. Or he’s gonna say he knows nothing but by saying he knows nothing he’ll incriminate everybody”. Later in the conversation she said “I know we’re guilty”.

The Commission lawfully intercepted telephone conversations between Mr Taylor and Mrs Taylor on 10 October 2007. During these conversations they openly and frankly discussed back-dating documents to be lodged with the Australian Securities and Investments Commission (ASIC), and their views of Mr Sanhueza and Mrs Taylor’s willingness to forge Mr Taylor’s signature on an ASIC document. These conversations demonstrate that Mrs Taylor was well aware of what was happening and indeed was playing an active role in assisting her husband.

The Commission is satisfied that Mrs Taylor was aware, at least in general terms, of the improper nature of Mr Taylor’s and Mr Sanhueza’s dealings with the NSWFB.

Mr Taylor's loan application

Mr Taylor made and used two false letters to obtain finance for property he purchased in 2007 for \$850,000. In order to borrow \$425,000 he needed to provide proof of income. Although he was paid by Cord he did not approach that company for a statement of income. Instead, he forged a letter on NSWFB letterhead dated 29 January 2007 so he could over-state his income. The letter falsely represented that he was a permanent contractor and over-stated the period of his employment. He forged Mr Sanhueza's signature and invented a title for him.

Another letter, dated 19 January 2007 and actually signed by Mr Sanhueza, contained a number of falsehoods including that Mr Sanhueza was his accountant and had been for three years. The letter represented that Mr Sanhueza was of the opinion Mr Taylor had the ability to service the proposed loan. Mr Taylor agreed there was no proper basis for such a claim.

Section 74A(2) statements

In relation to the matters referred to in this chapter of the report the Commission considers that Mr Sanhueza, Mr Nahed, Mr Taylor and Mrs Taylor are affected persons and makes the following statements pursuant to section 74(2) of the ICAC Act.

Mr Sanhueza

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 Sanhueza for the following offences:

- obtaining a financial advantage (paid employment) by deception contrary to section 178BB of the Crimes Act in relation to claiming in his CV and discussion with Mr Stroud that that he had a Bachelor of Commerce degree from the UNSW and a MBA from the Macquarie Graduate School of Management; and
- giving false or misleading evidence contrary to section 87 of the ICAC Act in relation to his denial that he told Mr Stroud he had two university degrees and his denial that he had ever claimed to have any university degrees.

Mr Nahed

Mr Nahed gave his evidence subject to a declaration made pursuant to section 38 of the ICAC Act, however his evidence can be used against him in a prosecution for an offence under the ICAC Act. Although he initially provided some false information to Commission investigators, he cooperated and gave truthful evidence at the public inquiry. In all the circumstances the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to his prosecution.

Mr Taylor

Mr Taylor gave his evidence subject to a declaration made pursuant to section 38 of the ICAC Act. This means his evidence cannot be used against him in a prosecution, except for an offence under the ICAC Act. There is however other available admissible evidence, including documentary evidence and telephone interception evidence. In these circumstances the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Taylor for the following offences:

- obtaining a financial advantage by deception contrary to section 178BB of the Crimes Act in relation to providing two false documents in support of his loan application; and
- aiding and abetting Mrs Taylor in hindering the investigation of a serious indictable offence contrary to section 315(1)(a) of the Crimes Act in relation to the removal and hiding of financial documentation by Mrs Taylor.

Mrs Taylor

Mrs Taylor gave her evidence subject to a declaration made pursuant to section 38 of the ICAC Act. This means her evidence cannot be used against her in a prosecution, except in a prosecution for an offence under the ICAC Act. There is however other available admissible evidence, including documentary evidence and telephone interception evidence. In these circumstances the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mrs Taylor for an offence of hindering the investigation of a serious indictable offence contrary to section 315(1)(a) of the Crimes Act in relation to her removal and hiding of financial documentation.

Chapter 7: Corruption prevention

Introduction

This chapter examines the key factors that allowed Mr Sanhueza and Mr Taylor to operate their corrupt scheme and to remain undetected for so long.

The Property Services Unit (PSU) of the NSWFB did not take appropriate steps to ensure the essential role of project manager was filled by suitably qualified and experienced persons with solid employment and personal references. Its process for hiring contracted project managers was inadequate and failed to detect Mr Sanhueza's false qualifications.

The NSWFB's process for allocating funds to capital works projects offered Mr Sanhueza and Mr Taylor an opportunity to misuse their positions as project managers to dishonestly obtain considerable amounts of this money from the NSWFB.

The PSU did not have adequate internal controls in place to prevent or detect Mr Sanhueza's and Mr Taylor's corrupt activity. Controls such as an effective corruption risk management process, sound supervision and work review measures, an efficient construction procurement process and effective oversight by financial services and internal audit would have assisted the NSWFB to prevent or at least quickly detect their corrupt conduct.

The Commission is aware that the NSWFB is already taking steps to address many of the issues highlighted in this chapter. The recommendations made here are intended to support and complement these initiatives.

Poor recruitment processes for contracted staff

As project managers, Mr Sanhueza and Mr Taylor were responsible for administering all aspects of the capital works process including tendering, contract management and quality control. They were also required to make recommendations about the expenditure of considerable amounts of public funds. Project managers played a crucial role in the NSWFB's capital works process and consequently were well-remunerated and allowed a high degree of discretion and autonomy in their day-to-day work.

Despite the responsible and pivotal nature of the role, the NSWFB did not take appropriate steps to ensure it was filled by suitably qualified and experienced

persons with solid employment and personal references who understood their responsibilities. It had not given adequate consideration to the most appropriate way to meet its need for project management skills or to manage the corruption risks associated with contracted project managers. The NSWFB appears to have assumed that the recruitment agency had already screened and interviewed Mr Sanhueza, Mr Taylor and Ms Xuereb. Mr Zrinski and Mr Gibbs did not conduct appropriate educational, employment and personal history checks or a merit selection process. They also did not inform Mr Sanhueza, Mr Taylor or Ms Xuereb about their responsibilities as public officials, the behaviour expected of them and the consequences of misconduct.

To address these issues, the Commission recommends:

RECOMMENDATION 1

That the NSWFB develops a written agreement with any recruitment agency from which it sources staff that clearly sets out all the tasks the recruitment agency is required to perform, for example reference and qualifications checks.

RECOMMENDATION 2

That the NSWFB Human Resources Division ensures that all staff hired on contract are selected on merit and subjected to appropriate checks in regard to claimed qualifications and experience, and references by previous employers.

Informing staff about their duties, their responsibilities as a public official, the requirement for ethical behaviour and the serious consequences that will follow misconduct and corrupt activity is an essential part of good governance. Such practices send out a positive message about an agency's values and the behaviour it requires from its staff. The Commission recommends:

RECOMMENDATION 3

That the NSWFB ensures that contracted staff understand their roles and responsibilities as public officials. Strategies to achieve this could include:

- a. developing a comprehensive position description for any contracted position outlining the responsibilities of the position;
- b. entering into a written agreement with the contractor, additional to their agreement with the recruitment agency, which sets out the duties and conduct expected of the contractor, and which the contractor is required to read and sign;
- c. developing and implementing a comprehensive induction process including clear instruction on the NSWFB Code of Conduct and their responsibilities as public officials.

RECOMMENDATION 4

That the NSWFB reviews its practice of using contracted project managers. It should consider all options including:

- a. creating permanent project manager positions;
- b. seconding experienced project managers from other public sector agencies;
- c. sourcing project managers from the Department of Commerce's pre-qualified panel of project manager contractors;
- d. appropriate restructuring of the Property Services Unit to meet its skill and staffing needs.

The NSWFB's relationship with Cord Management Group was unclear

The NSWFB did not have a formal agreement with Cord Management Group ("Cord"), the recruitment agency it used to source its project managers. NSWFB first retained the services of Cord in April 1994. Both Mr Sanhueza and Mr Taylor were employed through Cord. The NSWFB advised the Commission that it had no record of how this relationship was established and there was no written record of a contract between Cord and the NSWFB. Cord stated that it had an "informal agreement" with the NSWFB. There is

therefore no formal record of Cord's responsibilities in referring staff to the NSWFB. Both Mr Gibbs and Mr Zrinski believed Cord was on a Department of Commerce list of pre-qualified recruitment contractors, although this was not so.

The Property Services Unit (PSU) also had no formal written agreement with Cord outlining the skills and experience it required of the project managers or the nature of the work they would undertake. Instead, Mr Zrinski emailed Cord on 7 February 2005 requesting suitable applicants for the position of contract project manager. The email briefly described the experience and skills the PSU required. Mr Zrinski told the Commission that Cord did not require a written description of the project manager's duties as it was aware of the type of work the PSU undertook because it was a building industry expert and had supplied several other project managers over the years.

It is not surprising that, given the informal nature of this relationship, over time NSWFB staff may have made assumptions about Cord's role and responsibilities in the recruitment of the project managers. It appears that this is exactly what happened in the PSU.

Proper reference, qualification and conflict of interest checks were not conducted

Cord informed the Commission that, prior to referring Mr Sanhueza and Mr Taylor to the NSWFB, it did not test the validity of any information they included in their job applications and résumés. A Cord employee interviewed Mr Sanhueza and Mr Taylor by telephone in relation to their appropriate expertise and experience. Cord did not contact any third party in relation to either Mr Sanhueza or Mr Taylor. Under Cord's policy, it only conducted reference and other checks in "special circumstances" which, it stated, it was not advised were applicable in relation to Mr Sanhueza and Mr Taylor.

It appears that neither Mr Zrinski nor Mr Gibbs were aware of Cord's policy and practices in relation to checking the information submitted by applicants in their job applications and resumes. Although there was no express agreement that Cord would conduct reference or qualification checks, it appears that both Mr Zrinski and Mr Gibbs incorrectly assumed that Cord checked the qualifications and experience of any staff it referred to them. As Mr Gibbs said:

They had the responsibility clearly in my view to – to vet the people that they were sending in which would have included educational qualifications and experience at a minimum.

As a result of this misapprehension, Mr Zrinski did not check Mr Sanhueza's qualifications. Had he done so, he would have discovered some were fraudulent. Presumably he would not then have employed Mr Sanhueza and this scam would not have eventuated. Again, because he believed that Cord had conducted adequate checks, Mr Zrinski only rang one of the three referees Mr Sanhueza provided and made no attempts to call Mr Taylor's referees. This is because he was satisfied from the interview and his résumé that Mr Taylor had the appropriate experience. However, Cord did no reference or background checks on Mr Sanhueza or Mr Taylor.¹ It did not even require them to provide referees with their applications to Cord.

Mr Zrinski also did not request a declaration of interests from Mr Sanhueza or Mr Taylor or advise them of their responsibilities in regard to declaring or managing conflicts of interest. This is despite the provisions in the NSWFB Code of Conduct which stated that:

When involved in tender-type processes, whether preparing specifications, registrations of interest, requests for tender, evaluation criteria and/or being a member of an evaluation/decision-making team (formal or informal) etc, all employees, contractors, consultants or third-party team members, must at all times ensure that there is:

- no advantage or disadvantage to any potential tenderer; and*
- full and immediate disclosure of any contact, discussion or relationship, past, present or future that might be perceived to provide a potential/actual advantage/disadvantage to tenderers.*

For all major tender processes, employees will be required to sign a conflict of interest disclosure statement, prior to involvement in such processes.¹

Formal interviews were not conducted

The PSU did not follow a standard interview process for contracted project managers. Unlike a selection procedure for a permanent employee, there was no proper selection panel with independent input or any standard interview questions to test the applicant's skill. Generally, the practice was that two PSU officers conducted the project manager interviews. In Mr Sanhueza's case, the interview was conducted by Mr Zrinski and Mr Wylie, another contracted project manager. Mr Taylor was interviewed by Mr

Zrinski alone. The usual practice was to question the applicants based on their resume and recent experience. Although the NSWFB Hiring Temporary Staff from Agencies Policy required that "proper record keeping of all decisions to engage temps must be observed", Mr Zrinski kept no formal record of his 'selection' interviews with the project managers; only his handwritten comments in the margins of their résumés.

Mr Zrinski told the Commission that he was aware that selection processes for public sector positions required a panel with an independent person from outside the division but the PSU did not follow that procedure for contracted project managers. In his evidence Mr Gibbs also agreed that the selection process would have been more rigorous for permanent public sector positions but perceived the lack of rigour as one of the advantages of employing contractors:

You have far more flexibility with the contractors than you ever did with permanent staff, and that's why those – those – those actions were taken with contractors, as opposed to – to permanent employees. It was part of the advantage of having contractors.

It is clear with hindsight that this was an erroneous view, as the PSU was significantly disadvantaged by avoiding a proper and rigorous selection process which should have identified information, such as Mr Sanhueza's fraudulent qualifications, which may have prevented these events. It was a short-sighted approach that did not acknowledge the risks inherent in poor staff selection. It was also contrary to the NSWFB Hiring Temporary Staff from Agencies Policy which requires that managers must apply the merit principle when making a selection decision.

The NSWFB had no written agreement with the contracted project managers

The NSWFB had no written agreement with the project managers about their duties or the conduct that was expected of them. There was a contract in place between the project managers and Cord. However, there was no contract between the NSWFB and the project managers. There was also no formal position description or statement of duties. Mr Zrinski indicated this was unnecessary as the project managers understood what the position entailed.

1. NSWFB Code of Conduct, undated.

The induction process was inadequate

The induction process provided by the PSU for new project managers was manifestly inadequate, particularly for persons who had never before worked for the public sector. The PSU had an Induction Checklist which outlined the areas that Mr Zrinski was required to cover in his induction of the new project managers, such as emergency procedures, work hours and leave. The checklist also required him to explain that all forms and policies could be accessed through the NSWFB intranet. At the end of the induction session, the checklist form was to be signed by the persons conducting and attending the induction.

The Induction Checklist did not require Mr Zrinski to explain the provisions of the Code of Conduct to new staff, or even to inform them that the NSWFB had a Code of Conduct to which they must adhere. Neither did it require him to explain to new contracted staff that they were now public officials and what this entailed.

Mr Sanhueza and Mr Taylor maintained that their induction had consisted of a brief tour around the physical workplace. Mr Zrinski gave evidence that he spent a half day with them. However, as Mr Zrinski did not require them to sign the checklist in acknowledgement that they had completed the process, there is no objective evidence of exactly what the induction comprised. Even if Mr Zrinski had performed all the tasks on the Induction Checklist, it would have been at best a scant introduction to their new jobs and would not have provided any information about the responsibilities they faced as project managers in the public sector, the expectations of the NSWFB in terms of their behaviour or the consequences of misbehaviour. It is doubtful that this information would have influenced their subsequent behaviour in this case. However, sound induction processes are an essential part of good governance and would have sent out a positive message about the NSWFB's values and what it considered acceptable behaviour.

Even if Mr Zrinski had covered all the aspects of the induction process set out in the Induction Checklist, this would not have sent a strong positive message to Mr Sanhueza and Mr Taylor that they had a public duty and that ethical behaviour was expected and required in the PSU and serious consequences would follow misconduct and corrupt activity. However, it could certainly have sent a negative message that the Code of Conduct and the behaviour it required were not really important to the PSU and that misconduct would not be pursued.

There were no permanent project manager positions

Since 1990, when Mr Zrinski commenced employment with the NSWFB, the budget for capital works had increased approximately eightfold from about \$3 million to \$20–25 million annually, with no increase in permanent positions to respond to this growth. There was an ongoing need for project managers in the PSU and they were essential to the capital works program. However, it appears that for a number of reasons listed below the PSU continued to contract-out all its project manager positions instead of creating permanent positions:

1. Messrs Zrinski, Gibbs and Clark all gave evidence that they had made attempts to secure approval to create permanent project manager positions, however, it appears the NSWFB was reluctant to create additional substantive positions and they were not successful.
2. Although the PSU was not able to obtain funding to create permanent project manager positions, it was able to include the costs of a contracted project manager's salary in the budget allocation for each capital works project. It seems this became the easier option as the funding for the positions then essentially came from the NSWFB capital works budget instead of the staffing budget.
3. Mr Gibbs considered that, under the current staffing structure of the PSU, the remuneration for permanent project manager positions may not have been high enough to attract experienced project managers from the private sector. Mr Gibbs gave evidence that a private sector project manager could earn \$120,000 to \$150,000 p.a. which the Unit would not have been able to pay, given that Mr Zrinski's salary was only around \$94,000 p.a.

As there was a permanent need for project managers, some contracted project managers worked for the PSU full-time for considerable periods of time. One former contracted project manager worked for the PSU for 11 years. However, as they were formally employed only on a project-by-project basis, the contracted project managers should have been considered temporary employees under section 27 of the *Public Sector Employment and Management Act 2002*. (The NSWFB informed the Commission that it engaged project

managers on a “consultancy” basis, however, project managers do not meet the definition of a consultant in the government guidelines.²⁾

Public sector policy³ provides that the maximum total continuous period of employment of a temporary employee in the same job is three years. Re-employment is considered continuous even where there is a break of up to two months between periods of employment. If after three years the agency finds work is still needed and is expected to continue for at least 12 months, then a permanent position should be created at the three-year mark. This is based on the concept that there is an ongoing need for the position in the agency.

Agencies with an ongoing need for particular skills such as project management have several options open to them, including creating permanent positions and seconding project managers from other agencies. Although Mr Gibbs and Mr Clark gave evidence that they could not create permanent project manager positions, a number of NSW public authorities currently employ permanent project managers at various salary levels and the Commission believes this option is not necessarily closed to the PSU. In this matter, as well as complying with government policy relating to the use of temporary staff, the creation of permanent project manager positions may also have proved to be a sound corruption prevention strategy as it is reasonable to assume that the corruption risks associated with contracting increase when the person responsible for the agency’s procurement is him/herself employed on contract.

When it is necessary and appropriate to employ a temporary project manager to manage a contracting process, the NSWFB should consider sourcing project manager contractors from the Department of Commerce’s pre-qualified panel list. It should also ensure that all the corruption risks have been identified, sound measures are in place to manage them and effective detection mechanisms exist to identify any corrupt behaviour at the earliest possible time.

Recruitment and induction of Ms Xuereb

Ms Xuereb was engaged via an unknown employment agency as a temporary contract employee. Within a short period her role was upgraded from a receptionist outside the property area to an administrative assistant in Property Services, involved with orders and

invoices and with access to directors’ officers, tender documentation, and the computer system, including financials. This was without any merit selection process.

The NSWFB was unable to locate the Induction Checklist for Ms Xuereb’s induction, so it is unclear exactly of what this induction comprised. However, the usual induction process for support staff took place on-the-job and appears to have addressed mainly practical matters such as a tour of the area, general office procedures and computer access. The Induction Checklist also required supervisors to “clearly explain the work to be performed and where the employee can seek advice and guidance when required”.⁴ It appears that this requirement of the process was met by informing new staff that policies and procedures were available on the NSWFB’s intranet.

As with Mr Sanhueza and Mr Taylor, this induction did not provide any information about Ms Xuereb’s responsibilities as a public official or the possible consequences of misconduct. Whether this information would have influenced her subsequent behaviour is unknown. However, clear information at induction about the values and behaviour expected of staff reinforced by strong daily leadership by managers could have delivered a strong message that ethical behaviour was expected and misconduct would not be tolerated.

Inadequate capital works budgeting and estimating processes

The previous section discussed the weaknesses in the NSWFB recruitment and selection processes which allowed Mr Sanhueza and Mr Taylor to gain employment without appropriate checks for merit, experience or suitability for public sector employment. This section will explore one of the key factors that motivated them to develop their scheme and also allowed it to succeed. This investigation has shown that once employed by the NSWFB as project managers, Mr Sanhueza and Mr Taylor were able to misuse their positions to access project funds which were in excess of the actual cost of the project. Mr Sanhueza and Mr Taylor identified this opportunity within a month of their employment in the PSU. They quickly devised a scheme to misuse their positions as project managers to take advantage of this opportunity to dishonestly obtain considerable amounts of this money from the NSWFB.

2. *Guidelines for the engagement and use of consultants*, NSW Premier’s Department, July 2004.

3. *Commentary and Guidelines on Temporary Employment (Part 2.4) and Casual employment (Part 2.6) – Public Sector Employment and Management Act 2002*.

4. Policy for inducting administrative and support staff into the NSWFB, undated.

To address inadequacies in NSWFB capital works budgeting and estimating processes, the Commission recommends:

RECOMMENDATION 5

That the NSWFB review its budget allocation process for capital works funding to ensure the process provides an accurate and independent estimate of the cost of a capital works project.

It may sometimes be necessary to allocate an amount of money over the estimated cost of the project in order to cover any contingencies that may arise. This contingency amount should always be separately identifiable from the cost estimate of the project. Accordingly, the Commission recommends:

RECOMMENDATION 6

That where it is determined that a contingency amount should be included in the budget allocation, the two dollar figures for the contingency amount and the estimated cost of the project should be clearly and separately identified in the budget allocation.

The capital works budget allocation process

In general, the NSWFB identifies works valued at over \$600,000 – \$700,000 and involving the construction of new fire stations as major capital works. Minor capital works are valued under this amount and generally relate to renovations or additions to existing stations. Most of the matters that are the subject of this investigation involved minor capital works. The process followed by the NSWFB for estimating costs and allocating budgets for minor capital works at the time of these events is described below.

The NSWFB received a single allocation of funding from Treasury for minor capital works, such as fire station renovations, that were to be undertaken in a financial year. For each proposed minor capital works project a broad scope of works was determined by a PSU Area Manager in conjunction with the operational managers for that area. Scopes of work were initially broad and consisted of, for example, extensions to kitchens or additional engine bays. The cost of the project was estimated by the PSU Area Manager based on the particular type of work required and previous jobs of a similar nature. The costings at this stage were broad estimates only. A list of projects which added up to the total value of the minor capital works budget was

identified and approved by senior operational managers through the Resource Allocation Advisory Committee (RAAC).

A project manager was then allocated to each project, a project code was raised for accounting purposes and the project was reported in the monthly Capital Works Report to the Corporate Executive Group, including budget information. As the initial scope of works referred to above may have been set a few years earlier, it was reviewed and finalised with the project sponsor who was generally the local operational manager. Often the scope had to be adjusted to meet current standard station design principles. An estimate of project costs was then prepared by the project manager to determine if the earlier cost estimates were adequate or additional funding was required. If additional funding was required, it was either secured or the scope was adjusted to meet the current allocated funding.

Tender documentation was then prepared for the scope of works and a tender-to-budget comparison was carried out to ensure that there was sufficient funding for the project. If there were excess funds in the project budget, those funds were either allocated to another project or projects or were used to increase the scope of works of the original project.

There was no effective method of costing a capital works project

As this investigation has shown, Mr Sanhueza and Mr Taylor were able to manipulate this process and obtain for their own benefit \$2.4 million from the \$6 million they were allocated to complete the subject works.

The budget allocation process offered the corrupt project managers their opportunity. It seems that the initial broad estimates of costs for each project which were determined by the PSU Area Managers were quite generous. These figures were supposed to reflect the upper limits of what a project might cost to avoid the need to seek additional funds in future. As Mr Clark said:

[Mr Clark]: *The budget was intended to be a very conservative estimate of what it would cost in order not to have to - have to undertake looking for additional funds further on down the track.*

[Counsel Assisting]: *So on that basis it wasn't intended that it be fully expended?*

[Mr Clark]: No, no. Well, if it was, it was. What the intent of those – what the intent of those figures was, was to ensure that there was sufficient funds to complete – to complete the jobs.

This may have been a reasonable strategy if the process had included a later, effective recosting of the works prior to tender to ensure accountability. However, it appears that the process for providing these later estimates relied heavily on the advice and recommendations of the project managers themselves. They were required to estimate whether the initial budget was adequate or additional funding was required. Although in theory Mr Sanhueza and Mr Taylor only had the authority to recommend tenderers, in practice they controlled the tendering process which should have provided an independent indication of the true, current market cost of the projects.

The RAAC and the managers who approved the tender recommendations made by Mr Sanhueza and Mr Taylor therefore had no independent way of determining the true cost of the work. They falsely believed that an accurate cost had been set by a reliable market testing process guided by their experienced and well-qualified project managers. It seems the RAAC and the PSU managers were satisfied as long as this amount was smaller than the initial estimate set by the Area Managers, which meant the works could come in “within budget”.

As Mr Clark admitted:

.... The budget process or our allocation of funds process has certainly allowed some - some openings for that fraudulent activity, because of the amount of funds that we have allocated to those projects and the method of doing so....

Inadequate internal controls

Mr Sanhueza and Mr Taylor were able to dishonestly obtain a considerable amount of money from the NSWFB over a reasonably extended period of time. The NSWFB did not have adequate internal controls in place to either prevent or detect this activity, as Mr Clark admitted:

[Counsel Assisting]: ... but there was also a failure, I'd suggest to you, of the systems being run, within the Property Services Division [sic], lacked proper controls and proper checking and proper authorisations?

[Mr Clark]: Yes.

Strong internal controls such as an effective corruption risk management process, sound supervision and work review measures, an efficient capital works process compliant with government best practice and effective oversight by the NSWFB's corporate finance and internal audit functions could have prevented this activity or at least quickly detected it.

RECOMMENDATION 7

That the NSWFB conducts a comprehensive corruption risk assessment of the Property Services Unit and ensures it has adequate internal controls in place to manage these risks.

RECOMMENDATION 8

That the NSWFB ensures that its managers have the following skills and knowledge:

- a. understanding of the responsibilities and key accountabilities of their positions;
- b. the skills to meet these responsibilities;
- c. understanding of the relevant government and NSWFB policies pertaining to their work;
- d. understanding of their financial delegations;
- e. ability to supervise their staff effectively, including instituting effective work review and checking mechanisms;
- f. ability to assist staff to maintain appropriate boundaries with contractors.

Strategies to achieve this could include:

- specific and general management training;
- performance management of all staff with supervisory duties to ensure key accountabilities are met and to identify skill deficits.

The PSU's managers did not appear to have a clear understanding of their responsibilities as public sector managers. To better align their conduct with the ethical stance of the NSWFB, the Commission recommends:

RECOMMENDATION 9

That the NSWFB rewrites the position descriptions and performance agreements of the relevant senior managers to clearly define the desired behaviour, allow for measuring of this behaviour and to clarify that consequences will follow if there is a failure to comply.

RECOMMENDATION 10

That the NSWFB reviews its capital works process to ensure consistency with government policy and best practice. Strategies to achieve this could include:

- a. revising the *Property Services Procedures Manual* to ensure it is consistent with the *NSW Government Procurement Policy TPP 04-1*, the *NSW Government Code of Practice for Procurement* and the *NSW Government Tendering Guidelines* (December 2006);
- b. ensuring the *Property Services Procedures Manual* provides sufficient guidance for all staff levels and experience;
- c. engaging only legitimate and capable building contractors by using:
 - Department of Commerce pre-qualified contractors; or
 - developing a NSWFB list of contractors using the Department of Commerce's guidelines⁵;
- d. vetting subcontractors for suitability;
- e. maintaining adequate project documentation;
- f. undertaking adequate checks prior to authorising contracts;
- g. undertaking adequate checks, such as onsite verification of progress by a manager, prior to authorising progress payments.

The project managers had effective control of all aspects of the construction contracting process in the PSU. End to end control of any decision-making process such as contracting poses serious corruption risks for an agency.

The Commission recommends:

RECOMMENDATION 11

That the NSWFB takes steps to reduce the influence of the project manager in the selection of tenderers. Strategies to achieve this could include:

- a. using a tender review panel consisting of three or more persons to review tenders;
- b. including on the tender review panel one person independent of the Property Services Unit but with knowledge and experience in contracting and construction;
- c. allowing the project manager to advise the tender review panel but not to vote for a successful tenderer.

RECOMMENDATION 12

That the work of the Property Services Unit is subject to regular and random internal audit review, including performance audits and audit of use of financial delegation.

RECOMMENDATION 13

That the Finance and Administration Directorate of the NSWFB puts a process in place to check that when a payment is being processed, the amount of the payment requested is within the approving officer's delegation.

Agencies should ensure that staff involved in contracting and procurement maintain appropriate professional relationships with private sector contractors. A key element in maintaining appropriate relationships between staff and contractors is the management of activities or behaviour which could increase the personal or social aspect of staff interactions with contractors, such as gifts and benefits offered by contractors to staff. Agencies should require and assist staff to avoid these interactions as they can reduce the personal distance between staff and contractors and confuse the nature of their relationships.

The Commission recommends:

5. *Prequalification of Service Providers Guidelines*, NSW Dept of Commerce, May 2003.

RECOMMENDATION 14

That the NSWFB revises its policy on gifts and benefits to provide that staff involved in procurement may not accept gifts or benefits of any type, including those of token value, from any current or potential tenderer or contractor.

There was no effective corruption risk management process

The NSWFB had no effective corruption risk management process in place to identify and manage corruption risks in the PSU. A corruption risk assessment of a number of areas in the NSWFB, including the PSU, was undertaken by IAB Services in December 2004. This rated the overall risk of corruption in the PSU as high, but after controls were put in place to minimise the corruption risks, the corruption risk exposure rating was reduced to medium/low. It seems, however, that this process did not impact upon the opportunities for corrupt conduct available to Mr Sanhueza and Mr Taylor. Agencies cannot be confident about their ability to prevent corruption and the appropriateness of their internal controls unless they are fully aware of the extent of the corruption risks they face. They must ensure that corruption risk management processes are comprehensive and effective or else they will serve only to provide agencies with a false sense of security.

The PSU managers had some awareness that there were corruption risks associated with contracting. Both Mr Gibbs and Mr Clark acknowledged that prior to this investigation they had been well aware of the risks inherent in contracting and the expenditure of public funds. Mr Clark said he “certainly understood that that was a risky area”. Mr Gibbs acknowledged that he was aware of a number of corruption risks associated with contracting, for example, fake tenders, collusion and close relationships between contractors and fire brigade staff. However, neither Mr Zrinski, Mr Gibbs nor Mr Clark, as managers responsible for the PSU, took any steps to develop strategies to effectively manage these risks. As Mr Zrinski said:

[Counsel Assisting]: Was there any time that the three of you, or some combination, addressed corruption issues and corruption risks?

[Mr Zrinski]: Not that I can think of.

Mr Clark admitted that he had never ensured that the PSU was assessed for corruption risks:

[Counsel Assisting]: When you started your job, what assessment did you make of what strategies were in place to deal with that identified risk of which you were aware?

[Mr Clark]: I was – I was aware that there was – the procedure manual that was being used.

Q: Did you review that from a corruption point of view?

A: Not from a corruption point of view.

In the absence of a comprehensive assessment of the PSU’s corruption risks, managers had only a vague appreciation of the range and nature of the corruption risks they faced and a misplaced confidence in the robustness of their internal controls to prevent corrupt conduct. As they never took time to assess their corruption risks, they never had occasion to test the effectiveness of their internal controls to manage these risks and to address any weaknesses. As a consequence, these controls proved inadequate when tested in reality by the conduct of Mr Sanhueza and Mr Taylor.

The supervision of the capital works function was inadequate

The PSU is part of the Logistics Support Directorate, one of several directorates that report directly to the Commissioner of the NSWFB. The PSU is responsible for a number of functions including the construction and maintenance of NSWFB properties throughout NSW.

This investigation indicated that Messrs Zrinski, Gibbs and Clark placed a considerable amount of trust in their staff to exercise their functions efficiently. While it is true that there must be a level of trust in any workplace, this must be supported by solid foundations such as rigorous staff selection techniques, strong ethical culture, active supervision, sound leadership and effective checking and review mechanisms. None of these measures was effectively present in the Property Services Unit. Without such measures the trust that Messrs Zrinski, Gibbs and Clark showed to their staff exposed the PSU to the risk of corruption and gave Mr Sanhueza and Mr Taylor confidence that their scheme would not be discovered.

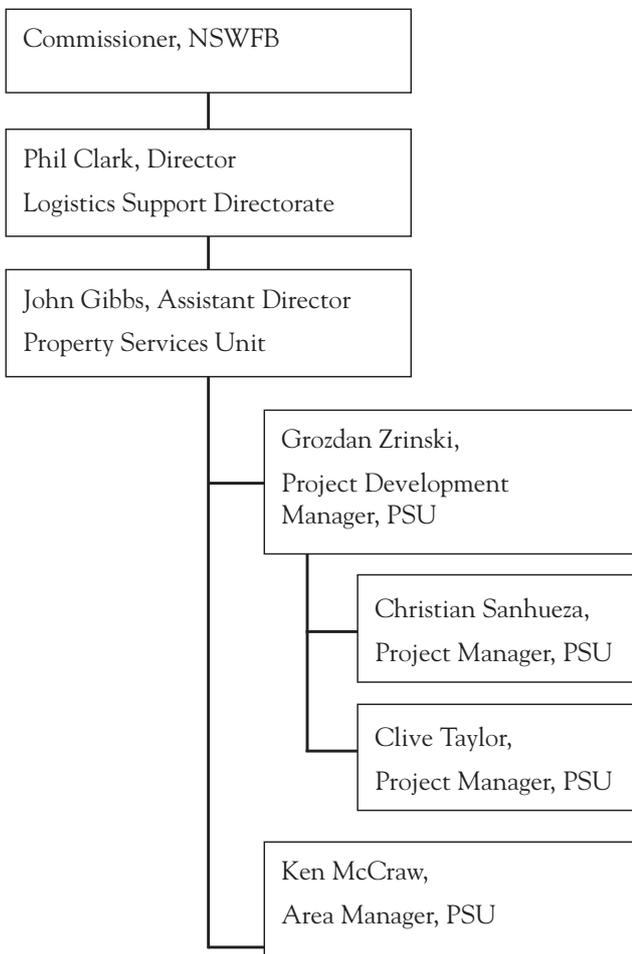
Supervision of Mr Sanhueza and Mr Taylor

As Project Development Manager, Mr Zrinski was directly responsible for the management of the PSU’s construction function. Mr Sanhueza and Mr Taylor were responsible for all aspects of the construction projects they managed, including tendering, contract management and quality control. Mr Zrinski was their direct supervisor, although Mr McCraw supervised some of their projects. However, neither Mr Zrinski nor Mr McCraw had any effective measures in place to adequately supervise their activities or review their work.

Mr Zrinski gave evidence that he supervised the project managers by interacting with them daily and holding monthly group meetings. He was unable to think of anything he did to supervise Mr Sanhueza and Mr Taylor that didn’t rely on their word or on trust. Mr Zrinski took no proactive steps to inform himself about the quality and probity of the project managers’ work. His understanding of their work was based almost solely on their own reports. As he told the Commission:

No, no, but you – you trust people on – on a face value and – and when – when you deal with them you trust them to, what appears to be right.

Figure 1: Reporting lines in the Property Services Unit



Mr Zrinski told the Commission that the most significant possible cause of what had happened was the “trusting of people that did it”. Mr Gibbs also trusted the project managers to operate properly. He told the Commission that he “[a]bsolutely” relied on trust in his dealings with Mr Sanhueza and Mr Taylor.

Mr Sanhueza and Mr Taylor were not required to submit all their recommendations for successful tenderers or progress payments through Mr Zrinski. They could also approach other managers for approval to proceed. This made it even easier to conceal their activities. Along with Mr Zrinski, Messrs McCraw, Gibbs and Clark all approved one or more of Mr Sanhueza’s and Mr Taylor’s recommendations in relation to selected tenderers or progress payments. Apart from questioning Mr Sanhueza and Mr Taylor, none of these managers conducted any objective checks on any aspect of these recommendations before authorising them.

Mr Zrinski never met with any of the representatives from the companies awarded the tenders. He could not recall ever having conducted any spot checks in relation to a tender. Mr Zrinski told the Commission that he wouldn’t know whether companies that supposedly had been invited to tender, had in fact been invited. Mr Zrinski had the authority to override the recommendations of project managers but he couldn’t nominate any instance when he had overridden a project manager’s recommendation for a particular tenderer. He did not require the project managers to report on the experience, capacity or genuineness of a tenderer. He only looked at the costs and the design when it was being developed and checked the expenditure.

[Counsel Assisting]: How did you satisfy yourself, in relation to Finley, that Mollix was the best one to do the job?

[Mr Zrinski]: Obviously, from the recommendation.

Q: That’s all you looked at, isn’t it?

A: Sure.

Q: You said, “Christian’s recommended it; I just sign it off”. That’s the reality, isn’t it?

A: In summary, yes, but I did look at the actually [sic] documents behind the recommendation. Did I check that they had, yeah, ABN numbers and so forth? No, I didn’t.

Mr McCraw gave similar evidence in relation to the recommendations made by Mr Sanhueza or Mr Taylor that he approved. In relation to a \$90,000 progress payment for the Greenacre project he stated:

[Counsel Assisting]: *Now, what did you do prior to signing this and approving it for payment?*

[Mr McCraw]: *I would have probably asked some questions financially in terms of these – the figures that – you know, this is the – is the second appraisal that's claimed and just – just verified that that was the actual figures within the budget allocation and that the – the progress claim reflected what progress claim had been in to make sure that the – the remaining funds or the outstanding balance was – was correct.*

Q: *What did you do to satisfy yourself that the work had been done?*

A: *Well, I – I would have obviously asked the question but also on the form it states that work has been done and it's signed off by the project officer.*

Q: *What did you do –?*

A: *Personally?*

Q: *Yes, to satisfy your –?*

A: *I would have said if there'd been any issues, that sort of thing, are you comfortable that the work is being committed [sic] but that's as far as it would have been. It wouldn't have been in-depth interrogation.*

Q: *That the work had been done and it was to the appropriate quality level, was that a matter that you would have addressed as well?*

A: *Quite possibly have asked the question but also I would have also relied on the integrity of the project officer to make that assessment, being mindful of the fact that I wasn't normally dealing with this – with the project officer and there – and he had been working in the*

area for some time therefore I felt there was a certain acceptance of integrity.

Mr Gibbs also approved a number of tender recommendations (for example, the Berowra project for over \$324,000). He also gave evidence that he made no independent enquiries or required any information other than what was put to him by the project managers.

[Counsel Assisting]: *Why were you signing this one?*

[Mr Gibbs]: *I don't recall. I don't recall.*

Q: *But you then take responsibility by signing it?*

A: *Yes, I take responsibility for my signature, yes.*

Q: *Well it isn't just your signature, is it? It's the authorisation. You are the person acting on behalf of the Fire Brigades –*

A: *Yes.*

Q: *– to enter into this contract?*

A: *Yes.*

Q: *And with the new company you've never heard of, but you made no enquiries?*

A: *That's correct.*

Q: *You relied on what Mr Sanhueza may have told you about it?*

A: *Yes.*

Mr Clark also approved some of Mr Sanhueza's and Mr Taylor's recommendations in relation to tenders, including approving the successful tender for the \$1 million West Wallsend project, without making any independent checks of his own. As he stated:

[Counsel Assisting]: *Given that it was a million-dollar job and it was the biggest one, did you consider that you should take some steps to independently check on the builder?*

[Mr Clark]: *Personally, no. I would have expected that that would have been completed as part of the process and that at least a – a builder who was capable of carrying out the tasks would have been recommended.*

Q: But that was an assumption?

A: It was.

Q: There was no checking to confirm your view?

A: I didn't carry out any checks, no.

Mr Gibbs's supervision of Grozdan Zrinski and the PSU

Mr Gibbs was responsible for the overall management of the PSU. One of the key accountabilities outlined in his position description as Manager Property Services required that he:

*Develop and manage the overall Statewide activities of the Property Services Unit so that it provides cost-effective and efficient property asset management and strategic property planning services which facilitate Fire Brigades operations throughout the State.*⁶

Mr Gibbs should have taken effective action to ensure the PSU was properly supervised and managed consistently with these responsibilities. However, he did not take adequate steps to review Mr Zrinski's supervision of the PSU or to ensure the construction function was operating appropriately. He gave evidence that he assumed Mr Zrinski would have conducted random checks in relation to the recommended tenderers. However, he never suggested to Mr Zrinski that he should do so or found out whether he did so.

[Counsel Assisting]: *Did you take it upon yourself to do a random check? Say, ring, in this instance, a telephone number on the tender from Carney [Group Pty Ltd] and have a chat –*

[Mr Gibbs]: *No, I did not.*

Q: *– to the person?*

A: *No.*

Q: *Did you ever do anything like that?*

A: *No.*

Q: *Was it your view that Mr Zrinski should do something like that?*

A: *But that would've been part of the process, yes, if not on every case, certainly on a – on a sort of sporadic type.*

Q: *Are you surprised to learn that never happened?*

A: *That it never happened, yes.*

Mr Gibbs said he supervised Mr Zrinski's work by reviewing the monthly reports, by visiting job sites himself and speaking to project managers and site sponsors. He encouraged Mr Zrinski to visit work sites and to hold regular meetings with the project staff. Although he admitted in evidence that he had concerns about the adequacy of Mr Zrinski's supervision of Mr Sanhueza and Mr Taylor, it appears these concerns related only to the frequency of Mr Zrinski's site visits. He stated that he "put it to" Mr Zrinski "a number of times" that he should conduct more frequent site inspections. However, he said that this was the only action he took to improve Mr Zrinski's supervisory and checking practices.

Mr Gibbs admitted that, as Mr Zrinski's supervisor, he should have done more to ensure that Mr Zrinski was carrying out his duties in the manner expected.

[Commissioner]: *... But could I ask this question, with some hindsight now, and I appreciate it is hindsight, what do you think you should have been instructing Mr Zrinski to do in the discharge of his duties and report to you that he had done it to minimise the possibility of the sort of corruption we've seen here?*

[Mr Gibbs]: *Well, for a start, running - running full checks on all the tenderers.*

Q: *That's one?*

A: *And in fact contacting some of the tenders – tenderers to ensure that they were in fact legal tenders – honest and appropriate tenderers.*

Q: *And bear in mind what you said was the policy –?*

A: *Yes.*

Q: *– you would have expected him to have gone out and seen some evidence that each one of the head contractors was doing something on the site?*

A: *M'mm.*

6. NSWFB position description, Manager Property Services, June 1997.

Another of the key accountabilities in Mr Gibbs's position description was to:

Manage, guide, develop and monitor the performance of Property Unit staff including the provision of training and development programmes appropriate to Property Development Asset Management, Construction, Business Management and customer service.

However, it does not appear that Mr Gibbs met this accountability. For example, although Mr Zrinski was responsible for recruiting the contracted project managers, he had never had any training on interviewing or selecting candidates or any sort of human resource management training. The induction training provided to Mr Sanhueza, Mr Taylor and Ms Xuereb provided an inadequate introduction to their responsibilities as public officials in the NSWFB. It also appears there was no regular training for staff in relevant areas such as government procurement policy and the NSWFB Code of Conduct.

Mr Clark's supervision of John Gibbs and the PSU

Mr Clark had a responsibility to "manage the NSWFB capital works program for infrastructure procurement and to manage the directorate's budget to obtain optimum value, meet procurement policy and not exceed budget".⁷ He should have taken steps to ensure the control systems in place in the PSU were adequate, consistently with this responsibility.

Mr Clark agreed that the control systems in place in the PSU were inadequate:

[Counsel Assisting]: I'd suggest to you, that it's the lack of systems within the Property Services Division [sic] which permitted the frauds, if I can call it that, or the arrangement to occur, would you agree?

[Mr Clark]: There were systems in place, but they certainly have proven to be not as effective as they should have been.

However, like Mr Zrinski and Mr Gibbs, Mr Clark trusted that certain things were happening in his division which in fact were not. He told the Commission that a number of the practices undertaken in the PSU were not as he would have expected. For example, he noted that he was surprised that the interview and checking process for contracted project

managers was not the same as that for permanent public sector positions. He stated that he "would have expected that there would have been some form of position description", or "duty statement" for the positions. He also gave evidence that he "would've expected that there would be a greater degree of diligence than what there was" in relation to the level of checking and supervision within the PSU. In terms of the due diligence that should have occurred in relation to successful tenderers, Mr Clark advised that he thought there should have been "at least" checks of references, company credentials, financial capability to undertake the work and references from previous jobs.

Mr Clark appears to have been surprised and disappointed that these types of measures were not in place in the PSU. However, since his appointment to the position of Director on 26 September 2005, he had taken no action to discover exactly how the project managers or the work of the PSU were supervised and checked.

Performance management

The PSU staff were not subject to a performance management process. Performance management is a useful way for managers to ensure that staff understand their roles and responsibilities and the agency's expectations. It also offers an opportunity for managers to identify any problem issues or attitudes, or non-compliance with required work practices. Used well, regular performance reviews of Messrs Zrinski, Gibbs and Clark by their respective managers should have been a useful tool to ensure they were meeting their key accountabilities. It should also have helped to identify any learning and development needs, particularly in relation to supervision and management skills.

Weaknesses in the construction procurement process

Sound and well-implemented policies and procedures reduce the opportunity for corrupt conduct and are an important aspect of good internal control. However, the PSU had developed a number of poor practices in relation to construction procurement, which are discussed below. These practices, instead of serving to prevent or detect Mr Sanhueza's and Mr Taylor's corrupt activity, instead assisted them to undertake and hide their scheme.

7. NSWFB Position Description, Director Logistics Support, April 2005, p. 3.

It also appears that the PSU managers did not maintain a current understanding of policy on construction procurement. For example, the Department of Commerce issued a new procurement policy effective from 30 June 2006.⁸ This was a key policy change for the PSU as it raised the threshold under which public sector agencies could manage their own construction procurement from \$500,000 to \$1 million. However, Mr Zrinski and Mr Gibbs were only vaguely aware of this policy change and mistakenly believed that it came into effect in January 2007:

[Counsel Assisting]: If there was such an important change, raising the 500,000 to a million, the Department of Commerce's involvement, that would be important for you to know?

[Mr Zrinski]: Yes, it was – I wasn't totally unaware of it, but I wasn't aware of the starting date.

Given the PSU managers' vague awareness of government procurement policy, it is not surprising that construction procurement in the PSU was not supported by a comprehensive procedures manual consistent with the NSW Government Procurement Policy⁹. The PSU's procurement procedures manual, the *Property Services Procedures Manual*, provided insufficient guidance on most aspects of the process and was completely silent on a number of important stages, such as tender evaluation. In addition to a flowchart and copies of the relevant forms, the capital works section of the *Manual* contained only three pages of text about the entire procurement process from initiation of a project to handover of the completed works. Comprehensive written procedures provide a standard against which an agency's practices can be periodically tested. The *Property Services Procedures Manual* was not adequate to this task.

The "pre-qualified" list of tenderers

The PSU did not select its building contractors by an open call to tender. Instead, the project manager for a project would invite three contractors from the PSU's list of contractors to tender for the work. The PSU maintained a list of contractors for both minor capital and maintenance projects. Contractors were added to the list if they had been awarded previous NSWFB construction contracts or because they had expressed an interest in future contracts. Mr Zrinski also encouraged

project managers to recommend contractors for the list. Regardless of how they came to be on the list, these companies were not subjected to any type of assessment against a set of required standards.

As Mr Zrinski said:

[Counsel Assisting]: How did you ascertain that in terms of the new companies brought in that they could deliver the same quality as the old companies that were being excluded?

[Mr Zrinski]: I relied on the recommendation of the project managers. Normally you would, you know, bring people with you that worked well and delivered right results so therefore I assumed that when they brought them in they had experience with them from before.

Q: That was an assumption you never tested?

A: No.

Q: And you now understand it was completely false assumption?

A: I do. I do.

Q: But it was one you relied quite heavily on?

A: Yes, it's the trust factor.

Mr Gibbs also encouraged the use of new companies, however he took no steps to ensure there was a process in place to test their capability and suitability. He assumed that Mr Zrinski would make enquiries about new companies the PSU had never dealt with before. But he couldn't recall specifically discussing this with Mr Zrinski or instructing him to ensure he was doing it.

[Counsel Assisting]: Did you ever discuss that with him?

[Mr Gibbs]: Corridor conferences, quite probably, but I can't recall specifically.

Q: Did you ever give him any instruction to ensure that he was doing it?

A: I don't recall.

Q: Does that mean, no?

8. Construction Procurement valued to \$1 million, NSW Department of Commerce, June 2006.

9. NSW Government Procurement Policy, Policy and Guidelines Paper, Office of Financial Management, TPP 04-1, July 2004.

A: *No. Can I remember a specific instance? No, I can't.*

The Department of Commerce has prepared guidelines to assist agencies to develop prequalified lists of service providers for construction and related works.¹⁰ However, neither Mr Zrinski nor Mr Gibbs was aware of these guidelines. Commerce also has lists of pre-approved contractors that the PSU could have accessed. Mr Zrinski said he was aware of these lists and had instructed the project managers to first use contractors from that list before sourcing local contractors. However, he never checked whether they had done so.

The use of contractors either from Commerce's pre-qualified list or from a properly assessed PSU list would have been an effective impediment to Mr Sanhueza's and Mr Taylor's activities. However, without this internal control, it was simple for Mr Sanhueza and Mr Taylor to put forward their fake companies to the PSU as legitimate tenderers.

Inadequate tender evaluation process

The PSU's *Property Services Procedures Manual* did not stipulate the process that project managers should follow when reviewing tenders. It simply stated that "Tender documentation is prepared and sent out to select tenderers" and that "Tenders are received and assessed". It did not provide any guidance about how tenders should be assessed. The absence of a proper tender evaluation process allowed Mr Sanhueza and Mr Taylor to select and recommend the tenderer of their choice without having to document and defend their selection process.

The *NSW Government Procurement Policy* includes a 10-stage procurement process. Stage 6 includes the completion and approval of a tender evaluation plan. Stage 7 includes the preparation of a tender evaluation and recommendation report and a post-tender review report. The PSU did not require staff to evaluate tenders in any formal way consistently with this policy.

It is easier for staff to commit corrupt conduct in the absence of open and transparent processes. As there was no required tender evaluation process both Mr Sanhueza and Mr Taylor had carte blanche to recommend that companies which Mr Sanhueza controlled be awarded the contracts. However, they would have found it more difficult to manipulate or circumvent a proper tender evaluation process by a tender review panel which tested tenders against

pre-determined criteria and documented its decision-making process to enable review. This internal control could have been further strengthened by the addition of an independent member to the tender review panel and by allowing the project managers to sit on the review panel only in an advisory capacity.

No contracts

According to Mr Zrinski there was a long established practice in the PSU of having no written contracts for construction projects:

[Counsel Assisting]: There was a practice of having no written contract apart from the purchase order with the conditions on the back of it?

[Mr Zrinski]: Correct.

Q: Why was that?

A: It was there before I joined the brigade so I don't know why it was.

The NSWFB advised the Commission that the PSU would "try to get contractors to sign, eg, a GC21 contract or a NSWFB modified version of Dept of Commerce minor contract or master builders contract". However, in many cases the 'contract' consisted only of the Request for Tender documents, the returnable schedules submitted by the contractor (if required) and a purchase order. Not all tenders required a returnable schedule. The PSU estimated that only around a third of the projects worked on by Mr Sanhueza and Mr Taylor required returnable schedules to be submitted.

When there is no formal written contract and the purchase order is taken as the contract, The NSWFB can be left in a situation where they have no signature from the contractor acknowledging the extent of the relationship with the NSWFB. Entering into a formal contract with a contractor may have led to further enquiries by the PSU into the bona fides of the companies as well as input by the NSWFB's legal section. This could have provided useful information that may have assisted the NSWFB to detect the activities of Mr Sanhueza and Mr Taylor.

10. *Prequalification of Service Providers Guidelines*, NSW Dept of Commerce, May 2003.

Subcontractors

The PSU did not require its contractors to provide it with details of any subcontractors undertaking the work. Mr Gibbs told the Commission:

... That's why you get a builder to do it and you don't become the builder yourself and subcontract out.

Indeed, he had few problems with a successful tenderer subcontracting out an entire project to another building company as he didn't believe the NSWFB could legally prevent them from doing so and if they did do so, the PSU would soon discover it. Unfortunately, Mr Gibbs' assumption was erroneous and Mr Sanhueza's and Mr Taylor's subcontracting was not so easily uncovered.

NSW Government procurement policy requires that agencies should ensure that subcontractors "are aware of the ethical standards appropriate for dealings with the agency and by the agency"¹¹. Subcontractors are required to comply with the requirements of the *Code of Practice for NSW Government Procurement* and *Code of Tendering for NSW Government Procurement*, including "the ethical principles, workplace practices, continuous improvement and best practice, provision of quality products and services at the most competitive price consistent with value for money, and provision of good client service".¹² It is difficult to imagine how the PSU could ensure subcontractor awareness of the relevant ethical standards and compliance with the relevant Codes if it was unaware of the existence of any subcontractors.

Agencies that contract out important functions have a right and a responsibility to inform themselves about who is actually carrying out the contracted work. Where a successful tenderer subcontracts out parts of a government contract, the agency should ensure it is aware of this and that the subcontractor is a suitable, reliable and capable operator.

Mr Sanhueza and Mr Taylor would have been aware that Mr Zrinski and Mr Gibbs would not find the presence on site of various unknown subcontractors unusual. The PSU's practice of not requiring details about subcontractors would have given them confidence that their own subcontractors would not be closely questioned by Mr Zrinski or Mr Gibbs.

Poor record-keeping practices

The NSWFB Code of Conduct noted that staff must "maintain adequate documentation to support any decisions taken". However, record-keeping practices in the PSU were well below this standard.

There was a large variation between project files reviewed in this investigation and a lack of consistency about which documents were maintained on file and whether documents requiring a signature were indeed signed. A Commission review of a number of relevant project files showed that none of the files reviewed (including some maintained by project managers other than Mr Sanhueza and Mr Taylor) contained all the key documents that should be on file, such as copies of tender documents, tender evaluation plans, tender evaluation reports and status reports.

Mr Zrinski stated that he encouraged his project managers to maintain their files in a particular fashion but says most of them were "sloppy with paperwork". However, he didn't check the project files to ensure they were being adequately maintained and he was not aware before this investigation that there was material missing from some of the files:

[Counsel Assisting]: There seems to be a large variation between the project files that I've been through and there seems to be a complete lack of consistency about documents kept, signed documents, et cetera and a lot of difficulty in finding some of the documents. When did you –?

[Mr Zrinski]: It was only after the - the - the investigation started that we – we learned that – that a lot of the stuff was missing.

Q: When did you ever review the actual files of all these projects?

A: I don't consider myself – I – I trusted the project managers to – I didn't need to review the files. I just needed to obtain the information occasionally from the files but basically I relied on them to – there's a reasonably common practice of how you maintain your files in construction and so – did I check it? No.

11. NSW Government Procurement Implementation Guidelines, 1999, p. 18.

12. NSW Government Procurement Implementation Guidelines, 1999, p. 16.

Poor record-keeping practices would have made it more difficult for Messrs Zrinski, McCraw, Gibbs or Clark to adequately inform themselves about a tender process or the progress of a project before approving a purchase order. It would also have made it easier for Mr Sanhueza and Mr Taylor to disguise the real nature of their activities.

Poor record-keeping and document control practices may also have assisted Ms Xuereb to access and take documents from various areas of the PSU without being detected.

Financial delegation

Mr Zrinski had a delegation to commit and incur expenditure (for example, by raising a purchase order) of up to \$60,000 on construction works. Mr McCraw had a similar delegation of up to \$50,000, and Mr Gibbs and Mr Clark up to \$150,000 and \$250,000 respectively. However, all four had approved numerous purchase orders for initial contracts recommended to them by Mr Sanhueza and Mr Taylor that exceeded these amounts.

For example, Mr Zrinski approved an initial purchase order for \$435,000 for a capital works project. As was discussed above, there was no formal contract, so this purchase order was, in effect, the NSWFB's contract with the successful tenderer for this particular project. Similarly, Mr Gibbs approved the initial purchase order for the Berowra station for over \$324,000. Mr Clark approved the over \$1 million West Wallsend/Holmesville project.

There was a general misunderstanding among these managers of the proper exercise and limits of their financial delegations. In relation to projects under \$1 million, where ministerial approval had been received to commence the project or funding was specifically identified in a budget allocation, they all believed that they had the authority to commit or expend the funds. The appropriate action would have been for individual purchase orders to be raised for each component of the costs associated with each project which would be authorised by an appropriate financial delegate. They were unable to identify where this misinformation had come from, although Mr Zrinski and Mr Gibbs thought they may have received the information from the finance section at some time in the past. As Mr Zrinski said:

[Counsel Assisting]: Who decided that that was an appropriate way to authorise the expenditure of public funds?

[Mr Zrinski]: That was just the practice that we – we were basically told.

Q: Who told you to do it?

A: We in first instance, I guess it was referred to Mr Gibbs, but also I believe that we check with the people higher up in the – in the finance section.

It appears that this practice in the PSU for managers to approve payments for construction projects well outside their financial delegation had continued for some time. Yet this was never identified by the Finance and Administration Directorate of the NSWFB.

[Counsel Assisting]: ... So that there were no internal controls in relation to how finance reviewed documents before they made the payment that occurred that somebody said to you, "Mr Clark, you can't spend a million dollars"?

[Mr Clark]: I'm not aware of those internal controls but I – as I said I certainly wasn't told that that was – as a result of processing this document, that that was not acceptable. They didn't pick it up and advise me.

The PSU managers and Mr Clark all misunderstood and misused their delegations. This was not identified by the Finance and Administration Directorate of the NSWFB. As a result, no manager outside the PSU ever had occasion to review one of Mr Sanhueza's or Mr Taylor's tender recommendations. Consequently, a potentially important control was not available. It is possible that a manager independent of the PSU culture might have required Mr Sanhueza and Mr Taylor to provide more evidence in support of their recommendations than Messrs Zrinski, McCraw, Gibbs or Clark did, which might have prevented some of their activity or at least led to an earlier detection.

Internal audit

The NSWFB's internal audit function is contracted out to IAB Services. The internal audit committee is called the Risk and Compliance Committee. It has an independent chairperson and is comprised of the Deputy Commissioner and a number of other senior staff including Mr Clark. Committee meetings are also attended by representatives of the Audit Office of NSW, IAB Services and the Office of Emergency Services.

As well as there being no regular supervision or checking of the project managers' work by their immediate supervisors, it seems the NSWFB did not

subject the capital works function to any review or audit process. Mr Gibbs gave evidence that he took no action to introduce any audit process for functions under his control.

[Counsel Assisting]: Were you ever asked to consider a more broad audit process for those matters under your control?

[Mr Gibbs]: Not that I recall, no.

Q: Was it ever a matter you turned your mind to, that is that there should be some thorough audit of your section to make sure that it's always operating in the manner in which it would make you comfortable and let you sleep at night?

A: Not other than as a result of the - the last interviews with Mr Sanhueza and Mr Taylor. I mean it - it no doubt crossed my mind at some point, did I do anything about it in any formal sense, no.

Internal audit is an important internal control which can identify indicators of corrupt conduct. For example, an audit of any of Mr Sanhueza's or Mr Taylor's projects should, at the very least, have identified procedural discrepancies such as their failure to use the tender box, incomplete project files and unsigned tender documents which should have led to further enquiries. It should also have identified Messrs Zrinski, McCraw, Gibbs and Clark's misuse of their delegations and hopefully would have raised questions about the credentials of the untested companies being awarded the contracts.

The absence of any effective internal or external review of their work gave Mr Sanhueza and Mr Taylor confidence that their activities would not be detected and allowed their scheme to continue unhindered.

Gifts

Units such as the PSU that frequently engage in contracting and procurement should ensure that staff maintain appropriate professional relationships with private sector contractors. Maintaining appropriate boundaries on these working relationships is an important internal control for the contracting function. A key element in maintaining these boundaries is the management of gifts and benefits offered by contractors to staff. It is essential that there are clear policies to guide staff action and that managers provide suitable training and support, and model the desired staff behaviour.

The evidence presented to the Commission in this matter from a range of witnesses both from within and outside the NSWFB indicated a lax culture in the PSU in relation to gifts and relationships with contractors. The NSWFB policy on gifts and benefits was confusing and inconsistent. Moreover, the PSU staff and managers displayed a complete lack of understanding of the appropriate boundaries that should be maintained in relationships with contractors and the corruption risks inherent in stepping outside of the appropriate boundaries. This sent inappropriate messages about acceptable behaviour.

Mr Sanhueza gave evidence that every Christmas one contractor would provide a "whole heap of pizzas" for the PSU staff, another took some staff to dinner, while yet another contractor built a barbeque for a staff member without charge. Mr Zrinski did not refute these allegations. He stated that the pizza incident could "possibly" have occurred, although he couldn't recall. In relation to staff being taken out to dinner by contractors, he said that he wasn't aware of that but wasn't "taken out regularly or virtually ever" by contractors himself, which would appear to indicate that he had been taken out on at least some occasions.

Mr Guirguis gave regular and substantial gifts to PSU staff over several years. He gave evidence that, since 2002, he had spent around "five or six hundred dollars" every Christmas on gifts to the PSU staff. These gifts included bottles of whisky, wine or hampers to "virtually everyone there, and including the secretarial staff". This included the project managers and area managers and Messrs Zrinski, Gibbs and McCraw. Mr Guirguis also arranged and paid for a weekday golf day at Macquarie Links private golf course at a cost of approximately \$4,000, attended by around a dozen of the PSU staff. He told the Commission that it was "literally a corporate golf day, where there was 18 rounds of golf, lunch afterwards and I provided some - just novelty trophies at the end of it". Mr Guirguis stated that none of the PSU staff or managers ever told him they should not accept a gift from a contractor, "No, quite the opposite; ... people thanked me for them".

Mr Zrinski admitted that he had accepted regular Christmas gifts from Mr Guirguis. He was also aware of Mr Guirguis's golf day but did not attend it because the weather was inclement:

[Counsel Assisting]: You intended to except for the weather on the day?

[Mr Zrinski]: Yes.

Q: That's correct, isn't it?

A: Correct.

Q: Had you taken the day off or were you intending to take the day off?

A: I took a flexiday off, yes, for that day.

Just as Mr Zrinski “didn’t see it as an issue” for himself, he also didn’t think it was inappropriate for his staff to attend the golf day:

[Counsel Assisting]: Did you think it was appropriate for your staff to attend golf day? Organised by a contractor?

[Mr Zrinski]: I – yes, I didn’t pay much attention to it in the – in the sense.

Mr Gibbs also accepted bottles of scotch from Mr Guirguis and was aware of the golf day. He said that he declined to attend because he had decision-making authority in relation to contractors:

[Mr Gibbs]: I didn’t attend. I declined the – the offer because I didn’t – I believed that I was in a position of – of – of high decision of - a high position of decision making and I just decided I wasn’t going to – I don’t go to those.

Although he felt it was inappropriate to attend the golf day himself, like Mr Zrinski, Mr Gibbs had no concerns about his staff attending:

[Counsel Assisting]: Did you think it was appropriate for your staff to go to this golf day?

[Mr Gibbs]: My expectation at that point would have been that the golf day would have been less than \$100. Again, on the basis of building relationships, they weren’t getting paid for the - for the time that they – they were off.

Q: So you thought that it was appropriate in those circumstances?

A: Yes, that was my expectation, yes.

Mr Gibbs’s reference to “less than \$100” came from the NSWFB Gifts and Personal Benefits Policy¹³ which stated that:

As a general rule, employees should not solicit or accept gifts and benefits of more than nominal value, which may be defined as approximately \$100 Aust.

This policy could be confusing to staff as it seems to convey that staff may accept gifts of nominal value, which is defined as under \$100. However, the policy also refers to nominal value gifts as being “cheap marketing trinkets, corporate mementos, inexpensive pens and pencils, notepads and key rings”.

The policy also repeated the following paragraphs from the Gifts section of the NSWFB Code of Conduct:

No public official should accept a gift or personal benefit if it could be seen by the public, knowing the full facts, as intended or likely to cause the official to do his or her job in a particular way, or deviate from the proper course of duty.

Token gifts may be accepted in certain circumstances approved by the Commissioner provided there is no possibility that the recipient might be, or might appear to be, compromised in the process. In general, gifts which may be seen as an inducement or reward which may place an official under obligation must be refused.

However, these provisions would seem to be in conflict with the \$100 cut-off. As Mr Clark stated in evidence, “there is [sic] a number of inconsistencies between those policies across the board”.

Although Mr Zrinski and Mr Gibbs believed that Mr Guirguis’s Christmas gifts and the golf day were simply innocuous presents, Mr Guirguis gave evidence that his gift-giving had a personal motive. He stated clearly that he gave PSU staff gifts to build and develop his relationships with them in order to obtain future work.

[Counsel for the NSWFB]: So in the life of you giving Christmas gifts, there’s about \$6,000 all up?

[Mr Guirguis]: Including the golf day, yes.

Q: That was solely for the purpose of ensuring as best you could for continuity of work with the Fire Brigades?

A: I would say it was for building relationships and maintaining them and as a result of that, as a natural result of that, yes, more work would arise.

13. Gifts and Personal Benefits Policy, NSWFB, May 2001.

Q: *There is no other explanation is there, other than that you wanted to ensure as best you could a continuity of work?*

A: Yes.

Mr Guirguis's relationship-building strategy would seem to have worked. He gave evidence to the Commission that in 1999–2000 the NSWFB provided around 10% to 15% of his total business. This increased to around 75% to 80% after Mr Sanhueza and Mr Taylor started working at the PSU. Since their departure, the proportion of Mr Guirguis's business filled by NSWFB contracts has further increased to around 85%. This includes a contract worth over half a million dollars to provide condition reports on fire stations.

It is important that relationships between public sector staff involved in the contracting process and contractors themselves remain professional. Public officials should be on cordial terms with contractors in order to get the job done but should maintain a personal distance. They should always remember that the contractor's priorities (profit and further contracts) are of necessity different from their own (best value and public duty). Managers should not allow staff to engage in behaviour or activities which increase the personal or social aspect of their interactions with contractors, for example accepting gifts (of whatever value) from contractors, lunching with them, attending Christmas parties and corporate events that are purely social in nature. This sort of activity between staff and contractors creates an environment in which the risk of collusion and bribery is increased.

Conclusion

Project managers played a key role in the NSWFB's capital works process. As project managers, Mr Sanhueza and Mr Taylor were responsible for administering all aspects of the capital works process including tendering, contract management and quality control. They selected the contractors from whom tenders would be requested, sent out the Request For Tender documents, and recommended a successful tenderer. They also made recommendations for the approval of progress payments as each stage of a project was completed. As we have seen, their recommendations were always approved by management. They also had input into the final project cost estimates to determine if additional funding was required. However, despite the importance of the project manager role, the NSWFB filled it with contractors and did not ensure that appropriate educational, employment and personal background checks had been conducted.

Mr Sanhueza and Mr Taylor were able to dishonestly obtain a considerable amount of public money from the NSWFB. The NSWFB did not have adequate internal controls in place to either prevent or detect such activity. The PSU did not appreciate the corruption risks it faced and managers had misplaced faith in the efficacy of their existing systems. Mr Sanhueza and Mr Taylor were poorly supervised and their work was not checked or reviewed in any meaningful way. The inadequacies in the PSU's construction procurement process assisted Mr Sanhueza and Mr Taylor in their activity and the NSWFB's internal audit and financial services divisions failed to provide a level of external review that may have helped the NSWFB uncover the scheme. Ms Xuereb misused her position to assist them. She was able to take advantage of the generally inadequate record-keeping practices to provide them with valuable confidential information after they had left the NSWFB.

The level of authority, discretion and 'end-to-end' control enjoyed by Mr Sanhueza and Mr Taylor, untempered by any internal controls capable of reducing their opportunity or preventing or detecting their corrupt activity, delivered effective control of the construction procurement process into their willing hands and assisted them to carry out and to hide their corrupt activity.

Appendix 1: The role of the Commission

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

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

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

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

The role of the Commission is to act as an agent for changing the situation which has been revealed. Its work involves identifying and bringing to attention conduct which is corrupt. Having done so, or better still in the course of so doing, the Commission can prompt the relevant public authority to recognise the need for reform or change, and then assist that public authority

(and others with similar vulnerabilities) to bring about the necessary changes or reforms in procedures and systems, and, importantly, promote an ethical culture, an ethos of probity.

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

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

Appendix 2: Corrupt conduct defined and the relevant standard of proof

Corrupt conduct is defined in section 7 of the ICAC Act as any conduct which falls within the description of corrupt conduct in either or both sections 8(1) or 8(2) and which is not excluded by section 9 of the ICAC Act. An examination of conduct to determine whether or not it is corrupt thus involves a consideration of two separate sections of the ICAC Act.

The first (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.*

Section 8(2) specifies conduct, including the conduct of any person (whether or not a public official), that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority, and which, in addition, could involve a number of specific offences which are set out in that subsection.

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

- a. *a criminal offence, or*
- b. *a disciplinary offence, or*
- c. *reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or*

- d. *in the case of conduct of a Minister of the Crown or a Member of a House of Parliament – a substantial breach of an applicable code of conduct.*

Three steps are involved in determining whether or not corrupt conduct has occurred in a particular matter. The first step is to make findings of relevant facts. The second is to determine whether the conduct, which has been found as a matter of fact, comes within the terms of sections 8(1) or 8(2) of the ICAC Act. The third and final step is to determine whether the conduct also satisfies the requirements of section 9 of the ICAC Act.

Section 13(3A) of the ICAC Act provides that the Commission may make a finding that a person has engaged or is engaged in corrupt conduct of a kind described in paragraphs (a), (b), (c), or (d) of section 9(1) only if satisfied that a person has engaged or is engaging in conduct that constitutes or involves an offence or thing of the kind described in that paragraph.

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 is no right of appeal against findings of fact made by the Commission nor, excluding error of law relating to jurisdiction or procedural fairness, is there any appeal against a determination that a person has engaged in corrupt conduct. This situation highlights the need to exercise care in making findings of corrupt conduct.

In Australia there are only two standards of proof: one relating to criminal matters, the other to civil matters. Commission investigations, including hearings, are not criminal in their nature. Hearings are neither trials nor committals. Rather, the Commission is similar in standing to a Royal Commission and its investigations and hearings have most of the characteristics associated with a Royal Commission. The standard of proof in Royal Commissions is the civil standard, that is, on the balance of probabilities. This requires only reasonable satisfaction as opposed to satisfaction beyond reasonable doubt, as is required in criminal matters. The civil standard is the standard which has been applied consistently in the Commission. 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 *Rejtek 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).

As indicated above, the first step towards making a finding of corrupt conduct is to make a finding of fact. Findings of fact and determinations set out in this report have been made applying the principles detailed in this Appendix.