

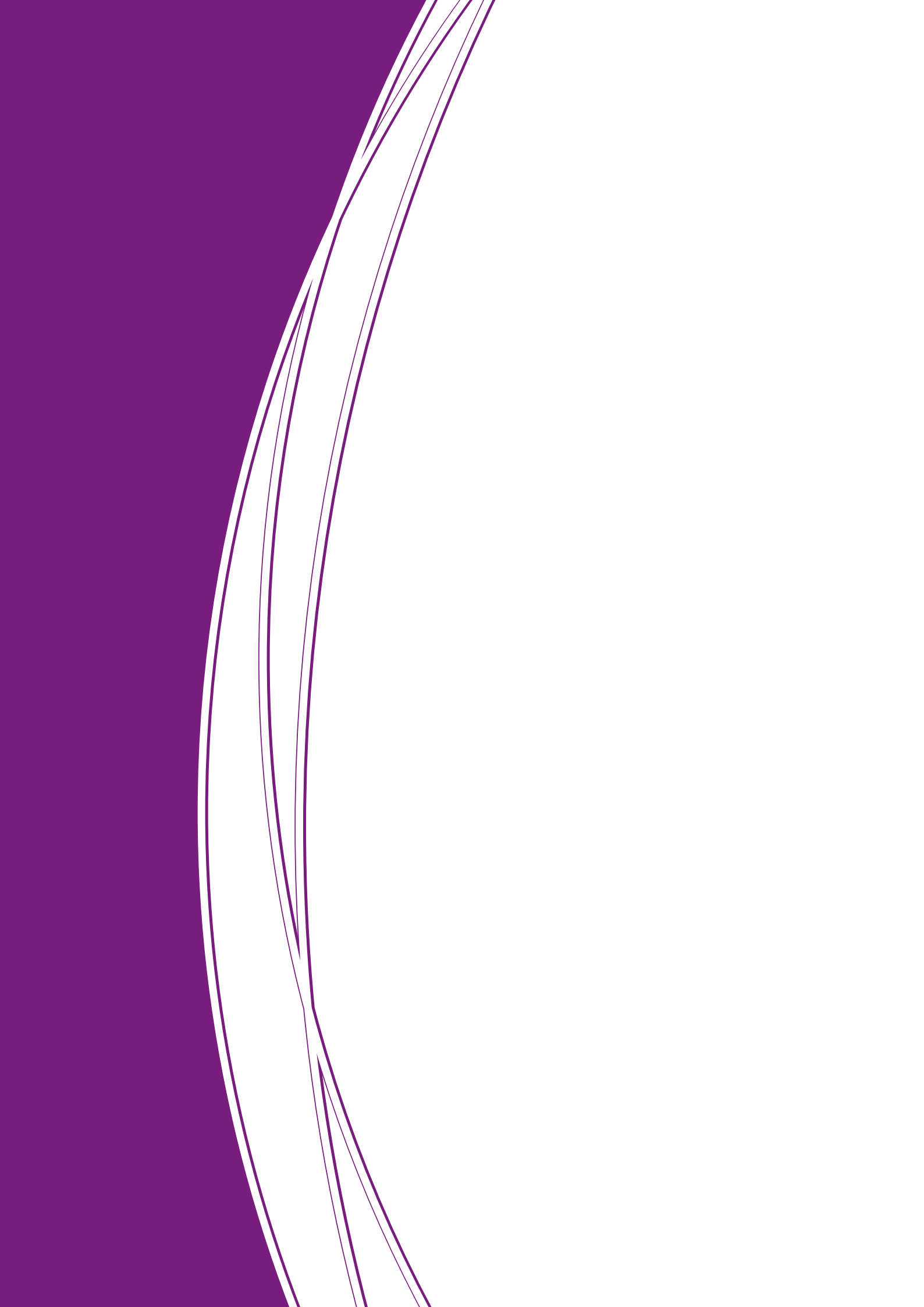


I·C·A·C

INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

**INVESTIGATION INTO
THE CONDUCT OF
OFFICERS OF
THE NSW RURAL FIRE
SERVICE AND OTHERS**

**ICAC REPORT
DECEMBER 2015**



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Mr President
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In accordance with s 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 officers of the NSW Rural Fire Service and others.

Assistant Commissioner Theresa Hamilton presided at the public inquiry held in aid of the 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 s 78(2) of the *Independent Commission Against Corruption Act 1988*.

Yours sincerely



The Hon Megan Latham
Commissioner

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Summary of investigation and results

This investigation by the NSW Independent Commission Against Corruption (“the Commission”) examined allegations that payments made by the NSW Rural Fire Service (RFS) to companies controlled by Scott Homsey were induced by false or misleading representations made by:

- Mr Homsey
- Arthur John Hacking (“John Hacking”), an RFS contracts officer
- Paul Springett, RFS procurement manager
- Darren Hacking, John Hacking’s brother and an RFS volunteer.

The Commission also examined whether John Hacking or Mr Springett had received money or gifts from Mr Homsey, and whether Mr Homsey and his mother, Gay Homsey, provided money or gifts to John Hacking or Mr Springett, as a reward for their role in facilitating RFS payments to Mr Homsey’s companies. During its investigation, the Commission also became aware that John Hacking had taken property from the RFS without authority, including mobile telephones and other devices.

The Commission’s investigation centred on the supply of snack packs to the RFS for declared emergencies between 2011 and 2015. Snack packs are clear plastic bags containing sweets, biscuits, muesli bars, pretzels or chips and other items. They are intended to be distributed to RFS staff and volunteers when they need a quick supply of energy on the fire ground during emergency operations.

The RFS paid Mr Homsey’s companies about \$8 million for snack packs during this period. John Hacking and Mr Homsey accepted that they had an agreement whereby Mr Homsey would undersupply snack packs to the RFS, and they would both share in the profits of this arrangement. This arrangement commenced during the 2012–13 fire season and continued until the Commission intervened in February 2015. A “fire season” roughly

correlates with a financial year and could extend from August in one year to March in the next year.

Results

The Commission found that John Hacking engaged in serious corrupt conduct by:

- accepting from Mr Homsey \$1,500 in March 2012 and \$3,000 in September 2012, the receipt of which he knew would tend to influence him to exercise his official functions in favour of Mr Homsey (chapter 2)
- accepting \$403,882 from Mr Homsey and Mrs Homsey between November 2012 and February 2015, the receipt of which he knew would tend to influence him to exercise his functions in favour of Mr Homsey and which did influence him to exercise those functions by facilitating and concealing the undersupply of snack packs to the RFS and showing favour to Mr Homsey in relation to the business of the RFS (chapter 2)
- raising RFS purchase orders to Mr Homsey’s companies for snack packs and facilitating payment of Mr Homsey’s invoices between October 2012 and December 2014, knowing that the full amount ordered would not be supplied or had not been supplied to the RFS (chapter 2)
- taking mobile telephones and other electronic devices from the RFS without authority between March 2011 and December 2014 (chapter 4).

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

- paying \$1,500 to John Hacking in March 2012 and \$3,000 in September 2012, the receipt of which he knew would tend to influence John Hacking to exercise his official functions in favour of Mr Homsey (chapter 2)

- paying \$403,882 to John Hacking between November 2012 and February 2015, the receipt of which he knew would tend to influence John Hacking to exercise his official functions in favour of Mr Homsey and which did influence him to exercise those functions by facilitating and concealing the undersupply of snack packs to the RFS and showing favour to Mr Homsey in relation to the business of the RFS (chapter 2)
- submitting invoices to the RFS for snack packs between October 2012 and December 2014, knowing that the full amount ordered had not been supplied or would not be supplied to the RFS, and knowing that payments had been made, or would be made, to a public official from the profit of the undersupply (chapter 2).

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

- assisting Mr Homsey to pay \$38,000 to John Hacking in November 2012, the receipt of which she knew would tend to influence John Hacking to exercise his official functions in favour of Mr Homsey (chapter 2)
- assisting Mr Homsey to pay money to John Hacking between August 2014 and February 2015, knowing that the money was being paid as an inducement or reward for John Hacking exercising, or having exercised, his official functions in favour of Mr Homsey, by facilitating and concealing the undersupply of snack packs to the RFS (chapter 2).

The Commission does not make any finding of serious corrupt conduct in respect of Mr Springett or Darren Hacking.

Statements are made pursuant to s 74A(2) of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act") that the Commission is of the opinion

that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the following persons:

John Hacking, for:

1. receiving corrupt commissions or rewards, which he knew would tend to influence him to show favour to Mr Homsey in relation to the affairs or business of the RFS, contrary to s 249B(1)(b) of the *Crimes Act 1900* ("the Crimes Act"), in respect of the payments he received from Mr Homsey between March 2012 and February 2015
2. by deception, dishonestly obtaining a financial advantage from the RFS or causing a financial disadvantage to the RFS pursuant to s 192E(1)(b) of the Crimes Act, in relation to representations he made to the RFS in respect of Mr Homsey's snack pack invoices during the 2012–13 fire season
3. attempting to commit an offence against s 192E(1)(b) of the Crimes Act, in relation to documents he created for the purpose of issuing an order for 100,000 snack packs to Mr Homsey in August 2014, and for representations he made to the RFS when facilitating payment of Mr Homsey's invoices against that order
4. larceny by a person in the public service under s 159 of the Crimes Act, in respect of the taking of mobile telephones and other electronic devices.

Mr Homsey, for:

1. corruptly making payments to John Hacking, which he knew would tend to influence him to show favour to Mr Homsey in relation to the affairs or business of the RFS, contrary to s 249B(2)(b) of the Crimes Act, in respect of the payments he made to John Hacking between March 2012 and February 2015
2. attempting to obtain a financial advantage, or cause a financial disadvantage, by issuing false invoices to the RFS between September and December 2014, contrary to s 192E(1)(b) of the Crimes Act
3. giving evidence that was false or misleading at a compulsory examination on 14 April 2015 regarding Mrs Homsey's knowledge of payments to John Hacking, contrary to s 87(1) of the ICAC Act
4. making false statements, or misleading or attempting to mislead, the Commission or an officer of the Commission, on 14 February 2015 regarding the payment of cash to John Hacking, contrary to s 80(c) of the ICAC Act.

Mrs Homsey, for:

1. aiding Mr Homsey to pay corrupt commissions or rewards to John Hacking, in respect of payments made between November 2014 and February 2015, contrary to s 249F(1) of the Crimes Act
2. giving evidence that was false or misleading at a compulsory examination on 14 April 2015 regarding her knowledge of payments to John Hacking, contrary to s 87(1) of the ICAC Act.

Chapter 6 of this report sets out the Commission's review of the corruption risks present at the time the conduct occurred. The Commission has made the following recommendations:

Recommendation 1

That the RFS, where possible, strengthens its logistics capabilities and modifies its procurement practices to reflect an overall logistics focus.

Recommendation 2

That the RFS continues to seek methods of integrating the Systems, Applications and Protocols (SAP) system and emergency manual controls in a way that does not impede speed and flexibility.

Recommendation 3

That all inventory relating to consumables held by the RFS be recorded as assets with their full value.

Recommendation 4

That consumables held in RFS inventory are expensed only when they leave inventory for a specific event or activity or because they have expired.

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

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

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

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

Recommendation that this report be made public

The RFS sought a non-publication direction regarding any findings of the Commission relating to weaknesses in the control systems of the RFS, to ensure that there is no public dissemination of materials that may encourage third parties to defraud the RFS. The evidence about RFS systems examined in this report, however, has already been made public in the Commission's public inquiry. Transcripts and exhibits in that inquiry were published on the Commission's website. The RFS did not seek a suppression order over the bulk of this material when it was introduced during the inquiry. A very limited amount of material was suppressed on the submission of the RFS because it was commercial-in-confidence, contained confidential telephone numbers or was in draft.

One of the principal functions of the Commission is to examine the laws governing and the practices and procedures of public authorities and public officials in order to facilitate the discovery of corrupt conduct and to secure

the revision of methods of work or procedures that, in the opinion of the Commission, may be conducive to corrupt conduct. The identification of weaknesses in RFS control systems will not only assist in securing the revision of procedures within the RFS, but will have educative value for other organisations in NSW that engage regularly in procurement during emergency situations.

Further, discussion of weaknesses in control systems is integral to exposing the corrupt conduct in this report. Publication of this material will facilitate public scrutiny of the Commission's methods.

The Commission is satisfied that the public interest in exposing corrupt conduct, and educating other public authorities, public officials and members of the public about corruption, outweighs the public interest in not publishing this material. In coming to this view, the Commission has had regard to the paramount concerns of the protection of the public interest and the prevention of breaches of public trust.

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

Chapter 1: Background

This chapter sets out some background information concerning the investigation by the NSW Independent Commission Against Corruption (“the Commission”).

How the investigation came about

In February 2014, the NSW Department of Premier and Cabinet referred an anonymous complaint to the Commission concerning Arthur John Hacking (“John Hacking”), an employee of the NSW Rural Fire Service (RFS).

The complaint alleged that:

- John Hacking had created purchase orders on behalf of the RFS and sent them to Scott Homsey’s businesses, D’Vine Tastes and Emergency Management Catering Services (EMCS), knowing that Mr Homsey would not supply the goods ordered
- Mr Homsey submitted invoices to the RFS for goods that he did not supply
- John Hacking authorised payment of those invoices
- John Hacking and Mr Homsey both received financial benefits from the arrangement
- John Hacking’s brother, Darren Hacking, had also submitted invoices for goods that were not supplied.

Why the Commission investigated

One of the Commission’s principal functions, as specified in s 13(1)(a) of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”), is to investigate any allegation or complaint that, or any circumstances which in the Commission’s opinion imply that:

- corrupt conduct, or*
- conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or*

- conduct concerned with corrupt conduct, may have occurred, may be occurring or may be about to occur.*

The role of the Commission is explained in more detail in Appendix 1. Appendix 2 sets out the approach taken by the Commission in determining whether corrupt conduct has occurred.

The complaint included allegations that a public official had received a financial benefit in return for improperly exercising his public official functions as an RFS employee. When considering whether to investigate the allegations, the Commission took into account that they concerned serious conduct that was alleged to be ongoing. The allegations also raised concerns about procurement processes within the RFS.

In the circumstances, the Commission decided that it was in the public interest to conduct an investigation to establish whether corrupt conduct had occurred and whether there were corruption prevention issues that needed to be addressed.

As the investigation developed, evidence emerged that Mr Homsey had provided gifts and benefits to Paul Springett, John Hacking’s manager. Evidence also emerged that Gay Homsey, Mr Homsey’s mother, had knowledge of payments from Mr Homsey to John Hacking and Darren Hacking. The scope of the investigation was expanded to include the conduct of Mr Springett and Mrs Homsey.

Conduct of the investigation

During the course of the investigation, the Commission:

- obtained documents from various sources by issuing 78 notices under s 21 or s 22 of the ICAC Act requiring production of documents
- lawfully executed six search warrants to obtain information relevant to the investigation

- obtained four warrants under the relevant legislation to enable the interception of telecommunications
- undertook physical surveillance of persons suspected of being involved in corrupt conduct
- interviewed and/or took statements from numerous persons
- conducted seven compulsory examinations.

The public inquiry

After taking into account each of the matters set out in s 31(2) of the ICAC Act, the Commission determined that it was in the public interest to hold a public inquiry, for the purpose of furthering its investigation. In making that determination, the Commission had regard to the following considerations:

- the allegations were serious, and there was a benefit in establishing whether corrupt conduct had occurred
- there was a benefit in exposing the alleged corrupt conduct to the public
- the risk of prejudice to reputations was not undue, in light of the seriousness of the allegations, the cogency of the evidence then available to the Commission, and the public interest in exposing conduct of the kind alleged
- there was a public interest in considering the processes and controls around procurement in emergencies situations.

The public inquiry was conducted over five days, from 2 to 9 June 2015. Assistant Commissioner Theresa Hamilton presided over the public inquiry. Ben Katekar acted as Counsel Assisting the Commission. John Hacking, Mr Homsey, Mrs Homsey and eight other witnesses were called to give evidence.

At the conclusion of the public inquiry, Counsel Assisting prepared submissions setting out the evidence and identifying the findings and recommendations that the Commission could make based on the evidence. These submissions were provided to all relevant persons, including the RFS, and submissions were received in response.

Subsequent to the receipt of submissions in response, the *Independent Commission Against Corruption Amendment Act 2015* was enacted. This amended the ICAC Act by inserting a new s 74BA, which provides that the Commission is not authorised to include in a report a finding or opinion that any conduct of a specified person is corrupt conduct unless the conduct is serious corrupt conduct. As a result of this amendment, the Commission sought further submissions from affected parties on the issue of whether certain conduct on their part could constitute serious corrupt conduct. The submissions were received by 25 October 2015. All submissions received were taken into account in preparing this report.

NSW Rural Fire Service

The RFS was established by the *Rural Fires Act 1997* (“the Rural Fires Act”). Its functions include providing rural fire services for NSW, issuing public warnings about bush fires and bush fire threats, and assisting other emergency service organisations. The service has around 74,000 volunteer members across 2,032 brigades. It also employs around 887 staff; 266 of whom work at the RFS’ headquarters in Lidcombe.

The RFS is one of several fire authorities in NSW. The others are Fire and Rescue NSW, the Department of Planning and Environment and the Forestry Corporation of NSW.

The office of the NSW Rural Fire Service is an executive agency related to the NSW Department of Justice, and a public service agency under the *Government Sector Employment Act 2013*. It is, therefore, a public authority,

and its employees are public officials for the purposes of the ICAC Act. To the extent that they exercise any public official functions, RFS volunteers are also public officials for the purposes of the ICAC Act, as they are members of the RFS under the Rural Fires Act.

RFS operations are funded through the Rural Fire Fighting Fund (“the Fund”). The Fund contains contributions from the NSW Government (14.6%), local government authorities (11.7%) and insurance companies (73.7%). The contribution from the NSW Government is appropriated by the NSW Parliament out of the Consolidated Fund.

Each year, the RFS has two standing provisions for emergency operations to be paid out of the Fund: a disaster relief provision of \$7 million and an aerial support provision of \$2.1 million.

Once its disaster relief provision is exhausted, the RFS may claim expenditure for emergency operations from the NSW Disaster Relief Account (DRA). The DRA is managed by NSW Treasury. Treasury, in turn, may claim some expenditure from the DRA under the Commonwealth’s National Disaster Relief and Recovery Arrangements (NDRRA).

Bush, grass and scrub fires are classified as Class 1, 2 or 3 fires. Class 1 fires are under the control of the responsible fire authority. Class 2 fires require involvement of more than one agency. Class 3 fires are major fires, where an appointment has been made or is imminent under s 44 of the Rural Fires Act.

The cost of responding to Class 1 and 2 fires is met from the Fund. The cost of responding to Class 3 fires is usually funded through the DRA.

The Commission’s investigation was mainly concerned with purchases by RFS officers during emergencies. The following provides some background to the emergency and procurement framework in which these purchases were made.

Section 44 declarations

When the RFS commissioner is of the opinion that a bushfire cannot be controlled by one firefighting authority, he or she is to take charge of bush firefighting operations under s 44 of the Rural Fires Act.

In these circumstances, the RFS commissioner makes a “section 44 declaration” and appoints an incident controller. The declaration applies to the entire local government area in which the fire is burning, or may start to burn, and lasts until it is revoked by the commissioner. The incident controller is the commissioner’s delegate for all fires in the area covered by the s 44 declaration.

The incident controller is supported by RFS State Operations. It is the incident controller’s responsibility to ensure systems are in place to effectively manage resources in the area over which they are responsible. When local resources are not sufficient, the incident controller may request state assistance. Logistics support organised by State Operations is paid through the RFS’ finance unit at head office.

A state operations controller is also appointed, and may act across a number of incidents at the one time. The state operations controller generally works from the State Operations Centre.

Limits on delegations to approve expenditure under s 12 of the *Public Finance and Audit Act 1983* are also increased in emergencies. For example, the RFS commissioner has a delegated limit of \$1 million for routine expenses within the RFS (referred to as the commissioner’s “general delegation”). For s 44 emergencies, the commissioner’s financial delegation is unlimited. RFS directors (now referred to as “executive directors”)¹ have a general delegation of \$150,000 but an unlimited delegation for s 44 emergencies. RFS group managers (now referred to as “directors”) have a general delegation of \$50,000 and a delegation for s 44 emergencies of \$150,000. RFS officers also use these increased delegations for other emergency operations.

Other emergency operations

The RFS also provides assistance to other agencies or organisations in emergencies. Recent examples include deployment of firefighters to Canada, and interstate to Victoria, South Australia and Western Australia, support for the NSW Police Force during the Lindt Cafe siege, and support for the NSW State Emergency Service during storms and floods.

Although these events were not the subject of declarations under s 44 of the Rural Fires Act, as they were not bush fires, John Hacking said that logistics officers received the work for these events as if they were s 44 declarations.

Expenses for these operations must be met in the first instance by the RFS standing provision. Once that provision is exhausted, they can be claimed from the DRA. NSW Treasury guidelines provide that the agency should seek reimbursement directly from the party requesting assistance or through other cost-recovery arrangements.

Procurement framework

Emergencies are inherently unpredictable. There will be occasions when goods need to be ordered, items moved and

¹ Changes implemented since the commencement of the *Government Sector Employment Act 2013*.

accommodation sourced in a hurry. Currently, the RFS has a procurement policy that allows for urgent orders, as follows:

2.23 During declared emergencies there will be occasions when it is necessary for NSW RFS officers to purchase urgent goods and services. Such purchasing requests shall be referred to the Duty State Logistics Operator in State Operations ... who will issue an emergency NSW RFS purchase order.

2.24 In such circumstances delegations may apply to the Incident Controller and Logistics Officer as per the NSW RFS incident control system to authorise the purchase of stores or the provision of services to a value sufficient to meet that particular emergency. The price paid must be reasonable and proper, and the quantity must not be in excess of that necessary to meet the immediate needs of the emergency.

This policy came into effect on 19 December 2013. It replaced the purchasing policy, which applied from 7 June 2004. The purchasing policy did not specifically refer to purchases during a declared emergency. It required:

- one quotation for goods between \$1,500 and \$30,000
- three quotations for goods between \$30,000 and \$150,000
- a tender process for goods above \$150,000.

The purchasing policy also required that goods be receipted against the order form by the officer taking receipt.

The current procurement manual, which forms part of the procurement policy, requires:

- one quotation for goods between \$3,000 and \$30,000
- three quotations (plus a quotation evaluation) for goods between \$30,000 and \$250,000
- a brief procurement strategy and full accreditation approach, including a tender, for purchases between \$250,000 and \$1 million (unless the purchase was one-off, it should be through a contract (for up to 5 years))
- a full procurement strategy and full accreditation approach, including a tender, for purchases over \$1 million (unless the purchase was one-off, it should be through a contract (for up to 5 years)).

Apart from the paragraphs in the procurement policy extracted above, neither policy states that an alternative process is to be followed for procurement during declared emergencies. Further, the RFS' Logistics Head Office User Guides, which were created to assist with purchasing during declared emergencies, state that:

...ethics and probity are a consideration through the entire process of procurement and all NSW RFS staff are required to adhere to the Procurement Policy and other relevant policies.

The user guides provide that best value for money, quotes/tender, legality and fraud, whole-of-lifecycle costing and monitoring of order-splitting must all be considered when purchasing goods and services.

However, items to be used in s 44 events or in other emergency operations are often not purchased by the RFS through the standard procurement processes but through a s 44 procurement process. Submissions from the RFS confirmed that the s 44 procurement process "does not engage a full tender process" as "most goods and services procured during an emergency need to be delivered urgently, often from vendors local to the area in which the relevant fire or other event is located". Some items, however, are not sourced locally or at the time of a fire event. The s 44 procurement process is discussed in more detail in chapter 5.

How were goods obtained and distributed in an emergency?

RFS "business as usual" procurement is recorded through the RFS' Systems, Applications and Protocols (SAP) system (software that tracks and controls the raising of purchase orders and the approval of invoices). Procurement for s 44 events, as well as procurement for other emergency operations, was manually recorded on Excel spreadsheets by RFS staff acting as state logistics officers for those emergencies.

Logistics officers are responsible for purchasing during declared emergencies, as well as arranging accommodation, catering and the movement of people and items around the state. There are logistics officers who work from a fire ground under the incident controller, and state logistics officers, who work from RFS State Operations. The Commission's investigation was concerned with the exercise of public functions by individuals acting as state logistics officers.

Consumables, including snack packs, are purchased by state logistics officers, stored in the RFS warehouse, and sent out to fire grounds as needed. RFS Assistant Commissioner Bruce McDonald submitted a statement of information to the Commission in which he stated that:

...the process [of planning for procurement of consumables] until recently had been within the purview of the Manager Procurement (formerly, Mr P K Springett) and the Contracts Officer (formerly, Mr A J Hacking) as the key logistics team members. They would make a judgment based on the amount of goods consumed in previous fire seasons and the predicted

severity of the forthcoming fire season. It is the RFS' practice to have goods in stock in anticipation of a fire. As these goods are consumed in response to a fire, more are ordered to be held at the Glendenning warehouse. In this way, the RFS cycles through the usage of goods in order to respond to fires as and when they break out.

Consumables stored in anticipation of s 44 events are generally purchased through the s 44 process. The RFS submitted that “the need to be ready operationally for future section 44 events, which may occur within hours or days of the revocation of the previous section 44 event, justifies the procurement of these items on an urgent basis”.

During the period examined by the Commission, the steps in the state logistics procurement process were as follows:

1. **Receipt of an approved logistics request:** the state logistics officer (“the officer”) on duty received a logistics request form signed by an incident controller. If the officer was initiating the purchase, he or she raised the logistics request form. The form was approved by someone in RFS State Operations, such as the state operations controller.
2. **Selection of supplier:** the officer decided how to progress the purchase, including the selection of a supplier.
3. **Creation of purchase order:** the officer entered the details of the purchase into an Excel spreadsheet created for each fire season. For each new entry, the spreadsheet generated a new purchase order number that began “S44” or “S44L”. The officer raised the purchase order from the spreadsheet through a mail-merge process.
4. **Supply of goods:** consumables, like snack packs, were generally supplied to the RFS warehouse at Glendenning. If a request was received from a fire ground, the consumables were generally sent out from the warehouse, and an order might be placed for restocking. No receipt was provided at Glendenning; however, information about what was in stock could be obtained from Glendenning staff.
5. **Submission of invoice:** RFS emergency purchase orders included a direction that invoices should not be sent with the goods, but should be returned to the logistics section or accounts payable.
6. **Confirmation that invoice is “OK to pay”:** once an invoice was received by the RFS, the officer certified that the goods ordered had been received by signing the invoice.

7. **Approval of expenditure:** the officer then sent the invoice to a person with the delegated authority to commit or incur expenditure. The invoice was signed by the person with the appropriate financial delegation, and sent to the RFS' finance unit to be paid.

RFS responses to requests for information from the Commission indicated that the manual system of requisitions and purchase orders was in place to allow the RFS to respond efficiently and in a timely manner to operational demands. The RFS said that SAP is unable to respond quickly enough to meet operational demands in these emergencies.

Logistics officers, particularly the “key logistics staff” responsible for preparing for the forthcoming fire season, had significant discretion when it came to the conduct of purchases and choice of supplier. Understandably, the emphasis within the RFS during emergencies was on making sure the needs of RFS staff and volunteers were met in potentially dangerous situations. The RFS submitted that, “during an emergency, it is not reasonable to expect senior RFS officers in the State Operations Centre to oversee procurement functions in detail”. A consequence of the manual process, however, was that only the logistics officer who certified the invoice as “OK to process” had oversight of the whole purchase. He or she was the only person who looked at the order and confirmed that the invoice was accurate.

Arthur John Hacking

John Hacking began working for the RFS in September 2004 as a purchasing clerk. In 2006, he was promoted to contracts officer, and held that position until he resigned in February 2015. Between late 2009 and 9 December 2011, John Hacking also acted as procurement manager.

When acting in his substantive position of contracts officer, John Hacking reported to Mr Springett, the RFS' procurement manager.

In his procurement roles (as acting manager or contracts officer), John Hacking's public official functions included contract management, providing advice within the RFS on appropriate procurement strategies, and ensuring procurement strategies complied with legislation, policies and procurement guidelines. John Hacking said that his role comprised around 80% contracts work and 20% procurement work.

During declared emergencies, including in the period examined by the Commission, John Hacking also regularly acted as a state logistics officer. The logistics role is distinct from his procurement role (although a logistics officer would be assisted by procurement experience). Other members of the RFS procurement team also acted as

logistics officers. John Hacking did not have the delegated authority to authorise any expenditure on behalf of the RFS, during emergencies or otherwise.

When acting in a logistics role, John Hacking's public official functions included:

- planning for the procurement of consumables, including snack packs, for upcoming fire seasons
- choosing suppliers
- raising logistics requests for approval by senior staff
- raising purchase orders
- confirming that invoices were "OK to pay", including that the goods had been supplied in full.

In exercising his logistics functions, John Hacking had an obligation to ensure compliance with legislation, policies and procurement guidelines.

John Hacking said that, within the RFS, "everyone came to me to get stuff". Senior RFS officers told the Commission that they had trusted John Hacking. Mr Springett, John Hacking's direct manager, agreed that he believed John Hacking to be a "scrupulously honest man".

In 1993, John Hacking registered the business name, AJ Purchasing Brokers. He used this business name on invoices for various items, such as telephones sold on eBay (chapter 4), and on false invoices sent to Mr Homsey (chapter 2).

On 12 March 2015, John Hacking made significant admissions in a voluntary interview with Commission officers. He was cautioned that anything he did or said was being recorded and may be used in evidence against him. On 8 April 2015, John Hacking repaid \$340,517 to the RFS. This sum comprised \$290,517, which he said was money received from Mr Homsey, and \$50,000 as an estimate of the proceeds from the RFS mobile telephones he sold on eBay. The Commission also held an amount of \$69,550, which it had seized from his home and car and that John Hacking said was paid to him by Mr Homsey.

John Hacking has also returned a number of mobile telephones and other devices to the RFS.

Paul Springett

In March 1986, Paul Springett began working for the Bush Fire Council, which in 1997 became the RFS. He has held the role of procurement manager since at least 1999. Mr Springett has acted in several finance positions, including management accounting manager. Mr Springett has now resigned from the RFS.

Between late 2009 and 9 December 2011, Mr Springett worked in finance and not in procurement. As an RFS cost

centre manager, Mr Springett had a financial delegation of \$20,000 under s 12 of the *Public Finance and Audit Act 1983*.

Like John Hacking, Mr Springett also volunteered for logistics duties during emergencies. He had a reduced role in logistics while he was working in finance. His public official functions in logistics were the same as those of John Hacking.

In his procurement role, Mr Springett reported to John Parnaby, who in turn reports to Mr McDonald. The procurement manager is responsible for planning and controlling procurement strategies. Mr Springett developed, or assisted with the development of, several key documents in the procurement and logistics areas of the RFS, including the 2014 procurement manual.

Scott Homsey and Gay Homsey

Mr Homsey trained as a chef and has a background in the hospitality industry. In November 2006, he registered the business name D'Vine Tastes. The RFS began using D'Vine Tastes for catering from November 2009, and to supply snack packs from January 2011. For most of the time he was supplying the RFS, Mr Homsey sold snack packs for \$14.50 each.

In May 2011, Mr Homsey lodged a debtor's petition for bankruptcy.

Gay Homsey is Mr Homsey's mother. In August 2010, Mrs Homsey opened a bank account in her name, which was used for the D'Vine Tastes business. Mrs Homsey also assisted Mr Homsey with the production of snack packs for the RFS.

In February 2013, Mr Homsey and Mrs Homsey established Emergency Management Catering Services Pty Ltd (EMCS) and D'Vine Group Pty Ltd. At all relevant times, Mr Homsey was the majority shareholder of both companies, and Mrs Homsey the sole director and secretary. Each company has a separate bank account.

At the beginning of the 2013–14 fire season, Mr Homsey began supplying the RFS as EMCS rather than D'Vine Tastes. Mr Homsey's businesses did not provide any of their services under contract with the RFS, nor were any of their services provided following a competitive tender process. The majority were "logistics" purchases, made through the manual system for s 44 declarations and emergency operations.

Between 2009 and February 2015, D'Vine Tastes and EMCS invoiced the RFS approximately \$9.7 million for goods and services (including GST). Snack packs made up around \$8 million of this total.

Darren Hacking

Darren Hacking is John Hacking's brother. He was also an RFS volunteer from March 2010 until he resigned from his brigade in February 2015.

Darren Hacking trained as a chef, and worked as a caterer for Mr Homsey on RFS fire sites on several occasions. He also supplied a small number of snack packs to the RFS. Darren Hacking used the registered business name, Harbour Catering, to invoice Mr Homsey for RFS work. Mr Homsey referred to Darren Hacking as a subcontractor. He charged the RFS for Darren Hacking's services under D'Vine Tastes or EMCS invoices.

Witness credit

In considering the evidence given by John Hacking and Mr Homsey, the Commission is wary of accepting statements from either that are in their own interest and not corroborated by other evidence.

Mr Homsey gave evidence that was in parts evasive, implausible and inconsistent with other evidence. He appeared reluctant to take full responsibility for his part in the arrangement to undersupply the RFS.

John Hacking is assisted by the fact that he came forward and made voluntary admissions prior to the Commission's public inquiry and has sought to repay money to the RFS. He also admitted that he had not told Commission officers the truth when first approached. Further, he gave evidence in the public inquiry in a manner that was direct and forthright. His evidence, however, was not always consistent with other evidence before the Commission; for example, in relation to his dealings with Corrective Services Industries (discussed later in this report).

Mrs Homsey did not present as a reliable witness. Initially, she said that she did not know anything about corrupt payments to John Hacking until November 2014. When

played a recording of a lawfully-intercepted telephone conversation with her son, which took place on 22 October 2014, Mrs Homsey accepted that she would have known since at least that date. She later accepted that she knew about the arrangement to undersupply the RFS and pay John Hacking from August 2014.

The Commission considers the shift in dates from November to August to be significant, considering how firm Mrs Homsey was initially in her evidence that she did not know until November. This was not the only change in her evidence. For example, Mrs Homsey agreed that Mr Homsey had asked her to withdraw money about once a month in the two most recent fire seasons. Later in her evidence, however, she denied this proposition. The evidence that Mrs Homsey gave was on occasion inconsistent and unreliable.

Darren Hacking gave evidence that was generally detailed, coherent and plausible.

The Commission accepts that Mr Springett has been generally honest with the Commission in relation to payments received from Mr Homsey. However, his evidence about his intention to pay for canapés received (chapter 3) from Mr Homsey was not plausible when considered in the context of the other evidence available to the Commission.

Chapter 2: The arrangement between Scott Homsey and John Hacking

How did Mr Homsey first start working for the RFS?

Mr Homsey began working for the RFS as a caterer in late 2009. RFS purchase orders and D'Vine Tastes invoices indicate that he provided catering services for the RFS canteen for the weekend of 21–22 November 2009 and six s 44 events between 22 November and 29 December 2009.

The total value of the catering work performed by D'Vine Tastes in 2009 was \$129,136.65. Each of the orders was given a "S44" number, indicating that it was an "emergency" purchase conducted through the manual ordering system. Each of the D'Vine Tastes invoices for this period was marked to the attention of John Hacking or emailed directly to him.

Mr Homsey said that he had been working in the RFS canteen when he received an urgent request to fly to a fire site to provide catering. John Hacking agreed that he had first met Mr Homsey at around this time, and that he had asked Mr Homsey to cater for these fires because it would be a "quick fix". This was also about the time that John Hacking began acting as procurement manager while Mr Springett was in the finance unit.

There is no suggestion that the early catering work involved any corrupt conduct. However, it provides some background to the development of John Hacking's relationship with Mr Homsey.

Early snack pack work

The Commission examined examples of purchases where it appeared that Mr Homsey had been paid twice for the same supply and that these payments were facilitated by John Hacking.

First order of snack packs from Mr Homsey

After 2009, Mr Homsey did not receive any more work from the RFS until January 2011, when he was sent the first order for snack packs. This was also the only order received by Mr Homsey during the 2010–11 fire season. The order was placed shortly before Mr Homsey was declared bankrupt, on his own petition, in March 2011. Mr Homsey agreed that he would have known well before January 2011 that he was in financial trouble.

The January 2011 order was for the supply of 2,000 RFS snack packs with an estimated cost of \$60,000 (or \$30 per pack). Mr Homsey submitted two invoices against this order; both for 2,000 snack packs. One invoice was for \$27,984 and the other was for \$28,380, making a total of \$56,364. The two invoices arrived a few weeks apart. Both invoices were stamped "John Hacking Manager Logistics". John Hacking's signature appears on both invoices.

John Hacking's legal representative submitted that his signature was available electronically, and that the invoices may not have been signed by John Hacking himself. The Commission accepts that John Hacking's signature was added electronically to some purchase orders generated through the manual spreadsheet. However, this was not the case with invoices. Invoices were at that time processed manually, stamped and signed by hand, and physically provided to an officer with a financial delegation for his or her signature. There was no evidence that invoices had an electronic signature applied in the same way that it was applied to purchase orders. The Commission is satisfied that John Hacking signed the invoices.

An inference available on these documents is that the two invoices were submitted for a single supply: allowing John Hacking to approve a double payment to Mr Homsey.

The Commission accepts John Hacking's evidence that logistics staff did not routinely keep track of which invoices had been approved for payment. This is corroborated by the logistics spreadsheets in evidence, which did not include a consistent record of payment.

Further, in June 2011, the NSW Internal Audit Bureau (IAB) reviewed the RFS accounts payable system and noted concerns in the area of duplicate invoices – albeit invoices processed through SAP. In 2015, the IAB reported on s 44-related procurement. The report stated that, although signing “OK to process” on the invoice in effect provided certification that goods were received, “procurement staff are not the recipients of these goods and are generally only certifying the reasonableness of the charges, given the nature of the goods ordered”.

There was no evidence that John Hacking received any benefit from Mr Homsey at around this time. RFS records were not sufficient to establish whether 4,000 or 2,000 snack packs were supplied by Mr Homsey. John Hacking also denied that he had arranged a double payment to Mr Homsey, although he made significant voluntary admissions to other more serious conduct. In these circumstances, the Commission cannot be satisfied that John Hacking exercised his official functions dishonestly or partially in respect of this order.

Second order of snack packs from Mr Homsey

A second order from Mr Homsey's companies raised similar concerns. In September 2011, an order was placed for 1,000 snack packs, with an estimated value of \$13,500. Two invoices were issued against this purchase order, both attached to the same email to John Hacking. The invoices were for 1,000 snack packs each; a total of \$30,250 across the two invoices. John Hacking signed and approved both invoices in October 2011, after he said he had returned to work following a serious car accident. Both were paid by the RFS.

The inference that this was a deliberate double payment is stronger than on the previous occasion, as the invoices were sent and received at the same time. However, John Hacking received the duplicate invoices amongst about 40 other invoices from Mr Homsey, including a number of invoices that had been split across different purchase orders. Again, the RFS could not confirm whether 1,000 or 2,000 snack packs were supplied.

There was also no evidence that John Hacking received a benefit from Mr Homsey at this time or was otherwise influenced by Mr Homsey to sign off on two payments. In these circumstances, the Commission cannot be satisfied that John Hacking exercised his official functions dishonestly or partially in respect of this order.

Money paid by Mr Homsey to John Hacking

In 2012, RFS orders to Mr Homsey's companies began to dramatically increase, and Mr Homsey began paying significant amounts of money to John Hacking.

The 2012–13 fire season

During the 2012–13 fire season, Mr Homsey invoiced the RFS \$2.78 million (including GST) for snack packs. There was no tender process or contract for this work.

John Hacking and Mr Homsey agreed that Mr Homsey paid \$1,500 to John Hacking in March 2012. Between 21 September 2012 and 21 February 2013, a total of \$231,882 was transferred from the D'Vine Tastes business account, in Mrs Homsey's name, to John Hacking's personal account (see table 1). John Hacking and Mr Homsey accepted that Mr Homsey made these payments to John Hacking.

Table 1: Payments from Mrs Homsey's account to John Hacking's account

Date	Amount
21 September 2012	\$3,000
23 November 2012	\$38,000
21 December 2012	\$15,960
31 December 2012	\$31,922
21 February 2013	\$143,000
Total	\$231,882

The total paid to John Hacking by Mr Homsey is just under 10% of the total paid by the RFS for Mr Homsey's snack packs during the 2012–13 fire season.

John Hacking said that the first two payments he received – \$1,500 in March 2012 and \$3,000 in September 2012 – were for items he had discussed with Mr Homsey over the telephone; the first, a “chip” for his car to make it run faster, and the second, a new computer. Mr Homsey agreed that he thought the \$1,500 was for a car chip, but said that he did not know what the \$3,000 was for.

There is a dispute about who made the first approach. Mr Homsey said that John Hacking asked him for the money and that he paid it because he had bad judgment. John Hacking said that he did not ask for the money, but that Mr Homsey volunteered the payment.

John Hacking said that he felt he was a soft target at that time, as he was taking pain relief medication and an anti-depressant following his car accident. He was also drinking at the time. His legal representative submitted that these were payments made by Mr Homsey to test

John Hacking's reaction. Medical records support John Hacking's account that he suffered serious injuries in a car accident on 27 July 2011. The injuries had an ongoing impact and caused him to take pain relief and anti-depressant medication.

The Commission considers that it does not need to determine whether the \$4,500 was paid as a result of a request or an offer. Mr Homsey and John Hacking had, for some time, been in the relationship of supplier and logistics officer. Mr Homsey denied that he paid the money to ensure the continued flow of orders from the RFS. John Hacking said that he thought it was just "a mate helping out", and that he was not encouraged to issue further work to Mr Homsey's companies as a result of him paying the money. However, Mr Homsey knew that John Hacking placed RFS orders to his companies and that John Hacking was in a position within the RFS to influence the flow of orders to Mr Homsey's companies. The Commission is satisfied that both were aware that the receipt of the money would tend to influence John Hacking to show favour to Mr Homsey in relation to the affairs of the RFS.

The Commission is also satisfied that these payments were made with John Hacking's knowledge and consent. In his interview with Commission officers, John Hacking said:

In the March 2012 um Scott phoned me and we, we were just having a chat and he said what are you doing? I said well I'm just researching a chip for me car because I felt the car was underpowered. And he says well I'll buy it for you? And I stupidly gave him my bank account details. Then next day \$1,500 was in the bank um.

In September 2012, John Hacking said that he spoke to Mr Homsey while he was at home and his computer was playing up:

...[Scott Homsey] says oh I'll fix it for you. So the next day, well the day after, whatever it was, he put \$3,000 into my account. And that's what I bought with that large bank, I bought a computer.

Not only did John Hacking give Mr Homsey his bank account details on the first occasion, but he also had discussions with Mr Homsey on each occasion during which he was made aware that Mr Homsey was intending to pay an amount of money into his account. John Hacking said that Mr Homsey never asked him to repay the money, and he did not do so.

At clause 3.5, the RFS' gifts and benefits policy provides that:

Certain activities across the NSW RFS have been identified as being at higher risk of improper influence

and potential corruption. In these areas the offer of any gift or benefit must be refused. These areas include:

- a. Development control, and*
- b. Procurement.*

By accepting the money from Mr Homsey, John Hacking breached this policy. He also failed to meet the high standards expected of RFS employees by the community of NSW. At clause 2.2, the RFS' code of conduct provides:

If involved with decisions it is your duty to ensure that those decisions are properly taken and that parties involved in the process are dealt with fairly. You must not only avoid impropriety, but must at all times avoid any occasion for suspicion and any appearance of improper conduct.

Following these first two payments, John Hacking and Mr Homsey accepted that they reached an arrangement for Mr Homsey to deliver fewer snack packs than ordered by the RFS and to pay all or half the profits of the undersupply to John Hacking.

Who proposed the arrangement to undersupply the RFS?

John Hacking and Mr Homsey blamed each other for proposing the arrangement to undersupply the RFS.

Mr Homsey said that the arrangement started when John Hacking asked him to set aside a certain amount of an order (for example, 1,000 bags). He said that, when he was asked to set aside 1,000 bags, he invoiced the RFS for those bags but did not supply them. He used profit from this undersupply to pay John Hacking. Mr Homsey said that he knew he did not have to supply all of the bags because John Hacking told him, "I do the warehousing, the moving around of stock".

Mr Homsey was asked why John Hacking would have trusted him enough to approach him with a dishonest proposal and he said that he could not speak for John Hacking, but his services were trusted by all of the RFS, and that he was efficient in an emergency situation. These answers are not responsive to the question and do not provide a sensible explanation for Mr Homsey's version of events.

John Hacking said that, in October 2012, Mr Homsey explained that he had taxation issues, and proposed an arrangement, saying "well, we can solve both of our problems". When questioned by Counsel Assisting the Commission, John Hacking accepted that he did not have any problems that needed to be solved, but said that Mr Homsey told him that he could "earn a little bit out of it". The arrangement that John Hacking claimed was reached was to undersupply snack packs to the RFS and share the profits of the undersupply equally (referred to as the "skimming" arrangement).

John Hacking said that he agreed to the skimming arrangement because he was “groomed” by Mr Homsey during a time when he was particularly vulnerable following his serious car accident. He also said that he accepted the arrangement because he did not want to lose Mr Homsey as a supplier.

Even if it is true that John Hacking experienced a period of vulnerability following his car accident, the Commission does not accept that the arrangement was entirely Mr Homsey’s idea. It was John Hacking, and not Mr Homsey, who had knowledge of RFS procurement processes in an emergency. It was John Hacking who had influence over the selection of vendors and the placement of emergency orders in the RFS. The Commission is satisfied that John Hacking contributed at least the details of the arrangement, and both he and Mr Homsey were willing beneficiaries of the arrangement.

When did the arrangement start?

On 4 November 2012, John Hacking sent Mr Homsey an email attaching an invoice under his (John Hacking’s) business name, AJ Purchasing Brokers. The invoice was for the sum of \$31,900 for the supply of lollies and pretzels to D’Vine Tastes. On the same day, John Hacking sent Mr Homsey another email attaching a second invoice from AJ Purchasing Brokers. The invoice was for the sum of \$7,975 for the supply of cardboard cartons. The two invoices total \$39,875.

Both John Hacking and Mr Homsey accepted that these were false invoices, for goods not supplied, and related to the \$38,000 transferred from the D’Vine Tastes account to John Hacking’s account on 23 November 2012.

Mr Homsey said that the \$38,000 payment was a loan to John Hacking. John Hacking said that it was the first payment under the skimming arrangement. The \$38,000 payment was made by bank cheque, withdrawn from the D’Vine Tastes account and deposited into John Hacking’s personal account. Mrs Homsey told the Commission that she made this payment, at her son’s request, and that he told her it was a loan.

There were no terms for repayment of the money, and John Hacking did not pay it back. Mr Homsey did not pursue repayment, and could not give an explanation as to why he did not do so. The Commission is unable to place significant weight on Mrs Homsey’s evidence in determining whether or not the money was a loan.

The Commission considers that John Hacking’s statement, that the \$38,000 was the first payment under the skimming arrangement with Mr Homsey, was made against his own interests, and is more credible than the evidence given by Mr Homsey. The Commission is satisfied that the skimming arrangement had commenced

by early November 2012, and that the \$38,000 was a payment pursuant to this arrangement.

What were the terms of the arrangement?

There was a dispute as to the quantum of the undersupply, and the terms on which the payments were made to John Hacking during the 2012–13 fire season.

John Hacking told the Commission that he believed the payments for the 2012–13 fire season were funded by a 10% undersupply to the RFS, the profits of which were split equally between himself and Mr Homsey. He based this belief on his conversations with Mr Homsey. He accepted, however, that he would not have known how many snack packs Mr Homsey actually supplied in that season, and also accepted that he did not know how much of the profit from the undersupply Mr Homsey was paying into his account.

Mr Homsey said that snack packs were undersupplied during the 2012–13 fire season at the rate of about 1,000 packs for every 10,000 ordered. He said that all of the profits went to John Hacking for this season and he did not profit from the arrangement until the following year.

John Hacking also accepted that it appeared as if Mr Homsey had paid him 10% of the amount of snack packs invoiced for that season. However, he said that he was overpaid around \$100,000 by Mr Homsey in the 2012–13 season, and underpaid in the following season to make up for it. The Commission does not consider this to be a plausible explanation, considering the contingent nature of the work given to Mr Homsey. During the 2012–13 fire season, there was no RFS contract guaranteeing that Mr Homsey would receive a certain amount of work during the 2013–14 fire season. There was, therefore, no guarantee that Mr Homsey could recoup any extra money he paid to John Hacking during the 2012–13 fire season by undersupplying snack packs in the following fire season.

Further, it is not consistent with John Hacking’s account that Mr Homsey approached him because he was having tax problems, and that he believed there was a possibility that he could lose Mr Homsey as a supplier. Mr Homsey accepted that he had been experiencing financial problems and that on 20 May 2011 filed a debtor’s petition for bankruptcy. He told the Commission that he had to “start again”. It would not have assisted Mr Homsey if all the money went to John Hacking during the 2012–13 fire season.

The Commission accepts that Mr Homsey had control over how much he paid John Hacking because the transfers came from his bank account. However, John Hacking did not repay any of the \$100,000. He also provided Mr Homsey with other AJ Purchasing Brokers invoices to cover the payments, dated between

29 November 2012 and 17 January 2013. The value of these invoices is roughly equivalent to the total amount of \$231,882 paid from the D'Vine Tastes business account to John Hacking's personal account between September 2012 and February 2013.

John Hacking said that, unlike the earlier invoices, these were all backdated, and provided at Mr Homsey's request. The fact that John Hacking created the false invoices and sent them to Mr Homsey to cover the payments indicates that the money was paid with John Hacking's knowledge, consent and endorsement.

The Commission does not consider plausible Mr Homsey's account that he paid all of the profits of the undersupply for the 2012–13 fire season to John Hacking. There is no independent evidence to support Mr Homsey's assertion that he did not share in the profits of the 2012–13 fire season undersupply and the Commission finds this very unlikely.

There are inadequate records to determine how many snack packs were ever actually delivered. John Hacking accepted that he would not have known whether Mr Homsey actually undersupplied by 10% or more. The fact that Mr Homsey had previously been double paid against invoices, and that John Hacking was now involved, indicates that there was ample opportunity to undersupply by a greater amount so that he too could make a profit.

John Hacking said that he understood that Mr Homsey shared in the profits of the undersupply from 2012, and he (John Hacking) exercised his public official functions to allow this to happen. Although it does appear that about 10% of the total ordered was paid to John Hacking in this first season, the Commission does not accept Mr Homsey's assertion that he did not also profit from the undersupply at that time.

Counsel Assisting the Commission submitted that an inference was available to the Commission that the agreement between Mr Homsey and John Hacking had been for a 20% undersupply from 2012 onwards, and that Mr Homsey derived an equivalent benefit to the amounts paid to John Hacking under the skimming arrangement. Mr Homsey declined to make submissions in reply to Counsel Assisting's submissions.

The Commission is satisfied that John Hacking received payments from Mr Homsey equal to about 10% of the RFS payments to D'Vine Tastes for snack packs in the 2012–13 fire season. Considering that the nature of the skimming arrangement was that the profits of the undersupply would be shared, and that Mr Homsey was recovering from financial difficulties, the Commission is satisfied that Mr Homsey also profited from this arrangement over and above his profit margin on the snack packs actually supplied during the 2012–13 fire season.

It follows from the conclusion that Mr Homsey kept some of the profits of the undersupply for himself, and that Mr Homsey undersupplied snack packs to the RFS by more than 10% to cover the amounts paid to John Hacking and money he kept for himself.

The 2013–14 fire season

The last bank transfer to John Hacking from Mr Homsey was on 21 February 2013 for \$143,000. During the 2013–14 fire season, Mr Homsey began paying John Hacking in cash.

Mr Homsey invoiced the RFS for \$3.06 million worth of snack packs (including GST) during the 2013–14 fire season. There were some devastating bush fires in that season, and a significant amount of work for the RFS. Again, however, there was no tender or contract for this work. There was a dispute as to the amount of money paid by Mr Homsey to John Hacking during that time. As the Commission has identified issues with both Mr Homsey's and John Hacking's credibility, it is wary of accepting either uncorroborated account.

John Hacking said that there continued to be an undersupply of 10%, which was split equally, but due to the overpayment in the previous year he had only "picked up" \$45,000 in cash in that season. He said that he had recorded the amount paid in his telephone at some stage, but he had since deleted the note and there was no written record now available. He said that he met Mr Homsey on about three occasions to receive money during that season.

Mr Homsey said that towards the end of 2013, he had a clear understanding that he was to undersupply the RFS by 10% on each snack pack order. He said that John Hacking would call him if the arrangement had changed, but otherwise "there was a clear understanding for me that I had to put [a] certain amount aside". Ten per cent of the RFS snack pack orders in that year is roughly \$300,000. If shared equally between them, they would each have received \$150,000. Mr Homsey accepted that he had received some of the profits of the undersupply during that season, although he did not describe it as a percentage.

A pattern to the cash payments in the 2014–15 fire season was identified through surveillance footage, bank records and recordings of lawfully-intercepted telephone calls. The pattern is as follows:

- John Hacking and Mr Homsey would arrange by telephone to meet on the NSW Central Coast
- Mr Homsey would arrange for the withdrawal of large amounts of cash from the EMCS account at Westpac bank's Wyoming and Gosford branches
- Mr Homsey would meet John Hacking as arranged and pay him up to \$20,000 in cash.

During the course of the public inquiry, Counsel Assisting the Commission showed Mr Homsey schedules indicating five possible cash payments from him to John Hacking during the 2013–14 fire season.

These schedules identified bank withdrawals and telephone contact matching the pattern established for the 2014–15 fire season. The schedules included cell site locations for John Hacking, indicating occasions on which he travelled to the Central Coast shortly after he had telephone contact with Mr Homsey and there had been significant cash withdrawals from the EMCS account.

Before he was shown these schedules, Mr Homsey said that he had met John Hacking around six or seven times during the 2013–14 fire season to pay him cash. When shown the schedules, Mr Homsey agreed that he paid John Hacking about \$90,000 during the 2013–14 fire season.

On 18 November 2013, a sum of \$11,000 was withdrawn from the EMCS account. On 19 November 2013, Mr Homsey called John Hacking and they spoke for three minutes. This call was followed by a text message several hours later. On 20 November 2013, Mr Homsey and John Hacking exchanged six text messages and spoke on the telephone twice. Cell site data shows that John Hacking was near Somersby on the Central Coast. EMCS is located at Somersby. Mr Homsey initially told the Commission that he paid John Hacking \$11,000 on this date. John Hacking told the Commission that he received \$10,000, and Mr Homsey accepted in cross-examination that this may have been the case. The amounts paid to John Hacking on other occasions were usually in the vicinity of \$10,000, \$15,000 or \$20,000. The Commission is satisfied that Mr Homsey paid \$10,000 to John Hacking on 20 November 2013.

On 12 December 2013, John Hacking and Mr Homsey exchanged six text messages. On 13 December 2013, \$10,000 in cash was withdrawn from the EMCS bank account at Westpac's Wyoming branch and \$10,000 cash was withdrawn from the EMCS bank account at Westpac's Gosford branch. On the same day, John Hacking and Mr Homsey exchanged five text messages and spoke on the telephone twice. Call charge records show that, at around 4 pm, John Hacking was at Carter Street in Homebush Bay (the location of RFS headquarters). They also show that, at around 5.15 pm, John Hacking was at the Central Coast. Mr Homsey agreed that he paid John Hacking \$20,000 on 13 December 2013.

On 18 December 2013, John Hacking and Mr Homsey spoke to each other twice by telephone. On the next day, \$15,000 was withdrawn from the EMCS bank account at Westpac's Gosford branch. On 20 December 2013, \$8,000 cash was withdrawn from the EMCS bank account at Westpac's Wyoming branch. On the same day, John Hacking and Mr Homsey exchanged five text messages. At about 5.15 pm on that day, cell site data for John Hacking's mobile telephone indicates that he was in west Gosford. Mr

Homsey said that he had no recollection of paying cash to John Hacking on this date, but that it was probable that he had given John Hacking \$20,000 around this time.

On 2 January 2014, John Hacking and Mr Homsey spoke briefly by telephone. On the next day, \$10,000 was withdrawn from the EMCS account at Westpac bank's Wyoming branch and \$13,500 was withdrawn from Westpac's Gosford branch. Mr Homsey and John Hacking exchanged six text messages on that day, and spoke once over the telephone. At about 6.40 pm that evening, cell site data for John Hacking's mobile telephone showed he was near Hawkesbury, which is between Sydney and the Central Coast. Mr Homsey said that he made a payment of \$20,000 to John Hacking on 3 January 2014.

On 24 February 2014, Mr Homsey and John Hacking spoke by telephone twice. On 26 February 2014, \$10,000 cash was withdrawn from Westpac's Gosford branch and \$10,000 was withdrawn from Westpac's Wyoming branch. On the same day, Mr Homsey called John Hacking at around 5.48 pm. Cell site data for John Hacking's mobile telephone indicates that he was at Carter Street in Homebush Bay until about 1.20 pm. The last email he sent from his work email account was at around midday. Although John Hacking was likely to be at work on 26 February 2014, the Commission is satisfied that he could have driven to Mr Homsey on the Central Coast in the afternoon, as on previous occasions. Mr Homsey agreed that he paid John Hacking \$20,000 cash on 26 February 2014.

John Hacking said that he did not receive any money at all on two of the occasions, and on 13 December 2013 he was paid \$15,000 not \$20,000, making a total of \$45,000. This is consistent with his evidence that he was overpaid in the previous season. The Commission does not accept his evidence that he was overpaid and received less in the following year to make up for it. There were other reasons he may have received a smaller payment in that year, including his heightened awareness of the possibility of a Commission investigation (expressed by him in emails to other RFS staff), following a Commission investigation into allegations concerning officers of the NSW State Emergency Service.

Mr Homsey's evidence as to the amount paid to John Hacking during the 2013–14 fire season held up under cross-examination. Although he conceded that he was not sure what day the money was paid on, he was confident that "those amounts were paid to Mr Hacking ... those amounts are definitely ah, for that payment".

Considering that the payment amounts and approximate dates are accepted by Mr Homsey, and supported by Mr Homsey's bank records and John Hacking's call charge data (including cell site locations for John Hacking), the Commission is satisfied that Mr Homsey did pay John Hacking \$90,000 during the 2013–14 fire season, as set out

in table 2. The Commission is satisfied that Mr Homsey undersupplied snack packs to the RFS during that season, and that he also profited from the undersupply.

Table 2: Cash payments made by Mr Homsey to John Hacking during the 2013–14 fire season

Date	Amount
20 November 2013	\$10,000
13 December 2013	\$20,000
20 December 2013	\$20,000
3 January 2014	\$20,000
26 February 2014	\$20,000
Total	\$90,000

John Hacking agreed that, by June 2014, the RFS was overstocked with snack packs and began giving them away. This evidence is supported by his email at the time, offering snack packs and water pallets to RFS managers for the hazard reduction period at no cost. This indicates that, even with the arrangement to undersupply the RFS, there was excess stock.

The 2014–15 fire season

In August 2014, John Hacking placed an order with EMCS for 100,000 snack packs at \$1.45 million (not including GST). This order will be referred to in this report as the “pre-season order”. Between 4 October 2014 and 14 February 2015, Mr Homsey paid John Hacking \$85,000. Both agreed that they intended that \$145,000 – 10% of the pre-season order – would be paid to John Hacking in that season.

This evidence is supported by bank records, surveillance footage and telephone intercept material tendered during the public inquiry, as well as a note kept by John Hacking on his iPhone recording the dates and amounts of each payment. On the basis of this evidence, and admissions made by John Hacking and Mr Homsey, the Commission is satisfied that the payments set out in table 3 were made.

Table 3: Cash payments made by Mr Homsey to John Hacking during the 2014–15 fire season

Date	Amount
4 October 2014	\$15,000
20 November 2014	\$20,000
20 December 2014	\$15,000
8 January 2015	\$15,000
14 February 2015	\$20,000
Total	\$85,000

A table of “monies received for snack packs” prepared by John Hacking during the public inquiry indicated that he

received only \$80,000 during the 2014–15 fire season. The Commission prefers to rely on the contemporaneous note of payments kept by John Hacking on his iPhone, which supports a finding that he received \$85,000.

Both John Hacking and Mr Homsey agreed that there was to be a 20% undersupply in the 2014–15 season, and the profits were to be split evenly. Mr Homsey said that Darren Hacking supplied 2,000 snack packs to the RFS in that fire season, making a total of 82,000 of the 100,000 supplied. Mr Homsey invoiced the RFS for all 100,000 snack packs but RFS records indicate he has been paid for only 80,000; his final invoice remains unpaid.

Mr Homsey said that, before the last order, John Hacking suggested that the undersupply increase to 20%, as the RFS was expecting a quiet season and they would need only 80,000 of the 100,000 snack packs ordered. John Hacking said that he told Mr Homsey that the arrangement would have to stop because “we’ve got SAP EAM coming in” and “it’s all accountable”, and that Mr Homsey said that they should “make it worth [their] while” and increase the undersupply. SAP EAM is a software application for asset management and would have improved recordkeeping for 44 deliveries. John Hacking also said that Mr Homsey’s evidence – that he said it would be a quiet fire season – was incorrect, as it was predicted to be an active season. RFS briefing slides for the 2014–15 fire season indicate that “above normal fire activity” was expected for a significant portion of NSW. John Hacking’s evidence on this point is to be preferred to Mr Homsey’s evidence.

Considering the surveillance material, bank records and recordings of lawfully-intercepted telephone calls available, the Commission is satisfied that the pattern followed by John Hacking and Mr Homsey on each occasion that a payment was made was similar to that leading up to the payment on 14 February 2015, which was as follows:

- On 11 February 2015, Mr Homsey called John Hacking and arranged to meet him on the following Saturday.
- Mr Homsey then called his mother to ask her to call the bank and have \$10,000 set aside by two different branches of the Westpac bank.
- On 13 February 2015, Mr Homsey went to Westpac bank’s Wyoming and Gosford branches and withdrew \$10,000 at each.
- On 14 February 2015, he put two envelopes containing the \$20,000 in a cardboard box and met John Hacking. Mr Homsey gave the box containing the money to John Hacking, who then placed the box in his car and drove away.

As John Hacking was leaving the meeting, Commission officers executed search warrants on John Hacking’s car

and home. They found \$20,000 in cash in a box in the car. John Hacking also had another \$49,550 in a safe at his house. John Hacking initially said that the money in his house and car was money “owing” to him from a loan he had made to Mr Homsey, or money he had withdrawn from the bank to pay for his daughter’s wedding. A month later, he participated in a voluntary interview with Commission officers in which he admitted that the money was paid to him by Mr Homsey “from the snack packs”.

Also on 14 February 2015, a search warrant was executed on Mr Homsey’s business premises. He was cautioned by a Commission officer and advised that it is a criminal offence to deliberately provide false or misleading information to an officer of the Commission. The Commission officer also told Mr Homsey that he did not have to answer any questions. He was asked whether he understood and replied, “yes I do” and “done”. Mr Homsey was also advised that the Commission was investigating whether John Hacking and Mr Springett received financial benefits as a reward for their role in facilitating the RFS payments to Mr Homsey’s companies, and whether Mr Homsey engaged in corrupt conduct by making such payments. The Commission officer asked Mr Homsey a number of questions about John Hacking and Mr Springett, including whether he had ever given John Hacking any cash payments, and he said “no”. The Commission is satisfied that this answer was false and, having regard to the evidence given by Mr Homsey at the public inquiry, that Mr Homsey knew this answer was false.

Mr Homsey’s representatives submitted that Mr Homsey did not wilfully make a false statement because he was in a state of shock and confusion, that it was not a considered response, that he was not given the opportunity for a considered response and sought to correct the answer at his first available opportunity, which was at a compulsory examination on 14 April 2015. The Commission does not accept that Mr Homsey was confused about what he was saying or that his answer was not a considered response. Although he had not sought any legal advice, Mr Homsey was not speaking under compulsion. He was advised that he did not have to answer any questions. The Commission is satisfied that Mr Homsey wilfully made the statement, which he knew to be false.

Total paid by Mr Homsey to John Hacking

John Hacking accepted that he had been paid \$360,067, calculated as a percentage of the number of snack packs he recalled being supplied in the relevant seasons. For the reasons outlined above, the Commission is satisfied that this is an underestimate.

The Commission is satisfied that, between March 2012 and February 2015, Mr Homsey paid John Hacking a total of \$408,382, the receipt of which could either tend to, or did, adversely affect the impartial and honest exercise of John Hacking’s official functions.

The receipt of the \$1,500 in March 2012 and \$3,000 in September 2012 was money paid by an RFS supplier to the RFS employee responsible for placing orders to his businesses. The receipt of this money by John Hacking would have created a sense of obligation or partiality towards Mr Homsey, particularly in circumstances where he had considerable discretion as to whether he continued to use Mr Homsey as a supplier. The receipt of money paid out of the skimming arrangement involved the partial and dishonest exercise of John Hacking’s functions. Further evidence of this is outlined directly below.

How was the undersupply achieved?

Move away from Corrective Services Industries

Before Mr Homsey’s companies started supplying snack packs to the RFS, the packs had been supplied by Corrective Services Industries (CSI). CSI charged snack packs at around \$10 to \$11.50 per pack or \$12.50 if they included a sachet of electrolyte powder.

Mr Homsey’s snack packs, and CSI’s so-called “yummy packs”, had roughly the same contents. An email from CSI to John Hacking on 6 September 2010 indicates that yummy packs contained: two packets of mixed lollies, two snack pack-sized M&Ms, two fruit drink poppers, two fruit cake portions, one fruit cup and spoon, one portion of Arnott’s biscuits, one muesli bar, one Go Natural bar and one napkin, all packed into a clear plastic bag to create one pack.

The RFS’ 2011–12 Logistics Head Office User Guide indicates that the packs supplied by D’Vine Tastes had exactly the same contents. By 2013, EMCS snack packs contained: a muesli bar, a sweet biscuit, pretzels, lollies, life savers, sports drink powder, fruit in natural juice, sultanas and a cheese and biscuit pack.

Mr Homsey’s snack pack work for the RFS dramatically increased after the 2010–11 fire season. In that season, he invoiced the RFS \$56,364 for snack packs and CSI invoiced the RFS \$181,850. The following season, Mr Homsey invoiced the RFS \$695,940 for snack packs, compared to the \$37,400 invoiced by CSI. This was the last season in which CSI supplied snack packs to the RFS. From the second half of 2012 to early 2015, snack packs were provided to the RFS exclusively by Mr Homsey’s companies.

John Hacking was asked why the January 2011 purchase order (the first to Mr Homsey) was not given to CSI. He replied that:

...at that time um, Corrective Services were, they were supplying. Um, they had some industrial issues. Also

picking up the goods um, I, they did deliver a couple of deliveries but um, because we weren't a consistent customer they couldn't fit us in to their program all the time. It depends on what they were doing at the time. Um, and we had to send trucks down to Long Bay to pick up the actual goods and there was times there we had vehicles sitting down there for three/four hours waiting to get in ... so it did become a little bit unproductive and it was costing a lot more.

He also said that, if CSI did not have the stock and were not "geared up ready to go", it would take a couple of weeks. He said that Mr Homsey was providing the product faster than CSI.

Gurdaljit Singh, CSI operations manager at the Metropolitan Special Programs Centre, disputed John Hacking's evidence. He said that CSI would be delayed by a few days, at most, in supplying, even during busy periods or during a strike situation. He also said that there was no difficulty getting trucks into the jail as the warehouse complex is outside the jail itself. He said that CSI was constantly in touch with the RFS seeking feedback on their service, and asking whether they wanted changes to the snack packs. He said that no one ever suggested that CSI was too slow or was not providing a good service to the RFS. Mr Singh presented as a credible witness. He gave evidence that was clear and consistent.

John Hacking's legal representative submitted to the Commission that Mr Singh was not an independent witness, in the sense that he had an interest in obtaining business for CSI. However, the grounds on which it is said that the Commission should disbelieve Mr Singh were not put to him during the public inquiry. Further, Mr Singh did not present to the Commission as someone spruiking for business. He accepted that there could be delays in CSI services, but disputed the extent of those delays.

John Hacking's evidence is also undermined by his email correspondence with CSI. On 15 October 2012, Michael Fletcher from Corrective Services NSW sent an email to John Hacking, noting that CSI had been supplying the RFS with yummy packs for the past three years, and stating:

...if we can be of assistance this year in supplying these packs or a pack which may suit your current demands please let me know as it would be great to continue the relationship we have built up over the last few years.

John Hacking replied:

...the RFS has contracted a catering company for the fire season. In their down time they've had them making snack packs even though this is costing the same. We're trying to cut costs as our catering bill is normally through the roof. We've decided to have

a caterer available at all times. As the season goes on I'm sure when these guys are fully committed I will be coming to you for snack packs. I just need to ensure value for money out of [our] contractors at the moment.

John Hacking accepted that the reason given in this email was not the reason he was sending the business to Mr Homsey. The RFS had not contracted with Mr Homsey's company for the 2012–13 fire season. Additionally, by October 2012, D'Vine Tastes snack packs cost more than CSI snack packs (\$14.50 compared to \$11.50 or \$12.50). John Hacking did not go back to CSI for snack packs in that year, or in any subsequent year. His legal representative submitted that the price of CSI snack packs was not competitive, in that it did not include labour costs. The Commission does not consider the labour cost of the different products to be relevant to the cost of the snack packs to the RFS. The fact remains that Mr Homsey's snack packs contained similar items at a greater cost to the RFS.

In the RFS' 2011–12 Logistics Head Office User Guide, D'Vine Tastes is listed as a supplier of RFS snack packs at \$13 each, with a lead time of two days. CSI is listed as a supplier of RFS snack packs at \$11.50 each, with a lead time of five days.

In the RFS' 2012–13 Logistics Head Office User Guide, D'Vine Tastes is listed as a supplier of snack packs at \$14.50 each, noting that "there should be a stock of these located at the Glendenning warehouse facility". CSI was listed with the notation, "lead-time for these items is 5-10 days. Corrective Services make to order using labour from the gaol system. They are good if you have time on your hands".

By 2013, D'Vine Tastes is listed as the only supplier of snack packs. D'Vine Tastes is also listed for courier services: "has two couriers available – SHORT notice". John Hacking accepted that he was one of a small number of people who contributed to these user guides, the others being Mr Springett and another RFS staff member.

John Hacking initially denied amending the Logistics Head Office User Guides for the purpose of encouraging others to place orders with Mr Homsey rather than with CSI. He accepted, however, that, by 2013, he took CSI out of the handbook so that all snack pack orders would be placed with Mr Homsey because he was making money from those orders. He also accepted that the reason he terminated the CSI arrangement was because he wanted to give the work to Mr Homsey.

John Hacking said that the decision to move away from CSI was made in consultation with Mr Springett. However, Mr Springett said that the move away from CSI was John Hacking's decision, and that John Hacking

said to him something along the lines of “we’re not using them anymore”. Considering the inconsistent explanations offered by John Hacking for the move away from CSI, the Commission does not consider his evidence about this issue to be reliable. Mr Springett’s evidence is preferred to John Hacking’s evidence.

In his interview with Commission officers, John Hacking said that he believed Mr Homsey had the impression that, by paying him money, he would ensure that Mr Homsey would continue to get work. John Hacking also said:

I wouldn't say it would be the right impression but I suppose, I suppose at the end of the day I may've had some influence over it but it certainly wasn't – I wasn't the, the end person saying this is what's going to happen.

John Hacking may not formally have had the final say as to whether a particular vendor was used by the RFS, however, the Commission is satisfied that John Hacking had considerable influence within the logistics area.

The Commission is satisfied that John Hacking arranged for the RFS snack pack work to be directed to Mr Homsey, instead of CSI, after September 2012. The Commission is satisfied that he was motivated at least in part to provide a benefit to Mr Homsey, and to gain a benefit for himself, and not because CSI was providing an inadequate service.

From 2012 to 2014

John Hacking was in the practice of ordering goods from Mr Homsey’s companies through emergency procurement processes. For example, in September 2012, he and Mr Homsey exchanged emails about first aid kits to be supplied by Mr Homsey’s company. On 24 September 2012, they had the following exchange:

[Mr Homsey]: *...Just wondering about medical kits when you might be looking at supply for this ...*

[John Hacking]: *Medical kits I will order later down the track. I need to wait for another event to get this through. Please be patient as I need to take things easy.*

[Mr Homsey]: *John it's no drama as I thought it might of needed to be organised ... I'm in no hurry just thinking of lead times and printing needs nothing more than that ...*

[John Hacking]: *Mate, No problems. Totally understand what you are saying however I need to have an event running if you know what I mean.*

Mr Homsey said that he knew that by “event”, John

Hacking meant a s 44 event. About a week later, a s 44 declaration was made over the Port Macquarie–Hastings local government area. On 15 October 2012, John Hacking raised a purchase order against this event to D’Vine Taste for 10,000 day medical kits (\$55,000). He explained to the Commission that, although normally he would have to go through a competitive process for a purchase of this amount, he was not required to do so for goods that would be used in s 44 events. This is consistent with submissions from the RFS that s 44 purchases “did not engage a full tender process”, and evidence that this approach was permitted by the RFS.

This was also true for the large purchases of snack packs from Mr Homsey’s companies. The s 44 process gave John Hacking an opportunity to direct a significant amount of work to Mr Homsey without engaging in a tender process. John Hacking’s name appears on the majority of purchase orders to Mr Homsey’s companies. The Commission accepts that, in some cases, John Hacking’s electronic signature was applied to purchase orders created through the Excel spreadsheet and that it may be difficult to ascertain who actually created the order. However, evidence of John Hacking’s meetings with Mr Homsey prior to fire seasons and his email correspondence with Mr Homsey indicate that he had a significant role in sending orders to Mr Homsey’s companies. This position gave John Hacking an opportunity to conceal the undersupply by increasing the orders for that season.

The s 44 process also allowed John Hacking and Mr Homsey to conceal the undersupply in the flurry of orders and invoices generated during an emergency. Steve Yorke, the RFS’ assistant commissioner, who – as response and coordination group manager – had a financial delegation of \$150,000 for s 44 events, gave evidence that he would see only the invoice when approving payment (and not the purchase order or any receipt of delivery), and that it would be among thousands of invoices he was required to approve. He said that he would check the invoice was signed by one of the officers as “OK to process”, and if he had questions he would check with one of the officers.

Further, no one who received the snack packs delivered to the Glendenning warehouse was able to check the delivery against the order or invoice or, in the case of the snack packs, against a consignment note. Brett Wallace, a logistics and warehouse support officer at the RFS warehouse, provided a statement to the Commission. He said that snack packs were the only item ordered in bulk for s 44 events that consistently arrived with no documentation. Fire retardant deliveries always arrived with vendor documentation, and vendor documentation was provided for all water deliveries in the last year. Warehouse staff would generally count the delivery, record it in the Goods Inwards Register and email the procurement team that stock had arrived. These emails,

however, did not contain a purchase order or invoice number indicating they had been received against a particular order.

John Hacking's signature is on the majority of invoices for the 2012–13 fire season. The Commission is satisfied that this was not an electronic signature; there was no evidence brought to the Commission's attention to indicate that it could have been. Rather, the evidence was that invoices were not scanned electronically at this time but were stamped and signed manually. The Commission is satisfied that John Hacking signed these invoices as "OK to process", facilitating payment of the invoices at a time when he knew that Mr Homsey was not supplying the full amount of items on these invoices, and that both he and Mr Homsey would share in the proceeds of that undersupply.

The invoices for the 2013–14 fire season are signed by different logistics officers and not by John Hacking. There was no evidence that these officers knew of the undersupply.

The 2014 "pre-season" order

The Commission also examined the pre-season order of 100,000 snack packs for the 2014–15 fire season. This was the only snack pack order placed this season. On 30 June 2014, John Hacking prepared a memorandum to the RFS commissioner. This memorandum recommended that the RFS commissioner approve the pre-ordering of \$1,918,480 of goods and services. It said that:

...in order for the NSW RFS to be prepared for the 2014 to 2015 fire season, it is necessary to pre-order from suppliers to ensure there is continual supply over the Christmas and Holiday period. This allows suppliers to have necessary resources in place to provide the support to the RFS over this period. This also allows the RFS to take advantage of price breaks ensuring value for money.

The memorandum said that it would be necessary to order 100,000 NSW RFS snack packs, 100 pallets of water, 125 pallets of Class A firefighting foam, and 20,000 cleansing wipes, but did not break down the cost of each item. If it had, it would have shown that the snack pack order would account for \$1.45 million of the \$1.9 million total order.

The 30 June 2014 memorandum was signed by John Hacking, as state logistics officer, Mr Yorke and Shane Fitzsimmons, the RFS' commissioner. Mr Yorke agreed that he had signed the memorandum but did not remember whether he had a conversation with John Hacking about it before he did so. He said that he understood the memorandum set out a strategy for the upcoming season and that he did not expect there to be an immediate order of 100,000 snack packs.

On 4 August 2014, John Hacking provided a logistics request form to Mr Yorke for his signature. The request described the goods to be ordered as "pre order for RFS snack packs to restock for the fire season (goods to be delivered over four months)". John Hacking told the Commission that there was no quantity or total cost entered into the document when he provided it to Mr Yorke. He said that he added "100,000" by hand after the document was signed.

On the same day, John Hacking raised a purchase order to EMCS for 100,000 snack packs through the manual system. He emailed the order to Mr Homsey on the next day. Mr Homsey issued his first invoice to the RFS on 29 September 2014 for 20,000 snack packs. The total value of the invoice was \$319,000; \$290,000 for the snack packs and \$29,000 GST. The invoice was signed by another logistics officer. It was also signed by Mr Yorke and Rob Rogers, the RFS' deputy commissioner. The deputy commissioner had an unlimited financial delegation for s 44 events, although he had a general financial delegation of \$150,000.

Between September and December 2014, Mr Homsey submitted invoices to the RFS for all 100,000 snack packs. Mr Homsey agreed that he had not supplied, and had not intended to supply, 100,000 snack packs to the RFS. This evidence was supported by a recording of a lawfully-intercepted telephone call dated 3 November 2014 in evidence before the Commission:

[John Hacking]: ...how many more we got to go?

[Mr Homsey]: Well we're on – we – we took a delivery today and we start Thursday –

[John Hacking]: Yep.

[Mr Homsey]: –for another ten thousand and that's half way.

[John Hacking]: Half way?

[Mr Homsey]: Yep.

[John Hacking]: Yeah.

[Mr Homsey]: That's just forty – that's forty, just on forty. With Darren forty two and –

[John Hacking]: Yep.

[Mr Homsey]: – and obviously with the deal and everything –

[John Hacking]: Yeah – yeah – yeah – yeah – yeah – yeah.

Some of Mr Homsey's invoices were approved for payment with the physical signatures of Mr Yorke and Mr Rogers, and others were approved electronically through SAP. By this stage, the RFS had begun to process some s 44 approvals through SAP. The majority of snack pack invoices approved in SAP were sent to Mr Yorke for approval by John Hacking.

The Commission is satisfied that John Hacking facilitated payment of these invoices knowing that Mr Homsey was not intending to supply the full amount of snack packs against the pre-season order.

The RFS had paid all but one of Mr Homsey's invoices by the time the Commission's investigation became known to the RFS. An invoice for 20,000 snack packs – a total of \$319,000 – remains unpaid.

John Hacking said that he had relied on the RFS commissioner's delegation to approve the expenditure by signing the 30 June 2014 memorandum. Under cross-examination, he admitted, however, that he knew he could not rely on the memorandum to incur expenditure of \$1.9 million, and that he would need to have a logistics request approved. He agreed that he had misled Mr Yorke in providing him with a logistics request that did not indicate the amount that would be expended, but maintained that he was relying on the memorandum to approve the spend.

The Commission is satisfied that John Hacking created documents and arranged for them to be signed by Mr Yorke, Mr Rogers and Mr Fitzsimmons intending that they would be used to support orders and facilitate payments to Mr Homsey for goods he would not supply. The Commission is also satisfied that, between September and December 2014, Mr Homsey submitted invoices for 100,000 snack packs to the RFS with the expectation that the RFS would pay those invoices in full, although he had not supplied, and was not intending to supply, 100,000 snack packs.

The Commission is satisfied that the money paid to John Hacking by Mr Homsey was given and received as an inducement or reward for facilitating Mr Homsey's undersupply to the RFS, and for showing favour to Mr Homsey in relation to the affairs or business of the RFS.

Partial treatment of Mr Homsey's companies

The Commission also examined whether John Hacking showed favour to Mr Homsey beyond facilitating the undersupply.

Contacts with other organisations

On 18 November 2014, Mr Homsey exchanged the following text messages with John Hacking:

[Mr Homsey]: *Hi mate can I please ask a favour ... would I be able to get all yr contacts for Victoria please*

[John Hacking]: *Yes sorry, I will get this tomorrow for you.*

[Mr Homsey]: *Thanks and need to see you this week*

On 20 November 2014, Mr Homsey met John Hacking and paid him \$20,000 in cash. On the same day, John

Hacking sent Mr Homsey an email containing names and email addresses for procurement contacts in other emergency organisations, including the NSW State Emergency Service, the Tasmanian State Emergency Service, Melbourne Water, NSW Fire and Rescue, Victorian Country Fire Authority, and the Western Australian Department of Fire and Emergency Services. John Hacking told the Commission that this was the list of members represented on an Australian association for firefighting authorities.

John Hacking told the Commission that providing these contacts was a benefit to Mr Homsey, because Mr Homsey would have "a direct conduit into agencies", which may result in getting work. In his interview with Commission officers, John Hacking agreed that the purpose of providing that information was to assist Mr Homsey to grow his business.

John Hacking said that he did not think that this information was confidential. He did, however, understand that it was a benefit to Mr Homsey. He also agreed that he told Mr Homsey not to say where he got it from, as he did not want to be seen to be giving out people's names.

The Commission is satisfied that John Hacking provided the contact names to Mr Homsey as a favour. It was information that John Hacking obtained in the course of his work, which he gave to Mr Homsey to assist him to expand his business to other organisations.

Bains-marie supplied by Caterquip Australia

Around August 2014, Caterquip Australia ("Caterquip") supplied five bains-marie to the RFS for use as prizes at the 2014 RFS State Championships (not an emergency operation or s 44 event).

Paul Bulmer from Caterquip quoted a total price for the bains-marie of \$4,730 (including GST). He provided this quotation to the RFS. According to the RFS procurement manual, this purchase required one quotation and could be approved by a cost centre manager who had a financial delegation of \$20,000.

On 11 August 2014, John Hacking and Mr Homsey were copied on an email from Paul Fowler of RFS' corporate events and partnerships to Mr Bulmer. Caterquip was also supplying other items for the State Championships. The email sought a quote for these items. The preceding email from Mr Bulmer, included in the copied reply, also stated his quote for the bains-marie.

On 22 August 2014, the RFS ordered around \$1,398 worth of equipment from Mr Bulmer for the State Championships. Caterquip was the vendor on the invoice, indicating that, by that time, Caterquip had been added as a vendor to the SAP system. This purchase order did not include the bains-marie.

On 26 August 2014, Mr Bulmer sent an invoice to Mr Homsey for a number of items, including the bains-marie for the State Championships. Mr Bulmer charged \$4,730 (including GST). On 2 September 2014, John Hacking raised a purchase order for the supply of five bains-marie for the State Championships to EMCS. The total value included in the purchase order was \$6,462 (including GST). Excluding GST from both prices, this is a mark-up of \$1,575 or \$315 per bain-marie. Mr Homsey's invoice was paid by the RFS on 9 October 2014.

Mr Bulmer told Commission officers that he delivered the bains-marie directly to the RFS Glendenning warehouse. He said that, although the original request had come from the RFS, he invoiced through Mr Homsey because he was having difficulty obtaining a purchase order number from the RFS. Mr Homsey told him that he would invoice the RFS instead.

John Hacking was asked why he sent a purchase order to Mr Homsey. He said that, "because we were dealing with Scott, I, I just ordered them through Scott". It is clear from the email correspondence, however, that the RFS was also dealing directly with Mr Bulmer. When John Hacking was asked why the items were ordered from Mr Homsey rather than directly from Caterquip, he said that he could not answer. Mr Homsey could also not provide an answer as to when he was asked why he on-charged Caterquip goods to the RFS, at a mark up of \$1,575.

Although there is no evidence that John Hacking was paid a benefit from this particular transaction, this transaction should be viewed in the context of a relationship where he was receiving and expected to receive substantial amounts of money from Mr Homsey. By August 2014, he and Mr Homsey had reached an agreement as to the amount of snack packs to be undersupplied to the RFS in that season and how much money he would be paid out of that undersupply.

The Commission is satisfied that John Hacking raised an RFS purchase order, which he sent to Mr Homsey, knowing that the goods were supplied by Caterquip and that they were available more cheaply through Caterquip. This is an example of how he used his position to favour Mr Homsey.

Allocation of work to Darren Hacking

Between 2012 and 2015, John Hacking's brother, Darren Hacking, provided snack packs, as well as catering and transport, to the RFS through Mr Homsey's companies. This arrangement was described by Mr Homsey as a subcontract. The Commission considered whether Darren Hacking knew about the undersupply to the RFS, and examined other aspects of Darren Hacking's work for Mr Homsey.

Snack packs

Darren Hacking began making snack packs for Mr Homsey in August 2012. On 24 August 2012, John Hacking lent Darren Hacking \$5,000 to help him with the initial purchase of supplies for snack packs. Darren Hacking repaid this money on 27 September 2012. At around this time, he began receiving some significant amounts of money from Mr Homsey: \$17,820 on 7 September 2012 and \$40,000 on 21 September 2012. Darren Hacking invoiced EMCS for 2,000 snack packs in late 2014, and was paid \$27,000 for this work.

Darren Hacking, John Hacking and Mr Homsey all gave evidence that Darren Hacking did not know of the undersupply and was not paid any of the profits of the undersupply. The Commission considers Darren Hacking to be a generally credible witness on this issue. Further, Darren Hacking's bank account records show that he did spend money on large amounts of confectionary and other items for snack packs, supporting his account that he did supply the items for which he invoiced.

The Commission is satisfied that Darren Hacking did not know about and did not participate in John Hacking's arrangement with Mr Homsey to undersupply snack packs to the RFS.

Transport

Darren Hacking initially told the Commission that he did not provide any courier services for Mr Homsey. He was then shown an invoice dated 24 October 2012 under his business name, Harbour Catering, addressed to D'Vine Tastes for a job described as "pick up off plotter Kempsey FCC delivered to Grafton region north", at a total cost of \$600. Darren Hacking said that he did not do this job for Mr Homsey but for John Hacking. He said that he did not care whether he was paid for the job as he did it as a favour to his brother and to the RFS, but he created the invoice because John Hacking insisted that he be paid.

On 31 October 2012, Mr Homsey emailed about 40 invoices to John Hacking. One of those invoices was for a delivery from Kempsey to Grafton, with a cost of \$750; that is, \$150 more than he was charged by Darren Hacking, plus \$75 GST. John Hacking approved this invoice for payment, and it was paid by the RFS on 15 November 2012.

This is consistent with Mr Homsey's evidence about his practice of invoicing the RFS for other courier work. He occasionally used another driver called Danny, and said that in invoicing the RFS:

...sometimes there was money that Danny and I would agree on and there was \$150 on [sic] some instances where I would run around and I would [receive] \$150 from that invoice as an admin.

John Hacking said that he knew that Mr Homsey used to put a percentage on his courier work. For example, on 10 January 2013, John Hacking sent an email to Mr Homsey attaching a purchase order for the collection of a “portable repeater from Tuncurry to Nowra”. The estimated value of the job was \$650. The email from John Hacking said only, “DARREN \$500”. John Hacking agreed that this email indicated that Darren would be paid \$500 for the work, and that the purchase order was for a greater amount because of Mr Homsey’s percentage.

D’Vine Tastes issued an invoice to the RFS, emailed directly to John Hacking, for \$650, plus \$65 GST (a total of \$715), for the delivery. Darren Hacking told the Commission that he did perform the work but did not invoice Mr Homsey. Rather, he did it free-of-charge, for his brother and for the RFS. RFS records indicate that Mr Homsey’s invoice was not paid.

During the public inquiry, Darren Hacking was asked why he sent his invoice to Mr Homsey rather than the RFS. He said that he did so because the “mechanism was already in place”. He clarified in cross-examination that he had already been sending bills to Mr Homsey’s companies for snack pack and catering work, and he had his computer and billing system set up. Mr Homsey was asked why he raised the invoice for work done by Darren Hacking and he said, “because all logistics would go through, all logistics would go through me”. John Hacking was asked why the purchase order went to Mr Homsey and not to his brother, and he said, “because Darren wasn’t on the books”.

The Commission is satisfied that John Hacking directed purchase orders for RFS logistics work to Mr Homsey knowing that Mr Homsey would take an additional payment of around \$150 for each job. The Commission is also satisfied that John Hacking used this “mechanism” to facilitate a payment to his brother for work performed for the RFS.

What did Mrs Homsey know?

Mrs Homsey had a role in both D’Vine Tastes and EMCS. Between January 2011 and February 2013, payments from the RFS for work invoiced by D’Vine Tastes went into an account in Mrs Homsey’s name. Mrs Homsey accepted that the account was in her name so that Mr Homsey could continue to operate a business while bankrupt. In 2013, Mrs Homsey became the sole director and secretary of the newly-established EMCS. Mrs Homsey also had a role in putting together the snack packs for both businesses.

In November 2012, Mrs Homsey deposited \$38,000 into John Hacking’s personal account. The money came from the D’Vine Tastes account held in her name. Mrs Homsey told the Commission that, although she had access to the

money in that account, she would not withdraw money unless she had asked Mr Homsey because “to me that was his money not my money”. She denied knowledge of the other bank transfers to John Hacking.

Mrs Homsey said she was told that the money was a loan and she did not ask any questions about it. Mr Homsey also said that he told his mother it was a loan. For reasons set out earlier in this report, the Commission is unable to place significant weight on statements from Mr Homsey and Mrs Homsey made in their own interests, including statements made in the interests of each other.

Mrs Homsey conceded that she knew that D’Vine Tastes had received a significant amount of business from the RFS around the time she paid \$38,000 to John Hacking. She also knew that John Hacking was the person responsible for the orders from the RFS. The Commission is satisfied that she knew that a payment of that amount would tend to influence John Hacking to show favour to Mr Homsey in relation to RFS business. Mrs Homsey said that she did not ask any questions, paid the money and then forgot about it. This evidence is consistent with knowledge that this payment was not a legitimate loan.

Mrs Homsey also assisted her son to make cash payments to John Hacking. At Mr Homsey’s request, she would call different branches of the Westpac bank and ask for around \$10,000 cash to be set aside and to be withdrawn from the EMCS account. Mr Homsey accepted that Mrs Homsey had done so on at least four occasions: 19 November 2014, 19 December 2014, 8 January 2015 and 11 February 2015. Sometimes Mrs Homsey would also collect the money herself, and hand it to Mr Homsey. Mrs Homsey eventually accepted that she had known from August 2014 that Mr Homsey was using this money to pay John Hacking and that the payments were profit from an undersupply to the RFS.

Mrs Homsey said that she told Mr Homsey to stop the arrangement, as he would get caught. However, she continued to withdraw money to be paid to John Hacking. Mrs Homsey was clear in her evidence under cross-examination that she knew when money was to be paid to John Hacking from the amounts involved. She said that the amounts were different from the amounts withdrawn to pay staff or suppliers.

Counsel for Mrs Homsey submitted that Mrs Homsey would do what her son asked her without question. However, the evidence before the Commission did not go quite this far. In a recording of a lawfully-intercepted telephone call dated 19 November 2014 between Mrs Homsey and her son, played during the public inquiry, the following exchange took place:

[Mr Homsey]: *Alright, um – yeah so we’ve got to trans (UNINTELLIGIBLE) and who do I*

have to pay. I've got Quartermaster to pay and I've got – like Quartermaster's about twen [sic] – fifteen grand, no about eighteen grand – twenty grand or something like that. And I've got a hundred and four thousand or whatever it is – (UNINTELLIGIBLE) hundred and five thousand for Trevor.

[Mrs Homsey]: *Righteo.*

[Mr Homsey]: *Okay.*

[Mrs Homsey]: *Righteo.*

[Mr Homsey]: *Bit of money coming out.*

[Mrs Homsey]: *Yeah, you've got to get it all back in.*

[Mr Homsey]: *Alright –*

[Mrs Homsey]: *(INAUDIBLE) –*

[Mr Homsey]: *– but then we're up to date except for this – this delivery. Now is this definitely number fifty thousand?*

[Mrs Homsey]: *Yeah, we've done forty, this is fifty.*

This exchange took place after Mr Homsey asked Mrs Homsey to call two bank branches and arrange for \$10,000 cash to be set aside at each. By this time, Mrs Homsey knew that this was money to be paid to John Hacking. Their subsequent conversation indicates that Mrs Homsey took an interest in the business, and in how her son managed the money going in and out of the business account. The Commission is satisfied that, although Mrs Homsey would generally do what her son asked her, she did not have an entirely passive role in the relationship. Further, her admissions indicate that she continued to assist Mr Homsey to make payments to John Hacking while knowing the purpose and source of these payments.

The Commission is satisfied that Mrs Homsey paid \$38,000 into John Hacking's personal account in November 2012, knowing that the receipt of that money would tend to influence John Hacking to show favour to Mr Homsey in relation to RFS business.

The Commission accepts that Mrs Homsey did not manage the D'Vine Tastes or EMCS business nor did she receive purchase orders from the RFS or prepare invoices. Further, there is insufficient evidence to establish Mrs Homsey's knowledge and role in the other payments prior to August 2014. The Commission is satisfied that she knew payments made from August 2014 were a reward or inducement for John Hacking to show favour to Mr Homsey and EMCS, and she assisted Mr Homsey to make those payments.

Evidence given about Mrs Homsey's knowledge of the arrangement

Mr Homsey

In a compulsory examination on 14 April 2015, Mr Homsey told the Commission that he did not tell Mrs Homsey what the money he asked her to withdraw was for as he "didn't want anybody around me to know what it was for". He gave this answer after being asked about how he made arrangements to pay John Hacking, and whether he ever asked anyone else to collect the money from the bank. In this context, the Commission is satisfied that his statement meant that he did not tell his mother that the money was for John Hacking.

During the public inquiry, Mr Homsey accepted that Mrs Homsey knew that the cash was being paid to John Hacking from about November 2014. When asked if she knew that for a specific purchase order there would be an undersupply, Mr Homsey said "she didn't know it was actually how much or what it was but she knew the money was going to John". Mrs Homsey also accepted in the public inquiry that she knew both that Mr Homsey was being paid the full amount for the August 2014 order, although he would supply fewer snack packs and that some of the payment was going back to John Hacking.

Mr Homsey's legal representatives submitted that his answers were equivocal at best, and that Mr Homsey continued to deny that Mrs Homsey knew of the undersupply. The Commission is satisfied that Mr Homsey's answer that he did not tell his mother what the money was for as he "didn't want anybody around me to know what it was for" was false, and that he knew it was false. Mrs Homsey also gave evidence in the public inquiry that Mr Homsey told her that the money was for John Hacking, and that he told her about the undersupply of snack packs to the RFS.

Mrs Homsey

In a compulsory examination on 14 April 2015, Mrs Homsey told the Commission that she could not recall whether Mr Homsey ever asked her to withdraw money that he was going to pay to John Hacking, although she could have had that conversation. As the examination progressed, she said that she would withdraw large amounts of money of up to \$10,000 from the EMCS bank account, which was given to her by the bank in an envelope, and that she would give these to Mr Homsey. Mrs Homsey was asked, "on any occasion, did Scott tell you what that money was for?" and she replied, "no". During the public inquiry, Mrs Homsey said that she did have a conversation with Mr Homsey where he told her

that he was making payments to John Hacking. She also said that he told her about the undersupply of snack packs to the RFS.

Mrs Homsey's legal representative submitted that Mrs Homsey's evidence in her compulsory examination was consistent with evidence given at the public inquiry, which was to the effect that after she was made aware of the skimming arrangement, she was "highly suspicious" that money was being paid to John Hacking. Although Mrs Homsey did describe herself as highly suspicious, she also said that Mr Homsey told her that he, in about November 2014, was making illegitimate payments to John Hacking. Her evidence was to the effect that the conversation was about the payments, as well as the undersupply. She also confirmed that she knew when amounts of money she withdrew for Mr Homsey were for John Hacking because of the sums involved – they were different from the amounts she would withdraw to pay staff wages. Mrs Homsey's legal representative submitted that her evidence during the compulsory examination might appear vague or insufficiently precise, but is insufficient to constitute conduct contrary to s 87 of the ICAC Act. The Commission is satisfied that Mrs Homsey's statements in the compulsory examination, that she could not remember talking to Mr Homsey about payments to John Hacking, and that Mr Homsey did not tell her what the large amounts of money of up to \$10,000 were for, were false and, having regard to her evidence in the public inquiry, that she knew those statements were false.

Corrupt conduct

The Commission's approach to making findings of corrupt conduct is set out in full in Appendix 2 to this report.

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of s 8(1), s 8(2) or s 8(2A) of the ICAC Act. If they do, the Commission considers s 9 and the jurisdictional requirements of s 13(3A) of the ICAC Act. The Commission then considers whether, for the purpose of s 74BA of the ICAC Act, the conduct is sufficiently serious to warrant a finding of corrupt conduct.

In the case of subsection 9(1)(a), the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence.

For the purposes of s 9(1)(a) of the ICAC Act, it is relevant to consider s 192E(1) and s 249B of the *Crimes Act 1900* ("the Crimes Act").

Section 192E(1) of the Crimes Act provides:

- (1) *A person who, by any deception, dishonestly:*
- (a) *obtains property belonging to another, or*
 - (b) *obtains any financial advantage or causes any financial disadvantage,*
- is guilty of the offence of fraud.*

Maximum penalty: Imprisonment for 10 years.

Section 249B of the Crimes Act provides:

- (1) *If any agent corruptly receives or solicits (or corruptly agrees to receive or solicit) from another person for the agent or for anyone else any benefit:*
- (a) *as an inducement or reward for or otherwise on account of:*
 - (i) *doing or not doing something, or having done or not done something, or*
 - (ii) *showing or not showing, or having shown or not having shown, favour or disfavour to any person,*

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

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

the agent is liable to imprisonment for 7 years.

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

- (a) *as an inducement or reward for or otherwise on account of the agent's:*
 - (i) *doing or not doing something, or having done or not having done something, or*
 - (ii) *showing or not showing, or having shown or not having shown, favour or disfavour to any person*

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

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

the firstmentioned person is liable to imprisonment for 7 years.

John Hacking

The Commission is satisfied that John Hacking's conduct in accepting from Mr Homsey \$1,500 in March 2012 and \$3,000 in September 2012, the receipt of which he knew would tend to influence him to exercise his official functions in favour of Mr Homsey, is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because it is conduct that could adversely affect the honest and impartial exercise of his official functions. These official functions included the choice of suppliers and allocation of work during s 44 events and emergency operations. Mr Homsey's business with the RFS relied heavily on decisions made by John Hacking in the exercise of his official functions.

The Commission is satisfied for the purposes of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that John Hacking committed offences under s 249B(1)(b) of the Crimes Act, of corruptly receiving a benefit the receipt of which would tend to influence him to show favour to Mr Homsey in relation to the business of the RFS.

Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

The Commission is also satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct because it was misconduct of a public official in connection with the exercise of his public official functions having regard to his responsibilities for important public functions, including RFS logistics and procurement in emergency situations. John Hacking's acceptance of the \$4,500 led to a situation where he said that he felt "locked in" to participating in the serious corrupt conduct that followed. John Hacking's legal representative submitted that this statement, in fact, referred to payments that occurred in November 2012. In his interview with Commission officers, however, John Hacking was asked why he agreed to enter into the skimming arrangement with Mr Homsey in October 2012 and he said, "I was locked in. I, I was, I was in a position where – I was frightened if I said anything he was gonna raise the alarm and do me in" and, "I thought that I was in, in like – like that I'd accepted these two small payments prior. I, I, I thought I was locked in. He, he had me".

John Hacking's legal representative submitted that the first two payments should not be conflated with the skimming scheme that developed after October 2012. Although the Commission accepts that there is no evidence that John Hacking exercised any of his functions partially or dishonestly in exchange for receiving the first \$4,500, John Hacking's own statements to the Commission illustrate

that his acceptance of these payments was not an isolated event but the first step in a course of corrupt conduct that continued until the Commission intervened in February 2015.

Although the amounts of money involved were smaller than the amounts John Hacking later accepted from Mr Homsey, the RFS' gifts and benefits policy prohibited procurement staff from accepting any gifts or benefits. This policy indicates that the risk of improper influence and potential corruption in the RFS was significant. By accepting money from Mr Homsey, John Hacking breached this policy and the breach was sufficiently substantial to warrant his dismissal. The risk of potential corruption identified by the policy was heightened by the operational realities of emergency situations, including reduced formality in procurement processes and greater reliance on logistics officers to deal with the "nuts and bolts" of procurement.

Submissions for John Hacking were to the effect that he was suffering from a severe mental illness at the time he received these early payments and was in no condition to take into account RFS policies. John Hacking told Commission officers that he "wasn't really thinking straight" when he received \$1,500 from Mr Homsey, and that he was taking a variety of medication and drinking when he gave Mr Homsey his bank details. The Commission was provided with medical reports prepared in August 2012 indicating that John Hacking suffered serious injuries in a car accident on 27 July 2011 and was diagnosed with a post-traumatic stress disorder with an ensuing major depressive disorder. The Commission has taken into account that, in 2012, John Hacking continued to suffer effects of his car accident, which impacted on his mental health. The Commission is satisfied that John Hacking's conduct in accepting these payments was intended, although not pre-meditated. His conduct had an adverse impact on the exercise of his own public official functions because he felt compromised by the payments.

The conduct could also involve an offence under s 249B(1)(b) of the Crimes Act, which has a maximum penalty of seven years imprisonment, and is a serious indictable offence. John Hacking's legal representative submitted that the receipt of \$4,500 would normally be dealt with summarily under the *Criminal Procedure Act 1986* ("the Criminal Procedure Act"), unless there was an election to deal with it on indictment. An offence under s 249B where the benefit does not exceed \$5,000 is a "Table 2" offence under the Criminal Procedure Act, and is to be dealt with summarily unless the prosecutor elects otherwise. The maximum term of imprisonment for a Table 2 offence that the Local Court may impose is two years imprisonment, and the maximum fine is \$5,500 or \$2,200 if the benefit does not exceed \$2,000. An offence under s 249B, where the benefit exceeds \$5,000, is a "Table 1" offence under the Criminal Procedure Act, and is to be

dealt with summarily unless the prosecutor or the person charged elects otherwise. The maximum penalty that may be imposed by the Local Court is two years imprisonment or a fine of \$11,000. Regardless of how such an offence would be dealt with procedurally, the fact remains that the Commission is satisfied that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that John Hacking committed a criminal offence.

Having regard to the importance of the public official functions for which John Hacking was responsible, the fact that receipt of the payments caused John Hacking to feel locked in by Mr Homsey, the risk of improper influence in RFS procurement and the fact that his conduct was a sufficiently substantial breach of RFS policy to warrant his dismissal, the Commission is satisfied that John Hacking's conduct in accepting \$1,500 and \$3,000 from Mr Homsey in 2012 was serious corrupt conduct.

The Commission is also satisfied that John Hacking's conduct in accepting \$403,882 from Mr Homsey and Mrs Homsey between November 2012 and February 2015, the receipt of which he knew would tend to influence him to exercise his official functions in favour of Mr Homsey and which did influence him to exercise those functions by facilitating and concealing the undersupply of snack packs to the RFS and showing favour to Mr Homsey in relation to the business of the RFS, is corrupt conduct for the purpose of s 8(1)(a). This is because this was conduct that could, and did, adversely affect the honest and impartial exercise of his official functions.

The Commission is satisfied for the purposes of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that John Hacking committed offences under s 249B(1)(b) of the Crimes Act, of corruptly receiving benefits, the receipt of which would tend to influence him to show favour to Mr Homsey in relation to the business of the RFS, and offences under s 249B(1)(a)(ii) of the Crimes Act of corruptly receiving benefits as an inducement or reward for showing favour to Mr Homsey in relation to the business of the RFS.

Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

The Commission is also satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct because it was misconduct of a public official in connection with the exercise of his public official functions having regard to his responsibilities in relation to important

public functions and the fact that he was employed in a role where there were heightened risks of improper influence and corrupt conduct. The amounts of money involved were significant, and John Hacking knew that the money paid by Mr Homsey was RFS money and was funded through the deception of the RFS. Further, it was money for declared emergencies, intended to support the functions of the RFS during emergencies that threatened life and property. John Hacking told the Commission that he did not need the money, and the Commission is satisfied that the conduct was not motivated by need. His conduct occurred over a period of more than two years, when he was in a position of trust within the RFS. His conduct was a significant breach of that trust and could have significantly impaired public confidence in public administration. It was also a sufficiently serious breach of RFS policy to warrant John Hacking's dismissal.

Receipt of the money did cause John Hacking to partially and dishonestly exercise his public official functions by facilitating and concealing the undersupply of snack packs to the RFS and showing favour to Mr Homsey in relation to the business of the RFS. The payments would have continued for the remainder of the 2014–15 fire season had the Commission not intervened. Although John Hacking said that the payments would have stopped at the end of that season, he said that this was because the arrangement could not continue as the RFS was implementing new software that would catch the undersupply, rather than because he voluntarily chose to end the arrangement. Further, the conduct could involve offences under s 249B(1)(b) and s 249B(1)(a)(ii) of the Crimes Act, each of which have a maximum penalty of seven years imprisonment and are serious indictable offences.

The Commission is satisfied that John Hacking's conduct in raising RFS purchase orders to Mr Homsey's companies for snack packs and facilitating payment of Mr Homsey's invoices between October 2012 and December 2014, knowing that the full amount ordered would not be, or had not been, supplied to the RFS, is corrupt conduct for the purpose of s 8(1)(b) and s 8(1)(c) of the ICAC Act. This is because his conduct involved a partial and dishonest exercise of his functions in Mr Homsey's favour and a breach of public trust.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that John Hacking committed an offence under s 192E(1)(b) of the Crimes Act, that he by deception, dishonestly caused a financial disadvantage.

Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

The Commission is also satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct because it was misconduct of a public official in connection with the exercise of his public official functions having regard to his responsibilities in relation to important public functions, and because he was employed in a role where there were heightened risks of improper influence and corrupt conduct. John Hacking was trusted by the RFS to perform these important public functions. His conduct was a serious breach of that trust and could have significantly impaired public confidence in public administration. Further, it occurred over a significant period of time.

At clause 3.1, the RFS' code of conduct provides that, "we are to provide service to the community with the responsible use of all our available resources. We are all accountable for working to meet the objectives of the organisation". John Hacking's conduct constituted a significant abuse of the resources entrusted to the RFS to meet the needs of emergency situations. Further, the conduct could involve an offence under s 192E(1)(b) of the Crimes Act, which has a maximum penalty of 10 years imprisonment and is a serious indictable offence.

The Commission is also satisfied for the purposes of s 8(1)(b) of the ICAC Act that John Hacking partially exercised his functions by using RFS funds to:

- pay for couriers through Mr Homsey's companies, knowing that Mr Homsey added a percentage to the charge, and to allow a payment to be made to his brother
- purchase bains-marie from Mr Homsey at an inflated price.

In doing so, John Hacking preferred the interests of Mr Homsey and Darren Hacking over the interests of the RFS.

The Commission does not make a corrupt conduct finding in relation to this conduct. Nor does it make a corrupt conduct finding in relation to John Hacking's conduct in sharing procurement contacts from other agencies. Rather, the Commission considers these to be examples of ways in which John Hacking showed favour to Mr Homsey's companies and demonstrate that the relationship went beyond simply assisting Mr Homsey to undersupply the RFS.

Scott Homsey

The Commission is satisfied that Mr Homsey's conduct in paying John Hacking \$1,500 in March 2012 and \$3,000 in September 2012, the receipt of which he knew would tend to influence John Hacking to exercise his official functions in favour of Mr Homsey, was corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because

it is conduct that could adversely affect the honest and impartial exercise of John Hacking's official functions.

The Commission is also satisfied for the purposes of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Homsey committed offences under s 249B(2)(b) of the Crimes Act, of corruptly giving a benefit, the receipt of which would tend to influence John Hacking to show favour to Mr Homsey in relation to the business of the RFS.

Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

The Commission is also satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct because at the time the money was paid, Mr Homsey was a supplier to the RFS and John Hacking was working in procurement and logistics at the RFS. John Hacking was responsible for making decisions about business that would go to Mr Homsey's companies. Mr Homsey intended that the payments would influence John Hacking to use his position to favour Mr Homsey. Although the amounts of money were small compared to the amounts that John Hacking received in 2013–14, they were not token amounts. Payment of the money was not a one-off error of judgment. It was the first step in a course of conduct that continued until the Commission intervened in February 2015. Further, the conduct could involve an offence under s 249B(2)(b) of the Crimes Act, which has a maximum penalty of seven years imprisonment and is a serious indictable offence.

The Commission is satisfied that Mr Homsey's conduct in paying \$403,882 to John Hacking between November 2012 and February 2015, the receipt of which he knew would tend to influence John Hacking to exercise his official functions in favour of Mr Homsey and which did influence him to exercise those functions by facilitating and concealing the undersupply of snack packs to the RFS and showing favour to Mr Homsey in relation to the business of the RFS, is corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act. This is because it was conduct that could, or did, adversely affect the honest and impartial exercise of John Hacking's official functions.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Homsey committed offences under s 249B(2)(b) of the Crimes Act of corruptly giving benefits, the receipt or expectation of which would tend to influence

John Hacking to show favour to Mr Homsey in relation to the business of the RFS, and offences under s 249B(2)(a)(ii) of the Crimes Act, of corruptly giving benefits to John Hacking as an inducement or reward for John Hacking to show favour to Mr Homsey in relation to RFS business.

Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

The Commission is also satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct because the amount of money involved was significant and was obtained out of funds intended to support the important public functions of the RFS in emergencies. The conduct occurred over a period of more than two years. Payment was intended to influence John Hacking to use his position to favour Mr Homsey. Further, the conduct could involve offences under s 249B(2)(b) and s 249B(2)(a)(ii) of the Crimes Act, each of which have a maximum penalty of seven years imprisonment and are serious indictable offences.

The Commission is satisfied that Mr Homsey's conduct in submitting invoices to the RFS for snack packs between October 2012 and December 2014, knowing that the full amount ordered had not been, or would not be, supplied to the RFS, and knowing that payments had been and would be made to a public official from the profit of this undersupply, is corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act. This is because it is conduct that could adversely affect the honest and impartial exercise of John Hacking's public official functions.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Homsey committed an offence or, in 2014, attempted to commit an offence, under s 192E(1)(b) of the Crimes Act, of obtaining a financial advantage dishonestly, by deception.

Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

The Commission is also satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct because Mr Homsey kept some of the money he received from undersupplying snack packs to the RFS, knowing that this money was intended for use in emergencies to support the important public functions of the RFS. Mr Homsey's conduct occurred over a significant period of time. It involved dishonesty, in that he made false representations to the RFS about whether he supplied the goods. The RFS paid a significant amount

of money for goods that were not supplied. Further, the conduct could involve an offence under s 192E(1)(b) of the Crimes Act, which has a maximum penalty of 10 years imprisonment and is a serious indictable offence.

Gay Homsey

The Commission is satisfied that Mrs Homsey's conduct in November 2012 in assisting Mr Homsey to pay \$38,000 to John Hacking, the receipt of which she knew would tend to influence John Hacking to exercise his official functions in favour of Mr Homsey, is corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act. This is because it is conduct that could adversely affect the honest or impartial exercise of John Hacking's official functions.

The Commission is also satisfied for the purposes of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mrs Homsey has committed an offence under s 249B(2)(b) of the Crimes Act, as the receipt of this money would tend to influence John Hacking to show favour to Mr Homsey in relation to RFS business.

Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

The Commission is also satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct because the amount of money involved was significant. Although Mrs Homsey gave John Hacking the money because Mr Homsey asked her to, she was not acting under duress when she did so. Further, the conduct could involve an offence under s 249B(2)(b) of the Crimes Act, which has a maximum penalty of seven years imprisonment and is a serious indictable offence.

The Commission is also satisfied that Mrs Homsey engaged in corrupt conduct by assisting Mr Homsey to pay money to John Hacking between August 2014 and February 2015, knowing that the money was being paid as an inducement or reward for John Hacking to exercise his official functions in favour of Mr Homsey, by facilitating and concealing the undersupply of snack packs to the RFS. This was corrupt conduct for the purpose of s 8(1)(a) of the ICAC Act, as the payment of that money adversely affected the honest and impartial exercise of John Hacking's public official functions.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mrs Homsey committed an offence under s 249F(1) of the Crimes Act, that she aided or abetted Mr Homsey in the commission of an offence under s 249B(2)(b) of the Crimes Act.

Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

The Commission is also satisfied for the purposes of s 74BA of the ICAC Act that this is serious corrupt conduct because the amounts of money withdrawn by Mrs Homsey between August 2014 and February 2015 were significant. Mrs Homsey's conduct continued over a period of several months. She believed that what Mr Homsey was doing was wrong but she continued to withdraw money for him. Although she withdrew money because Mr Homsey asked her to, she was not acting under duress. Further, the conduct could involve an offence under s 249F(1) of the Crimes Act, which has a maximum penalty of seven years and is a serious indictable offence.

Darren Hacking

The Commission is satisfied that Darren Hacking did not engage in corrupt conduct.

Section 74A(2) statements

In making a public report, the Commission is required by s 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 (DPP) with respect to the prosecution of the person for a specified criminal offence
- b. the taking of action against the person for a specified disciplinary offence
- c. the taking of action against the person as a public official on specific grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

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

The Commission is satisfied that John Hacking, Mr Homsey, Mrs Homsey and Darren Hacking are "affected" persons.

John Hacking

The evidence John Hacking gave in the public inquiry was the subject of a declaration under s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used in evidence against him in any subsequent criminal proceedings, except in a prosecution for an offence under the ICAC Act.

John Hacking, however, voluntarily participated in a recorded interview with Commission officers. He was cautioned that anything he did or said during that interview might be used in evidence, including in a criminal prosecution. In that interview, he admitted that he had received payments from Mr Homsey, and that he agreed that those payments would be funded through an undersupply of snack packs to the RFS.

There are also bank records, recordings of lawfully-intercepted telephone calls, call charge records and surveillance footage that show payments were made to John Hacking by Mr Homsey between 2012 and 2014. There are also admissible business records to show that John Hacking's employment with the RFS afforded him the opportunity to show favour, or to show disfavour, to Mr Homsey.

The Commission is of the opinion that that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of John Hacking for receiving a corrupt commission or reward contrary to s 249B(1)(b) of the Crimes Act in relation to the receipt of payments from Mr Homsey between March 2012 and February 2015.

Along with John Hacking's record of interview, there are admissible statements and RFS business records to indicate that John Hacking did facilitate Mr Homsey's undersupply to the RFS by signing Mr Homsey's invoices, knowing that the full amount had not been supplied and submitting them to senior officers to approve payment. The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of John Hacking for an offence against s 192E(1)(b) of the Crimes Act, in relation to invoices signed in 2012 to 2013. 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 John Hacking for attempting to commit an offence against s 192E(1)(b) of the Crimes Act, in relation to the 2014 pre-season order.

As John Hacking has resigned from his position at the RFS, it is not necessary to consider any recommendation in relation to disciplinary or dismissal action.

Scott Homsey

The evidence Mr Homsey gave in the public inquiry was the subject of a declaration under s 38 of the ICAC Act. John Hacking's recorded interview is not admissible against Mr Homsey.

There are bank records, however, that show payments made to John Hacking by Mr Homsey during the 2012–13 fire season. There are also bank records, recordings of lawfully-intercepted telephone calls, and surveillance footage that show payments made in the 2014–15 fire season. There are also admissible business records to show that John Hacking's employment with the RFS afforded him the opportunity to show favour, or not to show disfavour, to Mr Homsey.

There is a recording of a lawfully-intercepted telephone call that shows that Mr Homsey was only intending to supply 82,000 packs during the 2014–15 fire season.

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 Homsey for the following offences:

- corruptly making payments to John Hacking as an inducement or reward, contrary to s 249B(2)(b) of the Crimes Act, in respect of payments made between March 2012 and February 2015.
- attempting to obtain a financial advantage, or cause a financial disadvantage, by issuing false invoices to the RFS between September and December 2014, contrary to s 192E(1)(b) of the Crimes Act.

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 Homsey for making false statements to an officer of the Commission on 14 February 2015 regarding the payment of money to John Hacking, contrary to s 80(c) of the ICAC Act. Admissible evidence includes the statement of the Commission officer, Mr Homsey's evidence during the public inquiry and surveillance footage of Mr Homsey paying cash to John Hacking.

Evidence given by Mr Homsey in a compulsory examination and in the public inquiry, which was the subject of a declaration under s 38 of the ICAC Act, is admissible against him in relation to proceedings for an offence against the ICAC Act. The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Homsey for giving false or misleading evidence during his compulsory examination on 14 April 2015 regarding Mrs Homsey's knowledge of payments to John Hacking, contrary to s 87(1) of the ICAC Act.

Gay Homsey

The evidence Mrs Homsey gave in the public inquiry was the subject of a declaration under s 38 of the ICAC Act.

There is insufficient admissible evidence regarding Mrs Homsey's payment of \$38,000 to John Hacking in November 2012 for the Commission to consider obtaining the advice of the DPP with respect to a prosecution of Mrs Homsey in relation to that payment.

However, there are bank records, recordings of lawfully-intercepted telephone calls, and surveillance footage that show that Mrs Homsey withdrew money from the EMCS account in 2014 and 2015 and gave it to Mr Homsey, knowing that it would be paid to John Hacking and knowing that John Hacking was responsible for the orders received by EMCS from the RFS.

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 Homsey for aiding Mr Homsey to pay corrupt commissions or rewards to John Hacking, in respect of payments made between November 2014 and February 2015, contrary to s 249F(1) of the Crimes Act.

Evidence given by Mrs Homsey in a compulsory examination and in the public inquiry, which was the subject of a declaration under s 38 of the ICAC Act, is admissible against her in relation to proceedings for an offence against the ICAC Act. The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mrs Homsey for giving false or misleading evidence during her compulsory examination on 14 April 2015 regarding her knowledge of payments to John Hacking, contrary to s 87(1) of the ICAC Act.

Darren Hacking

The Commission is of the opinion that there is no basis to consider obtaining the advice of the DPP with respect to the prosecution of Darren Hacking for any criminal offence.

Chapter 3: Benefits received by Paul Springett

Money paid by Mr Homsey to Mr Springett

Payment of \$1,000

Mr Springett told the Commission that, around Christmas 2013, Mr Homsey gave him \$1,000 cash. Mr Springett said that he understood this to be a Christmas present, as Mr Homsey said to him something like, “here’s \$1,000, Merry Christmas”. Mr Homsey said that he did not give Mr Springett any cash as a Christmas present, but may have given him around \$1,000 at that time for a “logistics job”. This was a reference to courier work performed by Mr Springett’s friend, Ray Smith. Mr Homsey said that he used to give Mr Springett cash to pass on to Mr Smith as payment for courier work.

Mr Springett gave a detailed account of receiving the cash. Mr Homsey accepted that the payment may have occurred, but apart from suggesting that it was for a different purpose, did not offer any detail. Further, Mr Springett volunteered the information against his own interest. He was candid in accepting that he should not have taken the money and should not have kept it. The Commission would not have been aware of the payment without Mr Springett’s evidence. Mr Springett’s admission against his own interest is preferred to Mr Homsey’s explanation. The Commission is satisfied that Mr Homsey paid Mr Springett \$1,000 around Christmas 2013 and that this was a gift and not a payment for a courier service provided by Mr Smith.

The Commission also accepts Mr Springett’s evidence that he did not create an RFS purchase order in relation to the \$1,000, and nor did he ask anyone else to create a purchase order for this amount.

Mr Springett said that he knew that accepting \$1,000 as a Christmas gift from Mr Homsey was wrong. Mr Springett had an important role in relation to Mr Homsey’s work with the RFS. Mr Homsey told the Commission that all

the products he provided to the RFS had to be approved by John Hacking and Mr Springett. The statement of information provided to the Commission by Mr McDonald indicates that Mr Springett was a key logistics officer and had a role in pre-season planning for logistics purchases, which included purchases of snack packs. As such, Mr Springett had the opportunity to show favour to Mr Homsey in this role.

The Commission is satisfied that Mr Springett knew that receipt of the \$1,000 would tend to influence him to show favour to Mr Homsey in relation to the affairs or business of the RFS.

Payments for work done by Mr Smith

The term “logistics job” was a reference to an arrangement that Mr Homsey said he had with Mr Springett, with the following elements:

- Mr Smith performed courier work for the RFS
- Mr Springett provided an RFS purchase order to Mr Homsey for the courier work performed by Mr Smith
- Mr Homsey invoiced the RFS for the work performed by Mr Smith
- the RFS paid Mr Homsey for the work invoiced
- Mr Homsey paid the money he received from the RFS to Mr Springett in cash, on the understanding that either the money would be passed on to Mr Smith or the payment was reimbursement for money Mr Springett had already paid to Mr Smith for the work.

Mr Springett agreed that he had suggested to Mr Smith that he contact Mr Homsey for some work. He also passed on details of the jobs to Mr Smith. Mr Homsey and Mr Springett both agreed that, on 9 January 2015, Mr Homsey met Mr Springett at a laundry in Springfield on the Central Coast and gave him about \$1,000 in cash.

Both agreed that this money was payment for a courier job performed by Mr Smith.

Mr Smith made a statement to the Commission in which he said that he was paid for some transportation work by Mr Homsey. The statement does not mention that he was paid by Mr Springett. The Commission accepts the evidence of Mr Springett that he did, on occasion, receive money from Mr Homsey for Mr Smith that he passed on to Mr Smith. Mr Smith's statement does not exclude the possibility that he was also paid by Mr Homsey through Mr Springett. The Commission found Mr Springett's evidence about Mr Smith to be credible, and it was not contradicted by other evidence.

Other benefits provided to Mr Springett

On 27 November 2014, Mr Springett left Mr Homsey's premises carrying four bottles of wine. Surveillance footage of this event was tendered in evidence before the Commission. Mr Springett said that he had a friendly relationship with Mr Homsey, which involved sharing wines. Mr Homsey said that it was not unusual in his industry to provide gifts of wine, and said that he had also received wine from Mr Springett.

The Commission is satisfied that the four bottles of wine were provided to Mr Springett as a gift from Mr Homsey. Whether Mr Springett also provided wine to Mr Homsey does not alter the fact that this wine was a gift.

Mr Springett said that Mr Homsey also intimated that he would have another Christmas present for him in 2014, but Mr Springett told him that he did not want anything. On 24 December 2014, Mr Homsey provided canapés to Mr Springett for use at a family Christmas function. Mr Springett said that he always intended to pay for the canapés, which he believed to be worth around \$400, but had not done so at the time of the public inquiry.

On 26 December 2014, Mr Springett sent a text message to Mr Homsey:

Hey mate. Just a quick thankyou for organising the canapes. They went down a treat. Mum and my grandmother were suitably impressed. Hope you had a great day too with your family. Now off to eat some left over prawn sticks yum...

There is no indication in this message that Mr Springett intended to pay for the canapés.

Mr Homsey agreed that, initially, Mr Springett indicated an intention to pay for the canapés, but Mr Homsey said that he would provide them as a Christmas gift. Mr Springett also said that, in about mid-January 2015, he asked Mr

Homsey about an invoice for the canapés. Mr Homsey said he could not recall this discussion.

Mr Springett's legal representative submitted that Mr Springett is not required to establish that he "hounded" Mr Homsey to pay for the goods. In 2013, however, Mr Springett had received \$1,000 in cash from Mr Homsey in circumstances where he believed that the payment was wrong and could have affected his job. He said that he believed that Mr Homsey wanted to give him a Christmas present in 2014. The canapés were provided around Christmas, and Mr Homsey had refused his offer of payment. Even if it is accepted that Mr Springett had asked for an invoice in mid-January, he had taken no further action to make payment. This inaction on his part indicates that he did not have a genuine expectation that he would be required to pay for the canapés.

Mr Homsey denied that he provided the canapés to ingratiate himself with Mr Springett in order to continue his commercial relationship with the RFS. Their business relationship was, however, significant. Mr Springett was at that time procurement manager, and had met with Mr Homsey about products to be supplied to the RFS. In a recording of a lawfully-intercepted telephone call made on 25 November 2014 played during the public inquiry, Mr Homsey and Mr Springett discussed the canapés. Mr Springett mentioned the need for hot meals for Christmas lunch, and Mr Homsey said:

we – we definitely need to talk because I can show you a way and – and being Rural Fire mate you can – you can sign off on the program.

They then discussed the fact that Mr Homsey was going to start making meals in bags that could be reheated as needed. This conversation supports the inference that Mr Homsey provided the canapés to ingratiate himself with Mr Springett and encourage the future flow of work to his businesses. Mr Homsey connected the offer of assistance with Christmas catering to Mr Springett's functions at the RFS, and his ability to approve more business for Mr Homsey.

At clause 3.5, the RFS' gifts and benefits policy provides that:

Certain activities across the NSW RFS have been identified as being at higher risk of improper influence and potential corruption. In these areas the offer of any gift or benefit must be refused. These areas include:

- a) *Development control, and*
- b) *Procurement.*

Mr Springett breached this policy by accepting the money and canapés from Mr Homsey.

The Commission does not make a finding of serious corrupt conduct against Mr Springett. The Commission would not have known about the \$1,000 payment had Mr Springett not disclosed that information, and the canapés were of relatively low value and were presented to Mr Springett at Christmas time. The Commission also does not make a finding of serious corrupt conduct against Mr Homsey for the provision of gifts and benefits to Mr Springett.

Section 74A(2) statement

The Commission is satisfied that Mr Springett and Mr Homsey are affected persons for the purposes of s 74A(2) of the ICAC Act.

Mr Springett's evidence was the subject of a declaration under s 38 of the ICAC Act and, therefore, cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. Mr Homsey's evidence was also the subject of a declaration under s 38 of the ICAC Act.

There is insufficient admissible evidence to seek the advice of the DPP regarding any offences relating to the receipt of \$1,000 during Christmas 2013. There are some admissible recordings of lawfully-intercepted telephone calls regarding the receipt of canapés by Mr Springett at Christmas 2014. There is insufficient admissible evidence, however, regarding Mr Springett and Mr Homsey's intention in relation to the canapés to consider seeking the advice of the DPP regarding the prosecution of Mr Springett or Mr Homsey for a criminal offence.

In his compulsory examination on 16 April 2015, Mr Springett told the Commission that he had never received any money from Mr Homsey. Mr Springett's evidence in the public inquiry indicates that this was not the truth. The Commission does not consider that the advice of the DPP should be sought regarding prosecution of Mr Springett for an offence under s 87(1) of the ICAC Act, on the basis that he has now volunteered the truth to the Commission about this payment.

As Mr Springett has resigned from his position at the RFS, it is not necessary to consider any recommendation in relation to disciplinary or dismissal action.

Chapter 4: John Hacking's use of RFS mobile telephones and other devices

John Hacking's public official functions included purchasing and distributing telephones and other electronic devices for the RFS. He was expected to keep a record of these items.

Between 16 March 2011 and 19 September 2013, John Hacking sold 72 telephones through his PayPal account on eBay. The telephones were mostly Apple iPhone 4 handsets, although there were also some Apple iPhone 5 and Samsung Galaxy S4 handsets sold in 2013. They sold for between \$400 and \$700 each; a total of about \$45,000.

John Hacking accepted that all of the telephones he sold through eBay were RFS property and he did not have permission to sell them. He said that the telephones were old stock that had been returned; however, his eBay entries indicate that at least some of the telephones were "brand new in the box". John Hacking said that he did not have any financial difficulties in early 2011, and started selling mobile telephones because he was "stupid".

In June 2014, the RFS entered into a contract with Telstra as part of the NSW Government Telecommunications Agreement. As part of this contract, the RFS was allocated a hardware credit of \$200 for each service assigned to a fixed-term 24-month plan. The credit was referred to as the Subsidy Acquisition Revenue Centre or the mobile subsidy fund (MSF). Telstra does not treat the MSF as a fund of money, but as "an internal Telstra process which removes the cost of certain hardware orders".

In December 2014, the MSF was worth \$215,000 (excluding GST).

John Hacking had authority to use the MSF to order mobile telephones and other devices on behalf of the RFS. He was the only person to place an order on the fund, although Mr Springett was also aware it existed. On 8 December 2014, John Hacking placed an order for Apple iPads, and iPhone 6, iPhone 6 Plus and Sony Xperia handsets from the MSF. On 12 December 2014, he placed an order for additional Samsung Galaxy S5 handsets. The orders totalled approximately \$107,500. John Parnaby, the RFS' assets and infrastructure director, told the Commission that John Hacking was "pretty much the sole person who administered the mobile telephones, iPads et

cetera and basically maintained a spreadsheet and provided those telephones out to people as required ... I assumed that those IMEI [International Mobile Equipment Identity] numbers were being recorded on a spreadsheet".

John Hacking accepted that he supplied family and friends with some of the telephones that he had obtained through the MSF. He said that he gave his wife an Apple iPhone 6. A letter from his daughter's partner, Michael Bird, indicated that he received two Apple iPhone 6 handsets, an iPad, an iPhone 6 Plus and a Sony Xperia from John Hacking. Mr Bird received the iPhone 6 telephones in July 2014, indicating that they were not purchased through the MSF.

Scott Hacking, John Hacking's brother, received two telephones from John Hacking; a Samsung Galaxy S5 and a Samsung Ace 3. John Hacking said that he also gave a telephone to Darren Hacking, his nephew and his friends. Another person also returned an iPhone 6 Plus supplied to him by John Hacking to the Commission. John Hacking also provided three Samsung Ace handsets to a friend as part of a deal to purchase a ride-on lawn mower.

Samsung Ace telephones provided by John Hacking were not purchased through the MSF. John Hacking said that they were provided free of charge by Telstra to distribute to volunteers. Manopark Pty Ltd is a franchisee and agent of Telstra that supplies telephone handsets to the RFS. Shaun Burgess, an employee of Manopark, told the Commission that each of the telephones supplied by Manopark would have been paid for by the RFS, as Manopark has never supplied the RFS with free handsets.

Whether the Samsung Ace telephones were paid for by the RFS or not, John Hacking accepted that all the telephones given to family and friends belonged to the RFS and he did not have permission to give them away.

Corrupt conduct

The Commission is satisfied that John Hacking's conduct between March 2011 and December 2014 in taking mobile telephones and other electronic devices from the RFS without authority was corrupt conduct for the purposes of

s 8(1)(b) of the ICAC Act. This is because it involved the dishonest and partial exercise of his official functions. He favoured his own interests over the interests of the RFS, and did not undertake the task of purchasing and distributing devices for the RFS honestly. The Commission is also satisfied that it was conduct involving a breach of public trust for the purposes of s 8(1)(c) of the ICAC Act because it involved the exercise of his public functions in bad faith, to obtain a benefit for himself and for his family and friends.

For the purpose of s 9(1)(a) of the ICAC Act it is relevant to consider s 159 of the Crimes Act. This section provides:

Whosoever, being employed in the Public Service, steals any property, or any part thereof, intrusted to him or her, or taken into his or her possession, or being in his or her custody, or under his or her control, by virtue or colour of such employment, shall be liable to imprisonment for ten years.

The Commission is satisfied for the purposes of s 9(1)(a) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that John Hacking has committed offences under s 159 of the Crimes Act.

The Commission is satisfied for the purposes of s 9(1)(c) of the ICAC Act that John Hacking's conduct would have provided the RFS with reasonable grounds for terminating his services.

Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

The Commission is also satisfied for the purposes of s 74BA of the ICAC Act that the conduct is serious corrupt conduct because it occurred over a significant period of time and was not a one-off error of judgment. The conduct involved a significant amount of money and was not motivated by need. John Hacking was trusted to procure, receive and administer mobile telephones and other electronic devices on behalf of the RFS, and his conduct

was in breach of that trust. Further, John Hacking's conduct could involve an offence under s 159 of the Crimes Act, which has a maximum penalty of 10 years imprisonment and is a serious indictable offence.

Section 74A(2) statement

Evidence given by John Hacking in the public inquiry was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act.

John Hacking, however, voluntarily participated in an interview with Commission officers. He was cautioned that anything he did or said during that interview might be used in evidence, including in a criminal prosecution. In that interview, he admitted that all of the telephones sold through his PayPal account were RFS property, and that he did not have authority to sell them. He also admitted to providing family and friends with devices taken from the RFS without authority.

Other admissible evidence includes business records from PayPal of the sale of each telephone, mobile telephones and iPad devices lawfully seized from John Hacking's premises by Commission officers, photographs of devices returned to the RFS or the Commission by John Hacking's friends and family, RFS business records indicating the purchase of the telephones and John Hacking's access to the MSF, statements from people who received telephones from John Hacking and statements from Telstra or Manopark employees that indicate the source of some of the telephones taken by John Hacking.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to a prosecution of John Hacking for larceny by a person in the public service under s 159 of the Crimes Act.

Chapter 5: Corruption prevention

The logistics of RFS operations

There are many parallels that can be drawn between the logistics of supporting firefighters and military logistics. The Northern Atlantic Treaty Organization (NATO) definition of logistics includes:

- the design and development, acquisition, storage, transport, distribution, maintenance, evacuation and disposal of matériel
- transport of personnel
- acquisition, construction, maintenance, operation and disposition of facilities
- acquisition and provision of services
- medical and health service support.

The NATO definition includes planning, design, development and procurement as well as stock control, provision or construction of facilities, movement and control, reliability and defect reporting, safety standards for storage, transport and handling and related training.

To varying degrees, these logistics activities are the same as those required of the RFS in its support of firefighting efforts in NSW.

Logistics is much more than procurement of goods and services. It is often characterised as the bridge between industry and “combat” events. Time is always a critical consideration. Where possible, stockpiles of time-critical supplies are established to sustain operations until resupply can take place. This was the RFS approach to consumable items, such as snack packs and water, with stock warehoused centrally and in caches across the state.

For infrastructure and non-consumable components of logistics, such as telephones and communication systems, procurement and distribution occurs prior to an event to ensure operational readiness.

In a logistics environment, ensuring matériel will be available to support firefighters, when needed, would

be planned and prepared months in advance of a fire season. Inventories of matériel would be counted and tracked. Communications systems and equipment would be identified and tested to ensure readiness. For supplies that are less amenable to demand forecasting, stockpiling or transportation, such as accommodation and cooked meals, effective logistics requires planning for immediate procurement in a way that is unimpeded by red tape and onerous processes.

Logistics is typically cast as a highly integrated set of activities starting from pre-event planning, through to resupply during an event and finally closing off an event. In the case of snack packs, for example, the Victorian Country Fire Authority (CFA) integrates usage forecasting, inventory control, stockpiling, estimations of supplier capacity, transportation times and production lags, cost-sharing and risk-sharing into five-year contract arrangements that are competitively awarded in accordance with state procurement procedures.

Because there are large variations in demand from season to season, the CFA provides long-term ration pack demand data to the market so that pricing could take into account the risks of slow seasons. Slow seasons can result in stock held by suppliers reaching expiration dates as well as suppliers holding excess production capacity. To improve the price, the CFA offers a five-year contract to reduce the risks associated with demand fluctuations. The CFA also requires the supplier to hold part of the inventory, thereby spreading the cost of stockpiling. The price and terms of delivery of items are pre-determined, and supplies can be ordered as needed year-round. Inventory control is tight, and, after fire events, the snack packs are collected from the field, placed back into the stockpiles and accounted for.

The effective and integrated logistics of the CFA also act as a barrier to corruption. Stock levels are pre-determined and current inventory is well understood, as is likely future need. Corrupt over-ordering is made more difficult. The

price and allocation of the contract have been established through a thorough process that is unaffected by the pressures of an emergency. Theft and under-delivery are controlled by tight inventory systems and a post-event stocktake.

In contrast to the CFA, the RFS' approach to ration pack inventory and procurement at the time of the conduct examined by this inquiry lacked many of the characteristics of integrated logistics; indeed, to the point of appearing ad hoc. It was not clear to the RFS what stock was held in warehouse inventory and field stockpiles. Inventory was largely made up of the leftovers from prior emergency purchases and demand forecasting was rudimentary. In this environment, where neither current levels nor future needs were well understood, it was unclear what volume constituted an appropriate order and, therefore, the system was vulnerable to corrupt over-ordering.

An initial attempt to use a more strategic or logistics-based approach to ration pack procurement was made by the RFS with the 30 June 2014 memorandum titled "pre fire season orders". The memorandum sought approval to make a pre-season order of 100,000 snack packs (\$1.4 million) and other goods as a "pre-order for RFS snack packs to restock for fire season" with "goods to be delivered over four months".

Mr Yorke said that he agreed to sign the memorandum because he thought it was a pre-emptive procurement strategy for goods to be used during the approaching fire season, and stressed that this was the first instance that the RFS had looked strategically at its procurement of emergency supplies in advance of a fire season.

With the signed request, John Hacking could begin to place orders for the supplies from Mr Homsey as well as other suppliers. By using a declared emergency to procure the snack packs, it was possible to avoid the rigorous processes of determining price and allocation of work to suppliers. Without an effective inventory control system, significant under-delivery was possible.

Over the course of four years, about \$9 million worth of emergency response goods, including snack packs and other services and supplies, were procured by the RFS from a single vendor without any competitive process, usually under the auspice of "emergency" procurement.

The procurement of snack packs by the RFS was problematic in almost every way: the order had been allocated to a corrupt supplier, and the RFS failed to detect serious under-delivery. The failure to detect the under-delivery indicates that John Hacking had also ordered more snack packs than was needed. During the same period, loose control of assets had allowed John Hacking to misappropriate telecommunications assets.

The RFS operating environment

To understand why RFS emergency procurement systems evolved in a way that allowed for under-delivery, over-ordering, uncompetitive allocation of work and unauthorised removal of assets, it is important to examine the context within which the RFS operates.

Ideally, logistics would be a single integrated function of the organisation that would focus on tight control of all aspects of matériel. The logistics function would have control systems at its core that allow effective management of usage estimation and deployment planning, stock control, re-supply arrangements, methods of contracting with industry and processes around closing off operations to ensure unused matériel is recovered and accounted for.

At present, however, the RFS operating environment is not conducive to the development of effective controls within an integrated logistics function. Rather, the RFS must cope with complex arrangements around procurement policies and procedures, control systems, accounting and ownership of matériel. Ordinary procurement occurs under state procurement guidelines, but during emergencies many of the procurement controls are set aside to allow for a rapid response.

Ordinary procurement is conducted using SAP as the primary control system, but the RFS said that its SAP is not suitable for much emergency procurement so a manual system is used in many emergency procurement situations. Different funding rules apply depending on whether an emergency is current or not. Some of the matériel within the system is owned by the RFS, while other supplies are vested with local councils. With consumables expensed against an emergency, it is very difficult to place leftovers into inventory and, therefore, tracking stock levels is difficult.

In short, a single logistics function has to cope with multiple procurement rules, funding rules, control systems for tracking procurement and owners of matériel, and, at the same time, has to cope with matériel that is expensed and, therefore, exists on the shelves but has no accounting value. The policy and legislative environment in which the RFS currently operates undermines the development of an integrated logistics function and, therefore, the development of effective control systems within the RFS.

Further, the inconsistencies between different parts of the operating environment create incentives and opportunities for corrupt behaviour. In relation to this investigation, the incentive was to procure for s 44 events, where funding arrangements were less constrained and where opportunity for corruption was created by the weaker procurement rules that apply during emergencies.

The RFS will not be able to develop an effective logistics function and the tight associated controls without:

- incorporating procurement within a single logistical function rather than as separate emergency activities and non-emergency activities
- integrating control systems for emergency and non-emergency procurement
- solving the “vesting” and “expensing” issues in a way that allows for effective control of inventory (described in more detail below).

A single logistics function – with two systems of procurement

Logistics control is difficult under ideal conditions. Maintaining control when the function is artificially split across two systems is much harder, particularly when the difference between the arrangements creates incentives to shift procurement to the better funded and less rigorous arrangement.

The RFS is accredited by the NSW Procurement Board to carry out procurement in accordance with state policies when that procurement is other than emergency procurement. The fact that the RFS has been accredited indicates that the RFS capabilities to conduct non-

emergency procurement are satisfactory. When there is an emergency, however, the accreditation and state policies effectively cease to apply.

In a declared emergency, the RFS switches to a different system. Many staff move from their normal offices to the control room, where they take on different titles and work under different rules. Often a procurement officer will become a state logistics officer.

An emergency procurement system is used during declared s 44 emergencies or where the RFS is providing assistance in another emergency situation. Procurement in emergency response situations is coordinated by the RFS’ Major Incident Logistics Support unit. Many of the safeguards of ordinary procurement are relaxed; for instance:

- no procurement strategy is required
- vetting for vendors is loosened
- mandatory thresholds for quotes and tender processes are not applied
- accounting processes allocate each incurred expense to a particular s 44 event
- logistics purchases are attributed to a special operating budget supplied to the RFS by NSW Treasury, and later reimbursed by the NSW Treasury’s Disaster Relief Account.

Ordinarily procurement is conducted by RFS procurement officers using the RFS SAP Enterprise Resource Management software. Software such as SAP is very effective in ensuring that the proscribed processes are followed. Delegations and sign-offs are controlled. It is very hard to work around the safeguards. Rigorous checks on new vendors who may not yet exist in the SAP vendor master file (VMF) can be conducted to limit the likelihood of paying companies that have not been accepted through proper processes.

NSW Office of Finance Services-accredited processes, combined with the rigors of SAP software, add layers of control that may be too much of a burden for a system that requires speed and agility in an emergency. Indeed, RFS officers agreed that, in an emergency situation, their SAP software is “unable to respond quickly enough to meet the operations demands in a section 44 event” and, therefore, during declared emergencies procurement is conducted manually in order to respond quickly enough to support operational demands. In these circumstances, NSW Procurement Board rules will not apply and SAP checks will be limited to the verification of supplier Australian Business Numbers (ABNs). Vendors are added to SAP databases solely on the signed request of a logistics officer and ABN check.

The result is that, following an emergency, RFS staff can spend up to several months examining the decisions

made during an emergency, considering the integrity of the invoices they have received from suppliers and, when appropriate, challenging the suppliers. Regardless of the effort, it is very hard to apply controls after the fact. The choice of supplier, the volume and the price paid, unless patently wrong, will generally have to be accepted.

In the case of snack packs, procurement of the same item could occur under two quite different systems with different levels of control and different funding arrangements. The system creates a natural incentive to move procurement to the easier path. Such a path, once established, can also be used for corrupt purposes. In this case the procurement of snack packs, which should have occurred under the rigours of state procurement policies and been subjected to the controls contained in SAP, was conducted without any of the normal controls around allocation of contracts, estimation of needed volume or careful determination of price. While the volumes being ordered were in excess of that needed, individual orders were not so egregious that they stood out.

Unworkable limits on the use of procurement in an emergency

The risks associated with the misuse of emergency procurement are well known. NSW state procurement regulations expressly exclude the use of emergency processes for procurement that encompass multiple events or time periods.

The RFS submitted to the Commission that its policies are compliant with the *Public Finance and Audit Act 1983*. RFS policies allow logistics officers to authorise the purchase “to a value sufficient to meet that particular emergency”, provided that:

- the goods or services must be urgently needed
- the price paid is reasonable and proper
- the quantity is not in excess of that necessary to meet the immediate needs of the particular emergency.

In theory, limiting the use of emergency procurement to goods and services urgently needed for a single emergency appears to provide a clear boundary to this type of procurement and, therefore, a containment of possible abuse of the system. In reality, though, it is almost impossible to limit procurement only to that which is needed for the one event or to procure only for a single event.

Where there are pressures of time and uncertainty, logistics procurement becomes harder to control. In the case of matériel such as snack packs, supply-side uncertainty is created by potential lags in production and limitations in supplier capacity. Future consumption rates and loss levels in the field create uncertainty around

demand for goods, largely dependent on how the fire event unfolds. At best, the need for supplies can be predicted within a range. To supply at the lower end of the range is to risk leaving firefighters without adequate supplies – a reckless approach. To procure at the higher end of the range is to almost certainly buy more than is needed for that emergency, which is contrary to policy.

The number of snack packs that should be ordered and the capacity of a supplier to re-supply are not easily verified by a manager in an emergency situation. While some science may inform estimations, the upper limits of uncertainty generated by lead time, supplier capacity, consumption estimates and loss estimates will be a best-guess. There is little way a manager under time pressure can know the difference between an order for supplies that includes a safety margin and corrupt over-ordering. This becomes even more difficult when existing inventory levels are unclear.

It is equally unrealistic to attempt to control inappropriate behaviour by limiting procurement to a single emergency. The state will often have several declared emergencies running simultaneously. As fires burn, they may merge, creating a single emergency; and later diverge again. It is nonsensical to think that separate orders can be placed with a supplier for each separate event for only the precise amount needed for that event. The reality is that matériel is ordered at a level above that needed and is ordered to cover all events, current and anticipated. Goods and services are allocated to specific events after the fact through an accounting process.

Reforms to procurement processes

Since the Commission’s investigation and inquiry, the RFS has re-emphasised its procurement policies to staff. While this is commendable, the problem remains that control over the abuse of emergency procurement through limitations, based on immediate need and single emergencies, is unworkable. Policies that do not reflect the realities of emergency situations necessitate workarounds to achieve priority objectives. Ensuring that there are sufficient supplies to protect life and property will always take priority over technical compliance with a policy. Instead of the policy providing an effective control, the emergency procurement process at the time gave John Hacking the opportunity to disguise the undersupply of snack packs.

A more effective control is to strengthen the logistics capability of the RFS by shifting procurement of consumables to managed contracts that span emergency and non-emergency conditions, somewhat negating the incentives and opportunities created by the splits in policy and funding arrangements. A stronger logistics capability focuses efforts on key corruption controls of forecasting need, evaluating supplier capabilities, managing

contracts, controlling inventory and stockpiles, setting re-supply triggers, pre-setting emergency procurement arrangements and accounting for leftover stock. The RFS has stated that such an approach is currently being implemented.

The RFS is developing pre-season procurement strategies for identified consumable items used in fire-suppression, such as bottled water and snack packs, which will be sourced under collaborative purchasing agreements with the Victorian CFAs contracted vendor. Other meal packs and consumables are now subject to a request for quotation process in preparation for the 2015–16 fire season.

The RFS also outlined recent plans to explore the potential for integrating emergency procurement into the SAP system. In May 2015, the RFS issued a “request for quote” for a firm to review its emergency procurement processes and develop an invoicing process within SAP or some other solution to integrate emergency purchases. While it is clearly desirable to integrate the two procurement control systems, this should not be at the expense of speed and flexibility in the emergency procurement process, nor should speed compromise other elements of control, such as the checks carried out to ensure the integrity of the VMF.

An integrated logistics approach that pulls much of procurement for emergencies out of the emergency procurement process, and that is controlled through a single integrated system tied into SAP, will improve operations and reduce the incentives and opportunities for corruption. Nevertheless, the procurement undertaken by the RFS will always carry a high inherent risk due to both the speed and uncertainty around some procurement as well as the long-term relationships that will exist between RFS procurement officers and some suppliers.

Ideally, the RFS procurement strategy would identify all goods and services for which forecasts can be made around relevant criteria, such as stockpile volume, consumption rates, location or transportability, re-supply capacity and so on, and manage supply through contracts that are similar to the Victorian CFA ration pack contract. Where there is some certainty that goods and services will be required, but the volume, timing and location cannot be adequately predicted, then a pre-approved panel would be used. Where this cannot be achieved, as in the case of meals during transit, then a schedule of rates may assist in safeguarding against price gouging occurring in a spot market.

In an attempt to close control gaps, the RFS has recently adopted much of this model for its procurement of snack packs. The fact remains, however, that corrupt snack pack procurement was carried out under emergency conditions

and without a managed contracting process, without panel arrangements, and without even a schedule of rates.

Recommendation 1

That the RFS, where possible, strengthens its logistics capabilities and modifies its procurement practices to reflect an overall logistics focus.

Recommendation 2

That the RFS continues to seek methods of integrating the Systems, Applications and Protocols (SAP) system and emergency manual controls in a way that does not impede speed and flexibility.

Same stock – owned three different ways

One of the biggest challenges to control of matériel faced by the RFS is the complex arrangements of funding and ownership that permeate the state’s firefighting capability. These complex arrangements have their roots in the fact that rural firefighting was, and remains, a largely local and volunteer activity. With more than 70,000 volunteers, combating rural fires is undertaken primarily by civil society. The establishment of the RFS to provide coordination of fire response by civil society necessarily requires collaboration and compromises between the state and civil society to effectively respond to emergencies.

The compromise most relevant to the current inquiry is vesting. Almost all of the matériel required for firefighting is procured by the RFS for local organisations. The Rural Fires Act provides that, in an accounting sense, assets and inventory purchased through the Fund for the use of local fire districts or brigades are considered vested with the local council in which they are located. While the Rural Fires Act is somewhat unclear, the effect has been that the RFS claims ownership of very few assets, with the value of assets, such as fire trucks, located with local government. In effect, the RFS does not own – as assets – most of the matériel that is central to firefighting logistics, even when it has physical possession (as in the case of snack packs).

The situation is further complicated by the expensing of items such as snack packs. Expenditures for consumable items used in disaster response, such as these packs, are initially met through a standing provision of \$7 million for emergency response. Rather than being held in the inventory as assets, these assets and consumable goods, which are for use in district offices or local brigades, are expensed as soon as they are purchased by the RFS, and are not recorded as assets on RFS books; in effect they are deemed to have been consumed or ownership transferred and, therefore, no longer exist in an accounting sense even though they may physically exist.

In sum, the implication of the Rural Fires Act is that matériel such as snack packs can exist in three accounting positions:

1. Supplies can be owned by the RFS and on RFS books as assets with value.
2. In an accounting sense, the same class of supplies can also be vested with local government bodies, which puts their legal ownership and value with the local council but the RFS maintains some control over them.
3. After being expensed against a s 44 event, leftover supplies have no value in an accounting sense but still physically exist in the RFS' possession.

Due to the complexities of the Rural Fires Act, the simple logistics question of, "how many snack packs are in inventory and where are they are?", is not able to be answered with normal inventory controls. An inventory system cannot function effectively when parts of the physical inventory are not owned by the organisation and much of the stock itself is deemed not to have any value. Inventory cannot be integrated into the accounts payable system and the value of assets cannot be registered. The combination of vesting and expensing reduces inventory control to an informal system of tracking.

Confirmation of delivery of goods at the time of the corrupt behaviour was dependent on telephone or email communications between logistics officers and storepeople at the Glendenning warehouse. Storepeople would advise logistics officers by email of recent deliveries or stock levels of snack packs and other consumable goods.

These communications formed the basis for an informal inventory system, but could, however, only give a snapshot of stock levels, and deliveries of logistics goods could not be matched against a purchase order or invoice. With no requirement for delivery dockets and no SAP records for goods receipt, an accurate inventory of s 44 supplies could not be produced. The further effect was to give control of the entire inventory system to a single logistics officer.

RFS submissions and evidence given by Mr Rogers and Mr McDonald confirmed that the lack of comprehensive goods receipting was a factor that may have facilitated John Hacking's corrupt scheme. Supplies purchased by the RFS under emergency processes were not recorded on inventory management systems, and deliveries of logistics goods received at the RFS warehouse in Glendenning were not recorded in SAP systems and could not be matched against relevant purchase orders.

Initially, due to the lack of requirement for delivery dockets, this system could not confirm delivery of logistics items like snack packs, foam and water. The more recent

addition of a "goods receipt miscellaneous" function made a record of receipt possible, but could not match up receipted goods with orders or invoices. Unfortunately, this feature still cannot reconcile manual orders with warehouse deliveries. The RFS is currently seeking solutions to make this reconciliation possible; a vital logistics capability for ensuring inventory levels.

Reforms to inventory capabilities

The RFS has implemented a number of reforms to its inventory management systems. These reforms will close a number of gaps in inventory control and maintain better flows of inventory information.

The RFS recently issued a new State Warehouse Inventory Management Policy, which reformed warehouse inventory replenishment and distribution processes, and closed several of the gaps that previously existed. The addition of the new SAP Warehouse Management System (WMS) also improves the efficiency and tracking of logistics goods from the main RFS warehouse to local RFS caches across the state, helping to maintain better control over operationally critical inventory to be used during emergencies.

The new warehouse Standard Operating Procedures "manage receiving of deliveries and holding pre-determined minimum and maximum stock levels of operationally critical inventory based on forecast requirements" and manage replenishment timeframes agreed to in supplier contracts. Appropriate stock levels will be established by relevant business sections or category managers.

The RFS monitors and manages inventory of operationally critical goods using the SAP WMS system. When stock of these goods falls below a pre-determined minimum inventory level, officers will raise a purchase requisition in SAP for replenishment from a pre-determined supplier and seek the appropriate logistics procurement approvals. Once approved, purchase orders will be generated. Inventory arriving at the warehouse must now include paperwork that outlines the order number, supplier, description and quantity of goods. RFS logistics and warehouse officers will process goods receipts in SAP by cross-checking the quantity and type of goods ordered against those actually received, and place the goods in warehouse locations assigned by the SAP WMS.

The supply of operationally critical inventory will be requested by incident management teams in the State Operations Centre. Logistics officers will determine the most appropriate procurement option for these emergency orders, and warehouse logistics between the state warehouse and supply caches will be managed in SAP WMS.

Other planned functionalities, including SAP Enterprise Asset Management (EAM) and SAP Material Requirements Planning (MRP) protocols, will enable the RFS to identify and capture minimum and maximum stock levels and reorder points in a systematic fashion and track the movement of consumables, inventory and equipment.

These new systems aim to give the RFS capability to monitor inventory levels and allocate goods to particular caches, brigades, locations and incidents. These will also help to plan stock flows of perishable items, like snack packs, based on first-in-first-out accounting in order to minimise the waste of perishable goods.

The proposed changes certainly contribute to eliminating the weaknesses that were exploited by John Hacking. However, the tracking of stock is not the same as an integrated inventory system, and will remain less than ideal. Unless the RFS can overcome the limitations created by vesting and expensing, full control of inventory and the integration of inventory with asset controls and accounts payable will not be possible.

The simplest solution is for the RFS to ensure that all consumables in inventory are recorded as assets along with the full value as it is received; just as a standard inventory system would operate. Consumables in inventory are neither vested nor expensed. The value of all stock entering the system from the supplier retains its value as it is entered into RFS books. Consumables should not be expensed until they physically leave inventory, and should be expensed against a specific event or activity. Leftover consumables that are purchased under emergency conditions, or expensed to an event, would be brought into inventory only with appropriate journal adjustments that reinstate the value. The RFS would effectively buy the leftovers from the event.

Such a system of asset control also goes some way towards removing the incentive to shift costs to emergency funding arrangements or to over-order during an emergency, as only those goods actually consumed during an event will be expensed.

Recommendation 3

That all inventory relating to consumables held by the RFS be recorded as assets with their full value.

Recommendation 4

That consumables held in RFS inventory are expensed only when they leave inventory for a specific event or activity or because they have expired.

Mobile telephone equipment – limited tracking of an attractive asset

With many of the firefighting assets loosely tracked by the RFS – probably largely because they are vested locally or because they are in the possession of the RFS but in the limbo of having been expensed – it is perhaps not surprising that the control of telecommunications assets also had gaps at the time of the investigation. Mobile telephones, which were also expensed, were tracked in an informal way that paralleled the informal tracking of other expensed items in inventory.

Yet, mobile telephones are not like other assets. Their high levels of attractiveness, potential for personal use and portability leads many government departments to treat them as a special class of asset and to closely track their distribution and usage.

Equally, from a logistics concern, telephones form part of communications infrastructure. It is reasonable to think that ensuring telephones are in the right hands and working is a precondition for the coordination of firefighting efforts. Yet, the RFS was largely unaware of who had possession of its telephones or even the arrangements under which the telephones were purchased.

According to Mr Parnaby, the RFS' assets and infrastructure manager (who manages the division that tracked and maintained assets administered by the RFS including mobile telephones and iPads), it was believed that John Hacking was the sole person who administered the mobile telephones and iPads and that John Hacking maintained a spreadsheet of telephones provided to RFS employees.

An opportunity that presented itself to John Hacking was in the form of the handset subsidy that is routinely included as part of some Telstra contracts. The MSF, valued at approximately \$215,000, allows for the supply of subsidised handsets from the supplier.

While Mr Springett was aware of the existence of the MSF component of the contract, other RFS supervisors and managers appear to have been unaware of the MSF. With neither telephones nor the MSF registered as assets, and knowledge of this aspect of the plan not widely known, John Hacking was able to order handsets and take them without authority.

Stephen O'Malley, the RFS' chief financial officer, has confirmed that, since the discovery of John Hacking's conduct, the RFS now registers the MSF with the RFS asset databases. Moving forward, the MSF will be used

for acquisition of hardware for use by the RFS, and “control of the fund has been assigned to the Procurement Strategy Steering Committee which will determine the specific application of the fund”. The Commission has no further recommendations for reform in this area.

The RFS has also improved its control over its mobile telephone equipment. While mobile telephones are not considered “assets” on RFS books, Mr O’Malley indicated that, as part of the recent RFS implementation of SAP EAM, mobile telephones are now tracked as equipment in SAP systems. This means that, from the time telephones are recorded into RFS systems, the location and personnel to whom each telephone is assigned are recorded (and updated as equipment is reassigned). The Commission has no further recommendations in this area.

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

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

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

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



Appendix 1: The role of the Commission

The 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 Commission's functions are set out in s 13 and s 14 of the ICAC Act. One of the Commission's principal functions is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

- (i) corrupt conduct (as defined by the ICAC Act), or
- (ii) conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or
- (iii) conduct connected with corrupt conduct,

may have occurred, may be occurring or may be about to occur.

The Commission may also investigate conduct that may possibly involve certain criminal offences under the *Parliamentary Electorates and Elections Act 1912*, the *Election Funding, Expenditure and Disclosures Act 1981* or the *Lobbying of Government Officials Act 2011* where such conduct has been referred by the Electoral Commission to the Commission for investigation.

The Commission may report on its investigations and, when appropriate, make recommendations as to any action it believes should be taken or considered.

The Commission may make findings of fact and form opinions based on those facts as to whether any particular person has engaged in corrupt conduct.

The role of the Commission is to act as an agent for changing the situation which has been revealed. Through its work the Commission can prompt the relevant public authority to recognise the need for reform or change, and then assist that public authority (and others with similar vulnerabilities) to bring about the necessary changes or reforms in procedures and systems, and, importantly, promote an ethical culture, an ethos of probity.

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

Appendix 2: Making corrupt conduct findings

Corrupt conduct is defined in s 7 of the ICAC Act as any conduct which falls within the description of corrupt conduct in s 8 of the ICAC Act and which is not excluded by s 9 of the ICAC Act.

Section 8 defines the general nature of corrupt conduct. Subsection 8(1) provides that corrupt conduct is:

- (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or
- (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
- (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
- (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

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

Subsection 8(2A) provides that corrupt conduct is also any conduct of any person (whether or not a public official) that impairs, or that could impair, public confidence in public administration and which could involve any of the following matters:

- (a) collusive tendering,
- (b) fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety or the environment or designed to facilitate the management and commercial exploitation of resources,
- (c) dishonestly obtaining or assisting in obtaining, or dishonestly benefitting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage,
- (d) defrauding the public revenue,
- (e) fraudulently obtaining or retaining employment or appointment as a public official.

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

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

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

Subsection 9(4) of the ICAC Act provides that, subject to subsection 9(5), the conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in s 8 is not excluded

by s 9 from being corrupt if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

Subsection 9(5) of the ICAC Act provides that the Commission is not authorised to include in a report a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection 9(4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from the ICAC Act) and the Commission identifies that law in the report.

Section 74BA of the ICAC Act provides that the Commission is not authorised to include in a report under s 74 a finding or opinion that any conduct of a specified person is corrupt conduct unless the conduct is serious corrupt conduct.

The Commission adopts the following approach in determining findings of corrupt conduct.

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of subsections 8(1), 8(2) or 8(2A) of the ICAC Act. If they do, the Commission then considers s 9 and the jurisdictional requirements of section 13(3A) and, in the case of a Minister of the Crown or a member of a House of Parliament, the jurisdictional requirements of subsection 9(5). In the case of subsection 9(1)(a) and subsection 9(5) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence. In the case of subsections 9(1)(b), 9(1)(c) and 9(1)(d) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

The Commission then considers whether, for the purpose of s 74BA of the ICAC Act, the conduct is sufficiently serious to warrant a finding of corrupt conduct.

A finding of corrupt conduct against an individual is a serious matter. It may affect the individual personally, professionally or in employment, as well as in family and social relationships. In addition, there are limited instances where judicial review will be available. These are generally limited to grounds for prerogative relief based upon jurisdictional error, denial of procedural fairness, failing to

take into account a relevant consideration or taking into account an irrelevant consideration and acting in breach of the ordinary principles governing the exercise of discretion. This situation highlights the need to exercise care in making findings of corrupt conduct.

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

...reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or fact to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

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

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

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

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





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